APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
(APPELLATE JURISDICTION)

APPEAL NO. 432 OF 2019 & IA NO. 2211 OF 2023 & IA NO. 1386 OF 2019
And
APPEAL NO. 433 OF 2019 & IA NO. 2212 OF 2023

Dated: 1st AUGUST, 2025

Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Ms. Seema Gupta, Technical Member (Electricity)

In the matter of:

APPEAL NO. 432 OF 2019 & IA NO. 2211 OF 2023 & IA NO. 1386 OF 2019

M/S RENEW WIND ENERGY (TN2) PRIVATE LIMITED
Through its authorized signatory
138, Ansal Chamber – II
Bikaji Cama Place, New Delhi – 110 066 … Appellant

VERSUS

1. **CENTRAL ELECTRICITY REGULATORY COMMISSION**
   Through its Registrar
   4th Floor, Chanderlok Building,
   36, Janpath, New Delhi – 110001. … Respondent No.1

2. **NATIONAL THERMAL POWER CORPORATION LIMITED**
   Through its Chairman and Managing Director
   NTPC Bhawan, SCOPE Complex,
   7, Institutional Area, Lodhi Road,
   New Delhi – 110003. … Respondent No.2

3. **NTPC VIDYUT VYAPAR NIGAM LIMITED**
Through its Chairman and Managing Director
NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi – 110003. … Respondent No.3

4. **SOUTHERN POWER DISTRIBUTION COMPANY OF TELANGANA LIMITED**
Through its Chairman and Managing Director
6-1-50, Mint Compound,
Lokdikapool, Hyderabad, Telangana – 500004. … Respondent No.4

5. **NORTHERN POWER DISTRIBUTION COMPANY OF TELANGANA LIMITED**
Through its Chairman and Managing Director
Vidyuth Bhavan, Nakkalagutta,
Hanamkonda Warangal, Telangana – 506001. … Respondent No.5

Counsel for the Appellant(s): Mannat Waraich
Mohd Munis Siddique
Ananya Goswami
Mridul Gupta

Counsel for the Respondent(s): Shri Venkatesh
Nishtha Kumar
Somesh Srivastava
Ashutosh Kumar Srivastava
Vikas Maini
Suhael Buttan
Juhi Bhambhani
Lasya Pamidi **for Res.2**

D. Abhinav Rao **for Res.4 & 5**

APPEAL NO. 433 OF 2019 & IA NO. 2212 OF 2023

M/S RENEW WIND ENERGY (TN2) PRIVATE LIMITED
Through its authorized signatory
138, Ansal Chamber – II
Bikaji Cama Place, New Delhi – 110 066 … Appellant

VERSUS

1. **CENTRAL ELECTRICITY REGULATORY COMMISSION**
   Through its Registrar
   4th Floor, Chanderlok Building,
   36, Janpath, New Delhi – 110001. … Respondent No.1

2. **NATIONAL THERMAL POWER CORPORATION LIMITED**
   Through its Chairman and Managing Director
   NTPC Bhawan, SCOPE Complex,
   7, Institutional Area, Lodhi Road,
   New Delhi – 110003. … Respondent No.2

3. **NTPC VIDYUT VYAPAR NIGAM LIMITED**
   Through its Chairman and Managing Director
   NTPC Bhawan, SCOPE Complex,
   7, Institutional Area, Lodhi Road,
   New Delhi – 110003. … Respondent No.3

4. **BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED**
   Through its Chairman and Managing Director
   K. R. Circle, Bangalore
   Karnataka, PIN - 56000 … Respondent No.4

5. **HUBLI ELECTRICITY SUPPLY COMPANY LIMITED**
   Through its Chairman and Managing Director
   Navanagar, PB Road,
   Karnataka, PIN – 580 025. … Respondent No.5

6. **GULBARGA ELECTRICITY SUPPLY COMPANY LIMITED**
   Through its Chairman and Managing Director
   Gulbarga Main Road, Gulbarga,
   Karnataka – 585 102. … Respondent No.6

7. **MANGALORE ELECTRICITY SUPPLY COMPANY LIMITED**
Through its Chairman and Managing Director
MESCOM Bhavana Bejai,
Kavoor Cross Road, … Respondent No.7
Mangalore, Dakshina Kannada,
Karnataka, PIN – 575 004.

Counsel for the Appellant(s): Mannat Waraich
Mohd Munis Siddique
Ananya Goswami
Mridul Gupta

Counsel for the Respondent(s): Shri Venkatesh
Nishtha Kumar
Somesh Srivastava
Ashutosh Kumar Srivastava
Vikas Maini
Suhael Buttan
Juhi Bhambhani
Lasya Pamidi **for Res.2**

ORDER

PER HON'BLE MR. JUSTICE RAMESH RANGANATHAN, CHAIRPERSON

IA No. 2211 OF 2023 & IA NO. 2212 OF 2023
(For amendment of appeals)

I. INTRODUCTION:

IA No 2211 of 2023 in Appeal No. 432 of 2019 and IA No. 2212of 2023 in Appeal No. 433 of 2019 were filed by the Appellants in Appeal Nos. 432 and 433 of 2019 respectively on 11.10.2023 requesting this Tribunal to allow the applications, take on record the amended appeal as detailed in the IAs, and pass such orders as this Tribunal may deem fit in the facts and circumstances of the present case.

II. BACKGROUND FACTS:

The Appellants herein filed Petition No. 187/MP/2018 and Petition No. 193/MP/2018 before the CERC, under Section 79(1)(b) of the Electricity Act, 2023, seeking approval of change in law and consequent revision in capital cost due to introduction of the Central Goods and Services Tax Act, 2017 promulgated by way of notification dated 28.06.2017. Both these petitions were heard and decided by the CERC along with Petition No. 192/MP/2018 filed by M/s Phelan Energy India RJ Private Limited and Petition No. 178/MP/2019 filed by M/s ACME Jodhpur Solar Energy Private Limited.

In its order in the afore-said petitions dated 05.02.2019, the CERC framed the following three issues ie Issue No. 1 : Whether the promulgation of the IGST Act, 2017, the CGST Act, 2017, the Rajasthan GST Act, 2017 and the State(s) GST Act, 2017 with effect from 01.07.2017 are covered under the scope of 'Change in Law' under Article 12 of the Power Purchase Agreements?; Issue No. 2: Whether there will be incremental impact in the cost on account of promulgation of the GST Laws? and, Whether there is a need to evolve a suitable mechanism to compensate the Petitioners for the increase in recurring and non-recurring expenditure incurred by the Petitioners on account of Change in Law?; and Issue No. 3: Whether the claim of 'interest/ Carrying Cost' for delay in reimbursement by the Respondents is sustainable?

On Issue No.1, the CERC held that, in the instant case, the ‘GST Laws’ had been enacted by the Indian Government Instrumentalities i.e. by the Act of Parliament and the State Legislative Assemblies; the change in duties/ tax imposed by various Government Instrumentalities at Centre and State level had resulted in the change in the cost of the inputs required for generation, and hence the same was to be considered as 'Change in Law'; the enactment of 'GST laws' was squarely covered as 'Change in Law'

under the first and fifth bullet in seriatim of Article 12 of the PPA; and this view was taken by it in its order in Acme Valley Power Private Limited Vs Solar Energy Corporation of India Limited & Ors (Order in Petition No. 188/MP/2018 & Ors. dated 09.10.2018).

On Issue No.2, the CERC held that according to GST Laws, in cases where the invoices raised or consideration for the goods/ supply of services had been received before 01.07.2017 and the tax had already been paid under the earlier law, GST will not be applied in such cases; it was immaterial whether the consideration for supply had been paid fully or partly; as regards claims during the construction period, the Petitioner had to exhibit clear and one to one correlation between the projects and the supply of goods or services duly supported by the invoices raised by the supplier of goods and services and Auditor certificates; the amount determined by the Petitioner shall be on back to back basis, and shall be paid by DISCOMS to the Petitioners under the respective Power Sale Agreements; the Claim shall be paid within sixty days of the date of this Order or from the date of submission of claims by the Petitioners whichever was later, failing which it would attract late payment surcharge as provided under the PPAs/PSAs; alternatively, the Petitioners and the Respondents may mutually agree to a mechanism for payment of such compensation on annuity basis spread over the period not exceeding the duration of the PPAs as a percentage of the tariff agreed in the PPAs; and the claim of the Petitioners, on account of additional tax burden on O&M expenses (if any), was not maintainable.

On Issue No.3, the CERC held that the claim regarding separate Carrying Cost and interest on working capital in the instant petitions were not allowed. All the four petitions were disposed of accordingly.

Aggrieved thereby the Appellants filed Appeal Nos. 432 and 433 of 2019 before this Tribunal on 25.07.2019, under Section 111 of the Electricity Act, challenging the order passed by the CERC to the extent the Commission had disallowed compensation for increase in recurring expenses due to duty implementation of the Goods and Services Tax with effect from 01.07.2017 in respect of Operation and Maintenance Services, and for having disallowed carrying cost for change in law events. The relief sought by the Appellants in the said appeals was to allow the present appeals and set aside the impugned order passed by the CERC dated 05.02.2019 to the extent it sought to disallow increased in the cost on account of O&M services, and incremental carrying cost.

Among the grounds raised in the appeal, filed in challenge to the impugned order passed by the CERC, were that the impugned order was non-speaking and the additional material placed by the Appellants and the grounds raised by them were not considered; the impugned order was erroneous in as much as it had disallowed change in law relief in respect of O&M services on the ground that the outsourcing of O&M services was not permitted under the PPA; the terms of the PPA implicitly provided for outsourcing of O&M services; alternatively, the Appellant was eligible for expenses incurred in relation to procurement of materials required for carrying out the O&M activity; and the Appellants were eligible to claim the expenses incurred in relation to carrying cost under the 'change in law' clause of the PPA. After completion of pleadings, this Tribunal, by its order dated 06.09.2022, directed the said appeals to be included in the List of Finals.

After the impugned order was passed on 05.02.2019, and before they preferred the appeal on 25.07.2019, the Appellant addressed a letter to the second Respondent on 08.04.2019 seeking reconciliation of its claims in

terms of the impugned order which provided for one to one co-relation of the change in law impact on the Appellants. This request of the Appellant was rejected by the second Respondent in May, 2019.

a. CLARIFICATION PETITION:

After a lapse of two years, the Appellants filed Petition No. 109/MP/2021 before the CERC on 16.04.2021, under Section 79(1)(i) and Section 91 of the Electricity Act read with Regulation 111 of the CERC Conditions of Business Regulations 1999. The relief sought therein was for a clarification to be issued by the CERC that, in the light of the order dated 05.02.2019 passed by the Commission, the GST claims for change in law ought to be allowed for goods and services procured prior to COD where invoices were raised post COD, and for goods and services procured post COD where invoices were also raised post COD.

In the said petition, the appellants herein stated that their claims, with respect to 187/MP/2018 and 193/MP/2018, were partly rejected by the 1st Respondent-NTPC vide its email dated 13.05.2019 and 15.05.2019 stating that various invoices whose invoice date was after the date of actual commissioning, i.e. 01.11.2017 and 14.12.2017, could not be included in the claim; this objection came to be issued by the 1st Respondent-NTPC despite no such direction being issued by the CERC in the Appellant's own case; the Appellant, vide email dated 22.05.2019, had proceeded to justify the claim providing explanation on the aspect that the goods and services, the invoices of which were raised post commissioning, had been procured prior to commissioning; such goods and services were solely for the said project and thus would be covered under the change in law claim; however, by email dated 07.06.2019, the 1st Respondent-NTPC denied the Appellant's claim in relation to the invoices raised post commissioning.

Reference was made in the said Petition to various correspondence till September 2020, and it was stated that despite providing all details, after expiry of one and half years on 09.09.2020, the 1st Respondent-NTPC, relying on the decision of the CERC, in **Wardha Solar (Maharashtra) Private Limited** (Petition No. 388/MP/2018), stated that the liability of payment, on account of GST, shall lie only till the Commercial Operation Date; and, on this basis, they proceeded to direct the Appellant to submit their claim in relation to invoices raised up to COD.

It was further stated that, relying on the decision rendered subsequently, the 1st Respondent-NTPC had allowed the claim of the Appellant till COD, despite no such direction/ restriction being provided for in the Appellant's own case i.e. in 187 and 193 of 2019 decided by order dated 05.02.2019. Under these circumstances, the Appellant contended that they were constrained to file the clarificatory petition seeking a clarification and direction upon the following: -(a) that in light of the order of the Commission dated 05.02.2019, which does not lay down any restriction with respect to claim being prior to or post COD, the claims which related to invoices raised post COD against the procurement made before COD, where such procurement are in relation to goods and services used for setting up of the Project in terms of the PPA, should be allowed; (b) that in light of the order of the Commission dated 05.02.2019, which did not lay down any restriction with respect to claim being prior to or post COD, the claims which related to procurement made post COD should be allowed in as much as they are in relation to goods and services used for setting up of the Project in terms of the PPA.

After extracting certain provisions of the PPA, the Appellant stated in the Petition that it was evident from Article 12 that they were entitled to file a petition before the Commission seeking compensation in relation to the

additional expenditure as incurred by them; the only trigger for invoking the change in law clause was the effective date of the PPA, and the commissioning/ Commercial Operation Date had no relation to events concerning change in law; restricting the benefit to the commissioning/ commercial operation date was effectively leading to addition of extraneous conditions in the PPA which was impermissible; had the parties intended to restrict the benefit of change in law under Article 12 only for increased expenditure incurred up to the commissioning/ COD, the same would have been specifically provided thereunder; however, since the present PPA did not have any such express condition which restricted the reimbursement of GST till the commissioning/ COD, addition of such extraneous restriction effectively amounted to suo moto amendment to the terms of the PPA entered into between the parties which was impermissible in law; the Appellant was entitled to compensation for the expenditure incurred on account of imposition of GST, even though the same had been paid on goods and services procured after the COD in as much as there was a direct correlation between the Goods and Services, and the solar power project set by the Petitioner; the rationale for installing the additional modules which were imported after the COD was solely to enhance the DC capacity of its project to meet the generation/ supply commitment as agreed under the PPA so as to optimize the project.

While raising several grounds in support of their contention that they were entitled for change in law even post COD, the Appellant submitted that they were entitled to increased tax cost suffered on account of the change in event of introduction of GST laws, and such compensation ought to be governed on the basis of actual costs incurred as evidenced from the invoices; and the Petitioner was entitled to receive the entire amount from the 1st Respondent-NTPC.

The Appellant prayed that the Clarification Petition should be allowed, and the CERC should clarify that, in the light of the order dated 05.02.2019 passed by the Commission in Petition No. 187/MP/2018 and 193/MP/2018, GST claims for change in law ought to be allowed for goods and services procured prior to COD where invoices were raised post COD and for goods and services procured post COD where invoices were also raised post COD.

b. ORDER PASSED BY THE CERC ON 29.09.2021 IN THE PETITION FILED BY THE APPELLANTS:

In the order passed by it on 29.09.2021, in Petition No.109/MP/2021 filed by the Appellants herein, the CERC framed the following two issues: Issue No. 1 was whether the cut-off date for payment of GST/Safeguard Duty claims in respect of Orders passed by this Commission needed clarification; and Issue No. 2 was whether the respondent-NTPC could be directed to release the reconciled payments of Rs.5,66,51,694 out of the total claim of Rs. 6,91,89,713 for the period up to COD in view of the Order dated 05.02.2019?

On Issue No.1, the Commission, after referring to the various clauses of the PPA and other statutory provisions, observed that, in case of 'supply of goods', the date of issue of invoice could not be after the date of supply of goods as per Sections 12, 14 and 31 of the CGST Act, 2017, whereas in case of 'supply of services', related to the goods procured up to the COD, the date of issue of the invoice can be thirty days after the supply of services as per Sections 13, 14 and 31 of the CGST Act, 2017 along with Rule 47 of the CGST Rules, 2017; accordingly, there could not be any invoice under law, post supply of goods as the goods were not exempt under Rule 55 of the CGST Rules, 2017; further, in case the invoices were not raised, the point of taxation for supply of goods was deemed to be the date of delivery

of the goods; hence, the invoices related to supply of the goods could be raised only up to COD for all the equipment as per the rated project capacity that had been installed, and through which energy had flown into the grid, since the liability of NTPC/Respondent Discoms for payment of purchase of power from the Respondent SPDs started from the Commercial Operation Date (COD).

The Commission further found that there was a possibility of a few services, related to goods procured up to the COD, to be completed on the last date of COD; hence in case of 'supply of services', related to goods procured up to the COD completed on the last day of COD, the invoices could be raised within 30 days after COD; thus, in case of supply of services, related to goods procured up to COD, the invoices were to be raised within 30 days of supply of such services, which could not be later than 30 day of COD; the Petitioner was entitled to be compensated accordingly; the Order dated 05.02.2019 was passed in the batch of five petitions viz. Petition No. 187/MP/2018; Petition No. 192/MP/2018; Petition No. 193/MP/2018; Petition No. 178/MP/2018 and Petition No. 189/MP/2018; out of the above five Petitions, the Commission had already given clarification in Petition No. 192/MP/2018; Petition No. 178/MP/2018 and Petition No. 189/MP/2018 vide Order dated 20.08.2021 in Petition No. 536/MP/2020 & Ors; and no further clarifications were required.

On Issue No.2, the CERC referred to its earlier order dated 05.02.2019 in Petition No. 187/MP/2018 and then noted that, in their Order dated 05.02.2019, the contracting parties were given the option of one-time payment or payment on annuity basis; however, payment in either of the aforesaid modes was incumbent upon the Petitioner making available to the Respondents all relevant documents exhibiting clear and one to one correlation between the projects and the supply of goods or services, duly

supported by relevant invoices and Auditor's Certificate; in the instant case, the contracting parties had agreed to a one-time payment mode, and that one-to-one correlation between the project and the supply of goods and services had been established so far corresponding to the claim of Rs. 5.67 crores out of Rs. 6.92 crores; therefore, the said payment of Rs. 5.67 crores (being a major portion of the total claim) for which one-to-one correlation had been established may be released by NTPC to the Petitioner at the earliest as an interim measure; the balance claim of Rs. 1.25 crores would be released by NTPC after receiving full documentation to its satisfaction in terms of the Order dated 05.02.2019 in the original petition. Accordingly, Petition No. 109/MP/2021 along with I.A. No. 37/2021 was disposed of in terms of the above discussions and findings.

III. ORDER OF THIS TRIBUNAL IN PARAMPUJYA SOLAR ENERGY PRIVATE LIMITED AND OTHERS VS. CERC (JUDGEMENT IN APPEAL NO.256 OF 2019 AND BATCH DATED 15.09.2022):

Nearly one year after the CERC passed the order dated 29.09.2021, in Petition No.109/MP/2021 filed by the appellant herein, this Tribunal passed its judgement in **Parampujya Solar Energy Private Limited and Others vs. CERC** (judgment in Appeal No. 256 of 2019 and Batch dated 15.09.2022). Appeal No. 256 of 2019 and batch were filed before this Tribunal by certain Solar Power Developers aggrieved by the order passed by the CERC declining the relief of carrying cost on their claim for restitution in the wake of the change in law provision contained in the Power Purchase Agreement, In its judgement, this Tribunal held that, since the project in question was set up under a composite scheme envisaging supply of electricity thereby generated to more than one State, the objection to the jurisdiction exercised by the Central Commission was not correct.

On the issue of compensation for additional expenditure incurred by the Solar Power Developers on account of change in law, consequent on enforcement of the GST laws and safeguard duty on import of solar cells, and the incidental relief of carrying cost, this Tribunal observed that the stipulation that the developers would be entitled to be placed in the same financial position as it would have, had it not been for the occurrence of change-in-law", stood incorporated in the PPA executed in its wake, the guidelines also having a binding effect; they could not approve of the view taken by the Central Commission on the subject of carrying cost; and the developers were entitled to grant of relief in the nature of carrying cost over and above the compensation already allowed by the Central Commission.

On the appellants claim of compensation for the period post-COD, this Tribunal noted that the developers had also claimed compensation (on account of change in law events) for the consequent additional expenditure incurred or invoices raised after the Commercial Operation Date (COD) of the SPPs; the Central Commission, by the impugned decisions, had held that liability towards additional expenditure was to be borne by the respondent beneficiaries only till the date of corresponding COD of the project; the change-in-law clauses in the PPAs (Article 12) assured relief to be provided in relation to "any additional recurring/non-recurring expenditure" arising out change-in-law; there was no restriction in the contracts as to application of this clause for the period prior to COD; the activities of generation of electricity and its supply, post COD, were bound to include non-recurring expenditure, O&M expenses being one such area; the use of the word "any" in relation to the consequent "recurring or non-recurring expenditure" signified the wide ambit of the contractual clause, no exclusion of such nature as understood by the Commission deserving to be read there into; the extraneous qualification that such expenditure must relate to period prior to COD could not be approved of; while they did not

agree with the Central Commission as to the blanket denial of additional expenditure, as had arisen post COD, due to change in law events, they would avoid at this stage to make any comment as to the justification for or prudence of such expenditure in as much as that was an exercise which must be first carried out at the level of the regulatory authority.

This Tribunal concluded in para 109 of its judgement as under:-

> "……*The other captioned appeals – Appeal no. 256 of 2019 (Parampujya Solar Energy Pvt. Ltd & Anr. v. CERC & Ors.), Appeal no. 299 of 2019 (Parampujya Solar Energy Pvt. Ltd. v. CERC & Ors.), Appeal no. 427 of 2019 (Mahoba Solar (UP) Private Limited v. CERC & Ors.), Appeal no. 23 of 2022 (Prayatna Developers Pvt. Ltd. v. CERC & Ors.) Appeal no. 131 of 2022 (Wardha Solar (Maharashtra) Private Ltd. & Anr. v. CERC & Ors.) and Appeal no. 275 of 2022 (Parampujya Solar Energy Pvt. Ltd. & Anr. v. CERC & Ors.) - deserve to be allowed. We order accordingly directing the Central Electricity Regulatory Commission to take up the claim cases of the Solar Power Project Developers herein for further proceedings and for passing necessary orders consequent to the findings recorded by us in the preceding parts of this judgment, allowing Change in Law (CIL) compensation (on account of GST laws and Safeguard Duty on Imports, as the case may be) from the date(s) of enforcement of the new taxes for the entire period of its impact, including the period post Commercial Operation Date of the projects in question, as indeed towards Operation & Maintenance (O&M) expenses, along with carrying cost subject, however, to necessary prudence check."*

IV. INTERIM ORDER OF THE SUPREME COURT IN THE APPEAL AGAINST THE JUDGEMENT OF THIS TRIBUNAL IN PARAMPUJYA SOLAR ENERGY PRIVATE LIMITED AND OTHERS VS. CERC:

Aggrieved thereby, the Telangana Northern Power Distribution Company Limited carried the matter in appeal to the Supreme Court. By its order, in Civil Appeal Nos. 8880 of 2022 along with I.A No. 183158 of 2022 and Batch dated 24.03.2023, the Supreme Court condoned the delay and held that, pending further orders, the CERC shall comply with the directions issued in Para 109 of the impugned order dated 15.09.2022 of APTEL; however, final orders of the CERC shall not be enforced pending further orders.

V. RIVAL CONTENTIONS:

Elaborate submissions, both oral and written, were put forth by Sri Sujith Ghosh, Learned Senior Counsel appearing on behalf of the Appellants-Applicants, and Mr. Sri Venkatesh, Learned Counsel appearing on behalf of the Respondent-NTPC. It is convenient to examine the rival contentions, urged by Learned Senior Counsel and Learned Counsel on either side, under different heads.

VI. AMENDMENT OF PLEADINGS: ORDER VI RULE 17 CPC: ITS SCOPE:

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

Sri Sujit Ghosh, Learned Senior Counsel appearing on behalf of the Appellants-Applicants, would submit that Order 6 Rule 17 CPC, which

relates to amendment of pleadings, is applicable even at the appellate stage of the proceedings.

B. ANALYSIS:

Order VI CPC relates to pleadings generally. Order 6 Rule 1 CPC stipulates that "Pleadings" shall mean plaint or written statement. Order VI Rule 17 CPC relates to amendment of pleadings, and enables the Court, at any stage of the proceedings, to allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Under the proviso thereto, no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that, in spite of due diligence, the party could not have raised the matter before the commencement of trial.

The aforesaid provision relates to amendment of pleadings during the pendency of the Suit, and requires parties to be permitted to amend their pleadings at any stage of the proceedings in the suit, provided such an amendment is found necessary to determine the real questions in controversy in the suit. While Courts are required to adopt a liberal approach in permitting amendment of pleadings prior to commencement of trial, the proviso to Order VI Rule 17 CPC restricts amendment of pleadings after trial has commenced, and requires the Court to be satisfied that the amendment sought to be introduced could not have been sought earlier despite due diligence being exercised by the party seeking amendment. Order 6 Rule 17 would possibly have applied if the Appellants-Applicants herein had sought amendment of Petition No. 187/MP/2018 and Petition No. 193/MP/2018 when the said Petitions were pending adjudication before the CERC.

In **Anthonysamy v. Christoraj, 2013 SCC OnLine Mad 1172,** (on which reliance has been placed on behalf of the Appellants-Applicants and the contents of which shall be detailed later in this Order), the Madras High Court observed that, by virtue of the proviso to Order 6 Rule 17 CPC, one of the important factors to be considered was whether the party, seeking amendment, had pleaded and proved due diligence which determined the scope of the party's constructive knowledge, which, as per the Apex Court in **Samuel's case**, was very important to decide an application for amendment: in the absence of proof as regards due diligence, as to why the plaintiff could not file an application for amendment during the trial stage, the application moved just prior to the arguments, was nothing but a clear attempt to erase the pleadings and evidence made by the parties during trial, to wipe the admission made by the plaintiff in the pleadings, and to gain advantage for upsetting a judgment and decree decided against him.

It is only if the party to the suit is able to show that, despite due diligence on their part, they could not have sought amendment before commencement of trial is the court required to permit amendment of pleadings. The proviso to Order VI Rule 17 emphasizes on parties to the suit exercising due diligence with respect to their pleadings, and to avoid undue delay in seeking amendments thereof, and the consequential prejudice which the other side may suffer as a result.

a. JUDGEMENT OF THE SUPREME COURT IN LIC V. SANJEEV BUILDERS (P) LTD: (2022) 16 SCC 1:

The scope and ambit of amendment of pleadings, under Order 6 Rule 17 CPC, received detailed consideration in **LIC v. Sanjeev Builders (P) Ltd., (2022) 16 SCC 1** wherein the appeal was filed by the defendant in a

suit filed by the respondents before the Supreme Court (original plaintiffs), and was directed against the judgment of the Division Bench of the Bombay High Court in **LIC v. Sanjeev Builders (P) Ltd., 2018 SCC OnLine Bom 21289**, arising from the order passed by the Single Judge exercising ordinary original civil jurisdiction in Chamber Summons No. 854 of 2017 in Suit No. 894 of 1986 dated 11-9-2018. The chamber summons was allowed by the High Court permitting the plaintiffs to amend the plaint. The order passed by the High Court in the chamber summons came to be affirmed by the Division Bench in Appeal.

The said suit had been instituted seeking specific performance of the agreement dated 8-6-1979. In the alternative, the plaintiffs had also prayed for damages. The plaintiffs moved Chamber Summons No. 854 of 2017, inter alia, seeking enhancement of the amount towards damages on the grounds set out in the affidavit filed in support of the said chamber summons. The Single Judge of the Bombay High Court allowed the chamber summons by order dated 11-9-2018 keeping the issue of limitation open, and also permitting the defendant to file additional written statement. The appellant (defendant) before the Supreme Court preferred an appeal against the said order which came to be dismissed. Aggrieved thereby, the original defendant carried the matter in appeal to the Supreme Court.

Before considering the orders passed by the High Court permitting the plaintiffs to amend the plaint with respect to the prayer clause, the Supreme Court considered the law on the question of allowing or rejecting a prayer for amendment of pleadings, more particularly, when the plea of limitation was taken by one of the parties.

It is in this context that the Supreme Court observed that amendments ought to be allowed which satisfy the twin conditions (*a*) of

not working injustice to the other side, and (*b*) of being necessary for the purpose of determining the real questions in controversy between the parties; if the proposed amendment of pleadings does not constitute the addition of a new cause of action or raise a different case, and amounts only to a different or an additional approach to the same facts, such an amendment may be allowed even after the expiry of the statutory period of limitation; the prayer for amendment may be allowed if the amendment is required for effective and proper adjudication of the controversy between the parties; to avoid multiplicity of proceedings, provided (*a*) the amendment does not result in injustice to the other side, (*b*) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which confers a right on the other side, and (*c*) the amendment does not raise a time-barred claim, resulting in divesting the other side of a valuable accrued right (in certain situations); where the aspect of delay is arguable, the prayer for amendment may be allowed, and the issue of limitation framed separately for decision; where the amendment would enable the court to pin-pointedly consider the dispute, and would aid in rendering a more satisfactory decision, the prayer for amendment may be allowed; amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint; where the amendment does not result in divesting the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed; and where the amendment is necessary for the court to effectively adjudicate the main issues in controversy between the parties, the amendment should be allowed.

The Supreme Court further observed that amendments, necessary for determining the real question in controversy, may be allowed provided it does not cause injustice or prejudice to the other side; this is mandatory,

as is apparent from the use of the word “shall”, in the latter part of Order 6 Rule 17 CPC; it is in the discretion of the court to allow an application under Order 6 Rule 17 CPC seeking amendment of the plaint even where the relief sought to be added by amendment is allegedly barred by limitation; there is no absolute rule that amendment, in such a case, should not be allowed; the court's discretion in this regard depends on the facts and circumstances of the case, and has to be exercised on a judicial evaluation thereof; the provisions for amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended to promote the ends of justice and not to defeat it; the error may be permitted to be rectified so long as remedial steps do not unjustifiably injure the rights accrued; where the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed; where the amendment is sought before commencement of trial, the court is required to be liberal in its approach more so if it is of the view that, if such amendment is not allowed, a party, who has prayed for such an amendment, would suffer irreparable loss and injury; and, in dealing with a prayer for amendment of pleadings, the court should avoid a hyper-technical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

On the question of limitation, the Supreme Court observed that, where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which, since the institution of the suit, had become barred by limitation, the amendment must, ordinarily, be refused, for to allow it would be to cause the defendant an injury which cannot be compensated in costs by depriving him of a good defence to the claim; though the power, to make the amendment, should not as a rule be exercised where its effect

is to take away from a defendant a legal right which has accrued to him by lapse of time, yet there are cases where such considerations are outweighed by the special circumstances of the case; while courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application, but that is a factor to be taken into account in exercising discretion as to whether the amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interest of justice; and it is always open to the court to allow an amendment if it is of the view that allowing an amendment would subserve the ultimate cause of justice and avoid further litigation.

While holding that the power to allow an amendment is wide and may at any stage be appropriately exercised in the interest of justice- the law of limitation notwithstanding, the Supreme Court observed that exercise of such far-reaching discretionary powers is governed by judicial considerations and, wider the discretion, greater ought to be the care and circumspection on the part of the Court; an application for amendment of the pleading should be considered bearing in mind the discretion that is vested with the court in allowing or disallowing such amendment in the interest of justice; every application for amendment should be tested in the applicable facts and circumstances of the case; in cases where the delay is of such a nature as to extinguish the right of the party by virtue of expiry of the period of limitation prescribed in law, exercise of discretion by the court would depend on the facts and circumstances of the case; the jurisdiction to allow or not to allow an amendment being discretionary, the same should be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought; there can be no straitjacket formula for allowing or disallowing an amendment of pleadings; and each case depends on the factual background of that case.

On when an amendment should not be permitted, the Supreme Court observed that a prayer for amendment is generally not to be allowed if the amendment changes the nature of the suit; the prayer for amendment is mala fide, or by the amendment, the other side loses a valid defence; and where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed.

While amendment of pleadings in a Suit is governed by Order 6 Rule 17 CPC, it is Order 41 Rules 2 & 3 which may apply to appellate proceedings under the Civil Procedure Code. Suffice it to conclude our analysis under this head, by holding that, in view of the law declared by the Supreme Court in **LIC V. SANJEEV BUILDERS (P) LTD: (2022) 16 SCC 1,** even if Order 6 Rule 17 CPC were held applicable, an amendment of pleadings would not be permitted if the prayer for amendment is mala fide or where the amendment changes the nature of the suit or the cause of action; and, while amendments would ordinarily be declined if a fresh suit on the amended claim is barred by limitation on the date of the application seeking amendment, it would certainly be a factor to be taken into account by the Court in exercising discretion as to whether or not the amendment should be ordered.

We shall examine later in this Order whether any one or more of the afore-said factors are attracted in the facts and circumstances of the present case, necessitating the applications, for amendments sought for by the Appellants in these IAs, being rejected.

VII. APPEAL UNDER SECTION 111 OF THE ELECTRICITY ACT: ITS SCOPE:

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

Sri Sujit Ghosh, Learned Senior Counsel appearing on behalf of the Appellant, would submit that dismissal of the amendment application under Order 6 Rule 17 CPC, on the ground that such an application cannot be entertained in a Second Appeal, has been held to be bad in **North Eastern Railway Administration v Bhagwan Das (2008) 8 SCC 511** wherein (a) the amendment application was filed on 24.03.2003 and 28.06.2004; and (b) the application was made under Order 41 Rule 27 to adduce additional evidence; and amendment at an Appellate Stage has been allowed under Order 6 Rule 17 CPC even in the Post Amendment era. Reliance is placed in this regard on (a) **Susheeela S Sheregar v Jayanth Kumar Shetty 2017 SCC Online Kar 6935,** to submit that one *significant factor was that the First Appellate Court is a Court, which would consider an appeal not only on questions of law but also on all questions of fact";* (b) **Anthonysamy v. Christoraj & Others 2013 (4) CTC 443** wherein it was held that "***Minor Balakumaran through his Natural Guardian, next friend and father ..v Gunasekaraan 2012 (5) CTC 37*** was *similar to the present case, wherein an Amendment Petition had been filed in the Suit, just prior to the arguments, whereas, in the case on hand, the amendment sought for, is at the Appellate stage, just before the date fixed for arguments in the Appeal; and, therefore, this Court is of the view that* ***Minor Balakumaran's case****, squarely applies to the facts of the Revision Petition";* and that Courts have held that there was no impediment or total bar against an Appellate Court permitting amendment of pleadings, provided the Appellate Court observes the well-known principles subject to which amendment of pleadings are usually granted; the party should offer a reasonable explanation for the delay in making the Application seeking amendment and, particularly, when such amendment is sought for, at the

Appellate stage, the party seeking amendment should adduce strong and valid reasons as to why the amendment, sought for, was not made in the Trial Court; under Section 120(2) of the Electricity Act, 2003, this Tribunal acts as the first Appellate Authority with powers to re-appreciate evidence and, therefore, it can be said that powers available to the Trial Court also exists with this Appellate Tribunal; "Trial" is defined in Black's Law Dictionary to mean a formal judicial examination of evidence, and determination of legal claims in an adversorial proceeding*;* and the first Appellate Authority reappreciates evidence as held in **Malluru Mallappa v. Kuruvathappa (Judgement in Civil Appeal No 1485 of 2020 decided on Feb 12 , 2020).**

On the meaning of the word "Trial", Sri Sujit Ghosh, Learned Senior Counsel appearing on behalf of the Appellant, would submit that the said word does not have a fixed/universal meaning; it must be seen in the context and the scheme and purpose of the legislation under consideration (Refer: **State of Bihar v Ram Naresh Pandey AIR 1957 SC 389***);* the same principle was applied by the Division Bench of the Calcutta High Court, and it was also held that "…though generally speaking a trial and an appeal are different proceedings, a Sessions Judge hearing an appeal against a conviction under Section 210, IPC was held to be "trying" the appellant within the meaning of Section 487 of the Cr PC"**-Jiban Molla v Emperor 1933 SCC Online Cal 35;** (c) it has a narrow meaning (i.e. it starts at the final hearing) as also a wide meaning (starts from the filing of the petition until pronouncement) – **Harish Chandra Bajpai AIR 1957 SC 444;** (d) whether to adopt the narrow meaning or wide meaning would depend on the object of the provision, and the context in which it is used: **Indian Bank (1998) 5 SCC 69;** a narrow meaning of the word "Trial" has been applied by the Supreme Court in **Baldev Singhs Case - (2006) 6**

SCC 498; *and* a narrow meaning to the word "Trial" was applied by this Tribunal in **Reliance Infrastructure Case - (2020) SCC Online Aptel 96.**

Sri Sujit Ghosh, Learned Senior Counsel appearing on behalf of the Appellant, would further submit that an appeal under Section 111 is akin to a first appeal wherein re-evaluation of evidence is involved; a liberal approach should be adopted in allowing additional grounds (under Order 41 Rule 2) in a first appeal; and limitation cannot apply (since it is not a case of impleading a new party to the lis after the limitation period is over). Reliance is placed on **Pappireddy v Ramaswamy Reddy 2010 SCC Online Mad 4258**, wherein the Appeal was filed in 1989 and the IA for amendment was filed in 2010.

B. JUDGEMENTS UNDER THIS HEAD:

a. JUDGEMENTS RELIED ON BEHALF OF THE APPELLANT:

(*i*) In **North Eastern Chemicals Industries (P) Ltd. v. Ashok Paper Mill (Assam) Ltd., (2023) 19 SCC 798,** the respondent was declared "a sick company" under the Sick Industrial Companies (Special Provisions) Act; for the necessitated rejuvenation of the industry, the Government of Assam promulgated the Jogighopa (Assam) Unit of Ashok Paper Mills Limited (Acquisition Transfer of Undertaking) Act, 1990 (hereinafter referred to as "the Jogighopa Act"); the appellant filed its claim under Section 16 of the Jogighopa Act for a certain sum along with interest against which the Commissioner of Payments awarded the principal sum but no interest; the appellant claimants, under protest, accepted payment of principal amount in full; they raised grievance in respect of non-payment of interest; subsequently, the appellant claimants filed an appeal thereagainst, and also moved an application before the District Judge,

Guwahati under Section 5 of the Limitation Act, 1963 for condonation of delay in filing the Appeal; the District Judge held that, since no specific time had been provided for preferring an appeal upon dissatisfaction with the decision of the Commissioner, before the Principal Civil Court, such an appeal was fit to be admitted.

It is against this order, that the order impugned in civil revision came to be passed whereby it was held that the appeal was erroneously admitted by the District Judge and the same ought to have been dismissed as not maintainable on the ground of limitation.

On the question whether, in the absence of an expressly prescribed limitation, an appeal from an order passed by the Commissioner of Payments could be entertained, irrespective of passage of time, the Supreme Court observed that this dispute concerned the exercise of a statutory right; when a court is seized of a situation where no limitation stands provided either by specific applicability of the Limitation Act or the special statute governing the dispute, the Court must undertake a holistic assessment of the facts and circumstances of the case to examine the possibility of delay causing prejudice to a party; when no limitation stands prescribed it would be inappropriate for a court to supplant the legislature' s wisdom by its own and provide a limitation, more so in accordance with what it believes to be the appropriate period; a court should, in such a situation consider, in the facts and circumstances of the case at hand, the conduct of the parties, the nature of the proceeding, the length of delay, the possibility of prejudice being caused, and the scheme of the statute in question; when a party to a dispute raises a plea of delay despite no specific period being prescribed in the statute, such a party also bears the burden of demonstrating how the delay in itself would cause the party

additional prejudice or loss as opposed to the claim, which is the subject-matter of the dispute, being raised at an earlier point in time.

(***ii***) In **Susheela S. Sheregar v. Jayanth Kumar Shetty, 2017 SCC OnLine Kar 6936,** the petitioner had sought for amendment of his memorandum of appeal in order to incorporate certain grounds. The Appellate Court had dismissed that application. The petitioner intended to raise certain additional grounds in the Memorandum of Appeal.

It is in this context that the Karnataka High Court held that raising of those grounds, by way of an amendment of the Memorandum of Appeal, ought to have been permitted by the Appellate Court; the application was not in the nature of an amendment of the pleadings before the Trial Court; the consideration which arise for amendment of the plaint or written statement or any other pleading before the Trial Court was different from the one pertaining to the amendment of the Memorandum of Appeal; merely because certain additional grounds were sought to be raised, in the Memorandum of Appeal, would not imply that the appellant before the Appellate Court had established his case on those grounds; the amendment was only for the purpose of making submissions which arise in the appeal which was essentially based on the judgment of the Trial Court, and the pleadings and evidence on record; the Appellate Court ought not to have dismissed the application seeking amendment of the Memorandum of Appeal by which certain additional grounds were sought to be raised; one significant factor was that the First Appellate Court was a Court, which would consider an appeal not only on questions of law, but also on all questions of fact; and, in the circumstances, when the entire appeal was at large before the First Appellate Court, all grounds which could be raised by the appellant before such Court must be permitted to be

raised. The application for amendment was allowed, and the petitioner was permitted to amend his memorandum of appeal.

(*iii*) Anthonysamy v. Christoraj, 2013 SCC OnLine Mad 1172, the Madras High Court observed that **Minor Balakumaran's** case was similar to the present case, wherein an amendment petition had been filed, in the suit, just prior to the arguments, whereas, in the case on hand, the amendment sought for was at the appellate stage, just before the date fixed for arguments in the appeal and, therefore, **Minor Balakumaran's** case, squarely applies to the facts of the present revision petition.

The Madras High Court further observed that there was no impediment or total bar against an appellate court permitting amendment of pleadings, provided the appellate Court observed the well-known principles subject to which amendment of pleadings were usually granted; the party should offer a reasonable explanation for the delay in making the application seeking amendment and, particularly when such amendment is sought for, at the appellate stage, the party seeking amendment should adduce strong and valid reasons, as to why the amendment sought for, was not made in the trial Court; while an amendment could be permitted to avoid multiplicity of proceedings, but at the same time an amendment could not be allowed if it caused prejudice to the right of the party against whom an amendment was sought for; the scope of the appellate Court was to test the correctness of the judgment under appeal and any benefit or vested right, on account of declaration of the rights, inter-se between the parties to the lis, by the trial Court, could not be allowed to be taken away by allowing in an amendment to the pleadings, at the appellate stage, when the party seeking an amendment could have brought in such amendment, even at the time of commencement of the trial; an amendment admitting to wipe out the pleadings and admissions of the party, already considered by

the trial Court, for the purpose of arriving at a decision in the suit, cannot be allowed to be substituted with a new case, at the appellate stage, which would certainly cause serious prejudice to the party, against whom the amendment is sought for; and the effect of an admission in earlier pleading shall not be permitted to be taken away, by any proposed amendment.

The Madras High Court also held that the proposed amendment was in fact an introduction of a new case, as well as wiping out the admission already made by the plaintiff; by virtue of the proviso to Order 6 Rule 17 CPC, one of the important factors to be considered was whether the party seeking amendment, had pleaded and proved due diligence which determined the scope of the party's constructive knowledge, which as per the Apex Court in *Samuel's case*, was very important, to decide an application for amendment: in the absence of proof as regards due diligence, as to why the plaintiff could not file an application for amendment during the trial stage, the application moved just prior to the arguments, was nothing but a clear attempt to erase the pleadings and evidence, made by the parties, during trial, to wipe the admission made by the plaintiff, in the pleadings and to gain advantage, for upsetting a judgment and decree, decided against him.

(*iv*) In **Malluru Mallappa v. Kuruvathappa, (2020) 4 SCC 313,** the Supreme Court held that an appeal is a continuation of the proceedings of the original court; ordinarily, the appellate jurisdiction involves a rehearing on law as well as on fact and is invoked by an aggrieved person; the first appeal is a valuable right of the appellant, and therein all questions of fact and law decided by the trial court are open for reconsideration; the first appellate court is required to address itself to all the issues and decide the case by giving reasons; when the appellate court agrees with the views of the trial court on evidence, it need not restate the effect of evidence or

reiterate reasons given by the trial court; and expression of a general agreement with the reasons given by the trial court would ordinarily suffice.

(*v*) In **State of Bihar v. Ram Naresh Pandey, 1957 SCC OnLine SC 22,** the contention raised was that, in a case triable by a Court of Session, an application by the Public Prosecutor for withdrawal with the consent of the Court does not lie at the committal stage; and emphasis was laid on the wording of Section 494 of the Code Criminal Procedure which stated that "in cases *tried* by jury, any Public Prosecutor may, with the consent of the Court, withdraw from the prosecution of any person before the return of the verdict".

It is in this context that the Supreme Court held that the word "trial" was not defined in the Code (Criminal Procedure Code); "Trial", according to *Stroud's Judicial Dictionary,* meant "the conclusion, by a competent tribunal, of questions in issue in legal proceedings, whether civil or criminal" [***Stroud's Judicial Dictionary*, 3rdEdn., Vol. 4, p. 3092**]; according to ***Wharton's Law Lexicon,*** it meant "the hearing of a cause, civil or criminal, before a judge who had jurisdiction over it, according to the laws of the land" [***Wharton's Law Lexicon*, 14th Edn., p. 1011**]; the words "tried" and "trial" appear to have no fixed or universal meaning; in quite a number of sections in the Code (criminal procedure code), the words 'tried' and 'trial' have been used in the sense of reference to a stage after the inquiry; that meaning attaches to the words in those sections having regard to the context in which they are used; there was no reason why, where these words are used in another context in the Code, they should necessarily be limited in their connotation and significance; and they are words which must be considered with regard to the particular context in which they are used and with regard to the scheme and purpose of the provision under consideration.

(***vi***) In **Jiban Molla v. Emperor, 1933 SCC OnLine Cal 35 : AIR 1933 Cal 551,** the Calcutta High Court held that the words "try" and "trial" have no fixed or universal meaning, but they are words which must be construed with regard to the particular context in which they are used and with regard to the scheme and purpose of the measure concerned; though generally speaking a trial and an appeal are different proceedings, a Sessions Judge hearing an appeal against a conviction was held to be "trying" the appellant within the meaning of Section 487 of the Cr PC (Refer: **Madhab Chandra v. Novodeep Chandra [(1889) 16 Cal 121).**

(***vii***) In **Harish Chandra Bajpai v. Triloki Singh: AIR 1957 SC 444,** the Supreme Court observed that, in **Maude v. Lowley: (1874) LR 9 CP 165,** the point which arose for decision was whether the power conferred on the Election Court by Section 21(5) of the Corrupt Practices (Municipal Elections) Act, 1872 to try the petition, subject to the provisions of the Act, as if it were a cause within its jurisdiction, carried with it a power to order amendment of the petition; and it was held that it did.

(***viii***) In **Indian Bank v. Maharashtra State Coop. Marketing Federation Ltd: (1998) 5 SCC 69,** the Supreme Court observed that the word "trial" was of very wide import; in legal parlance it meant a judicial examination and determination of the issue in civil or criminal court by a competent Tribunal; according to **Webster's Comprehensive Dictionary, International Edition**, it meant the examination, before a tribunal having assigned jurisdiction, of the facts or law involved in an issue in order to determine that issue; according to **Stroud's Judicial Dictionary (5th Edn.),** a "trial" was the conclusion, by a competent tribunal, of questions in issue in legal proceedings, whether civil or criminal; thus, in its widest sense, it would include all proceedings right from the stage of institution of a plaint in a civil case to the stage of final determination by a judgment and

decree of the court; and whether the widest meaning should be given to the word “trial” or that it should be construed narrowly must necessarily depend upon the nature and object of the provision and the context in which it is used.

(*ix*) In **Baldev Singh v. Manohar Singh, (2006) 6 SCC 498,** the Supreme Court held that the proviso to Order 6 Rule 17 CPC provides that amendment of pleadings shall not be allowed when the trial of the suit has already commenced; it appeared from the records that the parties had yet to file their documentary evidence in the suit; the suit was not on the verge of conclusion; commencement of trial, as used in the proviso to Order 6 Rule 17 in the Code of Civil Procedure, must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments; and the proviso to Order 6 Rule 17 CPC confers wide power and unfettered discretion to the court to allow an amendment of the written statement at any stage of the proceedings.

(*x*) RELIANCE INFRASTRUCTURE LTD VS MERC: (2020) SCC ONLINE APTEL 96, this Tribunal observed that the principle of amendment of pleadings was provided under Order 6 Rule 17 of the Civil Procedure Code, 1908; Tribunals, including this Tribunal, were not bound by the procedure laid down by the Code of Civil Procedure, 1908, as laid down in Section 120(1) of the Electricity Act, 2003; it was clear from Section 120(1) that this Tribunal shall be guided by the principles of natural justice, and as such, strictly the provisions of CPC, 1908, is not applicable to the present proceedings, and that only the broad principles of CPC can be considered by this Tribunal while deciding the amendment application; further, any principles/provisions of CPC, 1908 have to be liberally construed, in light of Section 120(1) of the Electricity Act, 2003; the stipulation in Order 6 Rule

17 of the Civil Procedure Code, 1908, that amendment is to be normally allowed before commencement of "trial", has to be seen from the context of commencement of final hearings/arguments in an appellate proceeding; in the present case, the present appeal was never argued, and the application for amendment was made before commencement of final arguments; and, therefore, the present amendment, in any event, fell outside the restriction which was imposed in the aforesaid proviso of Order 6 Rule 17 CPC.

(*xi*) In **Pappireddy v. Ramaswamy Reddy, 2010 SCC OnLine Mad 4258,** the Madras High Court held that, as per Order 41 Rule 2 of CPC, the Court has got the power to permit the appellant to raise addition grounds, touching upon the findings of the lower Court.

C. ANALYSIS:

Before examining the contentions, urged on behalf of the Appellants under this head, it is useful to take note of the law declared in the judgements referred to earlier under this head.

In **North Eastern Chemicals Industries (P) Ltd. v. Ashok Paper Mill (Assam) Ltd., (2023) 19 SCC 798,** the Supreme Court, while considering a dispute concerning the exercise of a statutory right when a court is seized of a situation where no limitation stands provided either by specific applicability of the Limitation Act or the special statute governing the dispute, observed that a court should, in a situation where no limitation stands prescribed, consider, in the facts and circumstances of the case at hand, the conduct of the parties, the nature of the proceeding, the length of delay, the possibility of prejudice being caused, and the scheme of the statute in question.

Reliance placed on behalf of the appellant on **North Eastern Chemicals Industries (P) Ltd. v. Ashok Paper Mill (Assam) Ltd., (2023) 19 SCC 798**, is misplaced as, unlike in the afore-said case where no period of limitation was prescribed in the *"Jogighopa Act"* for filing an appeal, Section 111(2) of the Electricity Act prescribes a period of limitation of 45 days, from the date of receipt of a copy of the order passed by the appropriate Commission, for a person aggrieved to file an appeal before this Tribunal.

Reliance placed on **North Eastern Railway Administration v Bhagwan Das (2008) 8 SCC 511** wherein, even according to the applicants-appellants, the amendment application was made under Order 41 Rule 27 to adduce additional evidence, is also of no avail as Order 41 Rule 27 CPC relates to production of additional evidence in the Appellate Court. Sub-rule (1) thereof stipulates that the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellant Court may allow such evidence or document to be produced, or witness to be examined. Sub-rule (2) provides that, wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reasons for its admission.

The afore-said provision relates to filing of documents at the appellate stage. Even for documents to be filed at the appellate stage, the tests stipulated under Order 41 Rule 27 are required to be satisfied. In this context, it is necessary to bear in mind that the documents sought to be filed under Order 41 Rule 27 CPC would constitute evidence, and evidence can only be let in support of a plea, as no court can consider evidence with respect to a non-existent plea. An amendment to the pleadings in the appeal and the prayer made therein may, possibly, be permitted under Order 41 Rules 2 CPC if the tests stipulated by superior courts in this regard are satisfied, and Order 41 Rule 27 CPC is inapplicable.

In **Susheela S. Sheregar v. Jayanth Kumar Shetty, 2017 SCC OnLine Kar 6935,** while considering a case where the amendment sought was to incorporate certain grounds in the memorandum of appeal, the Karnataka High Court observed that the consideration, which arise for amendment of the plaint or written statement or any other pleading before the Trial Court, was different from the one pertaining to the amendment of the Memorandum of Appeal.

Since the amendment was only for the purpose of making submissions which arose in the appeal which was essentially based on the judgment of the Trial Court and the pleadings and evidence on record, the Karnataka High Court held that the application seeking amendment of the Memorandum of Appeal, by which certain additional grounds were sought to be raised, ought not to have been dismissed; and all grounds which could be raised by the appellant before such Court must be permitted to be raised.

Unlike in **Susheela S. Sheregar v. Jayanth Kumar Shetty, 2017 SCC OnLine Kar 6935**, where the amendment sought was only to raise

certain additional grounds in the memorandum of appeal, in the present case the Appellants-Applicants seek amendment by introducing new facts and subsequent correspondence. Besides seeking to raise additional grounds, they also seek additional reliefs which they had not sought earlier in the appeals, including to set aside the order of the CERC dated 29.09.2021, which order was passed in a petition filed by the Appellants-Applicants subsequent to their having filed Appeal Nos.432 and 433 of 2019 before this Tribunal.

In **Anthonysamy v. Christoraj, 2013 SCC OnLine Mad 1172,** the Madras High Court observed that there was no impediment or total bar against an appellate court permitting amendment of pleadings, provided the party offered a reasonable explanation for the delay in making the application seeking amendment; and the party seeking amendment should adduce strong and valid reasons, as to why the amendment sought for was not made in the trial Court,

As held by the Madras High Court, in **Anthonysamy v. Christoraj, 2013 SCC OnLine Mad 1172**, amendments are largely permitted at the appellate stage with a view to avoid multiplicity of proceedings. The appellants-applicants have, however, not satisfied the test stipulated in the said judgement of offering a reasonable explanation (in other words of showing 'sufficient cause') for the inordinate and undue delay in making the application seeking amendment, much less have they adduced strong and valid reasons, as to why the amendment sought for was not made before the CERC during the pendency of the Petitions filed by them before the Commission.

As held by the Supreme Court, in **Malluru Mallappa v. Kuruvathappa, (2020) 4 SCC 313,** an appeal is no doubt a continuation of the proceedings of the original court, and the appellate jurisdiction does

involve a rehearing on law as well as on fact. The fact, however, that an appeal is not the original petition, and an amendment sought of pleadings during the original proceedings is distinct from seeking amendment of pleadings at the appellate stage, since a new case, which was not put forth in the original petition, ought not to be permitted to be made out at the appellate stage.

The judgements of the Supreme Court in **State of Bihar v. Ram Naresh Pandey, 1957 SCC OnLine SC 22,** and the Calcutta High Court in **Jiban Molla v. Emperor, 1933 SCC OnLine Cal 35 : AIR 1933 Cal 551,** arose under the Criminal Procedure Code where an accused/convict is tried both at the original stage and at the appellate stage of the proceedings. The word “trial” or “tried” in the context of the criminal proceedings cannot be extrapolated to appellate proceedings, that too under special enactments such as the Electricity Act. It is impermissible for the appellant to read stray sentences in the said judgements out of context or to contend, based on such a reading, that the sentence they rely upon is the whole exposition of the law on the subject.

The law declared by this Tribunal, in **RELIANCE INFRASTRUCTURE LTD VS MERC: (2020) SCC ONLINE APTEL 96,** that the stipulation in Order 6 Rule 17 of the Civil Procedure Code, 1908, that amendment is to be normally allowed before commencement of “trial”, has to be seen from the context of commencement of final hearings/arguments in an appellate proceeding, runs contrary to the judgement of the Madras High Court in **Pappireddy v. Ramaswamy Reddy, 2010 SCC OnLine Mad 4258,** that, as per Order 41 Rule 2 CPC, the Court has the power to permit the appellant to raise addition grounds, touching upon the findings of the lower Court. What the appellant seeks,

by way of these IAs for amendment, is to additionally introduce a new case, distinct from the original lis, which is impermissible.

Further, as held by the Supreme Court, In **Baldev Singh v. Manohar Singh, (2006) 6 SCC 498,** the words “commencement of trial”, as used in the proviso to Order 6 Rule 17 CPC, must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As Order 6 Rule 17 CPC applies only during the pendency of the Suit, and the proviso thereto requires amendments, sought when the Suit is finally heard, to satisfy the due diligence test, it does not stand to reason that the word “trial” used in the proviso to Order 6 Rule 17 CPC should be read into Order 41 Rule 2 CPC requiring amendments to be permitted, as a matter of course, even when the appeal is taken up for final hearing.

As held by the Madras High Court, in **Anthonysamy v. Christoraj, 2013 SCC OnLine Mad 1172**, an amendment can be permitted only if a reasonable explanation is put forth (in other words if “sufficient cause “ is shown) for the inordinate and undue delay in making the application seeking amendment, and if they have adduced strong and valid reasons, as to why the amendment sought for was not made before the CERC during the pendency of the Petitions filed by them before the Commission.

Order 41 Rule 2 CPC relates to grounds which may be taken in appeal, and stipulates that the appellant shall not, except by leave of the Court, urge or be heard in support of any ground or objection not set forth in the memorandum of appeal, but the Appellate Court, in deciding the appeal, shall not be confined to the grounds or objections set forth in the memorandum of appeal or taken by leave of the Court under this rule. Under the proviso thereto, the Court shall not rest its decision on any other

ground unless the party, who may be affected thereby, has had sufficient opportunity of contesting the case on that ground.

Order 41 Rule 3 CPC relates to rejection or amendment of memorandum, and under sub-rule (1) thereof, where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there. Sub-rule (2) stipulates that, where the Court rejects any memorandum, it shall record reasons for such rejection. Sub-rule (3) provides that, where a memorandum of appeal is amended, the Judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

Order 41 Rule 2 CPC requires the appellant to seek leave of the appellate court to urge or be heard in support of any ground or objection not set forth in the memorandum of appeal. Such leave is not to be granted for the mere asking. While it is open to the Appellate Court, in deciding the appeal, not to confine itself to the grounds or objections set forth in the memorandum of appeal or those taken after the Court grants leave, the proviso to Order 41 Rule 2 CPC requires the appellate Court to give the other party sufficient opportunity of contesting the case on that ground.

The amendment permitted by Order 41 Rule 3 CPC is limited to a situation where the memorandum of appeal is not drawn up in the manner prescribed, and permits the appellate Court to return the appeal for the purpose of its being amended. The grounds urged in the Memorandum of Appeal cannot go beyond what is urged in the Original Suit, and the amendments which is, ordinarily, permitted at the appellate stage, in terms of Order 41 Rule 3 CPC, are those confined to the contentions urged in the original proceedings.

Apart from satisfying the test of sufficient cause being shown for the inordinate delay in seeking amendment, among the other tests which must be satisfied, before such amendments are permitted in terms of Order 41 Rule 2 CPC, include the Appellant being required to satisfy this Tribunal that, when they sought amendment to the appeal, they were in a position to file a fresh suit with respect to the said cause of action. It is only in such a situation, that too with a view to avoid multiplicity of proceedings in the form of more than one appeal, would they then be permitted to carry out amendments in the pending appeals.

The Civil Procedure Code neither prescribes a period of limitation for filing a suit nor for institution of an appeal. It does not also provide for any limitation period for amendment of pleadings either during the pendency of the Suit or when an appeal is pending. The period of limitation, for filing a suit, is as is stipulated in the Limitation Act, and the limitation prescribed therein varies depending on the nature of the suit which a party has instituted before the competent Civil Court.

Unlike civil suits filed before the Civil Court of competent jurisdiction, or appeals preferred thereagainst, the proceedings instituted before the Appropriate Commission, and the appeal preferred there-against to this Tribunal, are both in terms of the provisions of the Electricity Act. The present IAs are filed seeking amendment of pleadings, grounds and the prayers in the pending appeals. In considering whether the Appellant could have, instead of filing the present IAs seeking amendment of Appeal Nos. 432 and 433 of 2019, filed fresh appeals, against the clarificatory order passed by the CERC on 29.09.2021, we must examine the relevant provisions of the Electricity Act.

Section 111(1) of the Electricity Act enables any person, aggrieved by an order made by the Appropriate Commission under the Electricity Act, to prefer an appeal to this Tribunal. The word "order" in Section 111(1) would bring within its ambit even the order passed by the CERC, in the clarification petition filed by the Appellant, on 29.09.2021. Section 111(2) provides that every appeal, made under sub-section (1), shall be filed within a period of 45 days from the date on which a copy of the order made by the Appropriate Commission is received by the aggrieved person, in such form and to be accompanied by such fees as may be prescribed by Rules. The Appellant could only have filed a fresh suit, in terms of Section 111(2) of the Electricity Act, within 45 days of receipt of a copy of the order of the CERC dated 29.09.2021. In other words, they could have filed the appeal before expiry of 45 days from the date of the order i.e. before 14.11.2021, or within a few days thereafter since the period of 45 days is required to be computed from the date of receipt of a copy of the said order. The Appellant has not stated as to when they received a copy of the order of the CERC dated 29.09.2021.

The proviso to Section 111(2) of the Electricity Act enables this Tribunal to entertain an appeal, after expiry of the period of 45 days stipulated for filing an appeal under Section 111(2), if it is satisfied that there was sufficient cause for not filing the appeal within that period. The Appellants have filed the IAs for amendment on 11.10.2023, more than two years after the order was passed by the CERC in Petition No. 109/MP/2021 on 29.09.2021. Consequently, it is only if the Appellant had shown "sufficient cause" to the satisfaction of this Tribunal, would this Tribunal have been justified in entertaining an appeal. It is evidently with a view to avoid having to satisfy this Tribunal that the Appellant was disabled by "sufficient cause" to institute the appeal within the period of limitation

stipulated in Section 111(2), does the Appellant appear to have chosen the amendment route, since no explanation is furnished by them in the said IAs for their failure to file the IAs for amendment soon after the CERC passed the order dated 29.09.2021.

Among the tests required to be satisfied for an application seeking amendment to be entertained at the appellate stage is also the provisions of the concerned statute. Section 111(5) of the Electricity Act stipulates that the appeal, filed before the Appellate Tribunal under sub-section (1), shall be dealt with by it as expeditiously as possible, and endeavour shall be made by it to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal. Under the proviso thereto, where any appeal could not be disposed of within the said period of one hundred and eighty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within the said period.

It is clear, from a plain reading of the afore-said provision, that this Tribunal is required to endeavour to dispose of the Appeal finally within 180 days of its institution or, in other words, within six months of the appeal being filed. The proviso requires this Tribunal, in case it is not able to dispose of the appeal within 180 days, to record reasons as to why it was not able to do so. The afore-said provisions disclose the intention of Parliament to have appeals, filed against orders passed by the Electricity Regulatory Commissions, disposed of with utmost expedition.

While we may not be understood to have held that an appeal, filed with a delay of more than six months, should never be entertained, it is clear that the Appellant should show *"sufficient cause"* for not filing the appeal within the 45 days limitation period stipulated in Section 111(2),

since the time limit specified in Section 111(5), for an appeal to be disposed of, is 180 days from the date of its institution.

The power conferred on this Tribunal under Section 111(3) of the Electricity Act is to confirm, modify, or set aside the order appealed against. It is no doubt true that an appeal is a continuation of the original proceedings, and the appellate court has a co-extensive power with that of the trial court. **(T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board, (2004) 3 SCC 392**; **LIC v. Sanjeev Builders (P) Ltd., (2022) 16 SCC 1),** and this Tribunal has been conferred the power, in terms of Section 111(3), to re-appreciate the evidence on record. That such a power has been conferred on the Tribunal does not render the word "trial", referred to in the proviso to Order VI Rule 17 CPC, automatically applicable to appellate proceedings also. As noted hereinabove, Order VI Rule 17 CPC relates to amendment of pleadings during the pendency of the original suit and prior to its final disposal. The mere fact that an appeal has been held to be a continuation of the original proceedings does not mean that an amendment can be sought at the appellate stage for the mere asking.

VIII. WAS A FRESH CAUSE OF ACTION ADJUDICATED BY THE CERC IN PETITION NO.109/MP/2021?

A. SUBMISSIONS URGED ON BEHALF OF THE 2ND RESPONDENT:

Mr. Sri Venkatesh, Learned Counsel for the 2nd Respondent, would submit that the Appellants-Applicants filed the present I.As, seeking amendment of the present Appeals, to also challenge the Order of the CERC dated 29.09.2021 passed in another subsequent CERC Petition, being Petition No. 109/MP/2021; in the clarification Petition, the appellants

sought a cut-off date for claims and reimbursement for post-COD claims due to a change in law; admittedly, this issue was neither argued in the proceedings giving rise to the Order, impugned in the Appeal, dated 05.02.2019 nor was any reference made therein with regard to the said issue; instead, the present appeal was filed by the Appellant challenging denial of Carrying Cost and interest on working capital as well as reimbursement of expenses incurred on account of additional tax due to increase in cost of outsourcing Operation & Maintenance services on account of GST Law; and the Amendment Application seeks to introduce a new cause of action.

B. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

Sri Sujit Ghosh, Learned Senior Counsel appearing on behalf of the Appellant, would submit that, while allowing the change in law claim, the Central Commission, vide Order dated 05.02.2019, had directed the Appellant to make available all relevant documents exhibiting a one to one correlation between the Project and Supply of goods or services duly supported by relevant invoices and Auditor's certificate; thus, while allowing the change in law claim in relation to imposition of GST, no reference was made to the claims being allowed only up to SCOD or COD; thereafter, the Appellants filed Appeal Nos. 432 and 433 of 2019 on 25.07.2019 challenging the Order dated 05.02.2019 passed by the CERC to the extent of O&M services and carrying cost; in the meanwhile, at the stage of reconciliation of its claim with NTPC, certain claims were sought to be rejected vide email dated 14.05.2019 on the ground that the invoice date is after the date of actual commissioning of the Project i.e. 14.12.2017; further, vide email dated 09.09.2020, NTPC placed reliance upon a subsequent decision of the CERC, in **Wardha Solar (Maharashtra) Private Limited v. SECI and Ors** (Order

dated 27.03.2020), holding that the claims for GST would be allowed only till COD**;** since the CERC's Order dated 05.02.2019 did not make any reference to the cut-off date being SCOD or COD, the Appellant filed a Clarification Petition bearing Petition No. 109/MP/2021 on 16.04.2021**;** vide Clarification Order dated 29.09.2021, the CERC took note of the submission that the present clarification was merited on account of the fact that the said issue was neither argued nor was any Order passed in this regard; thereafter, the CERC made a reference to various provisions of the PPA and GST Laws, and clarified that, in relation to `supply of goods', invoices could be raised only up to COD, while for `supply of services' invoices could be raised 30 days beyond COD; the CERC further held that the same clarification had been given in other Petitions, including Petition No. 536/MP/2020; in this light, the CERC held that no further clarification was required***;*** NTPC did not object to the maintainability of the Clarification Petition, and instead put forth arguments on merits; while proceedings in the main Appeals (Appeal Nos. 432 and 433 of 2019) were pending before this Tribunal, this Tribunal, in the case of **Parampujya Solar Energy Pvt. Ltd. and Ors** (Order dated 15.09.2022), held that there was no restriction in the change in law clause to deny expenditure incurred post COD; the CERC reversed its earlier position in 164/ MP/2018 and batch dated 30.05.2023, by following the remand directions issued by this Tribunal in Appeal No.256 of 2019 dated 15.09.2022; and accordingly, pursuant to the Order in the case of **Parampujya**, the Appellant proceeded to file an amendment application on 10.10.2023 seeking to amend the appeal filed before this Tribunal to challenge the Clarification Order to the extent of denial of COD.

Sri Sujit Ghosh, Learned Senior Counsel appearing on behalf of the Appellant, would further submit that a clarification petition is filed only where there is no fresh cause of action; in **K. A.** ***Ansari and Another v. Indian Airline Limited, (2009) 2 SCC 164,*** the Supreme Court held that there was no

prohibition on the party 'applying for a clarification if the order was not clear and the party against whom it has been made is trying to take advantage because the order is couched in ambiguous or equivocal words, and there was no new cause of action as the application was filed for pursuing and implementing the relief as granted; unless assailed, there is a presumption that the statutory body had assumed jurisdiction validly; considering the fact that the CERC had issued the clarification order, and NTPC had neither objected to the CERC assuming jurisdiction nor had filed a substantive appeal challenging the assumption of jurisdiction by the CERC to issue the Clarification Order, it should be assumed that the Clarification Order was not predicated on a fresh cause of action; given that the Order dated 05.02.2019 was ambiguous to the extent of whether the claims were allowed post and pre-COD, and as the CERC had passed subsequent Orders limiting the claim to COD, the Appellants-Applicants were justified in seeking clarification of the Order of the CERC dated 05.02.2019.

Sri Sujit Ghosh, Learned Senior Counsel, would also submit that clarification orders are issued only where there is no new cause of action, but where clarification, relating to implementation of the Original Order, is sought. (Refer: **KA Ansari v. Indian Airlines (2009) 2 SCC 164***);* as a sequitur, in the present case, there was no new or fresh case set up by the present Appellant before the CERC through the Clarification Application and, therefore, amendment can be permitted by this Tribunal qua the aspects covered by the Order passed in the Clarification Application; the Respondents never questioned the jurisdiction of the CERC to issue the Clarification Order dated 29.09.2021; as the CERC did not raise any issue regarding its jurisdiction to issue such a Clarification Order, it suggests that the CERC acted within its powers as known to Law; this would mean that no new case was set up by the present Appellant, and the application was filed seeking implementation of the Original Order; and, as the present amendment application cannot be said to arise out of a fresh cause of

action/new case, it would be well within the powers of this Tribunal to allow the amendment.

Placing reliance on **Estralla Rubber v. Dass Estate (P) Ltd (2001) 8 SCC 97.** Sri Sujit Ghosh, Learned Senior Counsel appearing on behalf of the Appellant, would submit that, where there is no new case, amendment may be allowed to avoid multiplicity of proceedings; a liberal approach needs to be adopted in such cases subject to caution points ie (i) it should not result in injustice/ serious prejudice to the other side, and (ii) any admission made in favour of the plaintiff, conferring a right on him, should not be withdrawn; a liberal approach should be adopted in cases where the other side can be compensated with costs; and this principle, though laid out in the context of Order 6 Rule 17, can be equally applied under Order 41 Rule 2 CPC.

C. JUDGEMENTS UNDER THIS HEAD:

a. JUDGEMENTS RELIED ON BEHALF OF THE APPELLANT:

(*i*) In **K.A.ANSARI VS INDIAN AIRLINES LTD: (2009) 2 SCC 164**, the appeal to the Supreme Court was directed against two common orders passed by the Delhi High Court of Delhi allowing the appeals, preferred by Indian Airlines Ltd, the sole respondent, against the order passed by the Single Judge in the miscellaneous application filed by the first appellant seeking clarification of the final judgment rendered by the Single Judge earlier. The Division Bench held that after, disposal of the writ petitions, a miscellaneous application was not maintainable.

It is in this context that the Supreme Court observed that, when the proceedings stand terminated by final disposal of the writ petition, it is not open to the court to reopen the proceedings by means of miscellaneous

application in respect of a matter which provides a fresh cause of action; if this principle is not followed, there would be confusion and chaos and the finality of proceedings would cease to have any meaning (**State of U.P. v. Brahm Datt Sharma: (1987) 2 SCC 179);** at the same time, there was no prohibition on a party applying for clarification, if the order was not clear and the party against whom it had been made was trying to take advantage because the order was couched in ambiguous or equivocal words; the question for consideration, in the instant case, was whether the miscellaneous application preferred by the first appellant could be said to be founded on a fresh cause of action; they were of the opinion that, keeping in view the terms of the final order, the miscellaneous application could not be said to be founded on a separate or fresh cause of action so as to fall foul of the aforenoted legal position viz. on termination of proceedings by final disposal of the writ petition, it is not open to the court to reopen the proceedings by means of a miscellaneous application in respect of a matter which provided fresh cause of action; in direction (*ii*), the Single Judge had clearly directed that the writ petitioners would be entitled "to be posted to a post in equivalent scale held by them when the letter dated 23-4-2003 was issued"; the respondent Indian Airlines was obliged to obey and implement the said direction; if they had any doubt or if the order was not clear, it was always open to them to approach the court for clarification of the said order; without challenging the said direction or seeking clarification, Indian Airlines could not circumvent the same on any ground whatsoever; difficulty in implementation of an order passed by the court, howsoever grave its effect may be, is no answer for its non-implementation; in the miscellaneous application, no fresh relief, on the basis of a new cause of action, had been sought; it was an application filed for pursuing and getting implemented the relief granted in the writ petition namely, placement in appropriate grade in which he was placed at the time

when letter dated 23-4-2003, was issued; and this was precisely done by the learned Single Judge vide his order dated 4-3-2005.

(***ii***) The appeal, in **Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97,** was filed by the defendant. The plaintiff had filed suit against the defendant, in respect of the suit property, for eviction on the ground of reasonable requirement for building or rebuilding; and on the ground of default in payment of rent. The defendant filed an application under Sections 17(2) and 17(2-A) of the West Bengal Premises Tenancy Act, 1956 raising certain contentions including that the relationship of landlord and tenant did not exist between the parties. Thereafter the defendant filed an application for amendment under Order 6 Rule 17 CPC. The said amendment application was contested by the plaintiff. The trial court rejected the application, taking the view that the proposed amendment would be inconsistent and it would have the effect of displacing the plaintiff from the admission made by the defendant. The defendant filed a revision petition against the said order under Section 115-A CPC before the District Judge who allowed the revision petition, reversed the order of the trial court and allowed the amendment application filed by the defendant. Thereafter, the plaintiff filed a petition under Article 227 of the Constitution of India before the High Court. The High Court set aside the order of the District Judge stating that the proposed amendment will have the effect of displacing the plaintiff from the admissions made by the defendant in its petition filed under Sections 17(2) and 17(2-A) of the Act, and that such admissions could not be permitted to be withdrawn. Hence the appeal to the Supreme Court.

It is in this context that the Supreme Court observed that, having perused the relevant records including the original application and the proposed amendment, they were not able to see any admission made by

the defendant as such, which was sought to be withdrawn; by the proposed amendment the defendant wanted to say that Ala Mohan Dass was a permissive occupier instead of owner; the further amendment sought was based on the entries made in the revenue records; it was not shown how the proposed amendment prejudiced the case of the plaintiff; it was also not the case of the plaintiff that any accrued right to it was tried to be taken away by the proposed amendment; the proposed amendment was to elaborate the defence and to take additional plea in support of its case; assuming that there was some admission indirectly, it was open to the defendant to explain the same; and looking to the proposed amendment, it was clear that it was required for proper adjudication of the controversy between the parties and to avoid multiplicity of judicial proceedings.

After noting that the High Court had also found fault with the defendant on the ground that there was delay of three years in seeking amendment to introduce a new defence, the Supreme Court observed that, from the records, it could not be said that any new defence was sought to be introduced; even otherwise, it was open for the defendant to take alternative or additional defence; merely because there was delay in making the amendment application, when no serious prejudice was shown to have been caused to the plaintiff so as to take away any accrued right, the application could not be rejected; at any rate, it could not be said that allowing the amendment caused irretrievable prejudice to the plaintiff; and, further, the plaintiff can file his reply to the amended written statement and fight the case on merits.

The Supreme Court further observed that it was fairly settled in law that the amendment of pleadings under Order 6 Rule 17 was to be allowed if such an amendment was required for proper and effective adjudication of the controversy between the parties and to avoid multiplicity of judicial

proceedings, subject to certain conditions such as allowing the amendment should not result in injustice to the other side; normally a clear admission made conferring certain right on a plaintiff is not allowed to be withdrawn by way of amendment by a defendant resulting in prejudice to such a right of the plaintiff, depending on the facts and circumstances of a given case; in certain situations, a time-barred claim cannot be allowed to be raised by proposing an amendment to take away the valuable accrued right of a party; however, mere delay in making an amendment application itself is not enough to refuse amendment, as the delay can be compensated in terms of money; and amendment is to be allowed when it does not cause serious prejudice to the opposite side.

D. ANALYSIS:

As noted hereinabove, the subject IAs were filed, by the Appellants-Applicants, on 11.10.2023 seeking certain reliefs. In the said IAs, the Appellants-Applicants stated that, pursuant to the order passed by the CERC on 05.02.2019, the Appellants had sought to reconcile its claims, in terms of the impugned order, with the 2nd Respondent; they had submitted their claims to the 2nd Respondent by way of letter dated 08.04.2019 along with documentary evidence which clearly depicted one to one correlation of the change in law impact upon the Appellants; the 2nd Respondent-NTPC rejected the claims, vide its email dated 13.05.2019 & 15.05.2019 respectively, stating that various invoices were raised after the date of actual commissioning i.e. 01.11.2017 and 14.12.2017, and could not be included in the claim; consequent on rejection of the claim, the appellants-applicants had filed clarification petition No. 109/MP/2021 before the Commission; the CERC passed orders on 29.09.2021; subsequent to the filing of Appeal Nos. 432 and 433 of 2019 by the Appellants, this Tribunal had passed various judgments holding that the change in law claims

included Post COD claims in order to restore the developer to the same economic position as they would been had the change in law event not occurred; in the light of the same, the Appellants seek to amend the captioned appeals with regard to the issue pertaining to Post COD claims; the present appeals have been included in the List of Finals to be taken up for hearing from there in its turn; the applicants-appellants seek permission to amend the appeals, and include the additional issue in the main appeals; allowing the application would be in furtherance of interest of justice; since the present appeals are pending against the impugned order dated 05.02.2019, and the order passed by the CERC on 29.09.2021 is essentially being subsumed in the impugned order, the Appellants should be permitted to amend the appeals to challenge the specific findings of the Commission in the clarification petition to the extent the same introduces a cut-off date for the change in law claims by introducing certain paragraphs in the appeal.

By way of the amendment, the Appellants-applicants seek insertion of certain facts, as Para 20A to Para 20H and Para 21 of the Appeal. The Appellants-applicants also seek amendment to the grounds of appeal, as also the prayer to include therein a challenge to the clarificatory order, and for the said order to be set aside. Reliance is sought to be placed, in the said IAs, on the judgement of this Tribunal in **Parampujya Solar Energy Private Limited and Others vs. CERC** (judgement in Appeal No. 256 of 2019 and Batch dated 15.09.2022) and certain paragraphs of the said judgement are extracted in the IAs.

While the CERC passed an order on 29.09.2021 rejecting Petition No.109/MP/2021, and the judgement in **Parampujya Solar Energy Private Limited** was passed by this Tribunal on 15.09.2022, the present IAs, seeking amendment of pleadings, grounds and the prayer in the

Appeals preferred earlier, were filed on 11.10.2023. The IAs, seeking amendment, were filed more than two years after the CERC passed the order dated 29.09.2021 in the appellants-applicants' clarification petition, and more than one year after the judgement of this Tribunal in **Parampujya Solar Energy Private Limited** (judgment in Appeal No. 256 of 2019 and Batch dated 15.09.2022).

Since the limitation prescribed, for preferring an appeal against the clarificatory order passed by the CERC on 29.09.2021, is 45 days under Section 111(2) of the Electricity Act, the appellants-applicants, if they had chosen to file an appeal against the said order, would have been required to file the appeals on or before 14.11.2021. While the proviso to Section 111(2) does enable this Tribunal to entertain the appeal even after expiry of the period of limitation if it is satisfied that there was sufficient cause for the Appellants-applicants' failure to file the appeal within time, the Appellants-applicants herein, evidently with a view to overcome the inordinate delay in availing the appellate remedy, have, instead, chosen to seek amendment of the earlier appeals instead of filing fresh appeals against the order passed by the CERC on 29.09.2021.

While it is true that the law declared by the Supreme Court, as referred to hereinabove, does provide that an amendment can be permitted even after expiry of the period of limitation, it is also made clear therein that limitation is a factor which this Tribunal should take into consideration while exercising its discretion on whether or not to permit amendment, and a decision in this regard must be taken also in the light of the relevant statutory provisions.

The need to expeditiously dispose of appeals, and to provide a speedy mechanism for early resolution of disputes in the energy sector was recognized by Parliament since these appeals not involve huge monetary

stakes, but also have a bearing on the very functioning of the Power Industry as a whole. Consequently, a specific provision was made under Section 111(5) of the Electricity Act requiring this Tribunal to endeavour to dispose of the appeals finally within 180 days from the date of institution of the appeal. The proviso to Section 111(5) requires this Tribunal to record reasons, in case an appeal is not disposed of within the period of 180 days, as to why the appeal could not be disposed of within the said period.

While it is true that despite its best endeavour, there are several appeals pending adjudication, a few of them for several years, that does not mean that an application seeking amendment can be filed, in appeals instituted under Section 111(1) of the Electricity Act, for the mere asking, even without explaining as to whether the appellants-applicants were disabled by "sufficient cause" from seeking such amendment within the period of limitation prescribed for filing appeals.

As noted hereinabove, the Appellants-applicants have neither chosen to state in the said IAs as to why they did not seek an amendment shortly after the order was passed by the CERC on 29.09.2021, nor have they chosen to furnish "sufficient cause" for their failure to do so. We find it difficult to brush aside the submission, urged on behalf of the 2nd Respondent, that, after having chosen to accept the order passed by the CERC on 29.09.2021, the appellants-applicants chose to seek an amendment only after the judgement of this Tribunal in **Parampujya Solar Energy Private Limited (judgement in Appeal No. 256 of 2019 & Batch dated 15.09.2022)**. This contention, urged on behalf of the 2nd Respondent-NTPC, draws support from the specific averment made by the appellants-applicants themselves, in para 10 of the IAs, that, subsequent to filing of Appeal Nos. 432 and 433 of 2019, this Tribunal had passed judgement holding that the change in law claims would include Post COD

claims. The reference in Para 10, and in the subsequent paragraphs, of the IAs is to the judgement of this Tribunal in **Parampujya Solar Energy Private Limited (judgement in Appeal No. 256 of 2019 & Batch dated 15.09.2022)**.

The very fact that both Parampujya Solar Energy Private Limited and Wardha Solar Private Limited had preferred Appeal No. 131 of 2022, against the order of the CERC dated 27.03.2020, would go to show that the appellants-applicants herein could have likewise preferred an appeal against the order of the CERC dated 29.09.2021, and they seem to have chosen the amendment route only to avoid having to justify the inordinate and undue delay in approaching this Tribunal in terms of the proviso to Section 111(2) of the Electricity Act in case they had preferred an appeal under Section 111(1).

DFR No. 287 of 2020 (later numbered as Appeal No. 131 of 2022) was filed by Wardha Solar (Maharashtra) Private Limited and M/s Parampujya Solar Energy Private Limited before this Tribunal on 20.08.2020, against the order passed by the CERC in Petition Nos. 388/MP/2018 and 395/MP/2018 dated 27.03.2020. This Appeal formed part of the batch of appeals in which this Tribunal passed its' judgement in **Parampujya Solar Energy Private Limited vs CERC: (Judgement in Appeal No. 256 of 2019 & Batch dated 15.09.2022)**.

Before the CERC the Appellants, in Appeal No. 131 of 2022, had contended, among others, that the Respondents had withheld part payment from invoices towards the cost incurred for installation of Solar PV Modules and other associated equipment and allied services, which were installed after commissioning of the solar power plants, and invoices of certain goods and services which had been raised after the date of

commissioning of the solar power plants; and the Respondent be directed to release payments at the earliest.

In its order, in Petition Nos. 388/MP/2018 and 395/MP/2018 dated 27.03.2020, the CERC held that no invoices for GST modules, equipment and allied services raised after the commissioning date was admissible; according to GST laws, in cases where the invoices raised or consideration for the goods/ supply of services had been received before 01.07.2017 and the tax had already been paid under the earlier law, the GST will not be applicable in such cases; as per definition of Commercial Operation Date (COD) provided in Article-1 of the PPAs, COD will be the date 30 days subsequent to the actual date of commission of full capacity; the liability of payment on account of impact of GST on procurement of Solar PV panels and associated equipment by the Petitioners shall lie with the Respondents till the COD only; and there had to be a clear and one to one correlation between the projects, the supply of goods or services, and the invoices raised by the supplier of goods and services.

A specific plea, regarding entitlement for change in law claims for invoices raised post COD, was raised by the Appellants in Appeal No. 131 of 2022 before the CERC and, on such contention being rejected, they had preferred an appeal to this Tribunal in DFR No. 287 of 2020 (later numbered as Appeal No. 131 of 2022). It does not stand to reason, therefore, that the appellants-applicants herein could not have to preferred an appeal, against the order passed by the CERC on 29.09.2021, within the statutory period of limitation of 45 days as stipulated in Section 111(2) of the Electricity Act. No explanation is forthcoming as to why the Appellants chose not to avail the appellate remedy, and instead chose the amendment route by filing the aforesaid IAs on 11.10.2023 more than two years after the order was passed by the CERC on 29.09.2021. It is evident

that this route was taken only to avoid justifying the inordinate and undue delay which they would have been required to explain in case they had preferred an appeal against the clarificatory order dated 29.09.2021, since the proviso to Section 111(2) permits condonation of delay only on this Tribunal being satisfied that there was “sufficient cause” for the delay in invoking the appellate remedy.

It is relevant to note that the appellants-applicants did not even file the present application for amendment soon after the judgement of this Tribunal in **Parampujya Solar Energy Private Limited,** and it took them more than one year thereafter to do so on 11.10.2023. While no explanation is forthcoming for this undue and inordinate delay in seeking amendment, the Learned Counsel for the appellants-applicants claims, in the written submissions filed by them, that they had invoked the jurisdiction of this Tribunal, by way of the present IAs, after the remand order passed by the CERC on 10.10.2023, which order they claim reflects a change in the views of the CERC.

An appeal was preferred before the Supreme Court against the judgement of this Tribunal in **Parampujya Solar Energy Private Limited**, and it is pursuant to the orders of the Supreme Court dated 24.03.2023, directing the CERC to pass orders in compliance with the afore-said judgment of this Tribunal, that the CERC complied with the remand directions of this Tribunal. Orders passed by the CERC, in compliance with the remand directions of this Tribunal, cannot be understood to be a change in its view or justify the delay on the part of the appellants-applicants in seeking amendment of the pleadings, grounds and prayers in Appeal Nos. 432 and 433 of 2019.

It is true that the limitation stipulated in Section 111(2) of the Electricity Act is for an appeal to be filed before this Tribunal by a person

aggrieved by the order passed by the Appropriate Commission. The contention that no limitation has been prescribed in the Electricity Act, for an amendment application to be filed, ignores the fact that Section 120(1) of the Electricity Act expressly stipulates that the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of the Electricity Act, the Appellate Tribunal shall have powers to regulate its own procedure.

It is only because this Tribunal has not prescribed its own procedure, and in as much as the provisions in the Civil Procedure Code is a fair, reasonable and widely accepted procedure, that this Tribunal has, more often than not, relied on the provisions of the Civil Procedure Code though it is not bound in law to do so. That does not mean that the appellants-applicants can, with a view to circumvent the requirement of the proviso to Section 111(2) of the Electricity Act of having to explain the inordinate and undue delay in invoking the appellate jurisdiction of this Tribunal, choose to avoid filing an appeal and instead file an application for amendment, and then contend that such an application should be entertained for the mere asking as no limitation is prescribed in the Electricity Act for amendment applications.

The mere fact that the Appellants-Applicants had styled Petition No.109/MP/2021 as a clarification petition does not mean that no fresh cause of action had arisen necessitating the Appellant having to invoke the jurisdiction of the CERC. In this context it is useful to understand what the expression *"cause of action"* means.

a. "CAUSE OF ACTION" ITS MEANING AND SCOPE:

Osborne's Concise Law Dictionary defines “cause of action” as the fact or combination of facts which give rise to a right of action. **Black's Law Dictionary** defines the expression “cause of action” to mean the fact or facts which give a person a right to judicial relief. In **Stroud's Judicial Dictionary,** a cause of action is stated to be the entire set of facts that give rise to an enforceable claim. In **Words and Phrases (4th Edn.),** the meaning attributed to the phrase “cause of action”, in common legal parlance, is existence of those facts which give a party a right to judicial interference on his behalf.

“Cause of action” has been defined in **Halsbury's Laws of England (4th Edn)** as meaning simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. “Cause of action” has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action.

A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since, in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on, but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant

a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defense which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff. **(A.B.C. Laminart (P) Ltd. v. A.P. Agencies: (1989) 2 SCC 163; Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706; Bloom Dekor Ltd. v. Subhash Himatlal Desai [(1994) 6 SCC 322; Cooke v. Gill: (1873) LR 8 CP 107**; **Read v. Brown, (1888) 22 QBD 128**).Cause of action refers entirely to the grounds set forth in the plaint as the cause of action or, in other words, to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour. (**Mst. Chand Kour v. Partab Singh, 15 Ind App 156)**

The expression “cause of action” has acquired a judicially settled meaning. In the restricted sense, “cause of action” means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact by which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. **(Shanti Devi v. Union of India, (2020) 10 SCC 766; Mulla on the Code of Civil Procedure; Rajasthan High Court Advocates' Association v. Union of India, (2001) 2 SCC 294**;

“Cause of action” implies a right to sue. The material facts, which are imperative for the suitor to allege and prove, constitute the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted. Negatively put, everything which, if not proved, gives the defendant an immediate right to judgment, would be a part of the cause of

action. (**Kusum Ingots & Alloys Ltd. v. Union of India, (2004) 6 SCC 254** and ***Swamy Atmananda* v. *Sri Ramakrishna Tapovanam*, (2005) 10 SCC 51 : AIR 2005 SC 2392**; **V.K. Engg. Constructions v. Managing Director, IRCON International Ltd., 2008 SCC OnLine AP 827)**

Each and every fact pleaded does not *ipso facto* lead to the conclusion that those facts give rise to a cause of action, unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. (**Union of India v. Adani Exports Ltd., (2002) 1 SCC 567; National Textile Corpn. Ltd).** The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for sitting; a factual situation that entitles one person to obtain a remedy in court from another person [**Navinchandra N. Majithia v. State of Maharashtra, (2000) 7 SCC 640; Y. Abraham Ajith v. Inspector of Police, (2004) 8 SCC 100 : AIR 2004 SC 4286**].

As noted hereinabove, the Appellants herein filed Petition No. 187/MP/2018 and 193/MP/2019 before the CERC seeking approval of change in law and consequent revision in capital cost due to increase in the Central Goods and Services Tax Act, 2017. A common order was passed by the CERC, in these two petitions along with a few others, on 05.02.2019. It does appear that neither did the Appellant raise any plea, in the petitions filed by them before the CERC that the change in law claims, they were entitled to, was even with respect to invoices raised post the commercial operation date and, consequently, it does seem that the CERC was not called upon to consider this aspect in its order dated 05.02.2019 which was subjected to challenge in Appeal Nos. 432 and 433 of 2019.

Relying on its earlier order in **Acme Valley Power Private Limited Vs. SECI** (Order in Petition No. 188/MP/2018 dated 09.10.2018), the CERC held Issue No.1 in favour of the Appellants to the effect that the CGST Laws should be considered as change in law, and the enactment of the GST Laws was squarely covered as change in law under Article 12 of the PPA. The CERC further held that, while invoices raised or consideration paid for services received before 01.07.2017 would not attract GST and it was immaterial whether consideration for supply had been paid fully or party, in so far as claims, on account of GST were made during the construction period, the Petitioners (the Appellants herein) had to exhibit clear and one to one correlation between the projects and the supply of goods and services duly supported by invoices raised by the supplier for the goods and services, Auditors' certificate etc.

The Appellants claims, regarding separate carrying cost and interest on working capital, were disallowed by the CERC in its order dated 05.02.2019. Appeal Nos. 432 and 433 of 2019 were filed by the Appellants herein, under Section 111(1) of the Electricity Act, subjecting the afore-said order passed by the CERC to challenge only to the extent the CERC had disallowed compensation for increase in recurring expenses due to duty implementation of GST in respect of O&M expenses, and for having disallowed carrying cost for the change in law events. Even the grounds raised in the appeal were confined only to these aspects, and not to the Appellants claim for change in law compensation for invoices raised post COD.

While it is true that the Appellants herein filed a petition seeking clarification from the CERC that, in the light of the earlier order dated 05.02.2019, the GST claims for change in law ought to be allowed for goods and services procured prior to COD where invoices were raised post COD

and for goods and services procured post COD where invoices were also raised post COD, it does appear that these contentions were raised for the first time in Petition No. 109/MP/2021 filed before the CERC on 16.04.2021, and were not raised prior thereto.

Not only was a claim raised for the first time in Petition No. 109/MP/2021, which did not form part of the original petitions filed before the CERC, but reference was also made in the said Petition No. 109/MP/2021 to various correspondence, several of which took place after the earlier order of the CERC dated 05.02.2019, including a reference to the order of the CERC in **Wardha Solar (Maharashtra) Private Limited** (Order in Petition No. 388/MP/2018 dated 09.09.2020) wherein it was held by the CERC that the liability of payment on account of GST would lie only till the COD and not post COD. In its clarification petition, the Appellant had sought to distinguish the order, in Petition No. 388/MP/2018 dated 09.09.2020, contending that the earlier order of the CERC dated 05.02.2019 did not lay down any restriction with respect to claims being prior to or post COD or with respect to claims which related to invoices raised post COD against procurement made before COD; and since the order dated 05.02.2019 did not place any such restriction, they should be held entitled to change in law compensation for invoices raised post COD for goods and services procured either before or after COD.

In the clarification petition filed by them, the Appellants herein had also contended that it was evident, from Article 12 of the PPA, that the only trigger for invoking the change in law clause was the effective date of the PPA and not the commissioning/COD date in relation to events concerning change in law. The clarification which the Appellants had sought was that, in the light of the order passed by the CERC on 05.02.2019, they were

entitled to change in law claims for goods and services procured both prior to and after COD, even with respect to invoices raised post COD.

Among the two issues framed by the CERC in Petition No. 109/MP/21, which culminated in its order dated 29.09.2021, were (1) whether the cut-off date for payment of GST claims, in respect of orders passed by the Commission, needed clarification, and (2) whether the respondent-NTPC should be directed to release the reconciled payment of Rs. 5.67 Crores out of the total claims of Rs. 6.92 Crores.

While holding issue No. 1 partly against the Appellant, the CERC observed that, in case supply of services relating to goods procured up to COD were completed on the last date of the COD, invoices could be raised within thirty days after COD, and for such invoices the Appellants would be entitled for compensation on account of change in law. On the other issue, the respondent-NTPC was directed to make payment of the reconciled amount of Rs. 5.67 Crores out of the total of Rs. 6.92 Crores. This amount was directed to be released by the respondent-NTPC after receiving full documentation to its satisfaction in terms of the earlier order dated 05.02.2019.

It is also relevant to note that, in the order passed in Petition Nos. 187/MP/2018 and 193/MP/2018 dated 05.02.2019, reference is made by the CERC only to claims relating to change in law during the construction period which, evidently, is before the Commercial Operation Date. As the Appellants did not raise any claim, on account of change in law post COD, in the petitions filed by them before the CERC, it does appear that the CERC did not adjudicate upon the Appellants' entitlement to change in law compensation post COD.

The mere fact that the Appellants have styled Petition No. 109/MP/2021, filed by them before the CERC on 16.04.2021, as a clarification petition, does not mean that no fresh cause of action arose for consideration therein. The facts pleaded in the said clarification petition, and the prayer sought therein, are not those which were sought by the Appellants herein in the earlier petitions filed by them before the CERC i.e. in Petition Nos. 187/MP/2018 and 193/MP/2018. It is only if the Appellants had raised these issues in the afore-said petitions, and if the CERC had failed to consider such contentions properly, or did not consider such contentions at all, can it then be said that the order passed by the CERC on 05.02.2019 suffered from ambiguity necessitating the Appellants having to invoke its jurisdiction seeking clarification.

While we have no reason to doubt that the CERC has the jurisdiction to entertain a petition seeking clarification, and to clarify its earlier order, what we are required to examine, in the context of the present IAs, is whether the Appellant had, in fact, sought clarification with respect to an ambiguity in the order passed by the CERC on 05.02.2019 or whether it had sought a substantial relief based on facts and grounds not urged in the original petition filed by them earlier before the CERC.

The Appellants have, by way of the present IAs, sought amendment to the pleadings in the appeals filed by them, in the grounds of the appeals, and have also sought additional prayers. All these demonstrate that the cause of action for filing the clarification petition was distinct from that which resulted in the Appellants filing Appeal Nos. 432 and 433 of 2019. It is only if these amendments had been sought within the period prescribed, under Section 111(2) of the Electricity Act, for filing an appeal, would the Appellants have been justified in contending that the amendments ought to be permitted, since by seeking amendment, instead of filing fresh appeals,

the Appellants have sought to avoid multiplicity of proceedings. In the present case, the Appellants have not even sought to explain the delay of two years in filing the IAs seeking amendment, and have evidently resorted to the amendment route only to avoid having to explain the delay, which they would otherwise have had to justify, in case they had instituted appeals against the order of the CERC dated 29.09.2021.

We must, therefore, express our inability to agree with the aforesaid submission, urged on behalf of the Appellants-Applicants, that no fresh cause of action had arisen necessitating their having to file Petition No. 109/MP/2021, and they had only sought clarification of the earlier order of the CERC dated 05/02/2019, which order is under challenge in Appeal Nos. 432 and 433 of 2019.

IX. SHOULD AMENDMENT OF PLEADINGS BE PERMITTED AT THE APPELLATE STAGE IF THE BASIC STRUCTURE OF THE PETITION IS NOT ALTERED, AND TO AVOID MULTIPLICITY OF PROCEEDINGS?

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

Sri Sujit Ghosh, Learned Senior Counsel appearing on behalf of the Appellant, would submit that, in ***Sampath Kumar v. Ayyakannu and Anr, (2002) 7 SCC 559,*** the Supreme Court, albeit in the context of Order 6 Rule 17 CPC, while dealing with cases where amendment is allowed, observed that, in the facts of the said case, the basic structure of the suit was not altered by the amendment, and what was being changed was the nature of the relief sought for by the plaintiff; the Supreme Court further held that *`we fail to understand, if it is permissible for the plaintiff to file an independent suit, then why the same relief which could be prayed for in a new suit* cannot be

permitted to be incorporated in the pending suit...allowing the amendment would curtail multiplicity of legal proceedings; and, in the present case, since there was no fresh cause of action, the basic structure could not have been said to be altered.

Placing reliance on **Hindustan Construction 2010 (4) SCC 518,** Sri Sujit Ghosh, Learned Senior Counsel, would further submit that amendment at an Appellate Stage is permissible with the leave of the Court, without resort to Order 6 Rule 17 CPC, as per Order 41 Rule 2, 3 CPC; assuming, arguendo, that it was a new case/fresh cause of action which has arisen during the pendency of the suit, even then amendment may be permitted to avoid multiplicity of proceedings on the principles underlying Order 6 Rule 17. Reliance is placed in this regard on (a) **Rajesh Kumar Aggarwal v KK Modi (2006) 4 SCC 385;** (b) **Sampath Kumar v Ayyakannnu & Another (2002) 7 SCC 559;** and (c) **Harcharan v. State of Haryana, (1982) 3 SCC 408.**

Sri Sujit Ghosh, Learned Senior Counsel appearing on behalf of the Appellant, would also submit that, while Order 41 Rule 2 CPC does not provide for a limitation period for filing of an amendment application, such amendment should be filed within a reasonable period; in the present case, the application for amendment has been filed within a reasonable period; where the Statute does not provide for a limitation period, action must be taken within a reasonable time **– Jagdish v State of Karnataka (2021) 12 SCC 812, para 7;** the test of reasonable time, as laid down in **North Eastern Chemical Industry v Ashok Paper Mill (Assam) Ltd: 2023 SCC Online SC 1649,** is satisfied; the Court must undertake a holistic assessment of the facts and circumstances of the case to examine the possibility of delay causing prejudice to a party; Courts cannot supplant the legislature's wisdom by its own and provide a limitation; Courts must look

at the conduct of the parties, the nature of the proceedings, the length of the delay, the possibility of prejudice being caused, and the scheme of the Statute in question; and, in the present case, the amendment application has been filed within a reasonable period and none of the impediments pointed out by Supreme Court in **Northen Eastern Chemical** (Supra) can be said to exist

B. JUDGEMENTS RELIED UNDER THIS HEAD:

a. JUDGEMENTS RELIED ON BEHALF OF THE APPELLANT:

(*i*) Sampath Kumar v. Ayyakannu, (2002) 7 SCC 559, the plaintiff-appellant filed a suit for permanent prohibitory injunction, in the year 1988, alleging that their possession over the suit property, which was agricultural land, was sought to be interfered with. The defendant in his written statement denied the plaint averments and pleaded that, on the date of institution of the suit, he was in possession of the suit property, and therefore the suit for injunction was liable to be dismissed. In the year 1999, but before commencement of trial, the plaintiff moved an application under Order 6 Rule 17 CPC seeking amendment to the plaint. It was alleged in the application that in January 1989, that is during the pendency of the suit, the defendant had forcibly dispossessed the plaintiff. On such averment, the plaintiff sought for relief of declaration of title to the suit property and consequential relief of delivery of possession.

The prayer for amendment was opposed on behalf of the defendant-respondent submitting that the plaintiff was changing the cause of action through amendment which was not permissible, and also on the ground that the defendant had perfected his title also by adverse possession over the suit property rendering the suit for recovery of possession barred by

time, and therefore a valuable right had accrued to the defendant which was sought to be taken away by the proposed amendment.

It is in this context that the Supreme Court held that it was true that the plaintiff, on the averments made in the application for amendment, proposed to introduce a cause of action which had arisen to the plaintiff during the pendency of the suit; according to the defendant the averments made in the application for amendment were factually incorrect and the defendant was not in possession of the property before the institution of the suit itself; in their opinion, the basic structure of the suit was not altered by the proposed amendment; what was sought to be changed was the nature of the relief sought for by the plaintiff; in the opinion of the trial court, it was open to the plaintiff to file a fresh suit and that was one of the reasons which had prevailed with the trial court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiff's revision; if it is permissible for the plaintiff to file an independent suit, there was no reason why the same relief, which could be prayed for in a new suit, could not be permitted to be incorporated in the pending suit; and, in the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings.

The Supreme Court further observed that Order 6 Rule 17 CPC conferred jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings, and on such terms as may be just; such amendments as were directed towards putting forth and seeking determination of the real questions in controversy between the parties should be permitted to be made; the question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone, but by reference to the stage to which the hearing in the suit had proceeded; pre-trial amendments were

allowed more liberally than those which were sought to be made after the commencement of trial or after conclusion thereof; in the former case, generally, it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended; in the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case; no straitjacket formula could be laid down; mere delay cannot be a ground for refusing a prayer for amendment; in the present case the amendment was being sought almost 11 years after the date of institution of the suit; the plaintiff was not debarred from instituting a new suit seeking the relief of declaration of title and recovery of possession on the same basic facts as were pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which was pending; in order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit; the plaintiff had alleged that the cause of action, for the reliefs now sought to be added, had arisen to him during the pendency of the suit; the merits of the averments sought to be incorporated by way of amendment were not to be judged at the stage of allowing the prayer for amendment; however, the defendant was right in submitting that, if he had already perfected his title by way of adverse possession, then the right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new relief which would relate back to the date of the suit, and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of prescriptive title claimed to have been earned by the defendant; the interest of the defendant could be protected by directing that so far as the reliefs of declaration of title and recovery of possession were concerned, the prayer in that regard shall be deemed to

have been made on the date on which the application for amendment had been filed

(*ii)* In **State of Maharashtra v. Hindustan Construction Co. Ltd., (2010) 4 SCC 518,** the appellant**,** not being satisfied with the arbitral award, made an application for setting aside the award relying on Sections 28, 33 and 16 of the Arbitration & Conciliation Act, 1996. The District Judge rejected the said application. Aggrieved thereby, the appellant preferred an appeal under Section 37 of the 1996 Act before the Bombay High Court. The appellant made an application before the High Court seeking amendment to the memorandum of arbitration appeal by adding additional grounds.

The aforesaid application was opposed by the respondent on diverse grounds, inter alia, that the additional grounds sought to be incorporated in the memorandum of arbitration appeal could not be allowed at this stage after the expiry of period prescribed in Section 34(3) as that would tantamount to entertaining a challenge after and beyond the period of limitation and that the award had not been challenged by the appellant on any of the grounds sought to be urged/added through the amendment application. The learned Single Judge dismissed the application for amendment in the memorandum of arbitration appeal holding that the ground, not initially raised in a petition for setting aside the arbitral award, could not be permitted to be raised beyond the period of limitation prescribed in Section 34(3); and the proposed amendments in the memorandum of arbitration appeal were not even sought on the grounds contained in the application under Section 34.

On the question whether the principles relating to amendment of pleadings in original proceedings apply to the amendment in the grounds of appeal, the Supreme Court held that Order 41 Rule 2 CPC makes a

provision that the appellant shall not, except by leave of the court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the appellate court, in deciding the appeal, shall not be confined to the grounds of objections set forth in the memorandum of appeal or taken by leave of the court; Order 41 Rule 3 CPC provides that where the memorandum of appeal is not drawn up as prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended; the aforesaid provisions in CPC leave no manner of doubt that the appellate court has power to grant leave to amend the memorandum of appeal; and in **Harcharan v. State of Haryana: (1982) 3 SCC 408**, it was held that the memorandum of appeal has the same position as the plaint in the suit.

The Supreme Court then observed that, **L.J. Leach & Co. Ltd: AIR 1957 SC 357,** and **Pirgonda Hongonda Patil: AIR 1957 SC 363,** seemed to enshrine clearly that courts would, as a rule, decline to allow amendments, if a fresh claim on the proposed amendments would be barred by limitation on the date of application, but that would be a factor for consideration in exercise of the discretion as to whether leave to amend should be granted but that does not affect the power of the court to order it, if that is required in the interest of justice; there is no reason why the same rule should not be applied when the court is called upon to consider the application for amendment of grounds in the application for setting aside the arbitral award or the amendment of the grounds in appeal under Section 37 of the 1996 Act; in the application for setting aside the award, the appellant set up only five grounds; the grounds sought to be added in the memorandum of arbitration appeal by way of amendment were absolutely new grounds for which there was no foundation in the application for setting aside the award; obviously, such new grounds containing new material/facts could not have been introduced for the first time in an appeal

when, admittedly, these grounds were not originally raised in the arbitration petition for setting aside the award; moreover, no prayer was made by the appellant for amendment in the petition under Section 34 before the court concerned or at the appellate stage; the learned Single Judge had observed that the grounds of appeal which were now sought to be advanced were not originally raised in the arbitration petition, and that the amendment that was sought to be effected was not even to the grounds contained in the application under Section 34 but to the memo of appeal; and, in the circumstances, it could not be said that discretion exercised by the Single Judge, in refusing to grant leave to the appellant to amend the memorandum of arbitration appeal, suffered from any illegality.

(*iii*) In **Rajesh Kumar Aggarwal v. K.K. Modi, (2006) 4 SCC 385,** the appellants had filed an application, under Order 6 Rule 17, seeking leave of the Court to amend the plaint. and to incorporate certain pleas therein. They also sought an amendment to incorporate the relief of mandatory injunction.

After referring to Order 6 Rule 17 CPC and its proviso, the Supreme Court observed that this rule declared that the court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such a manner and on such terms as may be just; it also states that such amendments should be necessary for the purpose of determining the real question in controversy between the parties; the proviso enacts that no application for amendment should be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter for which amendment is sought before the commencement of trial; the object of the rule was that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for

determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side; Order 6 Rule 17 consists of two parts, whereas the first part was discretionary (may) and left it to the court to order amendment of pleading, the second part was imperative (shall) and enjoined the court to allow all amendments which were necessary for the purpose of determining the real question in controversy between the parties; since the cause of action arose during the pendency of the suit, the proposed amendment ought to have been granted because the basic structure of the suit had not changed, and there was merely a change in the nature of the relief claimed; and if it was permissible for the appellants to file an independent suit, there was no reason why the same relief which could be prayed for in the new suit could not be permitted to be incorporated in the pending suit.

The Supreme Court further observed that the real controversy test was the basic or cardinal test, and it was the primary duty of the court to decide whether such an amendment was necessary to decide the real dispute between the parties; if it was, the amendment should be allowed; if it was not, the amendment should be refused; in cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties, and to subserve the ends of justice; the rule of amendment is essentially a rule of justice, equity and good conscience, and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court; while considering whether an application for amendment should or should not be allowed, the court should not go into the correctness or falsity of the case in the amendment; likewise, it should not record a finding on the merits of the amendment; and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment.

(*iv*) In **Harcharan v. State of Haryana, (1982) 3 SCC 408,** various claimants, who were covered by the award, sought reference under Section 18 of the Land Acquisition Act, 1894. The learned District Judge enhanced the compensation in respect of some plantation land but otherwise affirmed the award of the Land Acquisition Collector. The appellant filed RFA No. 667 of 1973 in the Punjab & Haryana High Court. The High Court proceeded to ascertain and evaluate the market price of the land acquired as on the date of notification under Section 4 of the said Act. During the pendency of the appeal the appellant moved an application under Order 6 Rule 17 read with Order 41 Rule 3 and Section 151 of the Code of Civil Procedure for amendment of the memorandum of appeal seeking higher compensation on the allegation that the acquired land had the potentiality of a building site. The High Court rejected the application by a cryptic order holding that they saw no reason for the amendment, particularly after a lapse of six years of the filing of appeal.

In the application seeking leave to amend the memorandum of appeal, the appellant urged that in Regular First Appeal No. 416 of 1974 decided on April 4, 1979, the High Court had held that all lands in Ballabhgarh-Faridabad Controlled Area between Delhi-Mathura Road and Agra Canal, except a strip up to 500 feet along the Mathura Road, had the same potentiality and awarded compensation for the land acquired for the development of Sector 16 of Faridabad Complex at the rate of Rs 10 per square yard. It was further alleged that in Regular First Appeal No. 381 of 1977 and Regular First Appeal No. 563 of 1977, while evaluating the market value of the land for development of Sector 17 of Faridabad Complex, the High Court awarded compensation at the rate of Rs 10 per square yard on the footing that the land had the potentiality of a building site. It was also alleged that for the land acquired for development of Sector 13 of Faridabad Complex situated in Ballabhgarh-Faridabad Controlled

Area, compensation was awarded by the High Court at the rate of Rs 10 per square yard on the footing that the land had the potentiality of building site. After reciting the aforementioned averments, the appellant had stated that the land involved in dispute and acquired for development of Sector 14 was situated in the Ballabhgarh-Faridabad Controlled Area and must be held to have the same potentiality and, therefore, the compensation ought to be awarded on the footing that it had the potentiality of a building site. The appellant accordingly sought amendment of the memorandum of appeal for change of ascertainment of compensation.

It is in this context that the Supreme Court observed that the best evidence with regard to evaluation of price of land in a proceeding for ascertainment of compensation for land acquired under the Act was the award of the court, subject of course, to the comparison of the land area wise, topography wise and use wise; the appellant sought amendment relying on this principle; Order 6 Rule 17 in terms provides that the court may *at any stage of the proceedings* allow either party to alter or amend his pleadings in such manner and on such terms as may be necessary for the purpose of determining the real questions in controversy between the parties; determination of the question, regarding market value of the land, is the real question in controversy between the parties; to effectively and finally adjudicate this controversy necessary pleadings ought to be available; to highlight this real controversy it may become necessary to amend the pleadings; when an appeal is preferred. the memorandum of appeal has the same position like the plaint in a suit because plaintiff is held to the case pleaded in the plaint; in the case of memorandum of appeal same situation obtains in view of Order 41 Rule 3; the appellant is confined to and also would be held to the memorandum of appeal; to overcome any contention that such is not the pleading the appellant sought the amendment; it was declined on the sole ground that it was delayed by six

years; the High Court has not held the averments in the application about the various decisions rendered by the same High Court as being untrue or otherwise; therefore, the foundation for the amendment is neither shaken nor knocked out; the appellant sought amendment relying upon the decisions of the High Court itself and the decisions provided a comparable yardstick for effectively disposing of the real controversy before the High Court and the amendment was sought before the High Court proceeded to dispose of the appeal; and interest of justice demands that the appeal be allowed setting aside the order of the High Court rejecting the application.

(*v*) In **Chedilal Yadav vs Harikishore Yadav: (2018) 12 SCC 527**, the appeal preferred to the Supreme Court was against the judgment of the Division Bench of the Patna High Court whereby the order passed by the Additional Collector, Supaul, directing restoration of possession of the disputed land under the provisions of the Bihar Kosi Area (Restoration of Lands to Raiyats) Act, 1951 (for short "the Act"), was reversed.

While expressing its inclination to dispose of the appeal on the ground of unreasonable delay in applying for restoration of the land, the Supreme Court observed that there was inordinate, unexplained and unjustified delay on the part of the appellants in firstly, making an application for restoration of land after a period of 24 years after such a right is said to have accrued to them and, then in making an application for restoration after a period of 16 years when the matter was dismissed in default; the appellants had vehemently submitted that the delay must be overlooked because the Act was a beneficial piece of legislation intended to bring relief to farmers who had been dispossessed during the proscribed period; it is settled law that, where the statute does not provide for a period of limitation, the provisions of the statute must be invoked within a reasonable time; in **Collector v. D. Narsing Rao, (2015) 3 SCC 695** the Supreme Court had

affirmed the view of the Andhra Pradesh High Court, in **Collector v. D. Narasing Rao, 2010 SCC OnLine AP 406**, that suo motu revision undertaken after a long lapse of time, even in the absence of any period of limitation, was arbitrary and opposed to the concept of rule of law; where no period of limitation is prescribed, the action must be taken, whether suo-motu or on the application of the parties, within a reasonable time; what is reasonable time would depend on the circumstances of each case and the purpose of the statute; merely because the legislation is beneficial and no limitation is prescribed, the rights acquired by persons cannot be ignored lightly and proceedings cannot be initiated after unreasonable delay as observed in **Situ Sahu v. State of Jharkhand, (2004) 8 SCC 340**.

(*vi*) In **Jagadish v. State of Karnataka, (2021) 12 SCC 812,** the Supreme Court relied on its earlier decision in **Satyan v. Commr., (2020) 14 SCC 210** wherein the contention of the appellant that settled transactions cannot be disturbed after a long period of eight years was noted, and it was held that the transactions were of the year 1997 which were sought to be unsettled after almost eight (8) years, by preferring an application in the year 2005; the suo motu power was sought to be exercised by the Joint Collector after 13-15 years; Section 50-B was amended in the year 1979 by adding sub-section (4), but no action was taken to invalidate the certificates in exercise of the suo motu power till 1989; there was no convincing explanation as to why the authorities waited for such a long time; sub-section (4) was added so as to take action where alienations or transfers were made to defeat the provisions of the Land Ceiling Act; the Land Ceiling Act having come into force on 1-1-1975, the authorities should have made inquiries and efforts so as to exercise the suo motu power within a reasonable time; the action of the Joint Collector in exercising suo motu power after several years and not within a reasonable period, and passing orders cancelling validation certificates given by the

Tahsildar, was rightly held by the High Court, as unsustainable; the ratio was that such suo motu powers had to be exercised within a reasonable period of time; where no period of limitation is prescribed, the action must be taken, whether suo-motu or on the application of the parties, within a reasonable time; what is reasonable time would depend on the circumstances of each case and the purpose of the statute; in the case before them, the action was grossly delayed and taken beyond a reasonable time, particularly, in view of the fact that the land was transferred several times during this period, obviously, in the faith that it was not encumbered by any rights.

C. ANALYSIS:

Before examining the contentions, urged on behalf of the Appellants-Applicants under this head, it is useful to examine whether the judgements relied on their behalf are applicable to the facts and circumstances of the present case.

As noted herein above, in **North Eastern Chemical Industry v Ashok Paper Mill (Assam) Ltd: 2023 SCC Online SC 1649,** the Jogighopa Act provided for an appellate remedy, but no period of limitation was stipulated therein for filing an appeal. It is in this context that the Supreme Court observed that Courts cannot supplant the legislature's wisdom by its own and provide a limitation; and Courts must look at the conduct of the parties, the nature of the proceedings, and the length of the delay, in considering whether the appeal has been filed within a reasonable period. Unlike in **North Eastern Chemical Industry,** Section 111(2) of the Electricity Act prescribes a period of limitation of 45 days to prefer an appeal to this Tribunal. Reliance placed by the Appellants on **North Eastern Chemical Industry** is therefore of no avail.

In **Sampath Kumar v. Ayyakannu, (2002) 7 SCC 559,** the plaintiff filed the suit in January, 1989; in the year 1999, but before commencement of trial, the plaintiff moved an application under Order 6 Rule 17 CPC seeking amendment to the plaint in the pending suit. It was a case of a pre-trial amendment of pleadings, to which even the proviso to Order 6 Rule 17 CPC, evidently, did not apply. It does not stand to reason that the law declared in the said Judgement should be read out of context, and should be sought to be applied to appellate proceedings, which can only be instituted after trial in the suit stands completed, and the suit itself has been disposed of.

In **State of Maharashtra v. Hindustan Construction Co. Ltd., (2010) 4 SCC 518,** the appellant**,** during the pendency of the appeal under Section 37 of the Arbitration & Conciliation Act, 1996, made an application seeking amendment to the memorandum of arbitration appeal by adding additional grounds.

While holding that Order 41 Rules 2 & 3 CPC conferred power on the appellate court to grant leave to amend the memorandum of appeal, and in **Harcharan v. State of Haryana: (1982) 3 SCC 408** it was held that the memorandum of appeal has the same position as the plaint in the suit, the Supreme Court, in **Hindustan Construction Co. Ltd**, relying on **L.J. Leach & Co. Ltd: AIR 1957 SC 357,** and **Pirgonda Hongonda Patil: AIR 1957 SC 363,** observed that courts would, as a rule, decline to allow amendments, if a fresh claim on the proposed amendments would be barred by limitation on the date of application, but that would be a factor for consideration in exercise of the discretion as to whether leave to amend should be granted; and new grounds containing new material/facts could not have been introduced for the first time in an appeal when, admittedly, these grounds were not originally raised in the arbitration petition.

Like in **Hindustan Construction Co. Ltd**, not only has the present appeal been filed long after the period of limitation of 45 days had expired, and two years after the order of the CERC dated 29.09.2021, but new facts and reliefs, which did not form part of the original petition filed before the CERC or in the grounds raised in Appeal Nos. 432 and 433 of 2019, are now sought to be introduced by way of the IAs seeking amendment. Reliance placed by the Appellant on **Hindustan Construction Co. Ltd** is therefore misplaced.

In **Rajesh Kumar Aggarwal v. K.K. Modi, (2006) 4 SCC 385,** the appellants had filed an application, under Order 6 Rule 17 CPC, seeking leave of the Court to amend the plaint. and to incorporate certain pleas therein. They also sought an amendment to incorporate the relief of mandatory injunction.

In this context, the Supreme Court held that the second part of Order 6 Rule 17 was imperative (shall) and enjoined the court to allow all amendments which were necessary for the purpose of determining the real question in controversy between the parties; the basic structure of the suit had not changed, and there was merely a change in the nature of the relief claimed; since it was permissible for the appellants to file an independent suit, they ought to have been permitted to incorporate the same in the pending suit by way of an amendment; and subsequent events can be taken note of in order to shorten litigation, to preserve and safeguard the rights of both parties, and to subserve the ends of justice.

Reliance placed on **Rajesh Kumar Aggarwal** is also misplaced as Order 6 Rule 17 CPC relates to amendment of pleadings in a pending Suit. In the present case, the order impugned (challenge to which is sought to be added to the pending appeals by way of these IAs seeking amendment) is the order of the CERC dated 29.09.2021 passed in a petition filed by the

Appellants before the CERC on 16.04.2021, long after Appeal Nos.432 and 433 of 2019 were instituted before this Tribunal on 25.07.2019, against the earlier order passed by the CERC on 05.02.2019.

Harcharan v. State of Haryana, (1982) 3 SCC 408 related to determination of market value of the land acquired by the State under the Land Acquisition Act, 1894, which was a beneficial legislation. The Supreme Court was of the view that the High Court could not have ignored the market value determined by it in earlier cases, and should have permitted amendment of pleadings to enable the claimant to seek higher compensation for his land which had been acquired by the State. The observations in the said judgement cannot be read out of context, and be sought to be made applicable to an appeal under the Electricity Act, more so in the light of the limitation prescribed in Section 111(2), the requirement of showing "sufficient cause" in terms of the proviso thereto, and in view of Section 111(5) which requires this Tribunal to endeavour to dispose of appeals within 180 days of its institution. In any event the cause of action, based on which the amendment is sought, is distinct from that with respect to which the Appeals were filed earlier, though the issue raised in the subsequent petition filed by the Appellant on 16.04.2021 may not be wholly extraneous to the issues arising for consideration in the pending appeals.

In **Chedilal Yadav vs Harikishore Yadav: (2018) 12 SCC 527**, the Supreme Court, relying on **Situ Sahu v. State of Jharkhand, (2004) 8 SCC 340**, held that, where no period of limitation is prescribed, action must be taken within a reasonable time; what is reasonable time would depend on the circumstances of each case and the purpose of the statute; and, merely because the legislation is beneficial and no limitation is prescribed, the rights acquired by persons cannot be ignored lightly and proceedings cannot be initiated after unreasonable delay.

Likewise, in **Jagadish v. State of Karnataka, (2021) 12 SCC 812,** the Supreme Court held that where no period of limitation is prescribed, action must be taken within a reasonable time; and what is reasonable time would depend on the circumstances of each case and the purpose of the statute.

Unlike in **Chedilal Yadav** and **Jagadish**, Section 111(2) of the Electricity Act prescribes a period of limitation of 45 days for preferring an appeal to this Tribunal. Reliance placed by the Appellant on **Chedilal Yadav** and **Jagadish** is, therefore, misplaced.

While we have no quarrel with the submission, urged on behalf of the Appellants-Applicants, that amendment of pleadings can be permitted to avoid multiplicity of proceedings, the law declared by the Supreme Court, in the judgements referred to hereinabove, is that such amendments may not be permitted where the cause of action is distinct from that which had resulted in an appeal being instituted earlier. Reliance placed by the Appellant on **Sampath Kumar and Rajesh Kumar Agarwal** is wholly misplaced, since both these cases related to amendments sought during the pendency of the suit in terms of Order VI Rule 17 CPC.

Further in **Sampath Kumar,** though the suit was pending for more than a decade, the amendment sought was at the pre-trial stage. The distinction between pre and post amendments is that amendments at the pre-trial stage are required to be permitted liberally since no prejudice is likely to be caused to the defendant thereby, It is only for post-trial amendments that the due diligence test is required to be satisfied in terms of the proviso to Order VI Rule 17 CPC. While the Court undoubtedly has the power, under Order VI Rule 17 CPC, even to permit amendment of pleadings post commencement of trial and before disposal of the suit, if such an amendment is found necessary to determine the real question in

controversy between the parties, additional factors come into play when amendments are sought, after the proceedings in the Suit stand concluded with the passing of a decree, and after institution of an appeal against the decree passed in the Suit. Such factors include the appellate Court requiring to satisfy itself that if, instead of seeking amendment of a pending appeal, the applicant had instituted a fresh appeal, whether filing of such an appeal would have been barred by limitation; and, if there is a provision for condonation of delay, whether sufficient cause is shown for such condonation.

Reliance placed by the Appellant, on the judgement of the Supreme Court in **Jagdish,** to submit that the amendment was filed within a reasonable period is wholly misplaced. As noted earlier in this order, the provisions of the CPC do not relate to limitation for filing a suit as the limitation for doing so is either in terms of the provisions of the Limitation Act or in terms of the provisions of the special Statute which provides for institution of original proceedings or for an appeal to be preferred there-against. The submission that Order 41 Rule 2 CPC does not provide for a limitation period, for filing an amendment application, is therefore only to be noted to be rejected. The limitation for filing an appeal under Section 111(2) of the Electricity Act is 45 days from the date on which a copy of the order passed by the Appropriate Commission is received by the person aggrieved. Since the order passed by the CERC on 29.09.2021 is an order against which an appeal could have been preferred under Section 111(2), the appellants-applicants were required to satisfy this Tribunal that they had sufficient cause for not filing the appeal within the period of limitation, in which event alone would this Tribunal have been justified in permitting amendment to the existing appeal (instead of calling upon the appellant to

file a fresh appeal against the said order), with a view to avoid multiplicity of appellate proceedings.

Unlike in **Sampark Kumar**, it is not merely the nature of relief which is sought to be changed by way of the present IAs. In addition to the reliefs sought for in the earlier appeals, the Appellants-Applicants seek amendment of the earlier appeals to include additional reliefs, including to set aside the subsequent order of the CERC dated 29.09.2021. The Appellants-Applicants also seek amendment of pleadings by insertion of several paragraphs to the appeal to place on record facts which did not form part of the original appeal, and those which arose subsequent to the institution of the appeal. They also seek amendment to the grounds of appeal to include therein grounds relating to a challenge to the subsequent order of the CERC dated 29.09.2021.

Viewed from any angle, we are satisfied that the contentions urged in this head necessitate rejection.

X. ARE THE IAs SEEKING AMENDMENT LIABLE TO BE DISMISSED ON THE GROUND OF INORDINATE, UNDUE AND UNEXPLAINED DELAY?

A. SUBMISSIONS URGED ON BEHALF OF THE 2ND RESPONDENT:

Mr. Sri Venkatesh, Learned Counsel for the 2nd Respondent, would submit that, by the Amendment Application, a separate and new cause of action is sought to be introduced, that too after a lapse of 742 days from the Clarification Order, which would have otherwise been barred by limitation; since the issue is a new cause of action, the Appellant ought to have filed a separate Appeal in order to challenge the Clarification Order;

however, the Appellant, has, as an afterthought, sought to circumvent the limitation for challenging the Clarification Order by seeking to amend its present Appeal after a significant delay without sufficient cause; the Appellant should have exercised its right under Section 111(1) to challenge an Order which causes grievance; the Appellant cannot be allowed to subvert Section 111(1) by a subterfuge of an amendment application; and it is settled law that what cannot be done directly, ought not to be done indirectly. [Refer*:* '**Nazir Ahmad v The King-Emperor', 1936 SCC OnLine PC 41** and '**Chandra Kishore Jha v Mahavir Prasad and Ors.,', (1999) 8 SCC 266**).

Mr. Sri Venkatesh, Learned Counsel for the 2nd Respondent, would further submit that the Supreme Court has settled the law that amendments, necessary for determination of the real controversies in the suit, should be allowed, provided that it does not alter the Original *lis* or substitute a new cause of action; it was further held that (i) amendments should not defeat legal rights accrued due to lapse of time, (ii) Courts typically decline amendments if fresh suits would be barred by limitation, (iii) a prayer for amendment cannot be allowed if a time barred claim is introduced; and it is evident from the Amendment Application that it has been filed as an afterthought, that too after passage of significant time.

B. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

Sri Sujit Ghosh, Learned Senior Counsel appearing on behalf of the Appellant, would submit that, in ***Sampath Kumar v. Ayyakannu and Anr, (2002) 7 SCC 559,*** the Supreme Court held that delay in moving the amendment application should be decided by reference to the stage to which the hearing in the suit has proceeded; pre-trial amendments are allowed more liberally than those which are sought to be made after commencement

of the trial or after conclusion thereof; the defendant is not prejudiced, more so when the amendment was sought for before commencement of trial; however, in the said case, since the amendment was being sought 11 years after the date of institution of the suit, cost was imposed as a condition precedent for incorporating the amendment in the plaint; given that Order 41 Rules 2 & 3 do not lay down a time limit for filing an amendment application, such application ought to be filed within a reasonable time period; in the case of ***Chhedi Lal Yadav v. Hari Kishore Yadav, (2018) 12 SCC 527 as quoted in Jagadish v. State of Karnataka and Ors. (2021) 12 SCC 812,*** the Supreme Court held that, where no period of limitation is prescribed, action must be taken within a reasonable period of time, and what is reasonable will depend on the circumstances of each case, and the purpose of the statute; and in ***North Eastern Chemical Industry v. Ashok Paper Mills 2023 SCC Online SC 1649,*** the Supreme Court held that "*when a Court is seized of a situation where no limitation stands provided either by specific applicability of the Limitation Act or the special statute governing the dispute, the Court must undertake a holistic assessment of the facts and circumstances of the case to examine the possibility of delay causing prejudice to a party; when no limitation stands prescribed it would be inappropriate for a Court to supplant the legislature's wisdom by its own and provide a limitation, more so in* accordance with what it believes to be the *appropriate period; a Court should, in such a situation, consider, in the facts and circumstances of the case at hand, the conduct of the parties, the nature of the proceeding, the length of delay, the possibility of prejudice being caused, and the scheme of the statute in question; it may be underscored here that when a party to a dispute raises a plea of delay despite no specific period being prescribed in the statute, such a party also bears the burden of demonstrating how the delay in itself would cause the party additional*

prejudice or loss as opposed to, the claim which is the subject matter of dispute, being raised at an earlier point in time."

Sri Sujit Ghosh, Learned Senior Counsel appearing on behalf of the Appellant, would also submit that in the present case, given that the Clarification Order was issued on 29.09.2021, the Supreme Court COVID Extension was till 28.02.2022 (which provided a 90 day time period from 28.02.2022), the decision in **Parampujya** was rendered on 15.09.2022, and the amendment application was filed on 10.10.2023, the period of one year five months (approximately) from the date of expiry of the period provided by the Supreme Court Extension ought not to be treated as so unreasonable a period so as to dismiss the application on the ground of delay;

Reliance is placed by Sri Sujit Ghosh, Learned Senior Counsel appearing on behalf of the Appellants-Applicants, on the decision in ***Madras Port Trust v. Hymanshu International, (1979) 4 SCC 176,*** wherein the Supreme Court observed that technical pleas such as plea of limitation ought not to be taken by Government or Public Authority, unless the claim is not well founded and by reason of the delay the evidence for resisting such a claim has become unavailable.

C. JUDGEMENTS UNDER THIS HEAD:

a. JUDGEMENTS RELIED ON BEHALF OF THE 2ND RESPONDENT:

(*i*) Following **Taylor v. Taylor: L.R. 1 Ch. D. 426**, the Privy Council, in **Nazir Ahmad v. King-Emperor, 1936 SCC OnLine PC 41,** observed that, where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all; and other methods of performance are necessarily forbidden.

(***ii***) The issue which arose for consideration, in **Chandra Kishore Jha v. Mahavir Prasad, (1999) 8 SCC 266**, related to non-filing of the election petition within the prescribed period of 45 days from the date of election. The Designated Election Judge had opined that the presentation of the election petition on 16-5-1995 before the Bench Clerk was improper, the same not being in conformity with the High Court Rules and, therefore, could not save the period of limitation; and the presentation of the election petition made in the open court on 17-5-1995 was beyond the period of limitation and hence liable to be dismissed under Section 86(1) read with Section 81 of the Act, notwithstanding the fact that on 16-5-1995, after 3.15 p.m., the Designated Election Judge was not available in the court to whom the election petition could be presented in the open court.

After taking note of some of the relevant provisions of the rules of the Patna High Court, the Supreme Court observed that an election petition being a purely statutory remedy, nothing is to be read into the rules — nothing is to be presumed — which is not provided for in the rules; insofar as an election petition is concerned, proper presentation of an election petition in the Patna High Court can only be made in the manner prescribed by Rule 6 of Chapter XXI-E; no other mode of presentation of an election petition is envisaged under the Act or the rules made thereunder and, therefore, an election petition could, under no circumstances, be presented to the Registrar to save the period of limitation; if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. (**Refer: Nazir Ahmad v. King Emperor: (1935-36) 63 IA 372 : AIR 1936 PC 253 , Rao Shiv Bahadur Singh v. State of V.P.: AIR 1954 SC 322 : 1954 SCR 1098, State of U.P. v. Singhara Singh: AIR 1964 SC 358**).

b. JUDGEMENTS RELIED ON BEHALF OF THE APPELLANT:

(*i*) Madras Port Trust v. Hymanshu International, (1979) 4 SCC 176.

the question which arose for consideration before the Supreme Court was whether the claim of the respondent for refund of the amount. of wharfage, demurrage and transit charges paid to the appellant was barred by Section 110 of the Madras Port Trust Act (II of 1905); the appellant had lost in the High Court and a decree for Rs 4838.87 was passed against the appellant. The Supreme Court granted special leave on the appellant agreeing to pay the amount of the refund irrespective of the result of the appeal and also to pay the costs of the appeal in any event. That is how the appeal came up for final hearing.

It is in this context that the Supreme Court observed that they did not think that this was a fit case where they should proceed to determine whether the claim of the respondent was barred by Section 110 of the Madras Port Trust Act (II of 1905); the plea of limitation based on this section was one which the court always looked upon with disfavour; it was unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen; it was high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens; if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the court, but such a plea should not ordinarily be taken by a government or a public authority, unless the claim is not well-founded and by reason of delay in filing it, the evidence for the. purpose of resisting such a claim has become unavailable; the claim of the respondent was a just claim supported as it was by the

recommendation of the Assistant Collector of Customs and hence in the exercise of their discretion under Article 136 of the Constitution, they did not see any reason why they should proceed to hear the appeal and adjudicate upon the plea of the appellant based on Section 110 of the Madras Port Trust Act (II of 1905).

D. ANALYSIS:

As observed earlier in this order, reliance placed on behalf of the Appellants, on **Sampath Kumar v. Ayyakannu and Anr, (2002) 7 SCC 559; Chhedi Lal Yadav v. Hari Kishore Yadav, (2018) 12 SCC 527; Jagadish v. State of Karnataka and Ors. (2021) 12 SCC 812,** and **North Eastern Chemical Industry v. Ashok Paper Mills 2023 SCC Online SC 1649,** is wholly misplaced.

In **Madras Port Trust v. Hymanshu International, (1979) 4 SCC 176**, the issue related to the claim of the respondent for refund of the amount of wharfage, demurrage and transit charges. which the appellant claimed was barred by Section 110 of the Madras Port Trust Act. Special leave was granted only on the appellant agreeing to refund the amount and also to pay costs, irrespective of the result of the appeal. It is in this context that the Supreme Court observed that they did not think that this was a fit case where they should proceed to determine whether the claim of the respondent was barred by Section 110 of the Madras Port Trust Act; and public authorities like the Port Trust should, in all morality and justice, not take up such pleas to defeat a just claim of the citizen for refund.

It does appear that, in the afore-said case, there was no dispute regarding the respondent's entitlement for refund. The directions issued in such peculiar facts, cannot be extended to all cases where the plea of limitation is taken as a defense. An Appeal, under Section 111(2) of the

Electricity Act, is available to a person aggrieved by an order passed by the Regulatory Commission. The Appropriate Commission discharges regulatory and quasi-judicial functions under the Electricity Act besides exercising its quasi-legislative powers thereunder of making Regulations. The limitation prescribed for filing an appeal is in terms of the Statute i.e. Section 111(2) of the Electricity Act. The Respondent-NTPC is justified in bringing it to the notice of this Tribunal that the Appellant has failed to explain the inordinate and undue delay of more than one year eight months (excluding the covid period) in invoking the jurisdiction of this Tribunal. Despite the petition filed by the Appellants having been rejected by the CERC on 29.09.2021, the Appellants herein kept silent for more than two years thereafter till 11.10.2023, when it filed the present IAs seeking amendment of the pleadings, grounds and the prayers in Appeal Nos. 432 and 433 of 2019 filed by them earlier on 25.07.2019.

The limitation prescribed for filing an appeal under Section 111 (2) of the Electricity Act, against the orders passed by the appropriate Commissions, is 45 days. Consequently, if the Appellants had filed appeals against the order passed by the CERC dated 29.09.2021 instead of the present IAs, they could have done so on or before 13.11.2021, in which event alone would the said appeals have been held to have been filed within time. The present IAs were filed on 11.10.2023 ie 697 days after expiry of the period stipulated under Section 111(2) of the Electricity Act to prefer an appeal. It does appear that the present IAs have been filed, instead of preferring Appeals against the order of the CERC dated 29.09.2021, only to overcome the period of limitation of 45 days as stipulated under Section 111(2) of the Electricity Act.

In these IAs seeking amendment, the Appellants have sought to challenge the order passed by the CERC on 29.09.2021 in Petition

No.109/MP/2021 filed by them on 16.04.2021, and have sought to raise additional grounds with respect to change in law reliefs for the period post COD on account of imposition of GST. The reliefs sought by the Appellants, in para 21 of the said IAs, is to include prayer (d) ie to set aside the clarificatory order dated 29.09.2021 passed by the CERC in the petition filed by the Appellant, to the extent it sought to introduce a cut off date to restrict the claims of the Appellant only till COD, and prayer (e) ie to declare and direct that the Respondents herein were liable to reimburse the Appellant towards post COD claims on account of change in law.

In the present case, the delay from the date the order was passed, by the CERC on 29.09.2021, till the present IAs were filed on 11.10.2023, is of 742 days. From this, the period from 29.09.2021 till 28.02.2022 is required to be excluded in view of the judgment of the Supreme Court in **Re Cognizance for extension of limitation: (2022) 3 SCC 117.** By the said judgement, the Supreme Court directed that, in view of the Covid-19 pandemic, the period of limitation, stipulated in various enactments, would stand extended, and Courts/Tribunals, governed by Statutes, should exclude this period while computing the limitation period. We must, therefore, exclude the period from 29.09.2021 till 28.02.2022, and compute the delay in filing the appeal only from 01.03.2022 onwards. The delay, even if computed from 01.03.2022 till 11.10.2023, is of 590 days ie a delay of more than one year and eight months.

a. EXPIRY OF THE PERIOD OF LIMITATION GIVES A RIGHT TO THE DECREE HOLDER TO TREAT THE DECREE AS BINDING INTER-PARTIES:

The law of limitation is enshrined in the legal maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of

parties; the idea is that every legal remedy must be kept alive for a legislatively fixed period of time. (**Brijesh Kumar v. State of Haryana: (2014) 11 SCC 351).** Expiration of the period of limitation, prescribed for making an appeal, gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. When the prescribed period of limitation has expired, the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be lightly disturbed. (**Ramlal v. Rewa Coalfields Ltd., 1961 SCC OnLine SC 39 : AIR 1962 SC 361)**. As certain rights accrued to the Respondents on expiry of the period of limitation, it was open to them thereafter to proceed on the basis that the order passed by the CERC on 29.09.2021 had attained finality. It is in order to displace this right of the respondents to a limited extent, that Parliament has stipulated, in the proviso to Section 111(2) of the Electricity Act, that appeals can be entertained after the period of limitation of 45 days only on this Tribunal recording its satisfaction that the Appellant had "*sufficient cause"* for not filing the appeal within time.

b. "SUFFICIENT CAUSE": ITS SCOPE:

It is not every cause, but only a cause which is sufficient which would justify condoning the delay in invoking the appellate jurisdiction. In the present case, the Appellant has chosen not even to show cause, much less justify how their failure to invoke the jurisdiction of this Tribunal within time was because they had sufficient cause for not doing so. It is possibly to avoid doing so, that they have, instead of filing an appeal against the order of the CERC dated 29.09.2021, chosen to file IAs seeking amendment of the Appeals filed by them earlier contending that, unlike a period of limitation having been stipulated for an appeal to be filed, no limitation is

prescribed either in the Electricity Act or in the CPC for seeking amendment. As noted hereinabove, the CPC does not apply with respect to the period of limitation for instituting a Suit, or for filing an appeal against a decree passed in the said Suit, and it is the Limitation Act or the Special Statute which governs.

The discretion conferred on this Tribunal under the proviso to Section 111(2) of the Electricity Act, to condone the delay is only if sufficient cause is shown for condoning the delay. Such discretion should be exercised to advance substantial justice when neither negligence nor inaction nor want of bona fide is imputable to the applicants. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then this Tribunal should enquire whether, in its discretion, it should condone the delay. All relevant facts such as diligence of the party or its bona fides may fall for consideration at this stage. This cannot, however, justify an enquiry as to why the party was sitting idle during all the time available to it. (**Ramlal v. Rewa Coalfields Ltd., 1961 SCC OnLine SC 39 : AIR 1962 SC 361)**.

The law of limitation, a substantive law, has definite consequences on the right and obligation of a party. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly as a result of negligence, default or inaction of that party. Justice must be done to both parties equally, then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights, and availing its remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued

to him in law as a result of his acting vigilantly. The Court should not give such an interpretation to the provisions which would render the provision ineffective or odious. (**V. Balwant Singh v. Jagdish Singh, (2010) 8 SCC 685).**

Sufficient cause is a condition precedent for exercise of discretion by the court for condoning the delay, and when the mandatory provision is not complied with and the delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone. (**Esha Bhattacharjee v. Raghunathpur Nafar Academy: (2013) 12 SCC 649; Brijesh Kumar v. State of Haryana, (2014) 11 SCC 351).** The party should show that, besides acting bona fide, it had taken all possible steps within its power and control and had approached the court without unnecessary delay. The test of whether or not the cause shown for the delay is sufficient is to see whether it could have been avoided by the party by the exercise of due care and attention. (**Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edn., 2005;** (**V. Balwant Singh v. Jagdish Singh, (2010) 8 SCC 685).**

The law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to

prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (**Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81).**

Where a case has been presented in the court beyond limitation, the applicant has to explain to the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court would be justified in condoning an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time, condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature. **(P. Ramachandra Rao v. State of Karnataka: (2002) 4 SCC 578; Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81).**

In examining whether sufficient cause has been shown, for condonation of this inordinate delay of more than one year eight months, it must be borne in mind that Section 111(2) of the Electricity Act requires every appeal, under Section 111(1), to be filed within a period of forty-five days from the date on which a copy of the order made by the Appropriate

Commission is received by the aggrieved person. The proviso thereto enables the Appellate Tribunal to entertain an appeal, after expiry of the said period of forty-five days, only if it is satisfied that there was sufficient cause for not filing the appeal within the period of limitation of forty-five days. The crucial words in the proviso to Section 111(2) are *"if it is satisfied that there was sufficient cause for not filing it within that period".* In other words, it is only if this Tribunal were to be satisfied, for just and valid reasons, that there was sufficient cause for not filing the appeal within the period of limitation, that the delay can be condoned.

The word "cause" in the proviso to Section 111(2) is preceded by the word "sufficient". It is not every cause for the delay which can be condoned, as this Tribunal should record its satisfaction that there was sufficient cause, justifying condonation of delay. Merriam Webster Dictionary defines the word *"sufficient"* to mean enough to meet the needs of a situation or a proposed end. "Sufficient cause" means an adequate and enough reason which prevented the appellant to approach the court within limitation. (**Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81)**. Consequently, the cause which the applicant is required to show should not only be adequate enough to justify his failure to file an appeal within the period of limitation, but also such as would justify condonation of the delay in invoking the appellate jurisdiction of this Tribunal beyond the stipulated period of limitation of 45 days.

An appeal, under Section 111 of the Electricity Act, lies to this Tribunal both on questions of fact and law, and is akin to a first appeal. As wide powers have been conferred on this Tribunal to pass such orders in the appeal as it thinks fit, confirming, modifying or setting aside the order appealed against, Parliament was conscious, while conferring such a power, that hearing of each appeal would take considerable time, and yet

this Tribunal is statutorily required, by Section 111(5) of the Electricity Act, to endeavor to dispose of the appeal within 180 days of its institution. Condonation of delay should be considered bearing in mind the afore-said factors statutorily stipulated in the Electricity Act. While we may not be understood to have held that, even in cases where sufficient cause is shown, this Tribunal would refrain from condoning the delay beyond 180 days, what this Tribunal is required, while examining whether sufficient cause is shown for condonation of the delay, is to bear in mind whether the cause as shown for the delay is such as to require the delay to be condoned, even if it, in effect, defeats the very purpose for which this Tribunal has been statutorily required to endeavour to dispose of the appeal within 180 days.

As held by the Supreme Court, in **Ramlal v. Rewa Coalfields Ltd., 1961 SCC OnLine SC 39 : AIR 1962 SC 361** and **V.*Balwant Singh v. Jagdish Singh*, (2010) 8 SCC 685,** expiration of the period of limitation prescribed for filing an appeal gives rise to a right in favour of the respondent to treat the order of the Commission as binding between the parties; and, save sufficient cause, this legal right which has accrued to the respondents, by lapse of time, should not be lightly disturbed, particularly when the delay is directly as a result of negligence, default or inaction of the Applicant-Appellant. **(MANCHUKONDA AGROTECH PVT LTD VS KERC (Judgement of this Tribunal in DFR No. 188 of 2024 & IA No. 600 of 2024 dated 02.09.2024); WARDHA SOLAR (MAHARASHTRA) PVT. LTD & OTHERS VS CENTRAL ELECTRICITY REGULATORY COMMISSION & OTHERS (Judgement in** DFR NO. 32 OF 2024 & IA NO. 108 OF 2024 & IA NO. 110 OF 2024 dated 22.08.2024)

As the sufficient cause to be shown by an applicant, for the delay to be condoned, would depend on the facts and circumstances of each case,

this Tribunal would not be justified in applying a uniform criterion, or adopting a single yardstick, to determine whether the cause shown is sufficient to condone the delay in filing the appeal. The test of "sufficient cause" would vary from one case to another. We are satisfied that, in the present case, the cause shown by the Applicants-Appellants, does not constitute sufficient cause **(MANCHUKONDA AGROTECH PVT LTD VS KERC (Judgement of this Tribunal in DFR No. 188 of 2024 & IA No. 600 of 2024 dated 02.09.2024); WARDHA SOLAR (MAHARASHTRA) PVT. LTD & OTHERS VS CENTRAL ELECTRICITY REGULATORY COMMISSION & OTHERS (Judgement in** DFR NO. 32 OF 2024 & IA NO. 108 OF 2024 & IA NO. 110 OF 2024 dated 22.08.2024). If the appellants-applicants, instead of filing these IAs, had filed appeals before this Tribunal against the order of the CERC dated 29.09.2021, their request for condonation of delay would have necessitated rejection. By seeking amendment of the earlier appeals, instead of filing fresh appeals, the appellants-applicants cannot circumvent the requirement of showing sufficient cause for the undue and inordinate delay of more than one year eight months, from 29.09.2021 when the CERC passed the order till 11.10.2023 when the present IAs seeking amendment were filed.

The concept of liberal approach has to encapsulate the conception of reasonableness, and cannot be allowed a totally unfettered free play. The conduct, behaviour and attitude of a party, relating to its inaction or negligence, are relevant factors to be taken into consideration, as the fundamental principle is that courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach. (**Esha Bhattacharjee v. Raghunathpur Nafar Academy: (2013) 12 SCC 649; Brijesh Kumar v. State of Haryana, (2014) 11 SCC 351).** Lack of bona fides imputable to a party, seeking condonation of delay, is a significant

and relevant fact. (**Esha Bhattacharjee v. Raghunathpur Nafar Academy: (2013) 12 SCC 649; Brijesh Kumar v. State of Haryana, (2014) 11 SCC 351).** Accepting the contention that the Court should take a very liberal approach, irrespective of the period of delay, would practically render the limitation provisions redundant and inoperative. (**V. Balwant Singh v. Jagdish Singh, (2010) 8 SCC 685).**

As noted hereinabove, among the factors to be taken into consideration in permitting amendment of pleadings beyond the period of limitation stipulated for filing the appeal against the order of the CERC, (which order is sought to be subjected to challenge by way of the amendment application), is whether the appellants-applicants were justified in belatedly invoking the jurisdiction of this Tribunal by way of the amendment application.

If the Appellants-Applicants herein had chosen to prefer an appeal against the order of the CERC dated 29.09.2021, instead of filing an application seeking amendment of Appeal Nos. 432 and 433 of 2019 instituted by them earlier, they would have been required to show "sufficient cause" for the inordinate and undue delay of one year and eight months in filing the IAs seeking amendment. Having failed to show cause, much less sufficient cause, for such an inordinate delay in filing the IAs, the appellants-applicants contend that there is no period of limitation stipulated for filing amendment applications, and that the limitation prescribed for filing appeals is inapplicable. It is evident that the appellants-applicants have chosen the amendment route only to avoid having to show sufficient cause for the delay of more than one year and eight months in filing the IAs seeking amendment. These IAs necessitate rejection on this ground also.

XI. AMENDMENT BEING SOUGHT ONLY AFTER THE JUDGEMENT OF THIS TRIBUNAL IN PARAMPUJYA: ITS EFFECT:

A. SUBMISSIONS URGED ON BEHALF OF THE 2ND RESPONDENT:

Mr. Sri Venkatesh, Learned Counsel for the 2nd Respondent, would submit that the Amendment Applications were filed long after the **Parampujya** Judgment (2022 SCC OnLine APTEL 80) of this Tribunal, in order to benefit from the same; notably, the **Parampujya** Judgment was passed on 15.09.2022 subsequent to the impugned Order dated 05.02.2019, and the Clarification Order dated 29.09.2021; pertinently, the **Parampujya** Judgment decided the issue of cut-off date to make change in law claims in a manner which would favour the Appellant in this case; it is only after this, that the Appellant has now filed the application (after 390 days delay after the **Parampujya** Judgment) to amend the Appeal and introduce a new claim altogether, after sitting on the fence and waiting for a favourable outcome for almost two years; and, further, no explanation whatsoever has been offered regarding its delay of almost two years in seeking the present Amendment.

B. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

Sri Sujit Ghosh, Learned Senior Counsel appearing on behalf of the appellants-applicants, would submit that, while no prejudice would be caused to the Respondents given that this Tribunal has already decided the issue in favour of the Developers (**Parampujya** case), this Tribunal is also seized of similar issues; and the Appellants-Applicants would be severely prejudiced if such delay is not condoned.

C. JUDGEMENTS UNDER THIS HEAD:

a. JUDGEMENTS RELIED ON BEHALF OF THE 2ND RESPONDENT:

(*i*) PARAMPUJYA SOLAR ENERGY PVT LTD VS CERC: 2022 SCC OnLine APTEL 80, this Tribunal observed that change-in-law clauses in the PPAs (Article 12) assured relief to be provided in relation to *"any additional recurring/non-recurring expenditure*" arising out of change-in-law; there was no restriction in the contracts as to application of this clause for the period prior to the COD; the activities of generation of electricity and its supply, post COD, are bound to include non-recurring expenditure, O&M expenses being one such area; in fact, the use of the word "*any"* in relation to the consequent "*recurring or non-recurring expenditure"* signified the wide ambit of the contractual clause, no exclusion of such nature as understood by the Commission deserving to be read there into; and the extraneous qualification, that such expenditure must relate to the period prior to COD, could not be approved of.

D. ANALYSIS:

Even in the IAs filed by them seeking amendment of Appeal Nos. 432 and 433 of 2019, the appellants-applicants contend that the order of the CERC dated 29.09.2021 is contrary to the law declared by this Tribunal in **PARAMPUJYA SOLAR ENERGY PVT LTD VS CERC: 2022 SCC OnLine APTEL 80.** The judgement, in **PARAMPUJYA SOLAR ENERGY PVT LTD,** was pronounced by this Tribunal on 15.09.2022 nearly one year after the order of the CERC dated 29.09.2021. The present IAs, seeking amendment of Appeal Nos.432 and 433 of 2023, were filed before this Tribunal, by the Appellants-Applicants herein, on 11.10.2023 more than one year after the judgement in **PARAMPUJYA SOLAR ENERGY PVT**

LTD dated 15.09.2022. Bearing in mind the afore-said facts, let us now examine whether orders passed in other appeals, or pendency of similar appeals, would justify belated applications, for amendment, being entertained.

In **U.P. JAL NIGAM VS JASWANTH SINGH: (2006) 11 SCC 464,** the question which arose for consideration was whether relief should be granted to such other persons who were not vigilant and did not wake up to challenge their retirement and accepted the same, but filed writ petitions after the judgment of the Supreme Court in **Harwindra Kumar [Harwindra Kumar v. Chief Engineer, Karmik, (2005) 13 SCC 300;** and whether they were entitled to the same relief or not? In other words, whether employees who did not wake up to challenge their retirement and accepted the same, collected their post- retirement benefits, could be given the relief in the light of the subsequent judgement of the Supreme Court?

It is in this context that the Supreme Court, in **U.P. JAL NIGAM**, observed that a person, who is not vigilant of his rights and acquiesces with the situation, cannot claim, after a couple of years, that the same relief should be granted to him as was granted to a person similarly situated who was vigilant about his rights; the statement of law has also been summarised in *Halsbury's Laws of England*, para 911, p. 395 as follows: “In determining whether there has been such delay as to amount to laches, the chief points to be considered are: (*i*) acquiescence on the claimant's part; and (*ii*) any change of position that has occurred on the defendant's part; acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it; it is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and

neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted; in such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."

The Supreme Court, in **U.P. JAL NIGAM,** further held that, in view of the said statement of law, the respondents were guilty since they had acquiesced in accepting the retirement and did not challenge the same in time; if they had been vigilant enough, they could have filed writ petitions as others did in the matter; therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then, in such cases, the court should be very slow in granting the relief to the incumbent; and, secondly, it has also to be taken into consideration, on the question of acquiescence or waiver on the part of the incumbent, whether other parties are going to be prejudiced if the relief is granted.

In **Pathapati Subba Reddy v. LAO, 2024 SCC OnLine SC 513,** the Supreme Court held that merely because some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal; the delay is not liable to be condoned merely because some persons have been granted relief on similar issues; and condonation of delay in such circumstances would be in violation of the legislative intent or the express provision of the statute.

The law declared by the Supreme Court, in **U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464** and **Pathapati Subba Reddy v. LAO, 2024 SCC OnLine SC 513,** is binding on all courts and tribunals in view of Article 141 of the Constitution of India. This Tribunal would, therefore, not be justified in condoning the inordinate or unexplained delay of more than

one year eight months, and in entertaining the present IAs for amendment, merely because an appeal on a similar issue had been allowed by this Tribunal earlier in **PARAMPUJYA SOLAR ENERGY PVT LTD. (MANCHUKONDA AGROTECH PVT LTD VS KERC (Judgement of this Tribunal in DFR No. 188 of 2024 & IA No. 600 of 2024 dated 02.09.2024); WARDHA SOLAR (MAHARASHTRA) PVT. LTD & OTHERS VS CENTRAL ELECTRICITY REGULATORY COMMISSION & OTHERS (Judgement in** DFR NO. 32 OF 2024 & IA NO. 108 OF 2024 & IA NO. 110 OF 2024 dated 22.08.2024)

The Appellants-applicants may not have been entitled to invoke the appellate jurisdiction of this Tribunal, after an inordinate delay of more than one year and eight months, merely because an earlier appeal, in **PARAMPUJYA SOLAR ENERGY PVT LTD,** instituted within time on a similar issue, was allowed by this Tribunal. **(MANCHUKONDA AGROTECH PVT LTD VS KERC (Judgement of this Tribunal in DFR No. 188 of 2024 & IA No. 600 of 2024 dated 02.09.2024); WARDHA SOLAR (MAHARASHTRA) PVT. LTD & OTHERS VS CENTRAL ELECTRICITY REGULATORY COMMISSION & OTHERS (Judgement in** DFR NO. 32 OF 2024 & IA NO. 108 OF 2024 & IA NO. 110 OF 2024 dated 22.08.2024). As the present IAs, seeking amendment, appear to have been filed only to avoid furnishing sufficient cause for the delay in case they had filed appeals instead, we see no reason to entertain the IAs seeking amendment in the light of the inordinate and unexplained delay of more than one year and eight months in filing the IAs seeking amendment.

XII. MOULDING THE RELIEF:

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

Sri Sujit Ghosh, Learned Senior Counsel appearing on behalf of the Appellant, would submit that, even otherwise, the principle of moulding the relief would warrant that the amendment be allowed in the present case. Reliance is placed in this regard on (a) **Kanchanniya v Shiv Ram 1992 Supp (2) SCC 250,** to submit that Courts have recognized that moulding of relief is to be granted in a case on appeal, the court of appeal is entitled to take into account even facts and events which have come into existence after the decree, appealed against, was passed; (b) **Om Prakash Gupta (2002) 2 SCC 256.** to submit that such molding of relief is subject to specific conditions, and can be effected by way of amendment of pleadings under Order 6 Rule 17; and the Appellate Court can also take cognizance of such changed circumstances; (c) on **Vineet Kumar v Mangal Sain Wadhera (1984) 3 SCC 352,** to submit that it is well recognized that where amendment does not constitute an addition of a new cause of action or raise any new case, but amounts to no more than addition to the facts already on the record, the amendment would be allowed even after the statutory period of Limitation.

B. JUDGEMENTS UNDER THIS HEAD:

a. JUDGEMENTS RELIED ON BEHALF OF THE APPELLANTS:

(***i***) **Kanchaniya (Mst) v. Shiv Ram, 1992 Supp (2) SCC 250,** the appeal arose out of proceedings initiated by Respondent 1 against Malkhan under Section 248(1) of the Madhya Pradesh Land Revenue Code, 1959 for his ejectment from the land, on the ground that he was in unauthorised possession of the said land. The Supreme Court referred with approval to the judgement of the Federal Court in **Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri: 1940 FCR 84 : AIR 1941 FC 5,** wherein it was observed that an appeal being in the nature of a rehearing,

courts have recognized that, in moulding the relief to be granted in a case on appeal, the court of appeal is entitled to take into account even facts and events which have come into existence after the decree appealed against.

The Supreme Court also referred to its earlier judgement in **Qudrat Ullah v. Municipal Board, Bareilly: (1974) 1 SCC 202,** wherein it was held that it was permissible for the court to take note of the extinguishment of the statutory tenancy while considering the appeal and grant relief to the appellant accordingly.

The Supreme Court therefore held that it could take note of the fact that Malkhan had died during the pendency of the writ petition in the High Court and, as a result, possession of the appellants had become unauthorised since then; and the appellants could not, therefore, seek relief on the ground that their possession over the land in dispute was not unauthorised, and they could not be evicted under Section 248(1) of the Code.

(*ii*) Om Prakash Gupta v. Ranbir B. Goyal, (2002) 2 SCC 256 : 2002 SCC OnLine SC 96, the Supreme Court held that the court had the power to take note of subsequent events even at the appellate stage; courts “can” and sometimes “must” take notice of subsequent events, but that is done merely “inter partes” to shorten litigation but not to give to a defendant an advantage because a third party had acquired the right and title of the plaintiff; the doctrine itself was of an exceptional character only to be used in very special circumstances; it was all the more strictly applied in those cases where there is a judgment under appeal; in the case at hand, the defendant-appellant has simply stated the factum of proceedings initiated by HUDA against the plaintiff-respondent in an affidavit very casually filed by him; he had not even made a prayer to the court to take notice of such

subsequent event and mould the relief accordingly, or to deny the relief to the plaintiff-respondent as allowed to him by the judgment under appeal, much less sought for an amendment of the pleadings; the subsequent event urged by the defendant-appellant was basically a factual event and could not be taken cognizance of unless brought to the notice of the court in accordance with the established rules of procedure which if done would have afforded the plaintiff-respondent an opportunity of meeting the case now sought to be set up by the appellant; and the Court would not be justified in taking notice of a fact sought to be projected by the appellant in a very cavalier manner.

(*iii*) In **Vineet Kumar v. Mangal Sain Wadhera, (1984) 3 SCC 352,** the Supreme Court held that, for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed; normally amendment is not allowed if it changes the cause of action, but where the amendment does not constitute an addition of a new cause of action, or raise a new case, but amounts to no more than adding to the facts already on the record, the amendment would be allowed even after the statutory period of limitation; the question in the present case was whether by seeking the benefit of Section 39 of the new Act there was a change in the cause of action; in **A.K. Gupta & Sons v. Damodar Valley Corporation: AIR 1967 SC 96**, the Supreme Court, while dealing with the cause of action, had observed that the expression 'cause of action' did not mean 'every fact which it was material to be proved to entitle the plaintiff to succeed', for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial

allegation by amendment; and that expression only means, a new claim made on a new basis constituted by new facts.

C. ANALYSIS:

Even if we were to proceed on the premise that this Tribunal has the power to mould the relief, such exercise of power must be justified in the facts and circumstances of the present case. While the Appellant claims that the judgment of this Tribunal in **Parampujya Solar Energy Private Limited** was among the reasons for their choosing to file the IAs seeking amendment, that would, by itself, not justify the Appellant's failure to file the IAs, for nearly one year from 29.09.2021 when the CERC passed the order, till 15.09.2022 when the judgment, in **Parampujya Solar Energy Private Limited**, was passed by this Tribunal.

In any event, the judgment of this Tribunal in **Parampujya Solar Energy Private Limited** was delivered on 15.09.2022, and the Appellant filed the present IAs on 11.10.2023 more than one year (to be precise. 391 days) after the afore-said judgement was passed by this Tribunal. It is evident therefore that, even after this Tribunal delivered judgment in **Parampujya Solar Energy Private Limited**, the Appellant neither chose to prefer an appeal or seek amendment for more than a year thereafter nor to furnish "sufficient cause" for their not invoking the jurisdiction of this Tribunal within time. In these facts and circumstances, it would be wholly inappropriate for this Tribunal to allow the IAs permitting the Appellants-Applicants to amend the Appeals filed by them earlier. We see no reason, in the afore-said circumstances, to mould the relief.

XIII. CONCLUSION:

For reasons afore-mentioned, and mainly because (i) a fresh cause of action was adjudicated by the CERC in Petition No. 109/MP/2021, distinct and different from that which was adjudicated by the CERC in its earlier order dated 05.02.2019 against which Appeal Nos. 432 and 433 of 2019 were filed by the Appellants-applicants herein; and (ii) because of undue, inordinate and unexplained delay of more than one year eight months in filing the IA for amendment, both the IAs must be, and are accordingly, dismissed.

APPEAL NO. 432 OF 2019 & IA NO. 1386 OF 2019
APPEAL NO. 433 OF 2019

It is represented that pleadings are complete. Registry to verify whether pleadings are complete and, thereafter, include these appeals in the **List of Finals** to be taken up from there in there turn, for hearing.

Pronounced in the open court on this the **1st day of August, 2025**.

(Seema Gupta)
Technical Member (Electricity)

(Justice Ramesh Ranganathan)
Chairperson

REPORTABLE / ~~NON-REPORTABLE~~