

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**IA No. 1830 OF 2020 IN DFR No. 462 of 2020 &
IA No. 1832 OF 2020**

Dated : 12th August, 2021

**Present : Hon`ble Mrs. Justice Manjula Chellur, Chairperson
Hon`ble Mr. Ravindra Kumar Verma, Technical Member**

In the matter of:

- 1. Amreli Power Projects Ltd.,
Represented by Authorised Signatory
10th Floor, Sangeeta Complex,
Near Parimal Crossing, Ellisbridge,
Ahmedabad - 380006, Gujarat** **...Appellant No.1**

- 2. Bhavnagar Biomass Power Projects Pvt.
Ltd.
Represented by Authorised Signatory
10th Floor, Sangeeta Complex,
Nr. Parimal Crossing, Ellisbridge,
Ahmedabad - 380006, Gujarat** **...Appellant No.2**

- 3. Junagadh Power Projects Pvt. Ltd.
Represented by Authorised Signatory
10th Floor, Sangeeta Complex,
Near Parimal Crossing, Ellisbridge,
Ahmedabad - 380006, Gujarat** **...Appellant No.3**

VERSUS

- 1. Gujarat Electricity Regulatory
Commission
Through its Secretary,
6th Floor, GIFT ONE, Road 5C,
Zone 5, GIFT City,
Gandhinagar – 382355, Gujarat, India.** **...Respondents No. 1**

- 2. Gujarat Urja Vikas Nigam Ltd.
Through its Managing Director,**

**Sardar Patel Vidyut Bhawan,
Race Course Road,
Vadodra, 390007.**

...Respondents No. 2

Counsel for the Appellant(s) :

**Mr. Amit Kapur
Ms. Poonam Verma
Mr. Saunak Kumar Rajguru
Ms. Adishree Chakraborty
Ms. Aparajita Upadhyay
Ms. Sakshi Kapoor
Ms. Noor Shergil
Mr. Pratibhanu Singh**

Counsel for the Respondent(s) :

**Mrs. Suparna Srivastava for R-1
Ms. Ranjitha Ramachandran
Ms. Poorva Saigal
Ms. Anushree Bardhan
Mr. Shubham Arya
Ms. Tanya Sareen
Mr. Arvind Kumar Dubey for R-2**

ORDER

PER HON'BLE MR. RAVINDRA KUMAR VERMA, TECHNICAL MEMBER

1. Proceedings of this matter are conducted through video conferencing.
2. The instant Application has been filed by the Applicants/Appellants along with Appeal under DFR No. 462 of 2020 for condonation of 967 days delay in filing the instant Appeal. The present Appeal is filed under Section 111 of Electricity Act, 2003 against the Order dated 15.03.2018 in OP No. 01 of 2018 in 'Determination of Tariff for

Procurement of Power by the Distribution Licensees and Others from Biomass based Power Projects and Bagasse based Co-generation Projects for Control Period upto FY 2019-20 passed by the Gujarat State Electricity Regulatory Commission.

3. After hearing the learned counsel on both sides and also going through the written submissions filed by them our opinion is given in following paragraphs.

4. The instant application has been filed by the Applicants/Appellants for condonation of 967 days delay in filing the instant appeal. The issue in appeal is regarding determination of tariff and procurement of power by distribution licensees and others from Biomass based power projects and bagasse based co-generation projects for control period upto FY 2019-20 passed by the Gujarat State Electricity Regulatory Commission. The Applicants/Appellants owns a biomass power plant which it acquired much after the bar of limitation came into effect from the erstwhile promoters after 29.04.2018 (i.e. the date when the 45 day period to file the appeal ended). Before that the plants had remained shut for a prolonged period (over 5 years between 2013-2018) due to litigations. The case of the Applicants/Appellants is that it acquired the plants from the promoters

after the 45 days period to file the appeal had ended. The Applicants/Appellants has explained that it took time for the Applicants/Appellants to gather the operational experience by operating the plant for some time and it is only after acquiring the operational experience it was realised that the operational parameters i.e. the GCV of biomass fuel and the SHR (*Station Heat Rate*) as determined in the impugned order were unrealistic and rendered the projects unviable after operating the plant. It is submitted that only after operating the plants post-acquisition for a considerably reasonable period, Abellon got sufficient operational experience and could collate all necessary scientific information etc., to realize/conclude that the operational parameters i.e., the GCV of biomass fuel and the SHR as determined in the Impugned Order were unrealistic and rendered the Projects unviable. After operating the plants across all seasons and having utilized all forms of biomass available in the State, it became evident that the operational parameters viz. GCV and SHR were erroneously determined and that under no practical possibility could the Plants operate as per the operational parameters specified in the Impugned Order.

5. ***Per contra***, the Respondent No.2 has vehemently opposed the application for condonation of delay on the ground that there have

been an inordinate delay 967 days. The Respondent No.2 has submitted that the three purported reason given, besides being otherwise misconceived and misplaced on the face of record cannot be a ground for seeking condonation of delay as per the well settled principles of law.

6. It is the case of the Respondent that the Appellants have suppressed the fact that the present shareholder of the Appellants, namely, Abellon has also been independently involved in biomass generation and therefore ought to have had clear knowledge of the operation of the biomass generation and fuel characteristics.

7. Though, we appreciate that there have been a delay of 967 days in filing the appeal by the Applicants/Appellants, however, we note that the Applicants/Appellants is a biomass/bagasse based generator. During the hearing the counsel representing the Applicants/Appellants has submitted that it is the only generator in the state using a combination of biomass and bagasse as fuel. The generator have been struggling on account of financial viability and has been involved a long litigations since its commissioning so much so that the plant was even shut down for close to 5 years.

8. We also note that the Electricity Act, 2003 also provides for promotion of generation of electricity using biomass and bagasse. We also note that in any case the appeal will be decided only on merits and delay in filing the appeal has not altered as far as tariffs of the case are concerned.

9. The Applicants/Appellants have placed reliance on judgments passed by Hon'ble Supreme Court as under:

(a) In *N. Balakrishnan vs. M. Krishnamurthy*, (1998) 7 SCC 123, the Hon'ble Supreme Court held as under: -

“12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari [AIR 1969 SC 575 : (1969) 1 SCR 1006] and State of W.B. v. Administrator, Howrah Municipality [(1972) 1 SCC 366 : AIR 1972 SC 749].

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door

against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor....”

(Emphasis Supplied)

(b) *Bhivchandra Shankar More vs. Balu Gangaram More*, (2019) 6

SCC 387, it was held as under: -

“15. It is a fairly well-settled law that “sufficient cause” should be given liberal construction so as to advance sustainable justice when there is no inaction, no negligence nor want of bona fides could be imputable to the appellant. After referring to various judgments, in B. Madhuri [B. Madhuri Goud v. B. Damodar Reddy, (2012) 12 SCC 693 : (2013) 2 SCC (Civ) 546] , this Court held as under: (SCC p. 696, para 6)

“6. The expression “sufficient cause” used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice. No hard-and-fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years courts have repeatedly observed that a liberal approach needs to be adopted in such matters so

that substantive rights of the parties are not defeated only on the ground of delay.”

10. Further, he vehemently submitted that this Tribunal in a plethora of cases has condoned the delay where the Applicant demonstrated genuine grounds justifying such delay, viz.: -

(a) *Lalitpur Power Generation Co. Ltd. vs. UPERC*, 2018 SCC OnLine APTEL 145, condoning 738 days delay.

(b) *New Usha Nagar Co-Operative Housing Society Ltd. vs. MERC* 2016 SCC OnLine APTEL 141, holding as under: -

“14. It is well settled that it is not the length of the delay but sufficiency of cause that has to be considered while dealing with application for condonation of delay. Generally the courts are liberal in dealing with applications for condonation of delay out of their anxiety that interest of justice should not be defeated. However, if there is absence of reasonable and acceptable explanation the courts cannot condone delay. In this case in our opinion the Appellant has made out sufficient cause. We are unable to come to a conclusion that the Appellant was not prosecuting the writ petition in the Bombay High Court with due diligence and bona fide. In our opinion therefore delay deserves to be condoned ...”

11. In view of the above, we observe that though there has been a delay of 967 days in filing the appeal by the Applicants/Appellants, however, refusal to condone the delay would result in foreclosing the Applicants/Appellants from putting forth his cause. The Applicants/Appellants has submitted that the generator is using biomass and bagasse as fuel for generation of electricity and have been struggling on account of financial viability and has also been involved in long rounds of long litigations so much so that the generating station has been even under shut down for close to 5 years. In our opinion, sufficient cause has been shown by the Applicants/Appellants. It is also the fact that ultimately the appeal will be decided after hearing on merits and the merits of the case have not been altered to the advantage of the Applicants/Appellants or to the disadvantage of the Respondents.

12. In light of the above facts, we consider the present case fit for condonation of delay. However, we are of the opinion that it would be just and proper for this Tribunal to impose some reasonable cost by way of compensation to meet the ends of justice. For the foregoing reasons the instant application filed by the Applicants/Appellants is allowed, the delay in filing the instant

appeal (DFR No. 462 of 2020) is condoned and IA No. 1830 of 2020 stands disposed of.

13. The Applicants/Appellants are hereby directed to deposit a sum of Rs. 50,000/- in the Defence Organisation named **National Defence Fund, PAN No. AAAGN0009F, Collection A/c No. 11084239799 with State Bank of India, Institutional Division, 4th Floor, Parliament Street, New Delhi**, within a period of three weeks from the date of the receipt of a copy of this Order.

Registry is directed to number the Appeal and list the matter on **13.09.2021**.

**PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO
CONFERRING ON THIS 12th DAY OF AUGUST, 2021.**

(Ravindra Kumar Verma)
Technical Member

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REPORTABLE/NON-REPORTABLE

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(Justice Smt. Manjula Chellur)
Chairperson