

**COURT-I**

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

**IA NO. 1946 OF 2019 in  
DFR NO. 2360 OF 2019**

**Dated: 26<sup>th</sup> July, 2021**

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

**In the matter of:**

**Adani Power Rajasthan Limited ... Appellant(s)  
Versus  
Rajasthan Electricity Regulatory Commission&Ors.  
... Respondent(s)**

Counsel on record for the Appellant(s) : Mr. Amit Kapur  
Mr. Akshat Jain  
Mr. Pratyush Singh  
Mr. Raghav Malhotra

Counsel on record for the Respondent(s): Ms. Ranjitha Ramachandran  
Ms. PoorvaSaigal  
Ms. AnushreeBardhan  
Mr. Shubham Arya  
Mr. Arvind Kumar Dubey  
Ms. Tanya Sareen for R.2 to R.4

**ORDER**

**(PER HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON)**

This appeal is preferred by the Appellant-Adani Power Rajasthan Limited ("**APRL**") challenging the Order dated 23.04.2019 passed by Rajasthan Electricity Regulatory Commission ("**State Commission**") in Petition No. 577 of 2015 whereby the State Commission has disallowed

the payment of carrying cost to APRL for the change in law claims on the basis of the PPA mechanism for computing Late Payment Surcharge i.e., monthly compounding basis.

The facts in brief that are necessary for disposing of this Application are as under:

The Appellant-APRL had filed Petition No. 577 of 2015 before the State Commission seeking compensation for various Change in Law events along with carrying cost at SBI PLR plus 2% in terms of the PPA provisions. On 15.03.2016, the State Commission while disposing of Petition No. 577 of 2015 had allowed part of the Change in Law events claimed by APRL, but dismissed certain other Change in Law claims along with carrying cost. Aggrieved thereby, the Appellant-APRL filed Appeal No. 119 of 2016 before this Tribunal challenging the Order dated 15.03.2016 to the extent of disallowed Change in Law claims. This Tribunal, on 14.08.2018 passed the order in the said appeal allowing certain Change in Law claims along with carrying cost and remanded the matter to the State Commission to pass consequential order granting compensation/tariff adjustment for allowed Change in Law claims and carrying cost. Pursuant thereto, on 24.09.2018, the State Commission passed Order in Petition No. 577 of 2015 and allowed compensation to APRL for Change in Law claims approved by this Tribunal in Judgment

dated 14.08.2018, however, as regards the carrying cost and parties were directed to furnish detailed submissions with requisite documents to substantiate the claims regarding the rate at which carrying cost should be allowed.

According to the Appellant, in spite of submitting detailed justification, the State Commission vide Order dated 23.04.2019 in Petition No. 577 of 2015 has disallowed the carrying cost as claimed by APRL. Aggrieved by the disallowance of carrying cost in terms of the methodology provided for computation of LPS under the PPA, APRL has preferred the present Appeal challenging the order dated 23.04.2019.

As regards the delay of 140 days in filing this appeal, the Appellant-APRL submits that it had filed another Petition No. 392 of 2013 before the State Commission seeking Change in Law compensation and the State Commission vide its Order dated 17.05.2018 allowed the claims raised by APRL, however denied the claims of Carrying Cost. Aggrieved thereby, APRL had filed an Appeal No. 305 of 2018 before this Tribunal challenging the said order. Similar relief qua carrying cost was sought by APRL in Petition No. 577 of 2015, which was denied by the State Commission during the pendency of Appeal No. 305 of 2018 before this Tribunal. Since, this Tribunal has already seized of the issue of carrying cost, which would have ultimate

bearing on the Petition No.577 of 2015, the Appellant was waiting for the decision in Appeal No. 305 of 2018. On 14.09.2019, this Tribunal passed the Judgment in Appeal Nos. 202 & 305 of 2018 holding that carrying cost is nothing but a compensation towards time value of money and carrying cost should be paid on the same basis as Late Payment Surcharge under the PPA. In view thereof, the delay occurred from 07.06.2019 to 14.09.2019 may be condoned keeping in view the pendency of the issue of carrying cost in an Appeal filed by APRL before this Tribunal.

After the pronouncement of Judgment dated 14.09.2019 in Appeal Nos. 202 & 305 of 2018, APRL internally discussed the next course of action and took advice of the counsel and decided to file Appeal before this Tribunal seeking similar relief as granted by this Tribunal in Appeal No. 202 and 305 of 2018. Thereafter, the Appeal was drafted and finalized on 04.10.2019. However, the present Appeal is being filed before this Tribunal on 25.10.2019, with delay of 140 days.

Learned counsel for Respondent Nos. 2 to 4 has filed reply opposing the application for condonation of delay. It is submitted that due to the occurrence of delay of 140 days, a right has accrued to Respondent No. 1 to treat the Order as final. In support of this contention, learned counsel refers to the decision of Hon'ble Supreme

Court in “**Ramlal Motilal v. Rewa Coalfields Limited**” (1962 (2) SCR 762), wherein the Apex Court has recognized that the legal right accrued should be not be light-heartedly disturbed.

It is submitted that since no sufficient cause is shown by the Appellant, the delay cannot be condoned. The only justification that they were waiting for a decision in another appeal pending before this Tribunal cannot be accepted since the Appellant cannot wait for a judgment to be rendered in another appeal in order to decide on filing of the appeal. Each matter has to be decided on its own merits. Orders passed in other matters neither constitute new evidence/documents nor can be a reason for condonation of delay in filing the appeal. Even after the Order dated 14.09.2019 was passed, the Appellant did not choose to file the Appeal immediately.

Learned counsel further submits that the Appellant has not shown bona fide and has been negligent since it did not choose to file the appeal immediately even after the decision dated 14.09.2019 though the Appellant was well aware that it has already delayed the filing of the instant appeal. Respondent No. 2 craves reference to the following Judgments:

- (a) *Brijesh Kumar and Ors vs. State of Haryana and Ors., AIR 2014 SC 1612*

(b) ***Basawaraj and Ors. vs. The Spl. Land Acquisition Officer,***  
*AIR 2014 SC 746.*

(c) ***Vellaithai K. Thangavedivel and K. Valarmathi vs. V. Duraisami,*** [(2010) 1 MLJ 1092].

In view of the above, learned counsel prays that the application for condonation of delay in filing the appeal deserves to be dismissed since there is lack of bona fide and negligence on the part of the Appellant.

### **ANALYSIS & DECISION**

We have gone through the arguments and various decisions relied upon by the parties. According to the Appellant, the Appellant had already appealed in Appeal No. 305 of 2018 wherein subject matter was claim for carrying cost like the present Appeal. Apparently, Appeal No. 305 of 2018 was disposed of on 14.09.2019 along with Appeal No. 202 of 2018 opining that carrying cost is nothing but is compensation towards time value of money and carrying cost should be paid on the same base as late payment surcharge under the PPA.

The Appellant seems to have taken a decision to wait for the decision in Appeal No. 305 of 2018 since the same controversy is involved in the present Appeal. Therefore only after pronouncement of

Appeal 305 of 2018, they had preferred this Appeal and delay is between 07.06.2019 to 14.09.2019. The time for filing the appeal expired on 07.06.2019 and the delay is about 140 days.

According to the Respondents, if a legal right accrues to a party it cannot be ignored or it cannot be lightheartedly disturbed. There is no justification for the Appellant to wait for decision in another Appeal. According to them even after the order 14.09.2019, immediately the Appellant did not file the Appeal and was filed in October 2019.

The explanation given by the Appellant that since the issue of carrying cost was pending consideration for the first time in Appeal No. 305 of 2018, and they were waiting for the decision of the Tribunal seem to be a decision taken in a practical manner by the Appellant. Once the decision in Appeal No. 305 of 2018 is rendered, definitely it would take some time to peruse the said judgment and take a call after legal opinion to file the present Appeal. With all these, the delay caused is about 140 days. The Appellant though got compensation for change in law claims, so far as carrying cost, there was a direction to furnish detailed submissions with requisite documents. However, the Respondent Commission did not accept the claim of the Appellant by order dated 23.04.2019 pertaining to carrying cost. The present Appeal is filed

seeking condonation of delay. As on today, the issue of carrying cost is well settled.

Parties are directed to first appeal and parties are entitled to seek relief both on facts and law. This is not the first appeal coming before us seeking condonation of delay. The stakes involved in these appeals in general are quite huge which affects the financial position of the parties. Therefore, even if delay is condoned, ultimately, the Appeal has to be decided on merits depending upon facts and circumstances of the case and also settled position of law, if any. On trivial grounds, the application cannot be rejected since the Appeal will be decided on merits after hearing both the parties.

We are of the opinion that IA deserves to be allowed. Accordingly, the IA is allowed and 140 days of delay in filing the Appeal is condoned. The application is disposed of.

**Admit.** Reply to the main matter shall be filed by the Respondents within six weeks from today with advance copy to the other side. Thereafter, the Appellant shall file rejoinder, if any within two weeks with advance copy to the other side.

Registry is directed to number the Appeal, and list the matter on **27.09.2021**.

Pronounced in the Virtual Court on this the 26<sup>th</sup> day of July, 2021.

**Ravindra Kumar Verma  
(Technical Member)**

**Justice Manjula Chellur  
(Chairperson)**

*tpd*