

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

**ORDER ON IA NO. 1295 OF 2019**

**IN**

**DFR NO. 2199 OF 2019**

**Dated : 2<sup>nd</sup> December, 2019**

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson  
Hon'ble Mr. S.D. Dubey, Technical Member**

**IN THE MATTER OF:**

**Adani Power (Mundra) Ltd.  
Adani Corporate House  
"Shantigram", S.G. Highway,  
Ahmedabad – 382421  
Gujarat**

**Appellant/Appellant**

**VERSUS**

- 1. Central Electricity Regulatory Commission  
Through Secretary,  
3<sup>rd</sup> and 4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath, New Delhi - 110001**
- 2. Uttar Haryana Bijli Vitran Nigam Limited  
Through Chief Engineer  
(Haryana Power Purchase Centre)  
Shakti Bhawan, Sector – 6, Panchkula,  
Haryana – 134109**
- 3. Dakshin Haryana Bijli Vitran Nigam Limited  
Through Chief Engineer  
(Haryana Power Purchase Centre)  
Vidyut Sadan, Vidyut Nagar,  
Hisar, Haryana - 125005**

**...Respondents**

Counsel for the Appellant (s) : Mr. Amit Kapur  
Hemant Singh  
Ambuj Dixit  
Nishant Kumar  
Lakshyajit S. Bagdwal

Counsel for the Respondent(s) : Ranjitha Ramachandran  
Poorva Saigal  
Anushree Bardhan  
Shubham Arya  
Arvind Kumar Dubey  
For R-2 & R-3

## **ORDER**

### **PER HON'BLE MR. S. D. DUBEY, TECHNICAL MEMBER**

1. The instant Application has been filed by the Appellant alongwith the present Appeal for condoning the delay of 429 days in filing the Appeal (IA No. No. 1295 of 2019) in DFR No. 2199 of 2019 under Rule 30 of the Appellant Tribunal Rules, 2007 against the Impugned Order dated 28.03.2018 passed by the Central Electricity Regulatory Commission alongwith corrigendum order dated 20.04.2018 in Petition NO. 104/MP/2017.

### **Gist of Submissions of the Applicant/Appellant**

2. The Appellant filed a petition, being Petition No. 104/MP/2017, before the Respondent Commission under Section 79 of the Electricity Act, 2003, for claiming change in law compensation, with respect to occurrence of change in law event pertaining to the condition of installation of FGD plants in its generating units, in terms of Article 13 of PPA

dated 07.08.2008 executed by the Appellant with the distribution licensees of the State of Haryana, i.e. Uttar Haryana Bijli Vitran Nigam Limited (Respondent No. 2) and Dakshin Haryana Bijli Vitran Nigam Limited (Respondent No. 3).

- 2.1 In the above petition, the Respondent Commission passed the Impugned Order dated 28.03.2018, whereby the Change in Law claim with respect to FGD was allowed, however, the carrying cost claimed for the period of delay from the date of notification of the above Change in Law event, was disallowed.
- 2.2 Thereafter, the Appellant filed another petition being petition No. 214/MP/2018 before the Respondent Commission under Section 79 of the Electricity Act, 2003 seeking clarification of the Impugned Order dated 28.03.2018, with respect to the denial of the Respondent Nos. 2 and 3 to pay the change in law compensation corresponding to additional auxiliary consumption of FGD on energy charge. In the said petition seeking clarification, the Appellant filed an Interlocutory application, being I.A. No. 70/2018, seeking Carrying Cost on FGD on account of passage of the judgement dated 13.04.2018 in Appeal No. 210 of 2017 (*Adani Power Ltd. Vs CERC & Ors.*) passed by this Tribunal, whereby carrying cost was allowed with respect to change in law claims qua the same PPAs. The said judgement was also upheld by the

Hon'ble Supreme Court vide Judgement dated 25.02.2019 in CA No. 5865 of 2018 (*UHBVNL &Anr. v. Adani Power Ltd. &Ors*).

- 2.3 As a matter of record, it is to mention that the Appellant has also filed IA No. 101/2018 in Petition No. 214/MP/2018 as per the liberty granted by the Respondent Commission in respect of claim of capital cost
- 2.4 The Respondent Commission passed the final order dated 06.06.2019 in Petition No. 214/MP/2018 *inter-alai* along with I.A. No. 70/2018 & 101/2018 as mentioned above, whereby it was clarified that the Appellant is entitled to the compensation of increased energy charge on account of additional auxiliary consumption as a result of installation of FGD. However, in the above clarification order, the Respondent Commission again did not consider the claim of carrying cost on a hyper technical ground of rejection of carrying cost in Impugned Order.
- 2.5 The facts and circumstances giving rise to filing of the present Appeal have been stated in detail in the accompanying Appeal and the Appellant, for the sake of brevity and in order to avoid repetition, is not repeating the detailed facts herein, and craves leave of this Tribunal to refer to and rely upon the same at the timing of hearing.

- 2.6 That there has been an inadvertent delay of 429 days in filing of the accompanying appeal. It is submitted that Impugned Order in the above matter has been passed on 28.03.2018, however, till 06.06.2019 the Appellant herein was engaged in legal proceedings before the Respondent Commission qua carrying cost on FGD, which is the subject matter of the present appeal. As such, the Applicant has a sufficient cause for the delay to be condoned.
- 2.7 On account of the Appellant being involved in proceedings before the Respondent Commission, wherein the issue of carrying cost qua FGD was pending adjudication, the Appellant could not file the appeal earlier. The delay was inadvertent and unintentional, and with no element of negligence. As such, the said delay may be condoned in the interest of justice and equity.
- 2.8 The appellant has a good case on merits and it is for this Tribunal to appreciate that in the case the delay in filing the present appeal is not allowed, the same may result in causing grave injustice and loss to Appellant. Keeping the same in mind, the above inadvertent delay may be condoned. This Tribunal may also put the Applicant/Appellant to such terms as may be considered just and proper, for the purpose of condonation of delay.

- 2.9 The present application is bona fide and made in the interest of justice.

**Gist of Submissions by the Respondent No. 2 & 3**

- 3 By the impugned order dated 28.03.2018, the Central Commission has rejected the claim of the Appellant towards carrying cost from the date of incurring the expenditure under the change in law provision. The Appellant has filed the present appeal with a considerable delay of 429 days. The primary ground on which the delay has been sought to be condoned is that the Appellant was awaiting the outcome of a clarification petition being 214/MP/2018 wherein an Interim Application being I.A. No. 70 of 2018 was filed seeking carrying cost.
- 3.1 The above Clarification Petition No. 214/MP/2018 along with I.A. No. 70 of 2018 was disposed off by the Central Commission on 06.06.2019. The Central Commission vide order dated 06.06.2019, rejected the application being I.A. No. 70 of 2018 seeking carrying cost on the reasoning that *once the claim has been rejected by this Commission, the Petitioner cannot approach this Commission again for the same relief through an IA based on a subsequent judgment of the higher court.*
- 3.2 The reliance placed by the Appellant on the above proceedings before the Central Commission for seeking condonation of delay is baseless and an afterthought for the following reasons:

- (a) the above petition being Petition No. 214/MP/2018 was filed before the Central Commission on 25.06.2018 after a period of 89 days from the date of passing of the order dated 28.03.2018 in Petition No. 104/MP/2017;
- (b) the I.A. 70 of 2018 seeking carrying cost in Petition No. 214/MP/2018 was filed on 25.07.2018, after a period of 119 days from the date of passing of the order dated 28.03.2018 in Petition No. 104/MP/2017;
- (c) In the present application, there has been no explanation for the period from the date of the passing of the order dated 28.03.2018 to 25.07.2018 when I.A. No. 70 of 2018 was filed before the Central Commission;
- (d) The above is significant as the time limit prescribed for filing an Appeal before this Tribunal is 45 days from the date of the order which expired on 14.05.2018(12.05.2018 being a Saturday). The Appellant has not shown or proved any sufficient cause for approaching this Tribunal after such a long delay;
- (e) It is well settled principle that no event or circumstance arising after the period of limitation can constitute sufficient case. Reference is made to the decision in Ajit Singh Thakur Singh and Anr. -v- State of Gujarat AIR 1981 SC 733 as under:

*"6. At the outset, it is urged by learned counsel for the appellants that the High Court erred in condoning the delay in filing the appeal, and the appeal should have been dismissed as*

*barred by limitation. We have examined the facts carefully. It appears that initially the State Government took a decision not to file an appeal and it allowed the period of limitation to lapse. Subsequently, on certain observations made by the High Court while considering a revision petition by Bhulabhai that it was a fit case where the State Government should file an appeal and on notice being issued by the High Court to the State Government in the matter, the appeal was filed. It was filed three months after limitation had expired. A faint attempt was made to show that when the initial decision was taken not to file an appeal all the papers had not been considered by the department concerned, but we are not impressed by that allegation. The truth appears to be that the appeal was not filed at first because the State Government saw no case on the merits for an appeal, and it was filed only because the High Court had observed - and that was long after limitation had expired - that the case was fit for appeal by the State Government. Now, it is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation. In the present case, there was no such cause, and the High Court erred in condoning the delay."*

- (f) There is no event or circumstances prior to 12.05.2018/14.05.2018 relied on by the Appellant. The events after 12.05.2018/14.05.2018 cannot constitute sufficient cause.



- (g) Even otherwise, the Central Commission had specifically rejected the claim of the Appellant towards carrying cost in the order dated 28.03.2018. It is not conceivable as to how the Central Commission could have overruled its own decision in an interlocutory application filed in the clarification petition seeking certain clarifications in the Order dated 28.03.2018. There is no general or otherwise any power to amend any order or decision particularly, an order in regard to the adjudication of disputes including on change in law;
- (h) The Petition being Petition No 214/MP/2018 which was for implementation of the Order dated 28.03.2018 was not related to the issue of the carrying cost at all and therefore it is not conceivable how an application can be filed in such a Petition related to carrying cost.
- (i) The order dated 28.03.2018, in as much as it related to the decision on carrying cost, had attained finality. The findings of the Central Commission could have only been set aside in an Appeal filed by the Appellant before this Tribunal or a review petition filed before the Central Commission. The Appellant chose neither of the above and chose to file an application in a clarification petition and that too after the period for filing appeal and review were already over.

- 3.3 The I.A. No. 70 of 2018 filed in Petition No. 214/MP/2018 was primarily on the basis that this Tribunal in a judgment dated 13.04.2018 passed in Appeal No. 210 of 2017- Adani Power Limited -v- Central Electricity Regulatory Commission and Ors. has allowed the relief of carrying cost. It is submitted that, on that basis, even a review petition seeking review of the order dated 28.03.2018 could not have been maintainable.
- 3.4 The Appellant chose not to file an appeal against Order dated 28.03.2018 within the time provided and in fact even with the knowledge of the Order dated 13.04.2018 being passed by the Tribunal. In any case, even the application was filed more than 3 months after the Order dated 13.04.2018 was passed by the Tribunal. There is no explanation or justification for such delay.
- 3.5 In view of the above, it is submitted that the grounds raised in the present application are an afterthought and without any basis. The Appellant has failed to show any sufficient ground or otherwise.
- 3.6 In the circumstances, there is a clear lack of bonafide on part of the Appellant and the Appellant has acted in a negligent manner. On the principles laid by the Hon'ble Courts including this Tribunal, the application deserves to be dismissed.

#### **Rejoinder submissions by the Applicant/Appellant**

4. At the outset, the Appellant/ Applicant denies and disputes all the averments, contentions and allegations raised by the

Respondent Nos. 2 and 3 in its reply and except for what has been specifically and expressly admitted hereinafter in writing and any omission on the part of the Appellant/ Applicant to deal with any specific averment, contention or allegation of the Respondent Nos. 2 and 3 should not be construed as an admission on the part of the Appellant/ Applicant.

- 4.1 The Applicant/ Appellant filed a petition before the Respondent Commission, being Petition No. 156/MP/2014, wherein the Applicant/ Appellant sought change in law compensation qua certain change in law events with respect to a Power Purchase Agreement (PPA) dated 07.08.2008 executed by the Applicant with the Respondent Nos. 2 & 3. The Respondent Commission vide its order dated 06.02.2017 allowed some of the change in law events claimed, and further gave liberty to the said Appellant/ Applicant to approach the Respondent Commission through a separate application/ petition qua the issue of installation of Flue Gas De-sulphurizer (FGD).
- 4.2 Accordingly, in view of the above liberty granted by the Respondent Commission, the Appellant/ Applicant filed a separate petition, being Petition No. 104/MP/2017 seeking change in law qua FGD, as well as, carrying cost on FGD. However, in the impugned order dated 28.03.2018, while allowing the compensation under Change in Law for the additional expenditure incurred towards installation of FGD,

the Respondent Commission rejected the claim of carrying cost on FGD.

- 4.3 After the passage of the impugned order, there was a lacuna/ grey area with respect to the fact that whether the impact of additional auxiliary consumption on account of installation of FGD, is also to be considered for computing change in law compensation, as also the award of carrying cost after the law had been settled on this aspect by this Tribunal in its judgement dated 13.04.2018 passed in Appeal No. 210 of 2017. The said judgment of this Tribunal was also upheld by the Hon'ble Supreme Court in its judgment dated 25.02.2019 passed in Civil Appeal No. 5865 of 2018.
- 4.4 Accordingly, on 25.06.2018, the Applicant filed a clarificatory petition being, Petition No. 214/MP/2018, which was similar to a review petition, wherein the Applicant claimed the additional cost towards auxiliary consumption of the FGD units, as change in law. The clarification petition was subsequent to the passing of the impugned order dated 28.03.2018 passed by the Respondent Commission in Petition No. 104/MP/2017.
- 4.5 Since, the entire issue related to FGD was still pending in the clarification petition, with a view to ensure that the issue of carrying cost is not missed or overlooked in view of the aforementioned subsequent judgement, wherein carrying cost was allowed qua change in law events, the Applicant filed an

interlocutory application, being I.A. No. 70 of 2018, on 25.07.2018, for seeking carrying cost qua the change in law event of installation of FGD.

4.6 The Commission passed an order dated 06.06.2019 in the above clarification petition, wherein the following was held:

"45. However, this Commission has already adjudicated the issue of carrying cost in its order dated 28.3.2018 in Petition No. 104/MP/2017. The present Petition has been filed by the Petitioner, APML seeking certain clarification in the above order dated 28.3.2018. The Petitioner has filed I.A. No. 101/2018 seeking claim of IDC and FERV on actual basis pursuant to the liberty granted by the Commission in the said order. The Petitioner has also filed IA N. 70/2018 seeking carrying cost, based on subsequent judgment of the higher court. In our view, once the claim has been rejected by this Commission, the Petitioner cannot approach this Commission again for the same relief through an IA based on a subsequent judgment of the higher court. Therefore, the Petitioner is granted liberty to approach the Commission for appropriate relief through a separate Petition in accordance with law."

(underline supplied)

- 4.7 It is therefore, submitted that a substantial portion of time of 345 days was consumed in pursuing the Clarification Petition. As such, the only reason for delay in filing the instant appeal was on account of the above clarification petition.
- 4.8 The Respondent Nos. 2 & 3, in their reply to the application filed for condonation of delay in the present appeal, have taken a stand that there was a delay of 89 days in filing the above petition. Further, it is also contended that the above interlocutory application was filed a month after filing the above petition.
- 4.9 In view of the submissions made hereinabove, it is submitted that there is no negligence which can be attributed to the Applicant for initiating subsequent proceedings before the Respondent Commission, instead of challenging the impugned order dated 28.03.2018. It is after the Respondent Commission, while clarifying that compensation due to additional auxiliary consumption is to be granted to the Applicant, the said Commission observed that the relief of carrying cost cannot be granted as the same was already rejected vide the impugned order. Further, the Respondent Commission granted liberty to the Applicant to approach the said Commission through a separate petition in accordance with law.

4.10 As such, after the passage of the order dated 06.06.2019 in the aforementioned clarification petition, the Applicant challenged the impugned order dated 28.03.2018 before this Tribunal. From the above, it is evident that the Applicant/Appellant was involved in the legal proceedings (i.e. clarification/ review petition) relating to the same issue of carrying cost qua the change in law event of FGD, which ended only on 06.06.2019. This Tribunal has already held in its various orders that the time taken in review petitions, including clarification petitions, before the Commissions, is to be condoned in filing an appeal. It is submitted that the aforementioned clarification petition was in the nature of a review, and as such similar treatment ought to be accorded in the present case.

4.11 In this context, reference may be made to the order dated 21.12.2018 passed by this Tribunal in I.A. No. 762 of 2018, being *Uttarakhand Power Corporation Ltd. vs M/s Greenko Budhil Hydro Power Pvt. Ltd.* Therefore, in view of the above order of this Tribunal, the delay in the present case also needs to be condoned.

4.12 It is submitted that it is a settled principle of law that in regulatory matters, the principles of limitation do not apply. Further, the tariff determination is part of regulatory powers of the Commissions, and as such any determination of change in law compensation, which has an impact on tariff, attracts

regulatory powers of the said Commissions. Hence, the delay in the present case has to be liberally construed, and since the issue of carrying cost affects the tariff of the Applicant, the same ought to be allowed.

4.13 In light of the above, the delay of 429 days was occasioned, primarily on account of the pendency of clarification petition, being Petition No. 214/MP/2018 before the Respondent Commission. The Applicant, was neither negligent, nor was sitting on the fence, post the passage of the impugned order dated 28.03.2018. As a result of the proceedings pending before the Respondent Commission, there exists a sufficient cause for condoning the above delay in filing the present appeal.

4.14 Hence, keeping in mind judgments of the Hon'ble Supreme Court and this Tribunal qua delay in matters relating to tariff, the delay in the present appeal, ought to be condoned.

4.15 In view of the above, the Appellant/ Applicant has satisfactorily established the sufficient cause, on account of pendency of litigation before the Respondent Commission. Hence, the present application ought to be allowed and delay condoned.



## **OUR CONSIDERATION AND FINDINGS**

1. We have carefully considered the contentions of the Learned Counsel for the Applicant/Appellant and Learned Counsel for Respondent Discom. Based on the same, we now consider the case in hand. Learned Counsel for the Applicant/Appellant submitted that the facts and circumstances giving rise to filing of the present appeal have been duly stated in the application and for the sake of brevity and in so far to avoid repetition, it is not reproduced again. The Applicant/Appellant craves leave of this Tribunal to refer to and rely upon the same at the time of hearing.
2. Learned Counsel for the Applicant/Appellant further submitted that there has been an inadvertent delay in filing of the accompanying appeal on account of one or the other reason as explained in the instant application. The Impugned Order has been passed on the 28.03.2018, however, till 06.06.2019, the Applicant/Appellant herein was engaged in legal proceedings before the Respondent Commission qua carrying cost on FGD which is the subject matter of the present appeal. As such, the Applicant has a sufficient cause for the delay to be condoned.
3. Learned Counsel for the Applicant vehemently submitted that due to the facts that the Applicant being involved in proceedings before the Respondent Commission, wherein, the issue of carrying cost qua FGD was pending adjudication, the Applicant/Appellant could not file the appeal earlier. A delay of 429 days in filing the instant appeal has occurred, which was inadvertent, unintentional and with no element of negligence. The Learned Counsel as such prayed for condonation of said delay in filing the appeal in the interest of justice and equity. The Applicant/Appellant has a good case on merits and it is for this Tribunal

to appreciate that in the case the delay in filing the present appeal is not allowed, the same may result in causing grave injustice and loss to the Applicant/Appellant.

4. The Learned Counsel further contended that keeping the same in mind the aforesaid inadvertent delay may kindly be condoned and this Tribunal may also put the Applicant/Appellant to such terms as may be considered just and proper for the purpose of condonation of delay.
5. During rejoinder submissions Learned Counsel for the Appellant referred to an order dated 06.06.2019 in the clarification petition passed by the Respondent Commission, wherein among others the petitioner (Applicant herein) was granted liberty to approach the Commission for appropriate reliefs through the separate petition in accordance of law.
6. Learned Counsel submitted that the sufficient portion of delay i.e. 345 days was consumed in pursuing the clarification petition. To substantiate his contentions, learned Counsel for the Applicant/Appellant placed reliance on the order of this Tribunal dated 21.12.2018 passed in IA No. 762 of 2018 in DFR No. 1540 of 2018 being the case of Uttarakhand Power Corporation Ltd. Vs. Greenko Budhil Hydro Power Pvt. Ltd. & Anr. vide which a delay of 472 days in filing the appeal was condoned. Learned Counsel for the Applicant/Appellant reiterated that it is a settled principle of law that in regulatory matters the principles of limitation do not apply and tariff determination is a part of regulatory powers of the State Commission. Hence, the delay in present case has to be liberally construed and since the issue carrying cost has impact on the tariff of the Applicant the same ought to be allowed.

7. **Per Contra** Learned Counsel for the Respondent Discoms submitted that the Applicant/Appellant has filed the present appeal with a considerable delay of 429 days and primary ground on which the delay has been sought to be condoned is that the Applicant/Appellant was awaiting the outcome of the clarification petition being Petition No. 214/MP/2018 wherein an IA being number 70 of 2018 was filed seeking carrying cost. The above clarification petition alongwith IA was disposed of by the Central Commission on 06.06.2019.
8. Learned Counsel for the Respondent Discoms further contended that the reliance placed by the Applicant on various proceedings before the Central Commission for seeking condonation of delay is baseless and after thought. It is significant to mention that the time limit prescribed for filing an appeal before this Tribunal 45 days from the date of the order which expired on 14.05.2018 and the Applicant has not shown or proved any sufficient cause for approaching this Tribunal after such a long delay.
9. Learned Counsel for the Respondents was quick to submit that it is a well settled principle that with no event or circumstances arisen after the period of limitation can constitute sufficient cause. To strengthen the said submissions Learned Counsel relied upon the judgement of the Hon'ble Supreme Court in **Ajit Singh Thakur and Anr. Vs. State of Gujarat AIR 1981 SC 733** as per which it has been categorically held that *"there may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of*

limitation. *In the present case, there was no such cause, and the High Court erred in condoning the delay."*

10. Learned Counsel for the Respondent Discoms further submitted that even otherwise the Central Commission had specifically rejected the claim of the Applicant/Appellant towards the carrying cost in its order dated 28.03.2018 and it is not conceivable as to how the Central Commission could have over-ruled its own decision in an IA filed in the clarification petition seeking certain clarifications in the aforesaid order. In fact, the Applicant chose not to file an appeal against the order dated 28.03.2018 within the time provided and in fact even with the knowledge of the order 13.04.2018 passed by this Tribunal.
11. Summing up the arguments, Learned Counsel for the Respondent Discoms emphasized that grounds raised in the present application for condonation of delay are after thought and without any basis. The Applicant has failed to show any sufficient ground or otherwise. In the circumstances, there is a clear matter of bonafide on the part of Applicant that it has acted in a negligent manner. Accordingly, on the principles laid down by the Hon'ble Courts including this Tribunal the instant application deserves to be dismissed.
12. We have critically analyzed the rival contentions of the parties and taken note of various judgements of the Apex Court and this Tribunal relating to the condonation of delay. Besides, we also perused the specific judgements relied upon by the Learned Counsel for the Appellant as well as Learned Counsel for the Respondents. It is not in dispute that the Appeal has been filed by the Applicant/Appellant with a

delay of 429 days and Respondents have contested not to allow the condonation of delay which as per them is a clear matter of negligence.

13. In a catena of judgements, the Hon'ble Supreme Court has held that the expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice – that being the live purpose for the existence of the institution of Courts. For the sake of reference findings in following judgements are relevant for the case in hand :

- (i) **Collector, Land Acquisition, Anantnag & Anr. vs. Mst Katiki & Ors. (1987) 2 SCC 107**
- (ii) **"State of Nagaland v LipokAo (2005) 3 SCC 752",**
- (iii) **O. P. Kathpalia v. Lakhmira Singh [(1984) 4 SCC 66]**
- (iv) **"Ram Nath Sao v Gobardhan Sao (2002) 3 SCC 195**

14. The similar issue came before this Tribunal in the case of Uttarakhand Power Corporation Ltd. Vs. M/s. Greenko Budhil Hydro Power Pvt. Ltd. & Anr. in IA No. 762 of 2018 in DFR No. 1540 of 2018 wherein this Tribunal vide its Order dated 21.12.2018 allowed the condonation of delay in the interest of justice and equity.

Taking into consideration, the facts and circumstances of the case and law laid down by the Apex Court and this Tribunal in hosts of judgement, the instant application filed by the Applicant/Appellant is liable to succeed by condoning the delay in filing appeal in the interest of justice and equity. Further, in view of the judgement of the Apex

Court in the matter relating to carrying cost dated 25.02.2019, the balance of convenience lies in favour of the Applicant/Appellant and as such if the delay is not condoned it will suffer grave financial injury.

15. In light of the above facts, we consider the present case fit for condonation of delay. As stated supra, it would be the just and suffice 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 Applicant/Appellant is allowed, the delay in filing the instant appeal (DFR No. 2199 of 2019) is condoned and IA No. 1295 of 2019 stands disposed of.
16. The Applicant/Appellant is 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, 4<sup>th</sup> Floor, Parliament Street, New Delhi, within a period of three weeks from the date of the receipt of a copy of this Order.

**Pronounced in the open Court on this 2<sup>nd</sup> Day of December, 2019.**

### **DFR NO. 2199 OF 2019**

**Registry is directed to number the Appeal and list the matter for admission on 27.01.2020.**

**(S.D. Dubey)**  
**Technical Member**  
 mkj

**(Justice Manjula Chellur)**  
**Chairperson**