

COURT-I
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

IA NO. 912 OF 2019 IN
DFR NO. 2102 OF 2019

Dated: 22nd October, 2019

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

In the matter of:

Power Grid Corporation of India Limited ... Appellant(s)

Versus

Central Electricity Regulatory Commission & Ors. ... Respondent(s)

Counsel for the Appellant(s) : Ms. Swapna Seshadri
Mr. Utkarsh Singh
Mr. Damodar Solanki

Counsel for the Respondent(s) : Mr. R.B. Sharma
Mr. Mohit Mudgal
Ms. Neha Maniktala for R-2 & R-3

ORDER

1. This is an Application seeking for the Condonation of Delay of 751 days in filing the Appeal against the Impugned Order dated 24.02.2017 passed in Petition No. 85/TT/2015 by Central Electricity Regulatory Commission whereby the Central Commission has disallowed substantially the time overrun in commissioning of the transmission assets.
2. The prayer of Applicant/Appellant as follows:-

- a) Condone the delay of 751 days which has occurred in filing the appeal against the Order dated 24.02.2017 passed by the Central Commission in Petition No. 85//TT/2015.
 - b) Pass such further orders as deemed fit.
2. The Applicant/Appellant submitted that Impugned Order dated 24.02.2017 was communicated to the Appellant on 27.02.2017. Since there were errors apparent on the face of record in the findings of the Central Commission which were contrary to the documentary evidences placed on record before the Central Commission by the Applicant/Appellant which had led to disallowance of substantial time overrun, the Applicant/Appellant decided to prefer Review Petition against the Impugned Order dated 24.02.2017.
3. On 05.05.2017, the Applicant/Appellant filed Review Petition being RP No. 26/RP/2017 seeking review of the Impugned Order dated 24.02.2017 well within limit of 45 days of Impugned Order.

4. On 13.03.2019, the Central Commission dismissed the Review Petition vide Order dated 13.03.2019. Since the Central Commission passed a detailed order in review petition and made several observations against the Applicant/Appellant, an approval was taken to file an appeal against the Review Order on 27.03.2019. On 29.03.2019, the draft material was sent to the Advocates for opinion. On 05.04.2019, the Advocate upon perusing the records opined that since no appeal would be maintainable against the dismissal of review under Order 47 Rule 7 of the CPC, 1908, the appeal would have to be filed against the original order dated 24.02.2017. Thereafter, on 16.04.2019 fresh approval was taken to rework and file appeal against the Impugned Order. The draft appeal was verified by various officers of the Applicant/Appellant and finalized on 29.04.2019 and finally after signing and making of copies, the appeal was filed on 01.05.2019 before this Tribunal.

5. Accordingly, in the instant case out of the delay of 751 days, a period of 704 days has been taken due to the pendency of the Review Petition and thereafter the appeal has been filed on

01.05.2019 which within 47 days of the receipt of the Review Order dated 13.03.2019.

6. To substantiate its submissions, the Applicant/Appellant placed reliance on the judgments of Hon'ble Supreme Court in Green View Tea & Industries Vs. Collector, Golaghat, Assam reported in (2004) 4 SCC 122 and S.Nagaraj and Ors. V. State of Karnataka and Ors., MANU/SC/0797/1993(1994)ILLJ851.
7. **Per contra**, the learned counsel appearing the Respondent Nos.2 and 3 submitted that, the present Appeal under which the instant IA is filed is devoid of merits and the reasons given by the Applicant/Appellant are devoid of merit and justification. He further submitted that this instant appeal is on the question of time overrun for the balance period which was not condoned by the Central Commission. The Applicant/Appellant also filed a review petition which was rejected by the Central Commission indicating the fact that there was no error apparent on the face of the record. To substantiate his submissions, he placed reliance on the judgment dated 27.04.2011 in Appeal No. 72 of 2010 (MSPGCL Vs MERC & Ors.) passed by this Tribunal.

8. The learned counsel appearing the Respondent Nos.2 and 3 further submitted that presuming that if this Tribunal decides to admit the Appeal in spite of huge delay, then the answering respondents may also be permitted to file 'Memorandum of Objection' under Rule 22 Order 41 of the Code of Civil Procedure, 1908 as they may also be objecting to a findings of the Central Commission related to the approval of 'Statutory COD' under the 2nd proviso of Regulation 4(3) of the Tariff Regulations, 2014.
9. We have heard the learned counsel appearing for Applicant/Appellant and the learned counsel for Respondent Nos.2 and 3
10. In the light of the submissions of the learned senior counsel appearing for the Applicant/Appellant and the reasoning assigned in the application as well as in additional submissions explaining the delay in filing the Appeal, the delay is bonafide and unintentional and also beyond the control of the Applicant in the circumstances of pendency of the Review Petition and on account of official exigencies in preparing the appeal.

Having regard to the circumstances of the case we think it appropriate to hear the appeal on merits and decide. The delay in filing the Appeal has been explained satisfactorily and sufficient cause has been shown. Hence, we accept the same. Delay in filing the appeal is condoned. IA is allowed.

Further, the Bench observed that learned counsel appearing for the Respondent Nos. 2 and 3 raised a question in the combined written submissions filed on condonation of delay application presuming that if this Tribunal decides to admit the Appeal in spite of huge delay, then the answering respondents may also be permitted to file Memorandum of Objection to a finding of the Central Commission related to the approval of Statutory COD under the 2nd proviso of Regulation 4(3) of the Tariff Regulations, 2014.

The Bench have gone through the combined written submissions filed on the delay application and have considered the above contention of the Respondent Nos. 2 and 3. At this stage, the Bench is of the opinion that the answering respondents were granted time to file objections to the delay application and not to

raise a time barred issue by way of filing combined written submissions on the delay application. If the Respondent Nos. 2 and 3 were aggrieved by the said finding of the Central Commission, they had sufficient time and opportunity to prefer appropriate course of action as per provisions of law rather than to keep quiet since then. In the present circumstances, this request of the Respondent No.2 and 3 cannot be accepted and accordingly, rejected.

With these observations, the IA being IA No. 912 of 2019 stands disposed of.

List the main matter on **26.11.2019.**

Pronounced in the Open Court on this **22nd day of October, 2019.**

(Ravindra Kumar Verma)
Technical Member

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(Justice Manjula Chellur)
Chairperson