

overlooking its previous order, further allowed MSEDCL/Respondent No.2 to decide ceiling rate, for such competitive bidding, after conducting proper due diligence with the condition that the rate discovered shall not be more than the rates approved for short term procurement of wind energy.

The prayer of Applicant/Appellant as follows:-

- a) Grant leave to file the Applicant/Appellant for filing the present Appeal against the Impugned order dated 09.04.2019 in Case No. 50 of 2019 with the accompanying Appeal; and
 - b) Pass such further order/orders as this Tribunal may deem fit and proper in the facts and circumstances of the case.
2. The Application being IA No. 1633 of 2019 has been filed seeking for the Condonation of Delay of 97 days in filing the Appeal as against the Impugned Order dated 09.04.2019 passed in Case No. 50 of 2019 by Maharashtra Electricity Regulatory Commission.

The prayer of Applicant/Appellant as follows:-

- a) Condone the delay of 97 days in filing the present Appeal against order dated 09.04.2019 passed in Case No. 50 of 2019 by Maharashtra Electricity Regulatory Commission; and
 - b) Pass such further order/orders as this Tribunal may deem fit and proper in the facts and circumstances of the case.
3. The Applicant/Appellant is a wind energy generator, has executed multiple EPAs with Respondent No.2/MSEDCL, valid for a term of 13 years, for sale of wind power from its multiple Wind Power Plants, having a total capacity of 193.4 MW and EPAs for another 6.3 MW commissioned capacity are pending execution, despite the tariff being levelized for the entire useful life of the Project on the basis of assurance given by the State Commission, in its Order dated 07.04.2014, that the Applicant/Appellant can opt to extend the EPAs from 14 to 25 years at the same tariff as was for the first 13 years. It is stated even the EPAs, executed between the applicant/Appellant and MSEDCL/Respondent No.2, provide the option to renew or extend the agreements on terms and conditions mutually agreeable to the parties. Therefore, at the time of signing

of the EPAs the Applicant/Appellant was assured of the option of mutually renewing/extending the agreement.

4. MSEDCL/Respondent No.2 filed a Case No. 50 of 2019 before the State Commission seeking approval for procuring wind power from WEGs, of Groups II, III and IV, whose EPAs with MSEDCL have expired, at the tariff of INR 2.52/unit for balance useful life where MSEDCL submitted that it was facing difficulties in procuring long term wind power through competitive bidding at ceiling tariff of INR 1.97/unit previously set by the State Commissions. The Petition was admitted and adjudicated by the State Commission but no notice was issued to Group IV Wind Energy Projects such as Bothe Windfarm Development Private Limited, the Applicant/Appellant herein.

5. It is stated that since all the Wind Energy Projects of the Appellant are Group IV Projects falling under Zone 1, the State Commission has completely overlooked that Group IV Projects would not have recovered their capital expenditure at the time of expiry of EPAs.

6. It is further stated that the Impugned Order was passed on 09.04.2019 and since the Applicant/Appellant was not a party before the State Commission, the Applicant/Appellant did not receive the copy of the Impugned order. The Applicant/Appellant came to know about the Impugned Order on 15.05.2019 that the State Commission has allowed the Petition filed by MSEDCL/Respondent No.2 without affording reasonable opportunity to the Applicant/Appellant.

7. We have heard the learned counsel appearing for Applicant/Appellant.

8. In the light of the submissions of the learned counsel appearing for the Applicant/Appellant and the reasoning assigned in the applications seeking for leave to file appeal and for explaining the delay in filing the Appeal, the Appellant has given valid and cogent reasons for seeking leave to file appeal and for explaining the delay in filing the Appeal. We find merits in the submissions and the reasoning assigned in the Applications and, accordingly held that the Applicant/Appellant has explained the reasons for leave to file

appeal and the delay has been explained satisfactorily in filing the Appeal and sufficient cause has been shown. Hence, we accept the same. The leave to file the appeal is granted and the delay in filing the appeal is condoned. IAs are allowed.

9. The Application being IA No. 1635 of 2019 and the Application being IA No. 1633 of 2019 stands disposed of.

List the main matter on **28.11.2019.**

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