

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

IA NO. 466 OF 2018 IN
DFR NO. 825 OF 2018

Dated: 10th July, 2018

Present: Hon'ble Mr. Justice N. K. Patil, Judicial Member
Hon'ble Mr. S. D. Dubey, Technical Member

In the matter of:

M/s Aryan MP Power Generation Pvt. Ltd. Appellant(s)
Versus
Central Electricity Regulatory Commission & Ors. Respondent(s)

Counsel for the Appellant(s) : Mr. Matrugupta Mishra
Ms. Ankita Batra

Counsel for the Respondent(s) : Ms. Suparna Srivastava
Ms. Sanjna Dua for R-2

ORDER
(IA NO. 466 OF 2018)
(Application for condonation of delay in filing appeal)

We have heard learned counsel appearing for the Appellant and learned counsel appearing for the Respondent No.2 for a considerable length of time. The first Respondent served unrepresented.

2. The instant application is filed by the Appellant for condoning delay of 74 days in filing the Appeal. The learned counsel appearing for the Appellant submitted that the delay in filing has been explained satisfactorily and sufficient cause has been shown in paragraph no. 2 to 6 of the application. The same may kindly be accepted and delay in filing may kindly be condoned and matter may be heard on merits in the interest of justice and equity.

3. ***Per contra***, learned counsel, Ms. Suparna Srivastava, appearing for the Respondent No. 2, inter alia contended and submitted that the delay in filing has not been explained satisfactorily and sufficient cause has not been shown. Further, she quick to point out and submitted that in fact, the Appellant has filed a Petition on 10.11.2017 before vetting of the instant Appeal by the Appellant's counsel and also before the decision taken on 22.11.2017 by the Appellant or its counsel to file a Review Petition on the very same issue of encashment of Bank Guarantee and further submitted that though the Appellant has placed on record before this Tribunal a copy of Petition No. 242/MP/2017 filed by it before the first Respondent Commission, a copy of the Review Petition has not been placed on

record and suppressed deliberately so. On account of suppression of facts, the Appellant does not deserve to consider the instant Application for condoning the delay of 74 days in filing the Appeal. Therefore, she submitted that the instant Application filed by the Appellant may be dismissed as misconceived on the ground of delay and laches.

4. While replying to the submissions of the learned counsel appearing for the Respondent No. 2, the learned counsel appearing for the Appellant quick to point out and taken through the statement made in para 3 of the Application. He explained the delay from 31.10.2017 to 28.2.2018 by furnishing the details in a chart and further submitted that he has taken a substantial ground in the Memorandum of Appeal regarding filing the Petition and also a Review Petition. He has approached this Court with clean hands and delay in filing is bone fide and the said delay is not intentional and deliberate on the part of the Appellant. For redressing his grievance, he has filed a Petition in the High Court and also given the Affidavit regarding Bank Guarantee and also filed a Review Petition. He has not suppressed any of these aspects while filing this Appeal. Therefore, he submitted that the Appellant has got good case on merits and delay in filing the Application may kindly be accepted and objections raised by the counsel of the other side may be over-ruled and the Application filed by the Applicant for condoning the delay may be allowed and the matter may be heard on merits in the interest of justice and equity.

5. However, considering the submissions appearing for the learned counsel appearing for the Respondent no. 2 and perusal of the statement made in the Application filed by the Applicant for condoning the delay in filing the Appeal and also reply filed by the Counsel to the Application on behalf of the Appellant for condoning the delay in filing the Appeal alongwith supporting Affidavit, what emerged is that Appellant in fact has given days and events processing the petition in Para 3 of the Application and also specifically stated that the facts and circumstances giving rise to filing of the present Appeal have been stated in detail in the accompanying Appeal and the Applicant/Appellant, for the sake of brevity and in order to avoid repetition, are not repeating the facts and the delay of 74 days occasioned on account of the reasons stated in paras 3 & 4, the said delay has been explained and the Appellant submitted that there is a bona fide case on merit and they are likely to succeed before this Tribunal and the delay is bona fide in nature and not deliberate on the part of the Appellant.

6. Taking into consideration the submissions of the learned counsel appearing for the Appellant and the learned counsel appearing for the Respondent No. 2 and after careful perusal of the contents of the Application filed by the Appellant and also the reply filed by the Respondent No. 2, what emerged is that there is delay of 74 days in filing the Appeal. The said delay has been explained satisfactorily and sufficient cause has been shown and the same is accepted and delay in filing is condoned. The IA is allowed.

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7. Registry is directed to assign the number and list the matter for admission on **24.08.2018**, as requested.

(S. D. Dubey)
Technical Member

Bn/pr

(Justice N. K. Patil)
Judicial Member