

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(APPELLATE JURISDICTION)**

**IA NO. 426 OF 2017 IN
DFR NO. 4119 OF 2016**

Dated: 21st September, 2017

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I.J. Kapoor, Technical Member**

In the matter of:

JALA SHAKTI LTD.)
THROUGH ITS AUTHORISED SIGNATORY)
SHRI AUDITYA YADLAPATI)
REGD. OFFICE : H.NO. 135,)
UPPER JULAKARI, CHAMBA,)
HIMACHAL PRADESH – 176318) **.... Appellant(s)**

Vs.

1. HIMACHAL PRADESH ELECTRICITY)
REGULATORY COMMISSION)
THROUGH ITS SECRETARY,)
KEONTHAL COMMERCIAL COMPLEX,)
KHALINI, SHIMLA – 171002)

2. HIMACHAL PRADESH STATE ELECTRICITY)
BOARD LTD.)
THROUGH ITS DIRECTOR,)
KUMAR HOUSE, SHIMLA,)
HIMACHAL PRADESH – 171004)

3. THE HIMACHAL PRADESH ENERGY)
DEVELOPMENT AGENCY)
(HIMURJA),)
THROUGH ITS DIRECTOR, SDA COMPLEX,)
KASUMPATI, SHIMLA,)
HIMACHAL PRADESH – 171009) **.... Respondent(s)**

Counsel for the Appellant(s) : Mr. Buddy A. Ranganadhan
Mr. Raunak Jain

Counsel for the Respondent(s) : Mr. Pradeep Misra for R-1

Ms. Swapna Seshadri
Mr. Anand K. Ganesan for R-2

ORDER

1. The Appellant operates 5 MW Hydro Electric Power Project in the State of Himachal Pradesh. The Appellant has filed the present appeal challenging order dated 03/08/2016 passed by the Himachal Pradesh Electricity Regulatory Commission (“**the State Commission**”) in Petition No.9 of 2016. There is a delay of 83 days in filing the appeal. Hence, in this application the Appellant has prayed that the said delay be condoned.

2. In the application, following explanation is offered for filing the appeal after delay of 83 days:

“3. That the impugned Order has been passed on 03/08/2016. The Appellant has received a copy of the Order on 09/08/2016. Hence, the 45 days period would expire on 23/09/2016. The Appeal

has been filed on 15/12/2016 with delay of approximately 83 days.

- 4. Appellant took about three weeks time to collect the files and documents connected to the proceedings from their advocate in Himachal Pradesh. Since the Appellant's head office is in Hyderabad, the plant in Chamba had to send the documents to the head office for their scrutiny and necessary advice.*
- 5. That around 01/09/2016, after going through the order dated 03/08/2016, and because of multiplicity of past litigations, Appellant began collating all the relevant documents for each of the previous proceedings. Due to incomplete documents with the Appellant at Hyderabad, the plant at Chamba was further requested to send all the connected documents and files relating to each proceeding initiated by the Appellant in the past before the State Commission.*

6. *After collecting and collating all the files and past proceedings, Appellant contacted his advocate in New Delhi on 22/09/2016 and sent the necessary set of documents which were received in the office of the advocate on 26/09/2016. The advocate, after perusing through the order dated 03/08/2016 and documents sent by the Appellant, advised the Appellant to file an appeal against the order dated 03/08/2016. However, due to complexity of issues, it was further advised that an opinion may be obtained from a senior advocate in respect of the order dated 19/09/2015 since more than a year had elapsed in respect of the said proceedings. This process took about three weeks time due to complexity of issues and multiplicity of documents and past proceedings.*

7. *That as per advice of the counsel, an opinion was sought from the senior advocate who advised that the Appellant should file two appeals against both the orders i.e. order dated 19/09/2015 in Petition*

No.198/2014 as well as order dated 03/08/2016 in Petition No.9/2016. The said opinion was given on 02/11/2016 due to intervening Diwali holidays.

- 8. That thereafter, the counsel drafted both the appeals and sent it to the Appellant for their approval and necessary comments on 21/11/2016, who also sent it further to their local advocate appearing before the State Commission for his necessary comments. Ultimately, the Appellant as well as their local advocate sent revised drafts of the appeals back to the counsel on 08/12/2016.*
- 9. That due to large number of annexures and documents and because many of the annexures had to be re-typed, the appeal has been filed by the Appellant on 15/12/2016 after taking due care of the rules and procedures prescribed by the Hon'ble Tribunal. From the above, it can be ascertained that the Appellant has been diligently and bonafidely pursuing the appeal and has been taking steps to file the same before this Hon'ble Tribunal at the*

earliest, albeit, due to circumstances described above, the Appellant has been able to file the same with delay. This delay was neither intentional nor was it in the interest of the Appellant to have caused any such delay. It would therefore be in the interest of justice that this Hon'ble Tribunal be pleased to condone the said inadvertent delay."

3. We have heard Mr. Buddy Ranganadhan learned counsel appearing for the Appellant. Counsel has reiterated the above explanation. Counsel submitted that sufficient cause has been made out by the Appellant. Counsel submitted that grave and irreparable harm will be caused if the delay is not condoned. There is no deliberate inaction or negligence on the part of the Appellant and hence the delay may be condoned.

4. Ms. Swapna Seshadri learned counsel appearing for Respondent No.2 has opposed the application. She submitted that no sufficient cause has been made out by the Appellant. The file kept moving from one table to another. The Appellant is guilty of

inaction and lackadaisical approach and therefore application be rejected.

5. The State Commission has also opposed the application on similar grounds.

6. In our opinion, the Appellant has given acceptable explanation which we have quoted hereinabove. It is difficult for us to come to conclusion that the Appellant is guilty of any inaction or the Appellant's conduct lacks *bona fide*. The explanation appears to be genuine and hence, in the interest of justice we condone the delay of 83 days in filing the appeal. The application is accordingly disposed of.

7. Registry to number the appeal and post the appeal for admission on **09th October, 2017.**

(I. J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson