

**Before the Appellate Tribunal for Electricity  
( Appellate Jurisdiction )**

IA No. 64 of 2008 in Appeal No. 68 of 2008  
and  
IA No. 65 of 2008 in Appeal No. 69 of 2008

Dated: 27<sup>th</sup> November, 2008

Present : Hon'ble Mrs. Justice Manju Goel, Judicial Member  
Hon'ble Mr. H.L. Bajaj, Technical Member

**A. No. 68 of 2008:**

Multiplex Association of India ... Appellant  
Versus  
1. Maharashtra Electricity Regulatory Commission and  
2. Tata Power Co. Ltd. (TPC) ... Respondents

**A. No. 69 of 2008:**

Multiplex Association of India ... Appellant  
Versus  
1. Maharashtra Electricity Regulatory Commission and  
2. Reliance Energy Ltd. ... Respondents

Counsel for the Appellant(s) : Mr. Venkatesh Dhon, Mr. M. G.  
Ramachandran, Mr.. Manjul Dahiya,  
Ms. Suruchi Suri, Mr. Ameet  
Naik and Ms. Madhu Chaudhary

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Mr. Aupam Verma and Ms. Shobana  
Masters for Respondent No.2, TPC  
Mr. Buddy A. Ranganadhan for Resp.  
No.1, MERC  
Ms. Smieeta Inna for REL

## **ORDER**

1. These are two applications for condonation of delay. Both the applications are similar and the delay in filing of the two appeals are also similar. So are the grounds pleaded for condonation of delay. Hence the two applications are heard together and are being disposed of by this common order. For the sake of convenience, we are taking up the facts of IA No. 64 of 2008. The delay in filing the appeal is of 288 days. The order in challenge in the appeal is the tariff order passed on ARR and tariff petition for the period of 2007-08 to 2009-2010 filed by the respondent No. 2 namely the Tata Power Company Limited. While making the tariff design vide an order dated 30.4.2007, the Maharashtra Electricity Regulatory Commission (MERC) inserted a new tariff category LT-5, which was made applicable to Multiplexes and Shopping Malls falling under the low tension tariff having sanctioned load of 20 kW ( hereinafter referred to as the new category). Subsequently by the clarificatory order dated 26.09.2007, the new category was extended to single ownership establishment like Shoppers Stops and Shop Rite, Spencer's etc. which has the sanctioned load above 20 kW. The MERC had similarly introduced LT-9 category for the Shopping Malls and Multiplexes within the area of Reliance Energy Limited and had extended the applicability of LT-9 to Shopping Malls and Multiplexes receiving supply at HT voltage

which were previously categorized at LT-2. On two appeals filed by M/s. Inorbit Mall (India Pvt. Ltd.) and M/s. Vasudev C. Wadhva Construction, this Tribunal vide order dated 26.11.2007 directed that the two appellants be heard on the issue on the applicability of LT-9 category to them. While the respondent No. 1 proceeded to hear the two aforesaid appeals, this Tribunal vide order dated 19.12.2007 set aside the order creating the new category LT-9 on an appeal filed by M/s. Spencer's Retail Limited. The present appeal challenges the creation of LT-5 category on the tariff petition of the respondent No. 2 by filing this appeal. The appeal is presented on 14.03.2008 and is as such highly belated. It is contended by the appellant that it expected the MERC to withdraw the new category altogether in view of the fact that the new category have been withdrawn for the distribution companies MSEDCL as well as Reliance Energy Limited and therefore did not approach this Tribunal with an appeal. However, the respondent No. 2 insisted on billing the appellant as per the new category in the area of respondent No. 2 and the respondent No. 2 has not extended the benefit of the order of this Tribunal to the appellant which has compelled the appellant to approach this Tribunal.

2. The appellant has filed the other appeal being No. 69 of 2008 against an order of MERC creating the LT-9 category for the area of the Reliance Energy Limited by which the appellant has

been made liable for the higher rates applicable to the new category. The application for condonation of delay filed in this appeal is IA No. 65 of 2008. Similar grounds for condonation of delay have been pleaded in IA No. 65 of 2008.

3. M/s. Tata Power Company Limited, the respondent No. 2 has not filed any reply to the application of condonation of delay. However, M/s. REL opposed the application for condonation of delay.
4. The facts mentioned above show that the appellant could expect the benefit of this Tribunal's earlier order setting aside the category of LT-9 in the appeal filed by Spencer's to percolate to it. This has, however not happened. It is not proper to encourage litigation. It is not the law that people should rush to the Court without making an effort for resolution of the disputes at their own level. We can take judicial notice of the facts that this new category of LT-9, which is parallel to the new category of LT-5 have been subject matter of various other appeals. All these appeals were allowed by this Tribunal. If the appellant is situated similarly with the other consumers falling in LT-9 category, it was only fair that the respondent No. 2 in these two appeals extended the same relief to the appellant.
5. On behalf of the respondent, M/s. Reliance Energy Limited, it is submitted that the tariff order has come into effect from 1<sup>st</sup>

June, 2008 and further that ARR for the Financial Year 2008-09 has also been approved. It is submitted further that in case the appeal is allowed, it would seriously affect the cash flow of the respondent No. 2. The respondent No. 2 also claims that there is no parity between the case of the present appeal and the case of the earlier appeals like Spencer's Retails Limited and Inorbit Mall.

6. Without making any comments on the merit of the case, we feel that the delay in making this appeal can be condoned in view of the fact that a large number of consumers falling under the new category have got relief from this Tribunal and it was natural for the appellant to wait for similar relief to come to it without appealing against the impugned order. The prejudice, if any, to the cash-flow to the respondent can be taken care of, in case the appeal is allowed, at the time of granting the relief. Accordingly we allow application for condonation of delay in Appeal No. 68 and 69 and allow both the IAs No. 64 of 2008 and 65 of 2008.

**( H.L. Bajaj )**  
**Technical Member**

**( Justice Manju Goel )**  
**Judicial Member**

