

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

**IA No. 1763 of 2019IN
DFR No. 2305 of 2019**

Dated: 19th December, 2019

**Present: Hon'ble Mrs. Justice ManjulaChellur, Chairperson
Hon'ble Mr. S.D. Dubey, Technical Member**

In the matter of:

PEL Power Ltd.	Versus	...Appellant(s)
Central Electricity Regulatory Commission &Anr.		...Respondent (s)

Counsel for the Appellant(s) : Anand K. Ganesan
SwapnaSeshadri
AshwinRamanathan
Utkarsh Singh for App 1

Counsel for the Respondent(s) : SuparnaSrivastava for R-2

ORDER

1. This is an Application seeking for Condonation of delay of 148 days in filing the Appeal against the Impugned Order dated 08.03.2019 passed in Petition No. 92/MP/2015 by the Central Electricity Regulatory Commission.
2. The learned counsel appearing for the Applicant/Appellant submitted that in the year 2011 the transmission system in issue was not required for the Applicant/Appellant in view of the Appellant being unable to obtain the Consent for Establishment (CFE) from the Pollution Control

Board. This non-issuance of the CFE was beyond the control of the Applicant/Appellant and therefore a force majeure under the Bulk Power Transmission Agreement entered into between the parties.

3. The learned counsel appearing for the Applicant/Appellant further submitted that a petition being petition No. 315/MP/2013 was filed before the Central Commission seeking directions on the declaration of force majeure and also return on the bank guarantee retained by Powergrid.
4. Vide Order dated 12/07/2016, the Central Commission disposed of the said petition holding that the Applicant/Appellant had acted bona fide, however, it also held that the issue whether any charges are liable to be paid by the Applicant/Appellant would be decided based on the decision in other proceedings relating to relinquishment of open access capacity and levy of relinquishment charges if any.
5. Aggrieved by the order dated 12/07/2016, the Applicant/Appellant had preferred an appeal being Appeal No. 266 of 2016, which is pending before this Tribunal. The issue of return on bank guarantee to the Appellant and the declaration of force majeure in the present case is the issue in the said appeal.
6. In the circumstances, upon passing of the Impugned Order, the officers of the Applicant/Appellant were of the view that the Impugned Order does not create any liability on the Appellant and since the issue is already pending in Appeal No. 266 of 2016, no separate action was required to be taken in the case. Thereafter, on 20/05/2019, Powergrid issued a circular determining the relinquishment charges for each of the generator. For the Applicant/Appellant, Powergrid determined the LTA

effectiveness in the year 2019 and determined the relinquishment charges as Rs. 90.14 crores. As per the Appellant, the said determination is also erroneous and there is no basis for the same.

7. The Applicant/Appellant was initially of the view that the determination of relinquishment charges need to be challenged before the Central Commission. They obtained advise of the legal counsel in the first week of June, 2019. Due to summer vacation, the advocate could go through the matter in detail and only advise in the second week of July, 2019.
8. Based on subsequent discussions with the Applicant/Appellant, the advocate advised to challenge the Impugned Order by way of separate appeal in the Tribunal and the principles for the levy of relinquishment charges have been settled by the Central Commission.
9. In the meanwhile, Appeal No. 266 of 2016 was heard by this Tribunal on 29/07/2019 and was listed for hearing the Respondents on 26/08/2019. However, the Advocate advised that in case Appeal No. 266 of 2016 was allowed, the fresh appeal would become infructuous and it would not be advisable to postpone the filing of the appeal till the decision in Appeal No. 266 of 2016.
10. In the circumstances, the Applicant/Appellant on 27/08/2019 decided to file the appeal before this Tribunal challenging the Impugned Order dated 08.05.2019. The appeal was accordingly drafted and forwarded to the Appellant on 06/09/2019. The Appeal was thereafter finalized and filed before this Tribunal on 20.09.2019.
11. The learned counsel appearing for the Applicant/Appellant further submitted that in view of the above facts and circumstances the delay is

not deliberate and is on account of bona fide reasons. The application is bona fide and in the interest of justice, the delay of 148 may kindly be condoned.

12. We have heard the learned counsel appearing for Applicant/Appellant.
13. In view of the above, we find that the reasoning assigned in the application explaining the delay in filing the Appeal is satisfactory, the delay is bonafide and unintentional. Hence, the delay of 148 days in filing the appeal is condoned. IA is allowed.
14. The IA Being IA No. 1763 of 2019 stands disposed of.

List the main matter on 26.03.2020.

(S.D. Dubey)
Technical Member
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(Justice ManjulaChellur)
Chairperson