

**BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY
Appellate Jurisdiction, New Delhi**

Interlocutory Application No. 45 2008 in AFR No. 68 of 2008

Dated this 18th day of March, 2008

**Coram : Hon'ble Mr. H. L. Bajaj, Technical Member
Hon'ble Ms. Justice Manju Goel, Judicial Member**

IN THE MATTER OF:

Bharat Coking Coal Ltd.

Koyla Bhavan, Koyla Nagar,
DHANBAD – 826 006
Jharkhand

... Appellant

Versus

1. DLF Power Ltd.

DLF Galleria, 12th Floor, DLF City,
Phase – IV,
Gurgaon – 122 002.

2. Jharkhand State Electricity Regulatory Commission

2nd Floor, Rajendra Jawan Bhawan-Cum-Sainik Bazar,
Main Road,
Ranchi – 834 001.

... Respondents

For the Appellant(s) : Mr. Anip Sachthey, Advocate along
with Mr. Mohit Paul, Advocate

For the Respondent(s) : No appearance

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IA Nos. 45 & 46 of 2008 in AFR No. 68 of 2008

ORDER

Ms. Justice Manju Goel, Judicial Member

1) On 12th March, 2008 we dismissed the application for condonation of delay for reasons to follow. This order is to place the reasons on record.

2) The appeal is directed against the order dated 04th November, 2006 passed by Jharkhand State Electricity Regulatory Commission, Ranchi. The appeal has been filed on 05.01.08 after a delay of 385 days. The interlocutory application No. 45 of 2008 for condonation of delay was presented along with the appeal. The application says that the appellant placed the impugned order dated 04.11.06 before the management located at headquarters after it had received advice from the advocate and the management decided to file its appeal after making further queries. It further says that because of some renovation in the office of the advocate further delay was caused. The delay is said to be un-intentional and due to bona fide reasons. No affidavit was filed in support of the petition. There were no details in the petition in respect of the aforesaid averments. The learned counsel for the petition offered to file 'additional affidavit' which was sworn on 01st March '08. In this affidavit dates have been given as to how the time was spent between the impugned order of 04.11.06 to the filing of the appeal on 05.03.08. These dates are as under:

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3) The copy of the impugned order was served on appellant on 07.11.06 which was received by the receipt clerk at Dhanbad. The concerned officers sometime in December, 2007 received a copy of the impugned order and forwarded the same to the advocate for necessary advice. The advocate wanted the presence of the officers in Delhi. In March, 2007, the officers of BCCL came to Delhi when the advice was received to challenge the order in writ proceedings before the High Court of Jharkhand. Later in May, 2006, another advice was received for filing the appeal. After the summer vacation was over appeal was drafted in July, 2007 and sent to Dhanbad for approval. The appeal was received back in middle of August, 2007 whereon a final copy was prepared and again sent to Dhanbad. The same was received back with affirmation in November, 2007. The draft towards court fee was prepared on 04.12.07 and received in Delhi on 20.12.07. The appeal was eventually filed on 05.01.08.

4) There is absolutely no explanation in the affidavit as to how this long gaps took place. The whole story indicates that the appellant could not have cared less about either about time or about filing of the appeal. Why no one could visit Delhi between December 2006 to March 2007 to receive the advice from the advocate is not explained. Nor is it explained even after the advice to file the appeal was received in May, 2006, why the same could not be drafted till July 2007? The story of the appeal being shuttled

between Dhanbad and Delhi at the leisure of the concerned officers and officials also indicate only lack of due diligence in handling the entire matter. Further, even after the appeal was drafted and finalized in November 2007, it took two months to present the same in this Tribunal.

5) The appeal before this Tribunal is required to be filed within 45 days from the date on which copy of the order made by the Commission is received by an aggrieved person. The proviso says that the appeal can be entertained after the expiry of the 45 days period if there is sufficient cause for not filing the appeal within that period. The relevant provision is quoted below:

“111. Appeal to Appellate Tribunal.- (1)....

(2) Every appeal under sub-section (1) shall be filed within a period of forty five days from the date on which a copy of the order made by the adjudicating officer or the Appropriate Commission is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period

of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

.....

.....”

6) The words ‘sufficient cause’ used in the proviso should be understood in the manner in which the same words appearing in section 5 of the Limitation Act is understood.

7) We are aware of the judgment of Supreme Court advising the courts to adopt a liberal approach while construing the explanation “sufficient cause” appearing in section 5 of the Limitation Act. The term “sufficient cause” has to be understood in a pragmatic manner and a pedantic approach calling upon the party to explain “each days delay” has to be avoided. However, the present case is not one in which the delay in presentation of the appeal can be condoned even taking the most lenient view possible. Accordingly, we have been constrained to dismiss the application for condonation of delay as we have ordered on 12th March, 2008.

(Ms. Justice Manju Goel)
Judicial Member

(H. L. Bajaj)
Technical Member