

**M/s Kangra Hydro Power Ventures Pvt. Ltd. Versus the
HPSEBL and Another.**

**IA No. 199 of 2022
in
Filing No. 198 of 2022**

22.02.2023

Present: Sh. Vinay Mehta, Ld. Vice Counsel for the Petitioner.
Sh. Surinder Saklani, Ld. Counsel alongwith Sh.
Kamlesh Saklani, Authorised Representative for the
Respondent No.1.
Ms. Kamlesh Shandil for the Respondent No. 2.

DAILY ORDER

Rejoinder to the application under Section 5 of the Limitation Act filed by the Petitioner.

No reply to the application for condonation of delay is intended to be filed by the Respondent No. 2, as evident from the letter dated 06.02.2023 of the Project Director-cum- Deputy CEO, HIMURJA.

We have heard the parties on the application for condonation of delay. It is mentioned in the application under Section 5 of the Limitation Act that the Commission disposed of the Petition No. 73 of 2019 vide order dated 05.09.2022 and on perusal of the order, it was gathered that the Commission has erroneously calculated the Industrial Subsidy available to the Petitioner. Accordingly, the Petitioner made a representation on 04.10.2022 to the Respondent No. 1 for filing joint Review Petition but no response was given by the Joint Petition No. 1/ HPSEBL. It is also mentioned that after waiting for a considerable time, the authorized representative of the Petitioner, visited Shimla and got the Review Petition drafted alongwith the application for condonation of delay. It is

averred that the delay is neither intentional nor willful and rather, the same has occurred due to the reasons beyond the control of the Petitioner and that no prejudice would occur if the delay in filing the Review Petition is condoned. The application is supported by an affidavit.

The application has been contested that after receiving the order dated 05.09.2022, the replying respondent intimated the Petitioner on 28.09.2022 (Annexure N/A-1) that even after expiry of sufficient time, the Petitioner has not approached for execution of the Supplementary Power Purchase Agreement. Further, the Replying Respondent being satisfied with the order dated 05.09.2022 had requested the Petitioner for signing the SPPA as per the order dated 05.09.2022 but for the reasons best known to the Petitioner, no action as per order dated 05.09.2022 was taken and rather, the Petitioner vide e-mail dated 04.10.2022 conveyed its inability to sign the SPPA that the tariff of Rs. 3.53 per kWh as determined by the Commission is not acceptable. Further, that there was no occasion to wait for the response of the Respondent once the Respondent had conveyed the willingness to execute the PPA and therefore, there is deliberate and intentional delay in filing the review Petition and the explanation offered by the Petitioner is not genuine. Also that there is no provision in the Electricity Act, 2003 for the condonation of delay. The reply is also supported by an affidavit.

A careful perusal of e-mail dated 04.10.2022 shows that the Petitioner had requested the Respondent for filing joint Review Petition as Petition No. 73 of 2019 for approval of PPA had been filed together by the parties being joint Petition. It has not been disputed by the Respondent that they had not received the e-mail dated 04.10.2022. Since, a joint Petition for approval of PPA had been filed by the parties, the Petitioner had rightly approached the Respondent for filing joint Review Petition. Once, the Respondent had not agreed for filing the joint

Review Petition, the Petitioner had no option but to file the Review Petition individually. Hence, the delay is neither intentional nor deliberate. The application is duly supported by an affidavit. In the circumstances, there are sufficient reasons to condone the delay for filing Review Petition and therefore, the application is allowed and delay is ordered to be condoned. The application for condonation of delay is disposed of and ordered to be tagged to main file.

Let reply to the review Petition be filed within two weeks with advance copy to the opposite party and the Petitioner shall also file rejoinder on receipt of reply well before the next date.

List on 22.03.2023 at 11:00AM for hearing.

-Sd-

-Sd-

-Sd-

(Shashi Kant Joshi) (Yashwant Singh Chogal) (Devendra Kumar Sharma)
Member Member (Law) Chairman