

COURT-1

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

DFR No : 101 of 2025 & IA No. 670 OF 2025 & IA No. 669 OF 2025 & IA
No. 407 OF 2025

Dated: 26th May, 2025

Present : Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon`ble Ms. Seema Gupta, Technical Member (Electricity)

In the matter of:

New Delhi Municipal Council Appellant(s)

Versus

Indraprastha Power Generation Company Limited & Ors. Respondent(s)

Counsel on record for the Appellant(s) : Saad Mustafa Shervani
for App. 1

Counsel on record for the Respondent(s) : Anand K. Ganesan
Swapna Seshadri
Amal Nair
Shivani Sharma
Devyani Prasad
for Res. 1

ORDER

By order in IA No. 1380, 1381 and 1379 of 2023 in DFR No. 107 of 2023 and IA Nos. 431 and 432 of 2023, this Tribunal had condoned the delay of 276 days in filing the appeal on condition that the Appellant paid costs of Rs. 50,000/- to the Central Transmission Utility of India Limited within four weeks from the date of the order, and filed proof of payment in the Aptel Registry within two weeks thereafter. Since the Appellant did not pay the costs, this Tribunal had, in its order in DFR No. 107 of 2023 and IA No. 1380 of 2023 and IA No. 432 of 2023 dated 05.10.2023, observed that, admittedly, costs had not been paid till date nor any application

seeking extension of time for payment was filed; and, in such circumstances, they saw no reason to entertain the appeal. Accordingly, the appeal stood rejected.

Aggrieved thereby, the Appellant carried the matter in appeal to the Supreme Court in Civil Appeal Diary No. 22970 of 2024, along with an application to condone the delay in filing the appeal. On the said Civil Appeal being listed before the Supreme Court on 09.08.2024, Learned Senior Counsel appearing on behalf of the Appellant sought permission to withdraw the appeal and, consequently, the said Civil Appeal was dismissed as withdrawn by the Supreme Court.

Thereafter the Appellant herein filed Review Petition No. 54 of 2024 before the DERC along with an application to condone the delay of 1260 days in filing the review petition. In its order dated 16.01.2025, the DERC held that the review petitioner had failed to establish sufficient cause to condone the inordinate delay of 1260 days in filing the review petition. The IA for condonation of delay was dismissed and the review petition stood rejected on the ground of limitation without going into the merits of the case. Aggrieved thereby the present appeal.

Mrs. Swapna Seshadri, Learned Counsel for the first Respondent, would raise objections to the maintainability of the present appeal, and submit that the present appeal is liable to be rejected as not maintainable on two grounds, firstly having filed an appeal against the order of the Commission, before this Tribunal in DFR No. 107 of 2023, the Appellant could not thereafter have filed a review petition before the DERC; and, secondly, no appeal lies to this Tribunal against an order passed by the Commission rejecting the review petition.

Mr. J. Amal Anand, Learned Counsel for the Appellant, would, however, contend that Section 120(1) of the Electricity Act stipulates that this Tribunal shall not be bound by the procedure laid down in the CPC,

but shall be guided by principles of natural justice and subject to other provisions of the Electricity Act, the Appellate Tribunal shall have the powers to regulate its own procedure; consequently, the provisions of the CPC are inapplicable; and the appellant is entitled to file the present appeal notwithstanding the provisions of Order 47 Rule 1(a) or Order 47 Rule 7 CPC.

We find force in both the objections raised to the maintainability of the present appeal, by the Learned Counsel for the first respondent. Under Section 94(1) of the Electricity Act, the Appropriate Commission shall, for the purposes of any inquiry or proceedings under the Electricity Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of matters enumerated thereunder ie in Clauses (a) to (g). Clause (f) of Section 94(1) relates to the powers of the Commission to review its decisions, directions and orders. Consequently, in reviewing an order passed by it earlier, the Appropriate Commission has the powers of a Civil Court under the provisions of the Civil Procedure Code which would include Order 47 Rule 1 (a) thereof.

Order 47 Rule 1(a) of the Civil Procedure Code enables a person aggrieved by a decree or order, from which no appeal has been preferred, to file a review petition. Having filed an appeal before this Tribunal which was rejected for non-payment of costs, and having withdrawn the Civil Appeal filed thereagainst before the Supreme Court, the review petition filed by the Appellant before the DERC fell foul of Order 47 Rule 1(a) CPC. As the said provision disabled the Commission from entertaining a review petition after the Appellant had exercised its right of appeal against the original order passed by it, the Commission could not have entertained the review petition filed by the Appellant after their having availed their appellate remedy. That the Commission dismissed the review petition, on

the ground of inordinate delay of 1260 days in filing the review petition, is yet another ground to reject the appeal preferred thereagainst.

Order 47 Rule 7 CPC stipulates that an order of the Court rejecting the application for review shall not be appealable. No procedure, contrary to Order 47 Rule 7 CPC, has been prescribed by this Tribunal, in the exercise of its jurisdiction under Section 120(1) of the Electricity Act, nor has the Appellant been able to show that any procedure under Section 120(1), contrary to what is stipulated in Order 47 Rule 7 of the Civil Procedure Code, has been prescribed by this Tribunal. In the absence of any procedure having been prescribed by it, this Tribunal must adopt a fair, rational and transparent procedure, and while it may not be bound by the provisions of the Code, it can nonetheless choose to follow the fair and transparent procedure stipulated in the Civil Procedure Code, till it frames a fair procedure, under Section 120(1) of the Electricity Act, on its own. What Section 120(1) of the Electricity Act stipulates is only that this Tribunal shall not be bound by the procedure laid down in the CPC. That does not mean that, in the absence of any procedure having been prescribed by it, this Tribunal is disabled from following the fair and well accepted procedure laid down in the Civil Procedure Code.

In **A.A. Haja Muniuddian vs. Indian Railways: 1992 (4) SCC 736** the scope of Section 18(1) of the Railway Claims Tribunals Act, 1987 (a provision analogous to Section 120(1) of the Electricity Act, 2003) fell for consideration, and the Supreme Court held that nowhere in the Act was there any provision which ran counter to or was inconsistent with the provisions of the Code; although the Act and the rules do not provide for application of Order XXXIII of the Code, there was nothing in the Act or in the rules which precluded the Tribunal from following that procedure if the ends of justice so required; and Section 18(1) only said that the Claims Tribunal shall not be bound by the procedure laid down by the Code but

did not go so far as to say that it shall be precluded from invoking the provisions laid down by the Code even if the same was not inconsistent with the Act and the Rules.

In **Industrial Credit and Investment Corporation of India vs. Grapco Industries Ltd & Ors: 1999 (4) SCC 710**, the scope and prport of Section 22(1) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (a provision analogous to Section 120(1) of the Electricity Act, 2003) fell for consideration, and the Supreme Court observed that, when Section 22 said that the Tribunal shall not be bound by the procedure laid down by the CPC, it did not mean that it would not have jurisdiction to exercise powers of a Court as contained in the CPC; rather, the Tribunal can travel beyond the CPC, and the only fetter that was put on its power was to observe principles of natural justice.

Following the judgements of the Supreme Court, in **A.A. Haja Muniuddian vs. Indian Railways: 1992 (4) SCC 736** and **Industrial Credit and Investment Corporation of India vs. Grapco Industries Ltd & Ors: 1999 (4) SCC 710**,, this Tribunal, in **New Bombay Ispat Udyog Ltd. vs. Maharashtra State Electricity Distribution Co. Ltd & Anr. (Judgment in Appeal No. 55 of 2009 dated 06.05.2010)**, observed that Section 120(1) of the Electricity Act, 2003 merely stated that the Tribunal shall not be bound by the procedure laid down by the CPC; it did not preclude the Tribunal or prohibit it from invoking the provisions of the CPC in cases where it had not prescribed a procedure of its own; a careful perusal of the afore-said judgments made it clear that the provisions of Section 120(1) of the Electricity Act, 2003 was not enacted with the intention to curtail the power of the Tribunal with reference to the applicability of the Code of Civil Procedure to the proceedings before the Tribunal; on the contrary, the Supreme Court had clearly held that the words “*shall not be bound by*” do not imply that the Tribunal is precluded

or prevented from invoking the procedure laid down by the CPC; it further said the words “*shall not be bound by the procedure laid down by CPC*” only implied that the Tribunal can travel beyond the CPC and the only restriction on its power was to observe the principles of natural justice.

This Tribunal further observed that, under those circumstances, the submission of the Appellant that the person aggrieved was entitled to challenge any order passed by the Commission including the dismissal order in the review petition since the right of Appeal under Section 111 of the Electricity Act, 2003 was unrestricted and unfettered, was misplaced; the right of appeal provided to an aggrieved person under Section 111 of the Electricity Act, 2003 could not be read in isolation as the said Section should necessarily be read harmoniously along with the other provisions in the Electricity Act, 2003 namely Section 120 of the Act; a conjoint reading of both Section 111 along with Section 120 would make it clear that the right of Appeal available to an aggrieved person under Section 111 of the Electricity Act 2003 is subject to the procedure adopted by this Tribunal under Section 120 of the Electricity Act, 2003, and as such it cannot be said that the Tribunal is precluded from invoking the procedure and provisions contemplated under the CPC; and the Tribunal is well within its right to adopt its own procedure as well as the procedures contemplated under the CPC.

In the light of the law declared by the Supreme Court, in **A.A. Haja Muniuddian vs. Indian Railways: 1992 (4) SCC 736** and **Industrial Credit and Investment Corporation of India vs. Grapco Industries Ltd & Ors: 1999 (4) SCC 710**, and by this Tribunal in **New Bombay Ispat Udyog Ltd. vs. Maharashtra State Electricity Distribution Co. Ltd & Anr. (Judgment in Appeal No. 55 of 2009 dated 06.05.2010)**, this Tribunal is not disabled from applying the principles laid down in Order 47

Rule 7 CPC while examining the maintainability of an appeal filed under Section 111 of the Electricity Act.

Since the review petition was rejected by the Commission in the present case, no appeal would lie against such an order in view of Order 47 Rule 7 CPC. On both the afore-mentioned counts, the present appeal must be held to be not maintainable, and necessitates rejection.

Viewed from any angle, we see no reason either to entertain the present appeal or to interfere with the impugned order passed by the Commission. The appeal fails and is, accordingly, dismissed.

(Seema Gupta)
Technical Member (Electricity)
mk/dk

(Justice Ramesh Ranganathan)
Chairperson