IN THE HARYANA ELECTRICITY REGULATORY COMMISSION
BAYS NO. 33 -36 , SECTOR – 4, PANCHKULA – 134112, HARYANA

Case No. HERC/RA – 1 of 2014

Sheetal International Pvt. Ltd .... Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd. (DHBVNL) …. Respondent

Quorum

Shri R.N. Prasher, Chairman
Shri Jagjeet Singh, Member
Shri M.S. Puri, Member

Present:

On behalf of the Petitioner: Shri Ashish Chopra, Advocate.

On behalf of the Respondent: Shri Varun Pathak, Advocate.

Date of Hearing: 08/07/2014
Date of Order : 22/07/2014

In the matter of:

Review petition / application filed by Sheetal International Pvt. Ltd. (hereinafter referred to as the Petitioner) under section 94 of the Electricity Act, 2003 read with Regulations 78,85,86 and 91 of the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 seeking for review of the order dated 18.08.2009 passed by this Commission in PRO – 4 of 2009.

And in the matter of:

Representation dated 03.08.2007 & 08.08.2007 from Aura Resident's Welfare Association, Gurgaon, regarding imposition of alleged exorbitant electricity charges on residents of M2K Aura Colony by the builder M2K Infrastructure Pvt. Ltd. (New Delhi) and representation dated 26.07.2007 made by Sheetal Welfare Resident's Association (Regd.) Gurgaon, regarding inadequate distribution system for supply of electricity in Sheetal Enclave, Mayfield Gardens.

ORDER

1. The Petition has been filed seeking review of this Commission's order dated 18.08.2009 in Case No. HERC/PRO – 4 of 2009.

2. The Petitioner has submitted that they were granted license by the Town and Country Planning Department, Haryana for developing a residential colony over an area measuring about 304 acres in village Wazirabad and Bindapur, Sectors 47, 50, 51, 52 and 57 Gurgaon under 'Mayfield Garden'. The Petitioner Company was subsequently spun off into five different entities i.e. Sheetal International Pvt. Ltd., New India Developers Pvt. Ltd., North Star Apartments Ptv. Ltd., Satsudha Investment Pvt. Ltd and Ajay Impex Pvt. Ltd. Accordingly all the five companies got engaged in setting up of the Colony in terms of the License granted by the Town and Country Planning Department, Haryana. It was further submitted that Sheetal Residents Welfare Association, Gurgaon submitted a representation to this Commission alleging inadequate electricity distribution system in July, 2007 followed by a similar representation in August, 2007. This Commission passed an interim order dated 20.12.2007 and a final order dated 18.08.2009. The operative part of the said order (s) are reproduced below:

> *"After examining the reply of the parties, the Commission provided an opportunity of hearing to all the concerned parties before passing the*

instant order. The hearing was held in the office of the Commission at Panchkula on 17.12.2007. M/s Sheetal International Pvt. Ltd, New Delhi, DHBVNL and the applicant Residents Welfare Association were present in the hearing. After hearing all the concerned parties present, the Commission issued interim order dated 20.12.2007. The operating part of the interim order is as follows:-

1. M/s Sheetal International Pvt. Ltd. shall immediately approach DHBVNL, Hisar and apply for the release of additional load of 2 MVA for M2K Aura Complex and Blossom - 1 Complex, Gurgaon.

2. The company shall erect 11 KV feeder along with all the required switch gear from 66 KV S/Stn.Sector-38, Gurgaon to these colonies within one month.

3. The residents will be provided electricity connections from this system by DHBVNL immediately after the system is erected and commissioned.

4. A report in regard to the erection and commissioning of 11 KV feeder as above and electrification of Aura & Blossom-1 Complex shall be submitted by the company and DHBVNL to the Commission by 31.01.2008.

5. Prior to the erection and commissioning of the 66 KV sub-station, the company shall not add or commission any further load beyond the provision agreed as above by way of additional occupancy or otherwise in the project.

6. M/s Sheetal International Pvt. Ltd., New Delhi shall immediately arrange for providing adequate land for the 66 KV sub-station to

DHBVNL/HVPNL. They will jointly work out the arrangement within one month, plan a time schedule for handing over possession and erection of the sub-station and submit a report to the Commission before 31.01.2008. Compliance as above shall also be reported by M/s Sheetal international Pvt. Ltd. by 31.01.2008.

7. M/s Sheetal International Pvt. Ltd. accepted existence of some deficiencies in the electrical distribution system of Sheetal Enclave of Mayfield Gardens, Gurgaon. They will rectify all the defects and erect LD system conforming to the standard design, specifications and the required safety norms.

8. The Resident's Welfare Associations of M2K Aura and Sheetal Enclave shall also submit a status report on the above points to the Commission by 31.01.2008.

Feedbacks on actions taken were received from M/s Sheetal International Pvt. Ltd, DHBVNL and the Residents Welfare Associations. The following actions taken have been reported by the parties so far:-

1. DHBVN approved an additional load of 2.5 MVA for the project. The 11 KV feeder for supply of electricity to the referred colonies was completed and the system had been commissioned for supplying additional load of 2.5 MVA.

2. The release of electricity connection by DHBVNL to the residents who applied for the same was in progress. Aura Resident Welfare Association confirmed that the power from the licensee had been provided in the colony.

3. M/s Sheetal International Pvt Ltd, Gurgaon had not handed over possession of adequate land for construction of 66 KV S/Stn and no further action was reported regarding the time schedule for handing over possession of land and erection of the S/Stn despite clear directions given by the Commission in this respect.

4. Regarding deficiencies in the distribution system in Sheetal Enclave, the licensee DHBVNL reported that the deficiencies had been attended by the colonizer. However, Sheetal Resident Welfare Association reported in their feedback that the defects still existed and are yet to be rectified and that the same could cause any untoward incident.

Subsequently, M/s Sheetal International Pvt. Ltd., New Delhi informed the Commission on 17.01.2008 that the company stands pooled together with 19 other companies, named in the reference, to form an AOP (Association of Persons), dated 05.08.1996 namely 'May Field Projects' to develop a colony namely May Field Garden. The company further submitted that since the whole project and its parts are the liability of all AOP members, M/s Sheetal International Pvt. Ltd., Gurgaon is not responsible for any acts and omissions of other constituent companies in relation to the order passed by the Commission, only on the basis of being the licensee company. In consideration of the above submission, the Commission made the position clear vide its communication to M/s Sheetal International Pvt. Ltd., Gurgaon by memo No. 3682-84/HERC/T-132 dated

20.02.2008 that agreement for joint development dated 05.08.1996 with other partners has no legal relevance to the Commission unless it is recognized by the licensing authority i.e. DTCP, Haryana and in the given situation, the company being the licensee is liable to be held responsible before the Commission for any deficiency in electrical infrastructure as per the license condition.

Subsequently, through a communication to the Commission dated 15.7.2008, M/s Aura Residents Welfare Association expressed apprehension that the company had not commenced erection of 66 KV S/Stn, whereas the associate company M/s M2K Infrastructure Pvt. Ltd. had started construction of six new floor in the Aura Complex which will add to the existing power load without commissioning of 66 KV S/Stn. The Commission as a follow up measure, again directed M/s Sheetal International Pvt. Ltd. vide memo dated 21.01.2009, that prior to the erection and commissioning of 66 kV S/Stn., the company will not add or cause any further load beyond that agreed during the hearing, by way of additional occupancy or otherwise in the project.

The Commission has examined the case in the light of the relevant provisions of the statute and the instructions on the subject and given the benefit of hearing to all the concerned parties. To put the case in its correct perspective the Commission has relied on section 2(8) of Electricity Act, 2003 which defines Captive generating plant. Additionally, Section 9 of the Electricity Act has also been referred to which deals with the utilization of captive

generation through dedicated transmission lines and open access facilities. It is observed that the above sections do not provide for distribution and sale of electricity without license from the captive plant as being carried out by the builder. While a license is not required for installing a captive generating set, no distribution of power can be made without obtaining a license from the commission. Relevant sections applicable for distribution licensing are Sections 12, 13 & 14 of EA 2003. Further, as per section 62 of the Act, the Commission is required to determine tariff applicable for the licensees. In this case, the builder is not using the captive generation for his own purposes but is resorting to distribution of electricity to the residents without a valid license and its sale at its own determined rates which is clear contravention of section 12, read with section 62 of the Act. Thus the pleas taken by the builder in its submissions do not find any support from Electricity Act, 2003.

Consequently, the Commission orders that: -

1. M/s M2K Infrastructure Pvt. Ltd., New Delhi has not obtained any license from the commission for distribution of electricity. Therefore, under section 12 of Electricity Act, 2003, the company is not authorized to distribute any power to the residents from its own generators, captive gensets or otherwise and collect charges from the consumers till it qualifies for grant of distribution license and the same is granted to them by the Commission and tariff approved from the Commission.

2. Section 2(8) of the Act defines captive generating plant as, "a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such co-operative society or association". After hearing the parties it is evident that the gensets through which electricity is being supplied is not owned by the society or association.

In addition to the above Rule 3 (Requirements of captive generating plant) of the rules notified by the Ministry of Power, Government of India vide notification dated 8/06/2005 provides as under:-

> *(1) No power plant shall qualify as a 'Captive Power Plant' under section 9 read with clause (8) of Section 2 of the Act unless:-*
>
> *i) Not less than twenty six percent of the ownership is held by the captive user(s), and*
>
> *ii) Not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for captive use". Resultantly, the instant case does not qualify as captive power plant. It is a clear case of supplying / distributing power to the retail customer within the licensed area of supply of DHBVNL wherein licensing and tariff determination falls entirely*

within the jurisdiction of the Haryana Electricity Regulatory Commission. Therefore, this practice is in violation of the Electricity Act 2003 and Electricity Rules dated 8/06/2009 framed thereunder. Resultantly it should be discontinued without any further loss of time. The residents / flat owners, of the colony are at liberty to constitute a body/association of their own and run generating sets for their own consumption during the interim period till their demands for power are met with by the distribution licensee of the area i.e DHBVNL.

3. The Commission has taken serious note of the violation of its interim order and directs that no new premises/ flats shall be offered for occupation to the residents/ allottees in the May Field Projects without arranging for electricity connection from the existing distribution licensee.

4. M/s Sheetal International Pvt. Ltd. and DHBVNL shall ensure that all the deficiencies in the electrical distribution system of Sheetal Enclave of May Field Garden, Gurgaon are fully removed by the colonizer. The above exercise should be completed within six months from the date of issue of this order. Further, the developer shall erect LD system in all the residential areas of May Field Gardens with required rating transformers and associated equipments conforming to the standard designs, specifications and required safety norms as per the prevalent Indian Electricity Rules and obtain approval from appropriate authority (ies), before energization.

5. M/s Sheetal International Pvt. Ltd., New Delhi shall fulfill all its commitments as per their undertaking dated 14-12-2006, for providing required land for 66 kv S/Stn to the concerned power utility and for the erection of 66 kV S/Stn as per the load requirements of May Field Projects. The company shall hand over the said land for the substation and deposit the share amount to HVPNL within three months. HVPNL shall complete the construction of the substation within one year thereafter.

6. DHBVNL shall provide electricity connection to all the residents of the colony who have since occupied the premises and applied for electricity connection as per the provisions of Regulation No. HERC/12/2005 dated 26th July, 2005.

7. The Commission observes that different agencies are working in the field of urban development and providing services to the plot/ flat owners in Haryana. The Commission is of considered view that a coordinated effort of all the concerned agencies are required In order to streamline the activities so as to ensure better service to the consumer. Consequently, DHBVNL is directed to take up the issue with Director, Town and Country Planning (DTCP) to make adequate provisions in the licenses issued to the developers to ensure providing matching electrical transmission and distribution infrastructure by the developer commensurate with load requirements of the project in a time bound manner. DTCP may also send copies of the licenses issued by

them to the concerned power utilities for making necessary provisions in their plans".

3. Aggrieved, the Petitioner filed the present petition seeking review of the Commission's order dated 18.08.2009 and further prayed for staying the said order during the pendency of the Review Petition and / or issue appropriate directions to the authority concerned not to take steps that may be detrimental to the rights and interest of the Petitioner:

4. Reply filed by DHBVNL (the Respondent):

The answering Respondent in this case filed a reply dated 8.07.2014 through its Counsel (DSK Legal). The reply filed by the Respondent is briefly stated below:

1. " The present petition has been filed under the following provisions, namely:

- *Section 94 of Electricity Act, 2003 (hereinafter referred to as the "**Electricity Act**" or "**the Act**" for sake of brevity)*
- *Regulations 78, 85, 86 and 91 of Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 (hereinafter referred to as "**2004 Regulations**" for sake of brevity)*

2. The relevant provisions relied on for the purposes of present petition are reproduced as under:

"Section 94. (Powers of Appropriate Commission): -

(1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) discovery and production of any document or other material object producible as evidence;

(c) receiving evidence on affidavits;

(d) requisitioning of any public record;

(e) issuing commission for the examination of witnesses;

(f) reviewing its decisions, directions and orders;

(g) any other matter which may be prescribed.

(2) The Appropriate Commission shall have the powers to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate.

(3) The Appropriate Commission may authorise any person, as it deems fit, to represent the interest of the consumers in the proceedings before it.

Review of the decisions, directions, and orders

78(1) Within 30 days after making any decision, direction or order, the Commission may on its own motion or on the application of any party or person concerned review any decision, direction or order against which an appeal has been referred for the reasons set forth in sub-regulation (2) below.

(2) The Commission may review its orders or decisions if:

(a) there exists an error apparent on the face of the record; or

(b) any new and important matter of evidence was discovered which after the exercise of due diligence, was not within the knowledge of or could not be produced by the party concerned at the time when the order or decision was made; or

(c) for any other sufficient reason.

85. Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice or to prevent the abuse of the process of the Commission.

86. Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Act a procedure at variance with any of the provisions of these Regulations if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a matter or class of matters.

91. Subject to the provisions of the Act, the time prescribed by these Regulations or by order of the Commission for doing any act may be extended (whether it has already expired or not) or abridged for sufficient reason by order of the Commission." (Emphasis Supplied)

PRESENT REVIEW NOT PROPERLY INSTITUTED

3. It is submitted that the present review has been instituted against order dated 18.08.2009. A review petition can be filed before this Commission within a period of 30days. If there is any delay then the same can be condoned by this Commission, but for the purposes of condonation of such delay, an application has to be filed justifying sufficient cause. Under Regulation 91 sufficient cause has to be established before any condonation or relaxation of time period. In the present case there is a delay of 1642 days, which delay has not been condoned by this Hon'ble Commission. Infact, no separate application has been filed by the Petitioner seeking a condonation of delay and only a prayer for condonation has been asked with the rider that condone the delay if there is any. It is submitted that institution of the present review petition is not proper as there is no application for condonation of delay. Further, even the number of days of delay has not been counted and explained. The present petition deserves to be dismissed on this ground alone.

CONDONATION OF DELAY CAN ONLY BE FOR SUFFICEINT CAUSE

4. It is submitted that under Regulation 91 of 2004 Regulations, any delay can only be condoned if there is sufficient cause. The Hon'ble Supreme Court of India and the Hon'ble Appellate Tribunal in various judgments have elaborated upon sufficient cause. It is submitted that the present application is an afterthought and is an abuse of the process of law. It is submitted that

in the present review petition there is a delay of 1642 days. It is submitted that no reason for the delay have been provided, let alone sufficient cause. It is submitted that the order dated 18.12.2009, sought to be reviewed by the Petitioner has become final, after not having been challenged. It is submitted that the present petition has only been filed to delay the petition filed by the answering Respondent under section 142 and 146 of the Act, i.e. PETITION NO. PRO-25/2013. It is submitted that PETITION NO. PRO-25/2013 was filed by the answering Respondent way back in the year 2013. In fact the Petitioner itself filed its reply in the matter on 06.03.2014. Even from the date of filing its reply, the Petitioner has been lax and negligent and more than a period of 4 months have passed from the date the Petitioner filed its reply in PETITION NO. PRO-25/2013. It is further clear that the present petition is an afterthought because arguments have taken place in the petition filed by the answering Respondent and were part heard on the date of filing of the present petition. It is submitted that the present petition is malafide and is an abuse of the process of law.

5. Though there are various judgments on the principle of delay and sufficient cause, the answering Respondent wishes to rely on the following judgments and paragraphs thereto:

A. The Petitioner should not be negligent in pursuing his matter. Sufficient cause cannot include negligence or

inordinate delay. – In Ref:- Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai, ***(2012) 5 SCC 157***

"14. We have considered the respective arguments/submissions and carefully scrutinised the record. The law of limitation is founded on public policy. The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature. At the same time, the courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation.

15. The expression "sufficient cause" used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice. No hard-and-fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years this Court has advocated that a liberal approach should be adopted in such

matters so that substantive rights of the parties are not defeated merely because of delay.

...

23. What needs to be emphasised is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay." (Emphasis Supplied)

B. Sufficient cause would be a case where the Petitioner is not to be blamed at all –In Ref:- Basawaraj v. Land Acquisition Officer, ***(2013) 14 SCC 81***

"9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the

mistake is bona fide or was merely a device to cover an ulterior purpose. (See Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee [AIR 1964 SC 1336] , Mata Din v. A. Narayanan [(1969) 2 SCC 770 : AIR 1970 SC 1953] , Parimal v. Veena [(2011) 3 SCC 545 : (2011) 2 SCC (Civ) 1 : AIR 2011 SC 1150] and Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai [(2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24 : AIR 2012 SC 1629] .)

...

11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide Madanlal v. Shyamlal [(2002) 1 SCC 535 : AIR 2002 SC 100] and Ram Nath Sao v. Gobardhan Sao [(2002) 3 SCC 195 : AIR 2002 SC 1201] .)

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never

an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

...

15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the

delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature." (Emphasis Supplied)

C. Delay has to be explained. – In Ref:- Judgment dated 30th Jan, 2014 in I.A. No.362 of 2013 in DFR No.2293 of 2013 , The South Indian Sugar Mills Association & Ors. v. Andhra Pradesh Electricity Regulatory Commission & Ors.

"3. This Application for condonation of delay of 1619 days. is stoutly opposed by the Learned Counsel appearing for the Distribution Companies, the Respondents, after filing Counter on the following grounds: (a) The delay of 4 years and 35 days i.e. 1619 days in filing the Appeal which is inordinate has not been satisfactorily explained by the Applicants.

…

5. On going through the Application filed by the Applicants for condonation of delay as well as reply filed by the Respondent opposing the said Application and on considering the submissions made by both the parties, we are not inclined to condone the delay which is inordinate since, sufficient cause has not been shown by the Applicants to condone this delay.

6. The detailed reasons are as follows:

...

(b) The Applicants have not given any explanation as to why they have resorted to filing of the Review before the State Commission instead of invoking the Appeal remedy before this Tribunal that too in the absence of any apparent error on the face of the record as held by the State Commission.

(h) Although the Review Petition had been dismissed on 27.07.2013, the present Appeal has been filed only on 21.10.2013 i.e. nearly after three months. This delay also has not been satisfactorily explained.

(i) When there is an enormous delay of 4 years 35 days, it has to be established by the Applicants that they have pursued the matter with diligence throughout. But, in the present case, there is no diligence on the part of the Applicants to take further step to file an Appeal against the Order dated 31.03.2009 in time, instead of filing a Review or taking adequate steps to pray the State Commission for disposal of the Review Petition at an early date or approach the High Court or this Tribunal for seeking suitable direction to the State Commission for early disposal. On the other hand, they kept silent all along.

(j) In the light of the above circumstances, the objection raised by the Respondents to the Application to condone the delay on the ground that there is no justification to permit the Applicants to reopen the matter at this distance of time i.e. 4

years and 35 days, in the absence of the sufficient cause to condone the delay, is perfectly justified.

7. In view of the above reasonings, the Application to condone the delay is dismissed." (Emphasis Supplied)

JUDGEMENT HAS ATTAINED FINALITY AND CANNOT BE REVIEWED

6. It is submitted that the judgment under review has already attained finality and is at execution stage. It is submitted that only at the time of execution under the Act, i.e. enforcement under section 142 and 146, is the Petitioner seeking to review order dated 18.12.2009 passed by this Hon'ble Commission. It is submitted that the present petition is nothing but an abuse of the process of law and deserves to be rejected out rightly. The answering Respondent is canvassing the following propositions by relying on the below mentioned judgements:

A. Matter cannot be opened once it has attained finality. – In Ref: - Mohd. Aziz Alam v. Union of India, ***(2001) 10 SCC 93***

"1. This appeal is directed against an order of the Central Administrative Tribunal, Calcutta Bench, dismissing the claim of the appellants. The appellants applied for certain posts under the Railway Administration in the year 1984 and took up the

written examination as well as the viva voce examination in the year 1985. But, as the results were not declared and no merit list was published, they approached the Tribunal by filing OA No. 1004 of 1988. That application before the Tribunal was dismissed on the ground that the appellants did not approach the Tribunal within the period stipulated under the Act. Against the said order, the appellants approached this Court by filing SLP No. 1707 of 1990 and this Court by order dated 3-12-1990 refused to grant special leave and, therefore, so far as the appellants are concerned, the matter reached a finality. It transpires that some other similarly situated persons like the appellants had filed application before the Tribunal in the year 1989 and that application was allowed by the Tribunal with certain observations in the year 1990. Because of such order of the Tribunal, the appellants were emboldened to file a fresh application before the Tribunal which was registered as OA No. 899 of 1992 seeking the relief that the benefits which have been given to the similarly situated persons pursuant to the order of the Tribunal dated 4-12-1990 should be given to them. This application of the appellants which was registered as OA No. 899 of 1992 was dismissed by the Tribunal by the impugned order on the ground of limitation and hence the present appeal.

2. It is contended by the learned counsel for the appellants that the disposal of OA No. 327 of 1989 by the Tribunal filed by some other applicants gives a fresh cause of action to these appellants as they were similarly situated and therefore, the Tribunal committed error in refusing the relief sought for on the ground of limitation. According to the learned counsel, there is no justifiable reason to deny the relief to these appellants when similar relief has been given to some others who also did take the recruitment test along with the appellants in the year 1985 as already stated. We are unable to persuade ourselves to agree with this contention raised by the learned counsel appearing for the appellants, inasmuch as the appellants did approach the Tribunal way back in the year 1988 and being unsuccessful there, did approach this Court and this Court declined to grant special leave in the year 1990 and, therefore, so far as the question of the appellants' right of consideration to the post applied for has become final and would not be reopened merely on the ground that in some other matters filed at the behest of some similarly situated persons, the Tribunal or a court has granted some relief. That apart, more than 15 years have elapsed from the date on which the appellants claim to have taken the test in question.

3. In these circumstances, we decline to interfere with the direction of the Tribunal. This appeal accordingly fails and is dismissed." (Emphasis Supplied)

B. Once an order has attained finality, it cannot be opened in subsequent proceedings. In Ref:- Edukanti Kistamma v. S. Venkatareddy, ***(2010) 1 SCC 756***

"34. This judgment and order of the High Court also attained finality as it was not challenged by the respondents any further. Thus, in our view, the question of reconsideration of the validity of the tenancy certificate under Section 38-E(2) so far as Appellants 1 and 3 are concerned, could not arise in any subsequent proceedings whatsoever. More so, the entitlement of the said Appellants 1 and 3 to claim restoration of possession also cannot be reopened/questioned, as their entitlement to that effect had attained finality as the judgment and order of the High Court dated 28-4-2000, wherein their right to claim restoration of possession had been upheld, was not challenged by the respondents any further.

...

38. In view of the above factual matrix, we are of the considered opinion that it was not permissible for the High Court to reopen the issue either of grant or issuance of tenancy

certificate under Section 38-E(2) or deal with the issue of restoration of possession so far as Appellants 1 and 3 are concerned. At the most, the High Court could proceed in the case of Appellant 2.

39. Admittedly, Smt Ayesha Begum, the original landholder, had 127 acres of land. The claim of the appellants was valid and maintainable in view of the provisions of Section 37-A of the 1950 Act. The High Court was not justified in observing that as the issue of restoration of possession remained pending before the authority for about nineteen years, the respondents were justified in getting adjudication of their rights regarding issuance of certificate as it had not reached the finality. Mere pendency of proceedings before the court/tribunal cannot defeat the rights of a party, which had already been determined. The High Court ought to have appreciated that proceedings were only in respect of execution of the orders which had already been passed. Thus, proceedings were for the consequential relief. The issue of restoration of possession is to be decided under Section 32 of the 1950 Act. Question of application of the provisions of Section 35 ought to have been raised in the first round of litigation. Such an issue is required to be agitated at the very initial stage of the proceedings and not in execution proceedings. The said issue in respect of Appellants 1 and 3 had

already attained finality. More so, if in the tenancy registers of the relevant years, the names of the predecessors of the appellants were recorded as tenants, the High Court could not have opened the issues of factual controversies at all." (Emphasis Supplied)

C. Order final and principles of res-judicata apply. Once order has attained finality no interim orders can be passed. In Ref:- Ajay Mohan v. H.N. Rai, (2008) 2 SCC 507

"19. It is a trite law that the principles of res judicata apply in different stages of the same proceedings. (See Satyadhyan Ghosal v. Deorajin Debi [AIR 1960 SC 941] , Arjun Singh v. Mohindra Kumar [AIR 1964 SC 993] , C.V. Rajendran v. N.M. Muhammed Kunhi [(2002) 7 SCC 447] , Ishwar Dutt v. Land Acquisition Collector [(2005) 7 SCC 190] and Bhanu Kumar Jain v. Archana Kumar [(2005) 1 SCC 787] .)

...

24. The order of the City Civil Court dated 13-10-2006 may be bad but then it was required to be set aside by the court of appeal. An appeal had been preferred by the appellants thereagainst but the same had been withdrawn. The said order dated 13-10-2006, therefore, attained finality. The High Court, while allowing the appellant to withdraw the appeal, no doubt,

passed an order of status quo for a period of two weeks in terms of its order dated 23-11-2006 but no reason therefor had been assigned. It ex facie had no jurisdiction to pass such an interim order. Once the appeal was permitted to be withdrawn, the Court becamefunctus officio. It did not hear the parties on merit. It had not assigned any reason in support thereof. Ordinarily, a court, while allowing a party to withdraw an appeal, could not have granted a further relief. (SeeG.E. Power Controls India v. S. Lakshmipathy [(2005) 11 SCC 509 : 2006 SCC (L&S) 392] .)" (Emphasis Supplied)

D. Order final if no appeal is filed. In Ref:- Peerless General Finance & Investment Co. Ltd. v. Poddar Projects Ltd., ***(2007) 2 SCC 431***

"5. Although, in the appeal a question was raised as to whether for registration of transfer of shares effected under a scheme of arrangement or compromise or amalgamation sanctioned by a competent court under Sections 391 and 394 of the Companies Act, it is necessary to execute a further instrument of transfer as contemplated by Section 108 of the said Act, at the time of the hearing of the appeal, it was submitted on behalf of the appellant Company that the said question had been rendered academic. It was submitted that

during the pendency of the appeal, the appellant Company had complied with the direction of the Calcutta High Court and had registered the original shares in the name of Respondent 1 Company. Since Respondent 2 had not preferred any appeal against the order of the Company Law Board, the same became final as far as Respondent 2 is concerned. Although, on behalf of Respondent 2, it was submitted that the decision of the Company Law Board, as applicable to Respondent 1, would also operate in its favour, such a submission is not acceptable since Respondent 2 stands on a different footing. Till such time as the shares were not registered in the name of Respondent 1, the application of Respondent 2 for subsequent registration of the same shares in its name could not be considered. Accordingly, the direction given by the Company Law Board in respect of Respondent 1 could not apply to Respondent 2 and that is why the said Respondent 2 did not prefer any separate appeal against the order of the Company Law Board." (Emphasis Supplied)

E. Once order is final, judicial propriety requires that it should not be reopened. In Ref:- Hindustan Construction Co. Ltd. v. Gopal Krishna Sengupta, ***(2003) 11 SCC 210***

"25. The question still remains whether, on facts of this case, the direction given in the order dated 19-10-2000 can be maintained. In the application there was no prayer to examine Pritika Prabudesai. The prayer was to quash the proceedings and start trial afresh. There is no provision in law which permits this. Thus the application could not be allowed. Undoubtedly, the High Court has proceeded on the footing that this evidence is essential and necessary. Section 311 of the Criminal Procedure Code permits taking of evidence at any stage. The High Court undoubtedly felt that it was in the interest of all parties that necessary evidence be recorded at this stage itself. But the fact remains that the application for this very relief has been rejected on 6-11-1997. No appeal or revision was filed against that order. The order dated 6-11-1997 has therefore become final. Once such a relief has been refused and the refusal has attained finality, judicial propriety requires that it should not be allowed to be reopened. The High Court was obviously not informed of the order dated 6-11-1997. Thus the High Court cannot be blamed. However as that order has been brought to notice of this Court we cannot ignore it. The other factors which we keep in mind are the order dated 15-9-2000 in Writ Petition No. 599 of 1998 and order dated 23-11-1998 in Writ Petition No. 1507 of 1998. By these orders it has been clarified by the High Court that the case has reached conclusion and liberty has been

granted to the 1st respondent to raise all the points in a proceeding the 1st respondent may have to adopt if the criminal case is dismissed against him. The appellants are within their right to oppose the directions issued in the order dated 19-10-2000. However in the long run this may prove disadvantageous to the appellants. It is possible that if the case is decided against the 1st respondent and the higher court feels that application to lead necessary evidence has been wrongly rejected, the whole case may have to be sent back for leading this evidence. We therefore asked the appellants whether they wanted to still oppose the directions issued. We were told that they did. We therefore allow the appeal against the order dated 19-10-2000 and set aside the directions issued therein. The application filed by the 1st respondent will stand rejected." (Emphasis Supplied)

NO GROUND FOR REVIEW MADE OUT

7. It is submitted that the grounds for review are very limited. It is submitted that in the present case, no grounds for review have been made. It is submitted that review jurisdiction is very limited and is available only if there exists an error apparent on the face of the record; or any new and important matter of evidence was discovered which after the exercise of due diligence, was not within the knowledge of or could not be produced by the party concerned at the time when the order or

decision was made; or for any other sufficient reason. It is submitted that the grounds sought to be raised are in the nature of an appeal. The answering Respondent craves the leave of this Hon'ble Commission to show from the pleadings itself that the present petition is in the nature of an appeal. Further, the Petitioner has not been able to show any error apparent or that the fresh grounds could not have been presented during the hearings which lead to the passing of order dated 18.12.2009. It is submitted that the present review petition is nothing but an abuse of the process of law.

8. It is submitted that the review Petitioner is trying to mislead this Commission that the liability of the sub-station is not on it. It is submitted that HUDA in its letter dated 03.11.2011 has clearly stated that it has not charged any EDC for old sectors 1-57. Hence the review petition is not maintainable and is an abuse of the process of law and may be dismissed by this Commission".

5. Upon hearing both the parties on 17.06.2014 the Commission passed an interim order dated 18.06.2014 holding that the Ld. Counsel for the Respondent Shri Varun Pathak has vehemently opposed the maintainability of the present review petition as the same is hopelessly time barred and the impugned order of this Commission has attained finality and hence cannot be re – opened. Consequently, the Commission ordered as under:

"After hearing the parties, the Commission decided that the Petitioner shall file reasons for delay in filing the review petition within a week with a copy to the Respondent. The hearing on maintainability of the Petition will be held thereafter on 08.07.2014 at 3.00 P.M."

6. In accordance with the ibid order after the hearing held on 17.06.2014, the case was called for hearing on 08.07.2014 on the issue of condonation of delay and maintainability of the Petition. Both parties were present in the hearing.

7. The Ld. Counsel for the Petitioner in his written submission as well as his arguments in the hearing held on 8.07.201, on the issue of maintainability, argued as under:

8. The Ld. Counsel for the Petitioner argued that the Review Application itself included a prayer for condonation of delay, if any, in filing of the said review application. However, the Applicant has again filed an application seeking condonation of delay, if any, in filing the review application and/or relaxation of the thirty days period for seeking review of an order, as mentioned in Regulation 78 of Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 ('2004 Regulations'). It was submitted by the Ld. Counsel for the Petitioner that after passing of the order dated 18.08.2009 the Applicant was contemplating/in the process of challenging the said order before the Appropriate Forum or filing Review Application before this Commission. The Applicant at the same time, without prejudice to its rights, was also considering depositing the share cost of the substation, in order to safeguard the interest of the residents of the Colony, which was being jeopardize due to acts of omission and commission on part of the Respondent. However, the Applicant, after passing of the order dated 18.08.2009, continued to face adverse environment/situations, and hence could not take appropriate steps against the order due to certain supervening circumstances. It was further argued that as opposed to what was directed by this Commission vide order dated 18.08.2009 i.e. the Company shall handover the land for the Sub Station and

deposit the share amount to HVPNL, DHBVN started demanding the entire cost for construction of 66 KV Substation. The Respondent even started demanding the requisite consent(s) for the same. Additionally, it was brought to the notice of the Commission that even though initially it was proposed that 66 KV Sub Station would be of Air Insulated Sub Station (AIS) technology, discussions for erection of 66 KV Sub Station with Gas Insulated Substation (GIS) technology, keeping in view the area available for construction of the Substation started between the Petitioner and HVPNL. While HVPNL and the Applicant were in discussion with each other in relation to the same, HVPNL in and around the month of March 2010, started raising misconceived issues of non-handing over of the possession of the site for erection of Electric Substation. It was informed that the site had already been handed over to the STP, Gurgaon vide letter dated 6.10.2008 for transfer of the same to HVPNL and the latter was requested to coordinate with STP, Gurgaon. Since, the Company had been required to handover the possession to the Estate Officer, HUDA, the same was done on May 26, 2010. Thereafter, the site was handed over to SDE, HUDA to the representative of SE/Transmission Circle, HVPNL, Gurgaon in May 2010 itself.

It was further submitted by the Petitioner that it is a matter of record that the order dated 18.08.2009, passed by this Commission, besides laying down certain obligations to be carried out by the Petitioner, also contained certain directions and/or obligations to be carried out by the Respondent i.e. DHBVN, which DHBVN never complied. For instance, DHBVN was to provide electricity connections to those residents who had since occupied the premises and had applied for electric connections. However, it is a matter of record that DHBVN had been providing electricity connections even to those, who had occupied the premises subsequent to passing of the order. The cumulative effect of the events and circumstances, which have been taking place including but not limited to DHBVN, itself giving a goby to the obligation cast upon it by virtue of the order and also the discussions, which have been taking place for contemplating the erection of Electric Grid Substation with GIS technology and requiring the Applicant to do the entire cost, as opposed to

the obligation to pay the share cost, as ordered vide order dated 18.08.2009, the applicant had a reason to believe that there was no necessity of taking any steps against the order dated 18.08.2009, passed by this Ld. Commission.

The Ld. Counsel for the Petitioner further argued that by virtue of provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as '1975 Act'), the Petitioner has to get its licenses renewed from time to time and had been in receipt of notice seeking to reject the licenses for the development of the Colony, which after certain considerations and deliberations, culminated into passing of order dated February 4/10, 2012, by the Director General, Town & Country Planning, rejecting the application for renewal. The Applicant, along with other licensees, filed an appeal under Section 19 of the 1975 Act against cancellation of the licenses. It may be pertinent to mention here that besides cancellation of the licenses, the licensees had been put to an embargo to not alienate any property or create any third party rights/interest on the unsold property. It is only on July 20, 2012 that the appeal filed by the Applicant and other licensees was allowed. It was mentioned that keeping in view the facts and circumstances, which got created, the Applicant being in a position of unequal bargaining power, had no option, but to succumb to the demands of the Authorities concerned , which on the face of it, were illegal and misconceived, both on facts and law.

It was further argued that the Applicant, who as a matter of record, had not been even released the initial sanctioned load of 8.20 MVA by the Respondent, despite the fact that the Respondent were willing to deposit the share cost and had even deposited more than what was required for the share cost towards the load release, and again was being asked to give consent to pay Rs.47 crores for the cost of 66 KV GIS Substation. The said demand had been made by HVPNL in August 2012. Thereafter, in and around April 2013, the Applicant was asked to deposit tentative cost of Rs. 44 Crores for which no details/item wise calculations was provided. Apparently, the facts and circumstances including the discussions and

correspondences, which had been taking place between the Applicant and HVPNL, were not flowing out of the order dated 18.08.2009, passed by this Commission hence there was no reason and/or occasion for the Applicant to take any steps against the said order.

Additiionally it was submitted that while on one side, the Applicant was being required to submit undertakings/consents for payment of entire cost of construction of Grid Substation, on the other side, the matter as to whether it would be the obligation of DHBVN to provide electricity, was being considered on a petition filed by one of the residents/consumer of the Colony. It is on the said petition that an order dated 15.07.2013, was passed by the Permanent Lok Adalat, which was assailed by DHBVN by filing Civil Writ Petition No.17593 of 2013, wherein, the Hon'ble High Court vide order dated 14.08.2013 was pleased to dismiss the said petition. The said order was assailed by DHBVN vide Letters Patent Appeal No.1584 of 2013; DHBVN Vs. Sulekha. In the said appeal, it had been the plea of DHBVN before the Hon'ble High Court that the colonizers including the present Respondent are not fulfilling their obligations in providing electric infrastructure within the colony including the erection of Electric Sub Station. Keeping in view inter alia, the said submission, which in humble submission of the Respondent is misconceived and erroneous, the Hon'ble High Court ordered impleadment of certain builders including the Respondent herein. The Applicant, amongst other builders, has filed a comprehensive response. The issues such as non-erection of Electric Grid Sub Station by the colonizer/builder and the same being an obligation of the DHBVN; payment of EDC having been made for carrying out External Development Works, which include erection of Grid Sub Station, the per unit cost having been calculated by taking into account the augmentation charges including erection of Electric Grid Sub Station, are some of the issues raised therein. That since the matter, which is sub judice before the Hon'ble High Court and the issues raised herein are inextricably linked and the decision of the Hon'ble High Court would have a bearing

upon the matter sought to be raised herein, there was no reason and/or occasion for the Applicant to raise the said issue of Review of the order.

It was argued that the necessity of filing the present Review Petition has arisen due to the fact that DHBVN has been insisting on compliance of the Commission's order dated 18.08.2009, despite not being oblivious of the above said facts and circumstances and the petition was filed for compliance of the said order, to which the Applicant had even filed a Reply on 06.03.2014, was sought to be adjudicated upon. As such, the Review Application was filed on 17.06.2014. Apparently, the delay, if any, in filing the Review Application is not mala fide and is bonafide and rather in the interest of justice, equity and fair play.

Concluding his arguments the Ld. Counsel for the Petitioner prayed that this Commission may exercise its inherent powers, especially as provided in Regulation 85 of Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2004, which are necessary for the ends of justice and even to prevent the abuse of process of this Commission. Hence the delay in seeking resultant review of order dated 08.12.2009 is unintentional and liable to be condoned. It was submitted that it is a trite law that a liberal approach is required to be adopted while condoning the delay. The Hon'ble Supreme Court has held in catena of judgments that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred and further that the other side cannot claim to have vested right in the injustice being done because of non-deliberate delay.

9. The Ld. Counsel for the Respondent i.e. DHBVNL vehemently opposed the grounds / arguments on which the Petitioner sought condonation of delay. The Ld. Counsel argued that even in the Petition subsequently filed seeking condonation of delay in filing the present review petition neither the number of days of delay has

been mentioned nor sufficient reasons for the delay have been demonstrated. The Ld. Counsel further pointed out the contradiction in the Petition itself i.e. on the one hand the Petitioner has filed an affidavit dated 16.06.2014 that "*there is no case pending in any court of law with regard to the matter referred to the Commission*" while on the other hand at paragraph numbered 26 of the review petition the Petitioner has stated *"That from narration of events as above and from the perusal of the response filed before the Hon'ble High Court, it is evident that the matter, regarding the fixing of liability to erect a grid substation, amongst others, is sub judice before the Hon'ble High Court.*

Assailing the arguments of the Petitioner that the Respondent Nigam had violated the Commission's order dated 18.08.2009 i.e. DHBVNL shall provide electricity connection to all the residents of the colony who have since occupied the premises and applied for electricity connection as per the provisions of Regulation No. HERC/12/2005 dated 26th July, 2005 by releasing electricity connections to the persons who occupied the premises even after 18.08.2009, the Ld. Counsel for the Respondent averred that the connections were released only to the extent the existing infrastructure permitted.

In addition to the above, the Ld. Counsel for the Respondent reiterated various case laws on the issue of limitation / condonation of delay which has been reproduced at para 4 of this order under the heading "Reply filed by DHBVNL (the Respondent)", hence the same is not being reproduced here.

10. The Commission, at the outset, reiterates its interim order dated 18.06.2014 i.e. at this stage, the Commission is not going into the merits of the case, but has restricted the present proceedings to decide the issue of maintainability, as also agreed to by the parties. The Commission further observes that vis-a.vis the provision of 30 days for filing a review petition against an order passed by this Commission in the HERC (Conduct of Business) Regulations, 2004 notified by this Commission, there has been considerable delay in filing the present review petition against the order dated 18.08.2009 for which condonation of delay has been prayed

for. Additionally, the Commission observes that the submission of the Petitioner seeking condonation on the grounds of negative equity i.e. some obligations imposed upon the Respondents were not met with, is hardly tenable when tested on the anvil of law.

11. The Commission observes that the issues of limitation / delay as well as condonation of such delay are being examined and explained every day by the Courts including the Hon'ble Supreme Court. The Hon,ble Supreme Court in its recent judgment i.e. Special Leave Petition (Civil) Nos 6609 – 6613 of 2014 in Brijesh Kumar & Ors Versus State of Haryana & Ors has discussed the issue at length and held as under:

> "*The law of limitation is enshrined in the legal maxim "Interest Reipublicae Ut Sit Finis Litium" (it is for the general welfare that a period be put to litigation). Rules of Limitation are not meant to destroy the rights of the parties, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time".*

12. The Privy Council in General Fire and Life Assurance Corporation Ltd. v. Janmahomed Abdul Rahim, AIR 1941 PC 6, relied upon the writings of Mr. Mitra in Tagore Law Lectures 1932 wherein it was held as under:

> *"a law of limitation and prescription may appear to operate harshly and unjustly in a particular case, but if the law provides for a limitation, it is to be enforced even at the risk of hardship to a particular party as the Judge cannot, on applicable grounds, enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognized by law."*

13. In P.K. Ramachandran v. State of Kerala & Anr., AIR 1998 SC 2276, the Apex Court while considering a case of condonation of delay of 565 days, wherein no

explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held as under:–

> *"Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds."*

14. The Commission observes that the Petitioner has cited liberal approach argument and implored this Commission to ignore hyper technical grounds for taking a view on the issue of condonation of delay lest a meritorious matter is thrown out just because there could be some delay in filing the review petition. The Commission has further taken into consideration the arguments of the Petitioner that as averred by the Respondent that 'each day of delay needs to be explained' does not mean that this Commission should adopt a pedantic approach and hence adopt an injustice oriented approach. The Commission agrees with the Petitioner that that an injustice-oriented approach in rejecting the application for condonation of delay needs to be avoided. However, the Commission while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. The Hon'ble Supreme Court in a number of cases has held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.

15. In view of the case laws cited by the Respondent Nigam including those reproduced above, the Commission observes that Appellant, in the present case, kept sleeping over its rights for long and chose to wake-up when they had the impetus from the actions of the Respondent Nigam i.e. when DHBVNL preferred a petition in this Commission for execution of the Commission's order dated 18.08.2009, does not lend itself to the review at this belated stage. In the present case, it is further observed that the petition regarding non – compliance of orders by

the M/s Sheetal International Pvt. Ltd. (Petitioner in the present case) filed by DHBVNL (the Respondent in the present case) is dated 4.07.2013 and the Commission's order on the same are dated 20.12.2007 and 18.08.2009. While the present review petition preferred by the Petitioner is dated 16.06.2014, thus even if, for the sake of arguments, the period of delay from the original order dated 18.08.2009 is ignored, the delay in the intervening period i.e. July 2013 i.e. when petition regarding non – compliance of orders by the M/s Sheetal International Pvt. Ltd. was filed in the Commission by DHBVNL and June 2014, i.e. date of the present review petition, has also not been explained by the Petitioner. Thus a mere perusal of the timeline and conduct of the Petitioner establishes the fact that the present review petition preferred by the Petitioner was an afterthought. Further, seeking of condonation of delay vide a separate petition supported by an affidavit dated 07.07.2014 and in the hearing held on 22.07.2014 also seems to be an afterthought as the original petition dated 17.06.2014 (though the prayer clause did include a standard sentence i.e. "condone the delay, if any, in filing the present application"), neither mentioned the period of delay nor any reasons thereto.

16. In view of the above discussions including the facts of the case and case laws cited above, the Commission finds no sufficient grounds to condone the delay.
The Petition is accordingly disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 22nd July, 2014.

Date: 22/07/2014
Place: Panchkula

(M.S. Puri)	(Jagjeet Singh)	(R.N. Prasher)
Member	**Member**	**Chairman**