

Bangalore Electricity Supply Company ... vs M/S Brics Renewable Energy Pvt. Ltd. & ... on 20 May, 2026

COURT-1

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

IA No. 1262 OF 2024 in Appeal No. 482 OF 2024
(for interim relief)

Dated: 20th May, 2026

Present : Hon`ble Ms. Seema Gupta, Officiating Chairperson
Hon`ble Mr. Virender Bhat, Judicial Member

In the matter of:
Bangalore Electricity Supply Company Ltd & Anr.
Versus
M/s Brics Renewable Energy Pvt. Ltd. & Ors.

Counsel on record for the Appellant(s) : S. Srira

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IA No. 1262 of 2024 in Appeal No. 482 of 2024

Rahul K
for Res.

ORDER

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The Appellant, by way of this application, is seeking stay of the operation of impugned order dated 30th December, 2021 passed by the 3rd Respondent - Karnataka Electricity Regulatory Commission (hereinafter referred to as "the Commission") in petition filed by the 1st Respondent, a power generator, thereby condoning the delay of 114 days in commissioning of the 20 MW solar power project of 1st Respondent and holding it entitled to tariff of Rs.5.07/kWh as agreed in the Power Purchase Agreement (in short "PPA") executed by it with the Appellant.

2. We have heard the Learned counsels for the parties and have perused the impugned order.

3. It appears that initially the Appellant did not form any intention to assail the said order of the commission and allowed it to remain in operation for more than 1.5 years. The Appellant even paid an amount of Rs.1,14,11,059/- to the 1st Respondent towards differential tariff (i.e. PPA tariff of Rs.4.97/ unit and generic tariff of Rs.4.36/ unit) for the period from January, 2018 to October, 2022 in the month of November, 2022. Thereafter, the appellant challenged the impugned order by way of a writ petition before the Karnataka

----- High Court on 30.06.2023. It is relevant to note here that the operation of the impugned order was not stayed by the Hon'ble High Court in the writ petition at any stage. Accordingly, the Appellant continued to pay tariff to Respondent No. 1 in terms of the impugned order. Ultimately, the writ petition was dismissed as withdrawn by the Hon'ble High Court vide order dated 15 th April, 2024. Subsequently, this appeal came to be filed on 22nd July, 2024 i.e. about three months after the writ petition was dismissed as withdrawn by the Hon'ble High Court.

4. The Appellant has, thus, exhibited a very lackadaisical conduct in assailing the impugned order. At first, the Appellant accepted the impugned order as it did not challenge it for about one year & seven months and even made the payment of differential amount to the first respondent. When the Appellant woke up from slumber in June, 2023 it chose wrong forum/court i.e. Karnataka High Court to assail the order. As already noted herein above the Hon'ble High Court did not stay the impugned order and it remained in operation throughout the pendency of the writ petition before the High Court.

5. Even after filing of the instant appeal in this Tribunal on 22.07.2024, the Appellant did not show any urgency due to which the interim application under disposal has remained pending for about two years. Perusal of the order sheets would reveal that adjournments have been sought regularly sometimes by both the parties and on several date by the Appellant.

6. It is a settled principle of equity that a party seeking interim stay must approach the court expeditiously without any undue delay. Latin phrase "Vigilantibus non dormientibus jura subveniunt" (law helps those who are awake, not those who sleep on their rights) indicates that interim stay, being in the nature of equitable relief, cannot be granted to a party who does not show any urgency and commits delay in approaching the appropriate forum. Once a party waits for months altogether and even complies with the impugned order, even though partly, it can be fairly assumed that there was no real urgency or ground for assailing the order in question. Delay suggests that the party concerned has acquiesced to the situation created by the impugned order and granting of stay now would unfairly prejudice the other side.

7. Considering the above noted conduct of the Appellant, it is limpid that no irretrievable loss would be suffered by it in case the impugned order is not stayed and the balance of convenience also lies in favour of the first respondent even though upon taking note of the grounds raised in the appeal, the Appellant appears to have made out a prima facie case in its favour. Existence of prima facie case alone is not sufficient for passing an interim stay order when it is held that the other two factors to be considered i.e. likelihood of irretrievable loss and balance of convenience are not in favour of the Applicant/Appellant.

8. It is true that the delay in filing the appeal has been condoned in this case by this Tribunal vide order dated 30.09.2024 but that has no relevance while considering whether or not is the Appellant entitled to interim stay as sought in the application at hand and would not tilt the balance of convenience in favour of the Appellant.

9. We may also note that the PPA between the Appellant and first Respondent is valid for 25 years i.e. till the year 2041. During this period, the 1st Respondent is bound to supply entire power generated in the power project to the Appellant and therefore, the Appellant would have enough time period to recover the differential tariff from first Respondent in case it succeeds in the appeal.

10. Despite these observations and findings, we have perused the impugned order minutely. The 1st Respondent had sought extension of Scheduled Commissioning Date (SCOD) of the power project on account of following Force Majeure events :-

- (a) Introduction of GST (62 days)
- (b) Delay in signing supplementary PPA (96 days)
- (c) Delay in issuing evacuation approval (555 days)

11. The Commission has held against the first respondent on (a) & (b) whereas it has condoned the delay on account of (c). We have gone through the reasoning given by the Commission in the impugned order for condoning

----- the delay on account of (c) and prima facie concur with the same. We refrain from giving detailed reasons for concurring with findings of the Commission on (c) lest it shall prejudice the case of any of the parties at the time of final disposal.

12. Hence, in view of above discussion, no case for stay of the impugned order has been made out by the Appellant. Accordingly, the interim application is hereby dismissed.

13. Nothing said and observed herein above shall be considered as our opinion on the merits of the case which would be seen at the time of final disposal of the appeal.

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14. Pleadings are already complete. Registry is directed to include the matter in the "List of Finals" to be taken from there on its turn. Pronounced in the open court on this 20th of May, 2026.

Virender Bhat
Judicial Member

REPORTABLE / NON REPORTABLE

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