

Brahm (Alloys) Limited & Ors vs West Bengal Electricity Regulatory ... on 29 May, 2026

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

IA NO.997 OF 2025 IN
DFR No.231 OF 2025

Dated: 29.05.2026

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

In the matter of:

1. Brahm (Alloys) Limited
Through its Director
Having its office at 6/B-Camac Court,
25/B Camac Street, Kolkata - 700016
Email: admin@brahmgroup.com
 2. Jaishree Steels Private Limited
Through its Director
Having its office at 37, Shakespeare Sarani,
S.B. Towers, 3rd Floor, Kolkata - 700017
Email: jspl_2008@rediffmail.com
 3. Sova Electrocasting Limited
Through its Director
Having its office at 37, Shakespeare Sarani,
S.B. Towers, 3rd Floor, Kolkata - 700017
Email: sovaelectrocasting@gmail.com
- ... Appellant(s)

Versus

1. West Bengal Electricity Regulatory Commission
Through its Secretary
Plot No: AH/5 (2nd & 4th Floor),
Premises No.: MAR 16-1111,
Action Area 1A, Newtown,
Rajarhat, Kolkata - 700163

IA No.997 of 2025 in DFR No.231 of 2025
Email: cp-wberc@gov.in

Page 1 of 11

2. Damodar Valley Corporation
Through its Secretary
DVC Tower, VIP Road, Kolkata - 700 054

Email: membersecretary@dvc.gov.in

... Respondent (s)

Counsel on record for the Appellant(s) : Rohit Bansal
for App. 1, 2 & 3

Counsel on record for the Respondent(s) : C.K. Rai
Anuradha Roy
Vinay Kumar Gupta
for Res. 1

Ananya Dutta
Drishti Rathi
Shri Venkatesh
Shryeshth Ramesh Sharma
Ashutosh Kumar Srivastava
Suhael Buttan
Kanika Chugh
Akash Lamba
Nihal Bhardwaj
Priya Dhankar
Siddharth Nigotia
Abhishek Nangia
Mohit Mansharamani
Vineet Kumar
Kartikay Trivedi
Mohit Gupta
Manu Tiwari
Surbhi Kapoor
Indu Uttara
Kunal Veer Chopra
Shivam Kumar
Tanishka Khatana
Harsh Vardhan
Manav Bhatia
Punyam Bhutani
For Res. 2

IA No.997 of 2025 in DFR No.231 of 2025

Page 2 of 11

ORDER

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The appellants have, in this appeal, impugned the Tariff Order dated 05.05.2022 passed by the 1st respondent West Bengal Electricity Regulatory Commission for the period 2017-18 and are seeking condonation of delay of 1125 days in filing the appeal.

2. The appellants / applicants are the industrial power consumers of the 2nd respondent Damodar Valley Corporation (in short "DVC"). The grouse of the appellants is that even though the Tariff Order is passed on 05.05.2022 determining higher tariff, the Commission has directed consequential arrears to be paid with effect from 01.04.2017 which is wholly unjustified.

3. It appears that one of the consumers of DVC namely M/s Inox Air Products Ltd. had assailed the said Tariff Order dated 05.05.2022 by way of Appeal No.286 of 2023 before this Tribunal in which, vide order dated 06.06.2022, this Tribunal stayed the recovery of the arrears of higher tariff subject to condition that the appellant M/s Inox Air Products Ltd. pays full tariff at the rate determined in t h e s a i d T a r i f f O r d e r .

4. Subsequently, another consumer M/s Dinman Ploypacks Pvt. Ltd. also challenged the said Tariff Order dated 05.05.2022 by way of an appeal (DFR No.256/2022) before this Tribunal. Vide order dated 01.07.2022 passed in this appeal, this Tribunal not only passed a similar interim order as had been passed in the appeal of M/s Inox Air Products Ltd. but also extended the said interim relief to all consumers irrespective of the fact whether or not had they approached this Tribunal assailing the Tariff Order. The relevant portion of the said order is extracted hereinbelow: -

"We feel that the impugned order may nonetheless impel other similarly affected parties to approach this Tribunal by independent appeals on identical grounds, this leading to multiplicity of the proceedings. In order to preclude such flood of appeals coming in, we feel the interim relief granted in the earlier two matters be not only adopted for the purposes of appeal at hand but also suitably modified so that there is no need for other similarly affected parties to approach by fresh appeals.

In the facts and circumstances as presented, we are inclined to grant interim p r o t e c t i o n . W e s t a y t h e d i r e c t i o n

of the respondent Commission for payment of arrears subject to the condition that the affected parties, including the appellant, pay full tariff at the rate as determined by the impugned order for the period commencing with the date of the impugned order and continue to do so month by month against the periodic bills that are raised under the contract between the parties. This order shall continue to operate till the matter returns to this Court for further consideration."

5. However, later on vide order dated 22.08.2024 passed in the said appeal DFR No.256/2022 (subsequently registered as Appeal No.288/2023) along with a batch of appeals including Appeal No.286/2023 of M/s Inox Air Products Ltd., the Tribunal held that extending of the interim order to all consumers whether or not had they filed appeals, was beyond its jurisdiction and accordingly set aside the interim relief. The relevant portion of the said order dated 22.08.2024 is reproduced hereinbelow: -

"It is unnecessary for us to delve into this aspect, since we are satisfied that, even otherwise, the aforesaid order, extending in the interim order even to non-parties, c o u l d

not have been passed by this Tribunal in the exercise of its appellate jurisdiction under Section 111 of the Electricity Act, 2003. Section 111(1) of the Electricity Act enables "any person aggrieved by an order made by Appropriate Commission under the Electricity Act" to prefer an appeal to the Appellate Tribunal for Electricity. It is only on its appellate jurisdiction being invoked, by a person aggrieved, would this Tribunal then be entitled to pass appropriate orders in such an appeal. Interim orders passed in such an appeal, in favour of the person aggrieved, cannot be extended to those who are not parties to such proceedings, or to those who have chosen not even to invoke the appellate jurisdiction of this Tribunal. While Superior Courts, such as Supreme Court and High Courts, can possibly exercise their public law jurisdiction to pass orders in rem, the Appellate Tribunal for Electricity is a creation of the Electricity Act and can only entertain and adjudicate an appeal on its jurisdiction under Section 111(1) of the Electricity Act being invoked by a person aggrieved. The orders passed by it under Section 111 cannot, therefore, be extended to persons who have not invoked its appellate jurisdiction. We are

satisfied that the aforesaid extracted portion of the order, passed by this Tribunal earlier, is beyond its jurisdiction. The said order is, accordingly, set aside and the IA is disposed of accordingly."

6. It further appears that subsequently, several consumers assailed the order dated 22.08.2024 of this Tribunal in the Hon'ble Supreme Court by way of civil appeals which were later on withdrawn by them. The appeal of one of the consumers M/s H.P. Ispat Pvt. Ltd. was dismissed as withdrawn by the Apex Court vide order dated 18.02.2025, the relevant portion of which is extracted hereinbelow: -

"1. Mr. Kunal Chatterji, learned counsel appearing for the appellant(s) seeks permission to withdraw the present appeals.

2. Permission as sought for is granted.

3. Civil Appeals are dismissed as withdrawn. However, the question of law raised by Mr. Chatterji is kept open for being considered in an appropriate case."

7. Thereafter, the instant appeal came to be filed by the appellants in this Tribunal on 25.07.2025.

8. We have heard the learned counsel for the appellants as well as the learned counsel for the respondents no.1 and 2. We have also perused the written submissions filed by the learned counsels.

9. Learned counsel for the appellants would argue that the appellants were protected by the order dated 01.07.2022 passed in DFR No.256/2022 (Appeal No.288/2023) which remained in operation for more than two years till the same was set aside vide order dated 22.08.2024 and therefore, there was no reason or occasion for the appellants to file any appeal before this Tribunal during this period. He would further argue that thereafter also, since order dated 22.08.2024 had been assailed in the Hon'ble Supreme Court by some of the consumers, the appellants thought it appropriate to wait for the order of the Supreme Court. According to the learned counsel, it is when the appeals before the Supreme Court were dismissed as withdrawn on 18.02.2025, the appellants initiated steps for filing the appeal before this Tribunal and hence, delay in filing the appeal being not deliberate, deserves to be condoned.

10. On behalf of the respondents, it is argued that the delay in filing is not only inordinate but has remained to be fully explained by the appellants and hence, cannot be condoned.

11. It is true that the appellants were covered by the interim order passed by this Tribunal on 01.07.2022 in Appeal No.288 of 2023 till 22.08.2024. The question arises what did the appellants do after the interim order dated 01.07.2022 was set aside on 22.08.2024. They neither assailed the said order in the Supreme Court nor filed any appeal before the Tribunal against the Tariff Order dated 05.05.2022 of the Commission. They again adopted the wait and watch policy. Instead of agitating their rights and contentions either before the Supreme Court or before the Tribunal they sat on the fence to wait for the outcome of the appeals which other consumers had preferred in the Supreme Court against order dated 22.08.2024 of this Tribunal.

12. Such conduct of the appellants is clearly indicative of the fact that they have intentionally delayed the filing of instant appeal at least after the date 22.08.2024 when general interim protection was vacated by this Tribunal. Merely waiting for the outcome of appeals which other consumers had preferred before the Supreme Court only points to the lackadaisical, lethargic and laid back attitude of the appellants which does not entitle them to condonation of delay in filing the

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13. Latin phrase "Vigilantibus non dormientibus jura subveniunt" can be very aptly quoted and relied upon in these facts and circumstances of the case. It connotes that law helps only those who are awake and not those who sleep on their rights like the appellants herein. A litigant who does not show any urgency and delays approaching the appropriate forum runs the risk of thrown out outrightly on the ground of delay.

14. Further, even if it is assumed for the sake of arguments that the appellants realized for the first time on 18.02.2025 (when appeals were dismissed as withdrawn by the Supreme Court) that they ought to file appeal before the Tribunal, then also the appeal is barred by time as having been filed much beyond the stipulated period of 45 days. The appeal ought to have been filed on or before 04.04.2025. However, it has been filed on 25.06.2025 with a delay of more than two and a half

months. There is absolutely no explanation for this portion of delay in the entire application.

15. It is a settled principle of law that a litigant cannot claim condonation of delay as a matter of right without offering any explanation for such delay. This is for the reason that non-filing of an appeal within the prescribed period of limitation creates a valuable right in favour of the other party. It is only when the delay is satisfactorily explained by disclosing cogent reasons that the delay may
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and not otherwise. In the instant case, we note with immense intrigue that the appellants have failed to disclose any reason at all, much less a cogent reason, for the delay which has occasioned in the filing of the appeal after 18.02.2025. Therefore, such delay, having remained totally unexplained, appears to be contumacious and per se not condonable.

16. In view of the above discussion, the appellants have failed to make out a case for condonation of delay in filing the appeal. Hence, the application is dismissed.

DFR No : 231 of 2025 & IA No. 999 OF 2025

17. Considering the dismissal of the application for condonation of delay in filing the appeal, the appeal is held to be barred by time and is accordingly dismissed as such. All other applications filed along with the appeals also stand disposed of.

Pronounced in the open court on this the 29th day of May, 2026.

(Virender Bhat)
Judicial Member

(Seema Gupta)
Officiating Chairperson

REPORTABLE / NON-REPORTABLE
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