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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

CIVIL WRIT PETITION NO.13335 OF 2017

Agrawal Translink Pvt. Ltd.	...Petitioner
Versus	
Maharashtra State Electricity Distribution Company Limited, O & M and Ors.	...Respondents

Mr.S.B.Gothwal, for the Petitioner.

Mr.Rakesh Singh, i/b M.V.Kini & Co., for the Respondent Nos.1 and 2.

Mr.A.B.Kadam, A.G.P for the Respondent No.3.

CORAM : REVATI MOHITE DERE, J.

DATE : 19th OCTOBER, 2018

P.C. :

1. Heard learned counsel for the parties.
2. By this petition, the Petitioner has impugned the order dated 31st January, 2017, passed by the Appellate Authority and the Chief Electricity Inspector, Industrial Electricity and Labour Department, Mumbai, in an Appeal filed by the Petitioner under Section 127 of the Electricity Act, 2003.

3. Learned Counsel for the Petitioner submitted that the Appellate Authority was pleased to dismiss the Petitioner's Appeal on two counts viz. (i) that it was not filed within the period of limitation i.e. 30 days and (ii) that 2% of the mandatory Court Fees required to be deposited under Section 127 of the Electricity Act, was not deposited. He submitted that the delay in filing the Appeal was 28 days. He submitted that the Petitioner is ready to deposit 2% of the Court Fees, if required to be deposited under Section 127 of the Electricity Act, before the Appellate Authority and if the same is so admissible in law, under the Electricity Act.

4. Learned Counsel for the Petitioner submitted that the entire amount as assessed by the Authority has already been deposited by the Petitioner with the Supplier, without prejudice to his rights and contentions.

5. Learned Counsel for the Respondent Nos.1 and 2 submitted that if the amount as mentioned in the order dated 31st January, 2017 is deposited by the Petitioner, the Respondent Nos.1 and 2 will have no objection, if the delay condonation application as well as the Appeal is heard on merits.

6. Perused the papers. The Respondent No.2 i.e. the Superintendent Engineer, Maharashtra State Electricity Distribution Company Limited, Kalyan Circle II, Kalyan, inspected the Petitioner's premises and prepared the Spot Inspection Report dated 14th October, 2016 and thereafter passed the provisional as well as final assessment order and directed the Petitioner to pay the final assessment amount of Rs.46,75,070/-. It is not in dispute, that the Petitioner has deposited the said amount of Rs.46,75,070/- with the Respondent Nos.1 and 2, without prejudice to their rights and contentions, pursuant to which, the Electricity was restored. Being aggrieved by the final assessment order, the Petitioner challenged the same before the Appellate Authority under Section 127 of the Electricity Act. It appears that the Appellate Authority vide order dated 31st January, 2017, dismissed the Appeal on two counts i.e. (i) that the Appeal was not filed within 30 days and (ii) that 2% of the Court Fees was not paid under Section 127 of the Electricity Act. Section 127 of the Electricity Act, contemplates, that any person aggrieved by the final order passed under Section 126 of the Electricity Act may within 30 days of the said order, prefer an Appeal before the Appellate Authority. Under sub-section (2) of Section 127, no Appeal against an order of assessment under

sub-section (1) of Section 127 can be entertained unless an amount equal to (half of the assessed amount) is deposited in cash or by way of bank draft, with the licensee and documentary evidence of such deposit has been enclosed along with the Appeal. It is not in dispute that the Petitioner has deposited the entire amount as assessed in the final assessment order, without prejudice to his rights and contentions with the Respondent Nos.1 and 2 and as such there is compliance with sub-section (2) of Section 127 of the Electricity Act.

7. As far as 2% of the Court Fees is concerned, the Petitioner to deposit the same, if he is so liable to deposit the same under the Electricity Act and the Rules made thereunder. This Court in the case of ***Rakhee Gupta v/s The State of Maharashtra and Others, passed in Writ Petition No.1674 of 2006, decided on 18th October, 2016,*** after considering various Judgments of the Apex Court, on the point of condonation of delay, has in para 15 held that Section 29(2) of the Limitation Act would be applicable to an Appeal filed under Section 127 of the Electricity Act.

8. Having regard to the Judgment of this Court in the case of

Rakhee Gupta (supra), the impugned 31st January, 2017, passed by the Appellate Authority and the Chief Electricity Inspector, Industrial Electricity and Labour Department, Mumbai, in an Appeal filed by the Petitioner under Section 127 of the Electricity Act, 2003, is quashed and set aside. The Application for Condonation of Delay as well as the Appeal filed by the Petitioner are restored back to its original file.

9. The Appellate Authority and the Chief Electricity Inspector, Industrial Electricity and Labour Department, Mumbai, to decide the application for delay, and the Appeal, if the delay is condoned, on its own merits, in accordance with law, having regard to the Judgment of this Court in the case of ***Rakhee Gupta (supra)***.

10. All parties to appear before the Appellate Authority and the Chief Electricity Inspector, Industrial Electricity and Labour Department, Mumbai, on **2nd November, 2018 at 3.00 p.m.**, after which the Appellate Authority and the Chief Electricity Inspector, Industrial Electricity and Labour Department, Mumbai, to give dates convenient to him. All contentions of both the parties are expressly kept open. The Petitioner is

granted liberty to amend the application for condonation of delay filed before the Appellate Authority as the delay in filing the Appeal is not 15 days but 28 days.

11. Petition is accordingly allowed and disposed of, on the aforesaid terms.

12. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)