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HIGH COURT OF CHHATTISGARH AT BILASPUR

REVP No. 392 of 2025

Hitachi Energy India Limited 70/401, 8th Floor, Brigade Opus, Kodigehalli Main Road, Bengaluru (Karnataka). Hitachi Energy India Limited, Corporate Office- 17th Floor, Tower 1, M3M, IFC, Gurugram (Haryana) Pin Code 122002. Through Its Authorised Representative Kshitij Raj, Lead Legal Counsel.

--- **Petitioner**

(Respondent in MA No.72/2006)

versus

1 - M/s Sarda Energy And Minerals Limited Having Its Registered Office At 73-A, Central Avenue, Nagpur 440 018 & Office Address at : P-49, Industrial Area, Urkura, Raipur 493 221. (Original Appellant in MA No.72/2006)

2 - ABB Limited (Formerly Known As Asea Brown Bowery Limited) Having Its Registered Office At Khanija Bhavan, 2nd Floor, East Wing, 49, Race Course Road, Bangalore, 560001. (Formerly At Plot No. 22, Shah Industrial Estate, Andheri (West), Mumbai 400053.)

--- **Respondents**

REVP No. 362 of 2025

Hitachi Energy India Limited 70/401, 8th Floor, Brigade Opus, Kodigehalli Main Road, Bengaluru Karnataka (As Per Cause Title) Corporate Office 17th Floor, Tower - 1, M3M IFC, Gurugram (Haryana) Pin Code 122 002 Through Its Authorised Representative Kshitij Raj, Lead Legal Counsel

---**Petitioner**

(Substituted Appellant In M.A. No. 1456/2005)

Versus

1 - ABB Limited, (Formerly Known As Asea Brown Bowery Limited) Having Its Registered Office At Khanija Bhavan, 2nd Floor, East Wing, 49, Race Course Road, Bangalore 560 001 (Formerly At Plot No. 22, Shah Industrial Estate, Andheri (West), Mumbai 400 053) (Original Appellant In M.A. No. 1456/2005)

2 - M/s Sarda Energy And Minerals Limited Having Its Registered Office At 73-A, Central Avenue, Nagpur 440 018 And Office Address At P-49, Industrial Area, Urkura, Raipur 493 221 (Original Respondent In M.A. No. 1456/2005)

--- **Respondents**

For Petitioners	:	Mr. Manoj Paranjpe, Sr. Adv. with Mr. K. Rohan and Mr. Sujoy Sur, Advocates.
For Respondent-ABB Ltd.	:	Mr. Sumesh Bajaj with Mr. Rishabh Bajaj, Advocates.
For Respondent-M/s Sarda Ltd.		Mr. Sabyasachi Bhaduri, Advocate.

Hon'ble Shri Justice Naresh Kumar Chandravanshi, J

CAV ORDER

Since both these review petitions arise out of a common order dated 03.04.2025 passed by this Court in MA No.1456/2005 and MA No.72/2006 involving the same parties, they are heard analogously and being disposed of by this common order.

02. The Registry has raised objection in respect of maintainability of the review petitions on the ground that since both the miscellaneous appeals are also pending consideration before this Court, separate application for recalling of the order dated 3.4.2025 ought to have been filed in those appeals and as such, the instant review petitions are not maintainable.

03. Learned counsel appearing for the respondents herein also supported the aforesaid objection.

04. Learned counsel for the petitioner, referring to the judgment of the Full Bench of this Court in the matter of ***Ajay Gupta Vs. State of CG and others***, reported in ***2017 SCC OnLine Chh 111***, would

contend that while dealing with the issue of maintainability of appeal under Section 2(1) of CG High Court (Appeal to Division Bench) Act, 2006, against an interlocutory order, the Full Bench of this Court held that though proviso to Section 2(1) of this Act bars appeal against those interim orders which are totally interlocutory in nature, do not decide matters of moment and do not have an element of finality attached to them, but if the order vitally affects rights of the parties having bearing on final adjudication of case, it cannot be termed as interlocutory order and appeal would lie against such order. Further, it was held that appeal would also lie against those orders which cannot be undone at the time of final hearing and which have element of finality attached to them. He submits that in the present case, the order impugned has already attained finality in relation to the respondent-ABB Ltd. and in consequence thereof, the petitioner has been substituted in place of respondent-ABB Ltd. Thus, the order impugned vitally affects rights of the petitioner having bearing on final adjudication of case. Being so, the objection raised by the Registry deserves to be overruled and the instant review petitions be held to be maintainable.

05. This Court finds substance in the aforesaid argument of learned counsel for the petitioner. Since in compliance of the impugned order dated 3.4.2025, name of the respondent-ABB Ltd. has already been deleted from both the appeals and in place thereof, the petitioner has been substituted, it vitally affects the rights of the petitioner and has

bearing on the final adjudication of the case, and that the impugned order has attained finality in relation to the respondent-ABB Ltd., hence in the considered opinion of this Court, both the review petitions preferred against the impugned order dated 3.4.2025 are maintainable. Consequently, the objection raised by the Registry stands waived.

06. Heard on IA Nos.02/2025, applications for condonation of delay in filing the review petitions.

07. Learned counsel for the petitioner would submit that in MA No.1456/2005 and MA No.72/2006, the present petitioner was not a party. For the first time, the petitioner received a notice on 14.5.2025 in respect of both these appeals. Since they were not aware in respect of the orders passed by this Court, therefore, no application for review was filed at earlier point of time. Even otherwise, delay, if any, in filing these review petitions ought to be computed from 14.5.2025. He submits that the petitioner had to obtain and review the entire record of the case in order to understand the background and issues involved. The case record is voluminous, comprising 12 separate volumes of documents accumulated over years of arbitration and court proceedings. All of these documents and proceedings were entirely new and unfamiliar to the petitioner who had never been involved in the matter before. The petitioner only after obtaining and studying the relevant materials drafted the review petition articulating the grounds for review, and all this consumed precious time and contributed to the

delay.

08. Learned counsel would further submit that the petitioner applied for certified copy of the Court record on 12.8.2025 and the same was provided to the petitioner on 28.9.2025. Given this, it is submitted that the time period of 48 days ought to be deducted from the total period of delay at the petitioner’s end. Thus, there exists sufficient cause for condonation of delay, if any, in filing these review petitions. Learned counsel for the petitioner would submit that the fact remains that the petitioner was not heard before passing the impugned order on the application for substitution. Since the order impugned was ultimately passed against the petitioner, no malafide can be attributed to the petitioner and there was no occasion for the petitioner to file review petitions belatedly. He submits that delay so occurred was neither willful nor intentional or malafide but entirely beyond the control of the petitioner. The petitioner has been diligent and sincere in pursuing the matter once it came to its knowledge.

09. Learned counsel for the petitioner would next submit that even after Scheme of Arrangement entered into between the parties, the respondent-ABB Ltd. had made various communications with regard to the liability arising from both the appeals which have been categorically denied by the petitioner vide letter dated 30th May, 2022 (Annexure A/5), letter dated 14th September, 2023 (Annexure A/8) and letter dated 3rd March, 2025 (Annexure A/11). Hence, in view of above submission,

the delay occurred in filing the review petitions may be condoned, these petitions may be allowed; the impugned order dated 3.4.2025 be recalled and the respondent-ABB Ltd. be restored as appellant/respondent in the respective appeals and substitution applications (IA No.04/2025) be decided after affording opportunity of hearing to the petitioner herein.

In support of his contention, learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court in the matter of ***Haryana Suraj Malting Ltd. vs Phool Chand*** reported in ***(2018) 16 SCC 567*** in which the Hon'ble Supreme Court has explained what should be termed as sufficient cause and limitation will not come in the way if sufficient cause is shown by the party for filing a related application. To buttress his contention that the impugned order deserves to be recalled, he placed reliance on the judgments of the Hon'ble Apex Court in the matters of ***Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and others, 1980 Supp SCC 420*** and ***Kapra Mazdoor Ekta Union Vs. Birla Cotton Spinning and Weaving Mills Ltd. and another, (2005) 13 SCC 777.***

10. The respondent-ABB Ltd. has filed it reply. Learned counsel for the respondent-ABB Ltd., referring to its reply, would submit that the impugned order was passed on 3.4.2025 and both these review petitions have been filed by the petitioner on 6.10.2025 i.e. after 163 days from the date of passing of the order. He submits that it is the

contention of learned counsel for the petitioner himself that dispute persists with regard to liability in respect of both the appeals since 2022. He further submits that though copy of IA No.04/2025 was not sent to the petitioner by the Court but it was sent by the respondent-ABB Ltd. on its own, therefore, contention made by learned counsel for the petitioner that they were not aware of pendency of the instant appeals as well as the substitution application is wholly incorrect. Even after passing of the impugned order by this Court, copy of the order was sent by the respondent-ABB Ltd. to the petitioner through currier vide letter dated 17.4.2025 as also through email, and this fact has also been admitted by the petitioner in para 6(XX) of the review petitions. This apart, even if the date of information is supposed to be 14.5.2025 when the petitioner received notice, in that case also there is 125 days delay in filing the review petitions. Despite that, wrong facts have been mentioned in the applications for condonation of delay that review petitions have been filed within limitation.

11. Learned counsel for the respondent-ABB Ltd. would further submit that the petitioner filed application for getting certified copy of the record on 12.8.2025 whereas information about passing of the impugned order was conveyed to the petitioner by the respondent as well as by this Court in the month of April, 2025 itself. Since the respondent-ABB Ltd. had already informed the petitioner about filing of the substitution application, the order passed by this Court and Sarda

Energy & Minerals Ltd. did not raise any objection in respect of the contention made in the said application, therefore, issuance of notice to the petitioner was not required at all. Learned counsel further submits that in the substitution application, prayer of the respondent-ABB Ltd. is that name of the petitioner Hitachi Energy India Ltd. be substituted in place of the respondent/appellant-ABB Ltd. therein in the respective appeals in compliance of the order passed by NCLT or name of the respondent-ABB Ltd. may be deleted from the memo of appeals. He vehemently argues that if the respondent-ABB Ltd. does not want to be a party in those appeals, then it cannot be compelled to be a party in the same.

Reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***Sunil Gupta Vs. Kiran Girhotra and others, (2007) 8 SCC 506; Hari Mohan Sharma and another Vs. Charanjeet Singh Rekhi and others, (2019) 12 SCC 412; Gurmit Singh Bhatia Vs. Kiran Kant Robinson and others; (2020) 13 SCC 773;*** and ***Small Industries Development Bank of India Vs. SIBCO Investment Private Limited, (2022) 3 SCC 56***.

12. Learned counsel appearing for respondent-Sarda Energy & Minerals Ltd. would submit that he has nothing to say in the instant review petitions as the disputes relates to the petitioner and respondent-ABB Ltd.

13. Heard learned counsel for the parties and perused the material available on record.

14. ABB Limited was the operational company under the Companies Act approved by National Company Law Tribunal (NCLT), Bangalore Bench. The Power Grid Business including Transformer Business was transferred/demerged to ABB Power Products and System India Ltd. Subsequently, ABB Power Products and System India Ltd. was renamed as Hitachi Energy India Ltd. (Petitioner herein).

15. The first question that falls for consideration is whether the petitioner has been able to establish "sufficient cause" for condonation of delay in filing the present review petitions.

16. It is well settled that the expression "sufficient cause" occurring in the law of limitation is required to receive a liberal and justice-oriented construction so as to advance substantial justice, provided the conduct of the applicant does not disclose negligence, inaction or lack of bona fides. The Court is not expected to adopt a pedantic approach while considering an application for condonation of delay, particularly where refusal to condone the delay may result in denial of an opportunity of hearing to a person who is directly affected by the order under challenge.

17. The Hon’ble Apex Court in the matter of *Haryana Suraj Malting Ltd.* (supra), while dealing with the issue whether the Industrial

Tribunal/Labour Court becomes *functus officio* after 30 days of pronouncement/publication of the award and loses all powers to recall an *ex parte* award on an application made by the aggrieved party after 30 days from the date of the award, held in paras 34 & 35 of its judgment as under:

> "34. In case a party is in a position to show sufficient cause for its absence before the Labour Court/ Tribunal when it was set ex parte, the Labour Court/Tribunal, in exercise of its ancillary or incidental powers, is competent to entertain such an application. That power cannot be circumscribed by limitation. What is the sufficient cause and whether its jurisdiction is invoked within a reasonable time should be left to the judicious discretion of the Labour Court/Tribunal.
>
> 35. It is a matter of natural justice that any party to the judicial proceedings should get an opportunity of being heard, and if such an opportunity has been denied for want of sufficient reason, the Labour Court/Tribunal which denied such an opportunity, being satisfied of the sufficient cause and within a reasonable time, should be in a position to set right its own procedure. Otherwise, as held in *Grindlays, 1981 SCC (L&S) 309*, an award which may be a nullity will have to be technically enforced. It is difficult to comprehend such a situation under law."

18. In the present case, it is not in dispute that the petitioner was not originally a party to MA No.1456/2005 and MA No.72/2006. The

impugned order dated 03.04.2025 was passed on an application for substitution whereby the petitioner came to be substituted in place of respondent-ABB Ltd. Consequently, the petitioner became directly affected by the said order without having participated in the proceedings leading to its passing. Although the respondent-ABB Ltd. has contended that the petitioner had knowledge of the substitution application and the order prior to issuance of notice by this Court, mere knowledge of the proceedings cannot be equated with an obligation to institute review proceedings immediately. The petitioner has explained that upon receiving notice and becoming aware that its rights and liabilities stood directly affected, it was required to obtain the complete record, examine the legal implications arising out of the demerger approved by the NCLT, and ascertain the factual background of arbitration proceedings spanning several years. The explanation furnished that the record comprised twelve volumes and required detailed examination cannot be said to be inherently improbable or lacking in bona fides.

19. It has also been explained that certified copy of the record was applied for on 12.08.2025 and supplied on 28.09.2025. Though the respondent-ABB Ltd. has questioned the necessity of obtaining certified copies, it cannot be overlooked that a litigant seeking review of a judicial order is ordinarily expected to proceed on the basis of authenticated records, particularly when the order concerns

substitution consequent upon a corporate restructuring involving transfer of liabilities. The time consumed in obtaining certified copies, therefore, deserves due consideration while examining whether sufficient cause exists.

20. More importantly, the impugned order has the effect of substituting the petitioner in place of respondent-ABB Ltd., thereby potentially fastening upon the petitioner the consequences arising out of pending proceedings. The petitioner seeks restoration of the substitution application for fresh consideration after being afforded an opportunity of hearing. Thus, the review petitions raise an issue concerning observance of the principles of natural justice. Ordinarily, where a person alleges that an order adversely affecting its rights has been passed without affording an opportunity of hearing, the Court ought to lean in favour of adjudicating such grievance on merits unless the conduct of the applicant is demonstrably mala fide or grossly negligent.

21. The respondent-ABB Ltd. has emphasized that there is a delay even if limitation is reckoned from 14.05.2025. However, the length of delay is not decisive; what is material is the acceptability of the explanation. In the facts of the present case, the explanation offered by the petitioner appears to be plausible and supported by contemporaneous events. No material has been brought on record to establish that the petitioner deliberately delayed the institution of the

review petitions with an oblique motive or to secure any unfair advantage. Further, condonation of delay would not determine the merits of the controversy relating to substitution. It would merely enable the Court to examine whether the order dated 03.04.2025 requires reconsideration after hearing all affected parties. On the other hand, refusal to condone the delay would foreclose the petitioner's challenge to an order which directly affects its legal rights without examination on merits. The balance of justice, therefore, tilts in favour of condoning the delay.

22. On the basis of aforesaid discussions, this Court is satisfied that the petitioner has shown sufficient cause for not approaching the Court within the prescribed period. The delay deserves to be condoned in order to advance substantial justice, leaving all questions on merits to be decided independently without being influenced by the observations made herein. Accordingly, the applications (IA No.02/2025) for condonation of delay in filing the review petitions are allowed and delay in filing these petitions is hereby condoned.

23. As regards recalling of the order dated 3.4.2025, the application for substitution was filed by the respondent-ABB Ltd. on the ground that dispute in aforesaid cases relates to Power Grid Business of ABB Ltd. which has been transferred to ABB Power Products and Systems India Ltd.; the said Scheme of Arrangement has been approved by the NCLT vide order dated 27.11.2019 and after that ABB Power Products

and Systems India Ltd. has changed its name to Hitachi Energy India Ltd. (petitioner herein). The respondent-ABB Ltd. also filed documents demonstrating this fact of the Registrar of Companies and contended that Hitachi Energy India Ltd. being a necessary party is required to be substituted in place of ABB Ltd. (formerly known as Asea Brown Boveri Ltd.) in both the appeals.

24. In the review petitions, the petitioner has stated that earlier the respondent-ABB Ltd. had made various communications with regard to the liability arising from both the appeals but they have been categorically denied by the petitioner vide letter dated 30th May, 2022 (Annexure A/5), letter dated 14th September, 2023 (Annexure A/8) and letter dated 3rd March, 2025 (Annexure A/11). However, this fact of petitioner's specific denial with regard to the aforesaid liability was not mentioned in the substitution applications.

25. In the matter of *Grindlays Bank Ltd.* (supra), the Hon'ble Supreme Court observed in para 13 of its judgment as under:

> "13. We are unable to appreciate the contention that merely because the ex parte award was based on the statement of the manager of the appellant, the order setting aside the ex parte award, in fact, amounts to review. The decision in Patel Narshi Thakershi v. Pradyumansinghji is distinguishable. It is an authority for the proposition that the power of review is not an inherent power, it must be conferred either specifically or

> by necessary implication. Sub-sections (1) and (3) of Section 11 of the Act themselves make a distinction between procedure and powers of the Tribunal under the Act. While the procedure is left to be devised by the Tribunal to suit carrying out its functions under the Act, the powers of civil court conferred upon it are clearly defined. The question whether a party must be heard before it is proceeded against is one of procedure and not of power in the sense in which the words are used in Section 11. The answer to the question is, therefore, to be found in sub-section (1) of Section 11 and not in sub-section (3) of Section 11. Furthermore, different considerations arise on review. The expression "review" is used in two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in Patel Narshi Thakershi's case held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito justitiae* to prevent the abuse of its process, and such power inheres in every court or Tribunal."

26. As for the contention of the respondent-ABB Ltd. that nobody can be compelled and dragged into a litigation which, in that person's understanding, is not related to him, upon an overall consideration of the material available on record, this Court finds that the order dated

03.04.2025, whereby the petitioner was substituted in place of ABB Ltd., was passed without affording the petitioner an opportunity of hearing, though the order directly affects its legal rights and liabilities. The record further reveals that even prior to filing of the substitution applications, the petitioner had consistently disputed that the liabilities forming the subject matter of the present appeals stood transferred to it under the Scheme of Arrangement approved by the NCLT. Such dispute was neither admitted nor undisputed and, therefore, required judicial determination after hearing all the affected parties. The substitution applications came to be allowed without hearing the petitioner's stand on this crucial aspect, resulting in a procedural infirmity and violation of the principles of natural justice. The scope of the present review is confined to correcting this procedural error and does not extend to adjudicating the merits of the rival claims regarding transfer of liability.

27. The contention of respondent-ABB Ltd. that it cannot be compelled to remain a party to proceedings which, according to it, no longer concern it, also cannot be accepted at this stage. Although a litigant is ordinarily the *dominus litis*, the said principle is not absolute and cannot be invoked to substitute another entity in its place when such substitution itself is seriously disputed by the proposed transferee. Both the miscellaneous appeals arise out of the order passed by the learned District Judge and the award passed by the

learned Arbitrator, wherein liability has been fastened upon ABB Ltd. If ABB Ltd. seeks to contend that, by virtue of the Scheme of Arrangement approved by the NCLT, such liability has stood transferred to Hitachi Energy India Ltd. (formerly ABB Power Products and Systems India Ltd.), the said contention necessarily requires adjudication after impleading and hearing the alleged successor entity. Until such determination is made, ABB Ltd. cannot be discharged from the proceedings merely on its own assertion of transfer of liability. Otherwise, there would be no party before the Court against whom the respondent, M/s Sarda Energy & Minerals Ltd., could enforce or defend its rights in the pending appeals, thereby creating a procedural vacuum and frustrating the effective adjudication of the dispute. The fact situation of the case law cited by learned counsel for the respondent-ABB Ltd. is of no help to him in the fact situation of the instant case.

28. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that, before adjudicating IA No.04/2025 seeking substitution of the petitioner in place of ABB Ltd., the petitioner ought to have been afforded an effective opportunity of hearing to place its objections and submissions on the proposed substitution. However, such opportunity was inadvertently not extended, and the order dated 03.04.2025 substituting the petitioner in place of ABB Ltd. came to be passed without hearing the petitioner. Since the impugned order

directly affects the petitioner's rights and liabilities, the failure to afford an opportunity of hearing constitutes a violation of the principles of natural justice, warranting recall of the said order.

29. For the aforesaid reasons, both the review petitions stand allowed. The impugned order dated 3.4.2025 passed in MA No.1456/2005 and MA No.72/2006 is hereby recalled. Registry is directed to restore ABB Ltd. as appellant/respondent in the respective miscellaneous appeals.

Learned counsel for the parties are directed to remain present at the time of hearing of both these appeals on the next date of hearing so that the substitution applications (IA No.4/2025) filed by the respondent-ABB Ltd. may be disposed of afresh after affording reasonable opportunity of hearing to all the parties concerned including the petitioner herein.

Sd/

(Naresh Kumar Chandravanshi)

Judge

MOHD AKHTAR KHAN

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