$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **<u>FAO 145/2018 & C.M.Nos.15758-61/2018</u>**

M/S MANAK CONSTRUCTION PVT LTD. ..... Appellant
Through: Mr. B. S. Chaudhary, Ms. Sneh Lata Rana and Mr. Yogender Singh, Advocates.

Versus

TATA POWER DELHI DISTRIBUTION LTD & ANR. ..... Respondents
Through: Mr. Karan Bharihoke, Advocate(M. Nos. 8826122888/9811464567).

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% **08.05.2018**

1. This appeal impugns an order dated 30.08.2017 dismissing the appellant's petition under section 34 of the Arbitration and Conciliation Act, 1996 ('the Act') against an Award dated 15.09.2016 awarding a sum of Rs.86,101/- to the respondents, although they had claimed an amount of Rs.7,27,533/- along with interests @ 18% *per annum* with effect from 26.06.2009.

2. The brief facts of the case are that, the Scheme for Supply of Electricity to JJ Basties/Unauthorized Colonies was approved by the erstwhile Delhi Vidyut Board (in short 'the DVB') to address the problem of supply of electricity to unauthorized colonies, on the recommendation of the Government of NCT of Delhi vide its resolution No.77.98/1210-A on 23.12.1998. The Scheme, *inter-alia,* provided that: (i) DESU/DVB would

appoint a Single Point Delivery Agency Contractor in all the unauthorized colonies, on the recommendation of the Residents Welfare Associations or the local area MLA's, for distribution of electricity; (ii) the Contractors/ Agencies so appointed were to be given electricity on HT Lines-up to a certain (single) point at the periphery or within the colony by extending its 11 KV network; (iii) establishing a distribution transformer, and (iv) thereafter it was the responsibility of the Contractors/Agencies to install electrical LT network and distribute electricity within the area of its operation assigned by DESU/DVB. Formal contracts were entered into known as 'Single Point Delivery Contract' ('SPD Contract'), governing the relationship between the Contractor and the Utility viz. DESU/DVB.

3. In 1999, the appellant was awarded the SPD contract for seven years for 11 colonies and three Franchises by the erstwhile DVB. But it continued up-to 19.09.2008 till its termination. An agreement was executed between erstwhile DVB and the appellant under the SPD Scheme, to manage the distribution of electricity to the residents/occupants of Baba Colony. As per the said agreement, the appellant was to receive metered electricity at a single point from the respondent/claimant, for further supply to its penultimate consumers and to realize revenue for the metered supply of electricity, on the terms and conditions as mandated by the agreement, as well as by the applicable laws. For this purpose bulk supply electricity connection bearing K.No.39140991656 was provided and an HT meter was fixed, to measure the power supply by the respondents to the appellant. The latter was obliged to install private LT meters in the premises of all end consumers.

4. In 2003, Tata Power Delhi Distribution Ltd. (TPDDL) the respondent

no.1 became the licensee for distribution of electricity in North-West Delhi, replacing the erstwhile DVB as its successor.

5. On 11.09.2008, the appellant wrote a letter to the TPDDL for the termination of the aforesaid SPD connection, since it had grievances, and wanted a resolution of the same. The said SPD Contract of Baba colony was terminated by the TPDDL on 19.09.2008; on 20.09.2008, a public announcement was made apropos to the same effect, leading to the ending of the appellant's right to collect electricity revenue from the consumers of that locality after 20.09.2008.

6. A series of arbitration proceedings were carried out. Awards were pronounced. Against one such Award the appellant preferred an application under section 34 of the Act which was dismissed vide order dated 30.08.2017. This appeal impugns the said order and the Award dated 15.09.2016.

7. The learned counsel for the appellant states that both the Award and the impugned order have erred in not examining the fact that the Arbitrator went beyond the terms of reference of the arbitration i.e. the arbitral proceedings were not maintainable in the absence of a prior endeavour to settle the *lis* through mediation or by mutual settlement. He refers to the terms of the agreement, which reads as under:-

> *"11. DISPUTES AND ARBITRATION*
>
> *Disputes under the agreement shall be settled by mutual discussion. Falling this, the disputes will be referred to sole arbitration by the owner are his nominee as Sole Arbitrator. The agency shall have no objection if the nominee is an employee of DVB. The parties to tire agreement shall continue to fulfill their obligations under the agreement during*

> *arbitration proceedings and no payment shall be with held on this account unless it is a subject matter of the dispute."*

8. The appellant contends that repeated letters were sent to the respondents to settle the various disputes but it evoked no response, constraining them to file an arbitration claim regarding one *lis* which is still pending. Similarly, in the present case also, the respondents have not been able to show that they had made efforts to first settle the lis amicably or had resorted to prior mediation, as contemplated in the agreement.

9. The Court finds the contentions untenable because reference to arbitration was the last resort contemplated for resolution/ adjudication of *inter se* disputes. The mere fact that the parties were unable to settle the *lis* amicably, despite mediation – whatever that may have been between the parties, is a sufficient proof that there was a failure of settlement. The appellant was granted full opportunity to canvass its case in the arbitral proceedings. It did so. The documents and pleadings were duly considered and the arbitral Award was passed.

10. The impugned order has reasoned, *inter alia*, that the appellant had filed a reply to the claim petition and had led evidence, which was duly appreciated and the Award was passed. Simply because another view could be taken, is not a reason enough for upsetting the Award, as per the following judgments:-

(i) ***Veda Research Laboratories Ltd. v. Survi Projects*** 2013(2) Arb. LR 16 (Delhi) (DB) wherein it was held as under:

> *" This court is not an appellate body. The scope of objections under Section 34 of the Act is limited; the scope of the next hierarchy which is an appeal under Section 37 of the said Act cannot enlarge the scope of*

the objections which have already been dealt with by the learned Single Judge in detail. Where a reasoned award has been passed by the arbitrator there is little scope for interference as the arbitral tribunal is the sole judge of the quality as also quantity of the evidence and it is not for the court to take upon itself the task of being a judge on the evidence which has been adduced before the arbitrator. Unless and until there is an error apparent on the face of the award, the award may not be interfered with."

(ii) ***Wishwa Mittar Bajaj & Sons V. Union of India*** 2013(2) Arb. LR 417 (Delhi) (DB) it was held that:

> *" Once the arbitrator found that these were arbitrable, and the claims tenable, the court did not have the jurisdiction to examine the merits, re-appreciate the evidence on record and arrive at contrary findings; clearly, there was nothing in the award disclosing that it was contrary to public policy in the sense understood by the law, to warrant interference under Section 34."*

(iii) ***MC-Rotem-MeIco Consortium v. M/s. Delhi Metro Rail Corporation Ltd.*** 2015 Online Del 6378 wherein this Court referred the leading case of ***National Highway Authority of India v. Som Datt Builders-NCC-NEC (JV)*** in FAQ (OS) 427 of 2007 in which it was observed as under:

> *"21. We are conscious of the fact that primarily it was for the Arbitral Tribunal to interpret the contractual terms and that if the interpretation adopted by the Arbitral Tribunal is a plausible interpretation i.e. if it is one of the various interpretations that could reasonably be given to the contract, then the Court would not interfere with the award merely because, according to the Court's understanding, another interpretation is*

> *preferable. However, it is equally well settled that if the interpretation adopted by the Arbitral Tribunal in respect of the contractual terms is so unreasonable that no reasonable person would adopt, which is so unfair and unreasonable as to shock the conscience of the Court, the illegality is one which goes to the root of the matter and is not merely a trivial illegality and the interpretation of the contractual terms goes contrary to the contractual terms themselves and is patently incorrect, the court while hearing the objections to such an award, would be justified in interfering with such an award and setting aside the same."*

11. In view of the above, this Court finds no reason to interfere with the impugned order. The sole ground for challenge of the petition is untenable. There is no substance in the appeal. Accordingly, it is dismissed.

NAJMI WAZIRI, J.

MAY 08, 2018

sb