$~11

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

\+ FAO(OS) 99/2017

POWERGRID CORPORATION OF INDIA LTD ..... Appellant

Through : Mr. Sanjay Jain, Sr. Adv. with Mr. Rajesh Chhetri, Mr. Pawan Upadhyay, Mr. Rajeev Chhetri and Ms. Meenakshi Rawat, Advs.

versus

RPG TRANSMISSION LTD ..... Respondent

Through : Mr. Vikas Dhawan and Ms. Vanya Khanna, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**
**HON'BLE MR. JUSTICE A. K. CHAWLA**

**O R D E R**

% **16.10.2018**

The Powergrid Corporation prefers this appeal under Section 37 of the Arbitration and Conciliation Act (hereafter referred to as "the Act") objecting to majority award dated 14.05.2009 on the disputes referred to it between the parties. The respondent (hereafter referred to as "RPG") had claimed ₹42,33,557/- towards reimbursement of work contract tax along with interest from the date of reference till the date of realization.

The record would indicate that the parties entered into a contract pursuant to a letter of award dated 08.02.1995 – extending to survey, optimization, design and construction of 400 KV double circuit- Abdullapur- Bawana Transmission Line Tower - package A. The dispute referred related to reimbursement of work contract tax, borne by the RPG. The Powergrid Corporation contended that RPG's claim was time barred; furthermore, that the claims were settled in the year 2000 and that more substantially – the subject matter of the present appeal, the minutes of meeting of 24.01.1995 did not form part of the letter of award or even the contract between the parties.

The majority award held that the minutes of meetings dated 17.01.1995, 24.01.1995 and 31.01.1995 on the post bid discussions and the deviations agreed by the Powergrid Corporation enclosed as Annexure 'A' to the LOA formed part of the contract. It was further concluded that the meeting of 24.01.1995 discussed, both commercial issues as well as work contract tax, and were enclosed as Annexure 'A' to the contract and Annexure 'B' to the statement on claim. The award overruled the contentions with respect to the claims being barred.

The Powergrid Corporation's objections to the award under Section 34 were rejected after due examination by the Single Judge who observed as follows :

> *"7. Having examined the same documents as the AT did and having heard learned counsel for the parties, the Court is*

*unable to come to a different conclusion. The short question was whether the contract price was inclusive of all taxes and duties payable by the contractor. The majority Award held that any statutory tax that would inter alia include the sales tax lawfully payable on the transaction had to be reimbursed by PGCIL. Even otherwise it was liable to reimburse the sales tax payable on the material transferred by RPG in the works of PGCIL during the execution of the works under the contract. The said liability also was said to arise on the basis of Clause 3.01 of Annexure I and the MoM dated 24"^ January, 1995.*

*8. In this regard the Court concurs with the following conclusion in the majority Award:*

> *"39 The transaction whereby the Claimant incorporates the material during the execution of the works is a transaction solely between the Claimant and the Respondent and the sales tax that arises from such a transaction is required to be reimbursed by Powergrid to the Claimant"*

*9. As regards computation of the amount found payable by the PGCIL to RPG, para 39 (b) of the majority Award discusses the details of the amounts assessed and deposited by RPG towards WCT. The copies of the challans evidencing deposit of WCT by RPG was also produced before the AT. It was noted that the parties did not cross-examine the deponent and agreed to proceed on affidavits.*

*10. In the circumstances the conclusion in the majority Award that PGCIL had to reimburse RPG a sum of Rs.42,33,557 towards WCT cannot be said to suffer from any legal infirmity.*

*11. The award of interest @ 12% per annum also cannot be said to be excessive."*

It is argued on behalf of the Powergrid Corporation by Mr. Sanjay Jain, ld. senior counsel that both the Single Judge and the Tribunal fell into error in holding that the minutes of meeting of 24.01.1995 formed an integral part of the contract. It was submitted that they were meant to be only a discussion and agreement on the commercial terms and did not in any manner implicate the final price payable by the corporation to RPG towards performance of the contract. Ld. counsel relied upon para 3 of the minutes of the meeting dated 24.01.1995 as well as Clause 1.0 of the other minutes of meeting of the same date i.e. 24.01.1995 in this regard.

The relevant extracts of the minutes of meeting are as follows :

"***Minutes of meeting of Post bid discussion held between POWERGRID & SAE (India) Ltd., on commercial issues on 24.01.1995 for 400 KV Double Circuit Abdullapur – Bawana Transmission Line Tower Package-A Associated with Naptha – Jhakri H.E.P. (Specification No.C-20506-L165-1)***

*xxx xxx xxx*

*12.0 Except for the above, all other deviations/exceptions and/or additional conditions, implicit or explicit contained in the offer of SAE (or subsequent communications), if any, shall stands withdrawn without any cost implication to POWERGRID and the Contract shall be performed strictly in accordance with the bidding documents."*

The second minutes of meeting with respect to the works contract tax, in its relevant particulars, to the extent it is pertaining to the present disputes, reads as follows :

***"Minutes of meeting of Post bid discussion held between POWERGRID & SAE (India) Ltd., on Works Contract tax on 24.01.1995 for 400 KV Double Circuit Abdullapur – Bawana Transmission Line Tower Package-A Associated with Naptha – Jhakri H.E.P. (Specification No.C-20506-L165-1 and C-20508-L165-1)***

*xxx xxx xxx*

*1.0. In case concerned state Tax Authorities decide to levy taxes on account of works contract.*

*xxx xxx xxx*

*iii) In case the tax assessed by the Sales Tax office for a year is more than the amount of tax deposited, the contractor shall obtain necessary stay for additional demand and file appeal with the Authorities concerned. All deposites that are required to be made under sales tax act for admitting stay application and any deposit that may be required before filing appeal shall be deposited by SAE. POWERGRID shall reimburse the same against BG for 25% of amount so deposited. The refunds if any received by SAE are to be returned to POWERGRID immediately. The same is applicable to all appeals to Tribunal, High Court and Supreme Court. No other claims except the those mentioned shall be entertained by POWERGRID.*

*xxx xxx xxx*

*v) Further if so decided by POWERGRID, SAE shall further contest the case in High court. Actual expenditure incurred by SAE on legal counsel for contesting the case in the High court alongwith stamp charges and fees shall be shared equally by SAE & POWERGRID. The reimbursement shall be made based on documentary evidence of expenditure. However counsel shall be appointed in consultation with POWERGRID.*

*vi) Upon final decision of the Court, if any additional amount is payable the same shall- be deposited by SAE, and the same shall be reimbursed by POWERGRID forthwith. In case of any refund, the same shall be paid by SAE to POWERGRID immediately."*

The majority award upon an overall consideration of the terms of the contract as well as the two minutes of meetings of 24.01.1995, was of the opinion that since the parties had visualized the likely impact of the works contract tax, any liability arising from it, had to be borne by the Powergrid Corporation. The Single Judge has concurred with that view.

It is well settled (***Ref.: Oil & Natural Gas Commission v. Mcdermott International Inc., 2000 (1) BomCR 369; Steel Authority Of India Ltd v. Gupta Brother Steel Tubes Ltd., (2009) 10 SCC 63; Associated Engineering Co v. Government Of Andhra Pradesh, 1992 AIR 232***) that the contract interpretation falls within the exclusive domain of the arbitral tribunal. In the absence of any glaring or any manifest unreasonable approach or conclusion in an award, plausibility of another view cannot persuade the court under Section 34 to upset the Tribunal's reasoning. If one were to keep this in perspective, it is quite apparent – having regard to Clause 12.0 of the second minutes of meeting of 24.01.1995, that in all respects, except certain deviations, which were deemed rejected, the terms agreed and reflected in the document were to prevail. The Tribunal held that these form an integral part of the contract as they were executed and agreed upon simultaneously with the award of work. This understanding is not entirely alien to the law. In fact, the second minutes of meeting (which the corporation stressed by relying on Clause 1(4)) is forthright, as also is the condition in the other minutes of meeting with respect to the works contract tax liability that if any amounts were to be paid by the contractor/claimant, the ultimate impact had to be borne by the Powergrid Corporation.

In these circumstances, the court is of the opinion that there is no merit in the arguments of the Powergrid Corporation.

For the above reasons, the appeal lacks merit and fails accordingly. The amount deposited in court, pursuant to the award and the impugned order of the Single Judge shall be released to the claimant. The parties shall be present before the concerned Registrar on 01.11.2018, who shall make appropriate orders to release the amounts and the interest accrued thereon.

The appeal is dismissed subject to the above terms.

**S. RAVINDRA BHAT, J**

**A. K. CHAWLA, J**

**OCTOBER 16, 2018**
aj