In the Appellate Tribunal for Electricity, New Delhi
(Appellate Jurisdiction)

R.P. NO. 07 OF 2016 IN APPEAL NO. 99 OF 2015

Dated: 15th November,2016

Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I.J. Kapoor, Technical Member

In the matter of

Power Grid Corporation of India Ltd.
Saudamini, Plot No.2, Sector 29,
Gurgaon – 122 001 **… Review Petitioner/ Appellant**

Versus

1. **Central Electricity Regulatory Commission**
3rd and 4th Floor, Chanderlok Building,
36, Janpath, New Delhi – 110 001.

2. **Rajasthan Rajya Vidyut Prasaran Nigam Ltd.**
Vidyut Bhawan, Jyoti Nagar,
Janpath, Jaipur – 302 005.

3. **Ajmer Vidyut Vitran Nigam Ltd.**
400 kV GSS Building, (Ground Floor)
Ajmer Road, Heerapura, Jaipur – 302 005.

4. **Jaipur Vidyut Vitran Nigam Ltd.**
400 kV GSS Building (Ground Floor)
Ajmer Road, Heerapur,
Jaipur – 302 005.

5. **Jodhpur Vidyut Vitran Nigam Ltd.**
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapur,
Jaipur – 302 005.

6. Himachal Pradesh State Electricity Board Ltd.
Vidyut Bhawan, Kumar House Complex
Building II, Shimla – 171 004.

7. Punjab State Power Corporation Ltd.
The Mall, Patiala – 147 001.

8. Haryana Power Purchase Centre
Shakti Bhawan,
Sector 6, Panchkula (Haryana) – 134 109.

9. Power Development Department
Govt. of jammu & Kashmir,
Mini Secretariat, Jammu – 180 006.

10. Uttar Pradesh Power Corporation Ltd.
Shakti Bhawan, 14, Ashok Marg,
Lucknow – 226 001.

11. Delhi Transco Ltd.
Shakti Sadan,
Kotla Road, New Delhi – 110 002.

12. BSES Yamuna Power Ltd.
Shakti Kiran Building, Karkardooma,
Delhi – 110 092.

13. BSES Rajdhani Power Ltd.
BSES Bhawan, Building No. 20,
Nehru Place, New Delhi – 110 019.

14. Tata Power Distribution Company Limited
(Formerly North Delhi Power Limited)
Power Trading & Load Dispatch Group
Cennet Building, Grid Building,
Near PP Jewelers, Pitam Pura,
New Delhi – 110 034

15. Chandigarh Administration
Sector 9, Chandigarh – 160 022.

16. Uttarakhand Power Corporation Ltd.
Urja Bhawan, Kanwali Road,
Dehradun – 248 001.

17. North Central Railway Regional Head Quarter,
Civil Lines, Allahabad – 211 001.

18. New Delhi Municipal Council
Palika Kendra, Sansad Marg,
New Delhi – 110 002. **… Respondent(s)**

Counsel for the Review Petitioner/ Appellant : **Mr. M. G. Ramachandran**
Ms. Ranjitha Ramachandran
Ms. Poorva Saigal
Ms. Anushree Bardhan
Mr. Shubham Arya

Counsel for the Respondent(s) : **Mr. Sethu Ramalingam for R.1**

Mr. R. B. Sharma for R-13

Mr. Suraj Singh for R-3 & R-5

ORDER

PER HON'BLE MR. I. J. KAPOOR, TECHNICAL MEMBER

1. M/s. Powergrid Corporation of India Limited (hereinafter referred to as the **"Review Petitioner/Appellant"**) has filed this Review Petition in Appeal No. 99 of 2015 seeking review of the judgment dated 01.12.2015 passed by this Tribunal in Appeal No. 99 of 2015 under Section 120 (2) of the Electricity Act, 2003 read with Order 47 of Rule 1 of the Code of Civil Procedure, 1908.

2. This Tribunal judgment dated 01.12.2015 in Appeal No. 99 of 2015 was passed upholding the Impugned Order dated 09.01.2015 passed by the Central Electricity Regulatory Commission (hereinafter referred to as the **"Central Commission"**) in Petition No. 80/TT/2012 regarding approval of the transmission charges filed by the Review Petitioner.

3.0 The present Review Petition has been filed by the Review Petitioner in pursuance of the decision of the Supreme Court in Civil Appeal No. 4469 of 2016 filed by the Review Petitioner against the Order dated 01.12.2015 on the following terms;

"1. Mr. V. Giri, learned senior counsel appearing on behalf of the appellant seeks permission to withdraw this appeal with liberty to approach the Tribunal by way of application for review. The prayer is allowed.

2. In case the application for review is filed within two weeks from today, the same may not be dismissed on the ground of delay.

3. The civil appeal is, accordingly, dismissed as withdrawn with liberty as above."

4.0 In terms of the above liberty granted by the Supreme Court, this Review Petition has been filed by the Review Petitioner on the premise that there are certain errors apparent on the face of the record and there are otherwise sufficient cause for reviewing the Order dated 01.12.2015 of this Tribunal for the following stated reasons;

"(a) The project in issue i.e. Koteshwar Transmission System with unique design of 765 KV FSC installation at Meerut was first of its kind in the India and as per the available knowledge, only second in the World;

(b) This technology was adopted by the Review Petitioner to avoid laying of additional transmission lines in the area thus optimizing the right-of-way as well as the cost of the transmission system. This helped in reducing the burden on beneficiaries.;

(c) Even the worldwide experience for the installation of 765 KV FSC Transmission System was limited but at the same time, there was a need to engage in installation of new technology for the progressive growth of the transmission system in India;

(d) The bidding process initiated and held by the Review Petitioner for award of the project and finalization of the technical specification and engineering parameters were found to be difficult to be implemented on account of unique nature of the above installation and limited competent and able manufacturers to participate in any such bidding process;

(e) There was a need to undertake repeated bidding processes, great deal of discussions with the participating bidders, finalisation of technical specifications, unique to the project. This was a departure from the other projects of 400 KV Transmission System or other Transmission System of lesser KV where the Review Petitioner had a number of manufacturers to select from and there were no such technical complexity involved."

5.0 As per the Review Petitioner, there was a delay of 34 months for the issue of the Letter of Award itself on account of the above reasons and such delay cannot be said to be on account of any inefficiency or other reasons attributable to the Review Petitioner.

5.1 It is further the case of the Review Petitioner that in addition to the above 34 months delay, the remaining 6 months delay in the implementation of the project was on account of the delay by the contractor. Since the installation was technically complex involving detailed calculations for finalisation of the final parameters and this being an unique installation, this delay in implementation cannot possibly be said on account of any inefficiency on the part of the Review Petitioner.

6. On the above issues, we have heard at length Mr. M.G. Ramachandran, the learned counsel for the Review Petitioner and Mr. R.B. Sharma learned counsel for the Respondent and considered their arguments and our observations are brought out hereunder;

7. For the purpose of review of our judgment dated 01.02.2015 under Section 120(2) of the Electricity Act, 2003, we will first examine the issue whether there is some mistake or error apparent on the face of the record or discovery of new and important matters or evidence which could not be produced by the Review Petitioner at the time when the Order was passed or for any other sufficient reasons. To look into this aspect, we would peruse our judgment dated 01.12.2015.

8. While dismissing the Appeal No. 99 of 2015 and upholding the Impugned Order dated 09.01.2015 passed by the Central Commission in Petition No. 80/TT/2012, we have opined as under;

"(c) We find that the Board of Directors of appellant approved the Investment Approval for the said transmission assets on 01.06.2005. We also find that the first bidding process was annulled by the appellant itself as the two out of three bidders did not have technical qualifications and it was not proper to proceed with the bidding process with only one technically qualified bidder. The

second time bids were again invited after a gap of one year, after incorporating the revised qualifying requirements, which bids were opened on 14.12.2007 and the second bidding process was again annulled on the ground that the bidders had deviated from the design in bidding documents. After more than seven months of the opening of the second bids, the appellant again reviewed the technical specifications and after necessary modifications, the bids were third time re-invited and the bids were opened and ultimately on 17.06.2009 the letter of award was issued to the successful bidder, namely M/s. Siemens. Thus these facts clearly indicate that four years were taken by the appellant in selecting successful bidder from the date of the Investment Approval by the Board of Directors of the appellant. We may take note of the fact that the scheduled completion period of the project in this case was decided by the appellant itself, as is evident from the Investment Approval dated 01.06.2005, which clearly stipulates that the project was scheduled for completion within 27 months from the date of Letter of Award for Gas Insulated Substation. Thus it is evident from the record that as per the Investment Approval, the said transmission assets were scheduled to be commissioned within 27 months from the date of Letter of Award for Gas Insulated Substation and accordingly scheduled completion date of the transmission assets was 01.10.2008 (i.e. 27 months from 17.06.2006). Admittedly, the transmission assets in this case were commissioned only on 01.02.2012.

(d) The contention of the appellant that bids had to be invited thrice, after they failed twice, only because of the uniqueness of the nature of the transmission works to be carried out and this was due to the fact that it was the first 765 kV Fixed Series Compensation installation in the country and there were constraints in the availability of the experienced manufacturers worldwide which forced the bid process to be delayed by about 34 months with respect to the Investment Approval date. Further contention of the appellant is that the period of execution of the project of 27 months

was indicated to begin along with award of Tehri Pooling Point Gas Insulated Substation and this was mainly due to the reason that both projects were required at the same time and as per Investment Approval both were expected to be awarded simultaneously. However, in actuality, though the contract for Tehri Pooling Point Substation GIS got awarded on 17.06.2006, the contract for 765 kV FSC installation could not be awarded due to the thrice bidding process which involved a delay of nearly three years. Further, the project also got delayed during the execution stage since the bypass switch was not meeting the technical requirement stipulated by the appellant. Further contention of the appellant is that the nature of the transmission work being a unique project, on account of technical complexities involved and the said work being first 765 kV installation in the country, it required a detailed set of calculation based on which the series of type test were carried out at CERDA, France which completed in January 2012 and accordingly, the FSC was commissioned in February, 2012. A justification is being argued by the appellant for this delay of 40 months from the date of scheduled commissioning stating the aforesaid grounds/reasons, which we are unable to accept after considering the facts and circumstances and the factors connected there with. All these reasons were entirely within the control of the appellant and the appellant was well aware of the uniqueness/complexity and the nature of 765 kV installations in the country. If the reasonable and prudent precautions and care had been taken by the appellant/petitioner the said situation would not have arisen.

(e) We are totally unable to accept or countenance the said contentions of the appellant because there was a clear stipulation in the Investment Approval that the said assets were to be commissioned within 27 months from the date of Letter of Award for Gas Insulated Substation package. The Letter of Award for Gas Insulated Substation package was made on 17.06.2006 and accordingly, the scheduled completion date was 01.10.2008. There is no indication

at all to the effect that the period of execution of the project of 27 months would begin along with award of Tehri Pooling Point GIS. If the appellant expected that both projects were expected to be awarded simultaneously, it was a mistake on the part of the appellant. In the present case, the contract for Tehri Pooling Point GIS was awarded on 17.06.2006 whereas the contract for 765 kV installation was awarded after nearly three years, there remained no question to contemplate that both the projects would be awarded simultaneously. It appears from the record that there was no proper and careful planning about the said transmission project which resulted in the said project having been commissioned with a delay of 40 months. We conclude from the facts and circumstances in the matter in hand, that the said delay of 40 months was absolutely within the control of the appellant and by the exercise of due and reasonable prudence, the said transmission system could have been commissioned within the stipulated time but because of the slackness and improper coordination the said delay had occurred. Hence, we conclude that the delay in issuance of letter of award was completely attributable to the appellant/petitioner because had the appellant finalized the technical specifications to the best of its ability at an appropriate time, the said extra ordinary unexplained delay could not have occurred. We are of the firm view that in such situation the appellant should have held the pre-bid conference and we are unable to accept the contention of the appellant that such pre-bid conference with potential bidders for discussion of qualifying criteria and technical specifications in the bidding documents could not be held.

(f) We agree to the finding of the Central Commission as recorded in the Impugned Order that the delay in commercial operation of the transmission asset is on account of inefficiency of the appellant/petitioner or the failure of the vendor/supplier to supply the equipment of the agreed technical specifications and the same could not be condoned. We further approve the finding of the Central Commission that there is no justification, whatsoever, to

burden the consumers with additional costs for the failure of the vendor/supplier to supply the proper equipment. We are unable to approve or countenance this contention of the appellant that the scheduled commissioning of the asset in question being 27 months from the date of letter of award means that the letter of award for both Tehri Pooling Point GIS and 765 kV FSC installation would be awarded around the same time. The said technical complexities involved in this asset, as is emerging from the material on record, were neither brought to the notice of Standing Committee meeting on Transmission System planning in Northern Region nor to the Board of Directors of the appellant while granting Investment Approval. It appears from the record that the appellant had not properly prepared the technical specifications before undertaking the bidding process. If the appellant was of the view that the project was unique, a pre-bid conference could have been held to finalize the specifications and assess the availability of vendors which is a general practice for such projects. However, in this case, pre-bid conference was done by the appellant when huge delay had already occurred. A part of the delay was also caused by the vendor as the vendor could not supply the bypass switch in accordance with the prescribed specifications under the contract and is liable for the damages. Thus the whole delay in the commissioning of the transmission asset was entirely within the control of the appellant and the same is fully attributable to the appellant/ petitioner itself."

9. The Appellant had stated that out of the time over run of 40 months, 34 months' time over run was for the issue related to the issuance of the Letter of Award for the reasons raised in the Appeal as well as in this Review Petition and balance 6 months was due to delay of the contractor in implementation.

10. On careful perusal of our Order dated 01.12.2015, we find that these issues have been dealt with in our judgment dated 01.12.2015 and the Review Petitioner is trying to reargue the original matter.

11. The Review Petitioner has not pointed out any error apparent on the face of record or any sufficient reason necessitating the review of the impugned Judgment. Hence, in the circumstances it is not possible for us to entertain this Review Petition. Accordingly, the Review Petition is dismissed.

12. Pronounced in the Open Court on this **15th day of November, 2016.**

(I.J. Kapoor)
Technical Member

(Mrs. Justice Ranjana P. Desai)
Chairperson

√

REPORTABLE/NON-REPORTABLE

mk