

सा निदेशक (प्रणाली) दि. वि. प्रा.
Dy. Director (Systems) M. B.D.A.
आयरी नं० / Dairy No. 3462
दिनांक / Date 01/7/24



75
Azadi Ka
Amrit Mahotsav

निदेशक (प्रणाली) दि. वि. प्रा.
आयरी नं० 2019
दिनांक 19-6-24

दिल्ली विकास प्राधिकरण
DELHI DEVELOPMENT AUTHORITY
ई.एम. सचिवालय
E. M's SECRETARIAT

01/7/24
श. जोषा (07/15)

No. EM2(3)2024/Hort./06/DDA/ 469

Dated: 19.6.24

**MINUTES OF THE 885th MEETING OF ASB HELD ON 13.06.2024 IN THE CHAMBER OF
CE(HQ), DDA**

885th Meeting of Arbitration Scrutiny Board (ASB) under the chairmanship of CE(HQ), DDA was held on 13.06.2024 at 05:30 P.M. in the chamber of CE(HQ), DDA to deliberate the Arbitral award in the matter of **M/s CXL Titon Electronics Pvt Ltd Vs DDA** for the following work: -

N.O. W : M/o Complete Scheme under North Zone
SH : Cleaning of Bhalswa lake Dirty Water near Bhalswa Dairy.
Agency : M/s CXL Titon Electronics Pvt Ltd.
Agmt .No. : 03/EE/ND-1/DDA/2017-18 (15/EE/ND-5/DDA/2018-19)

The Agenda note was received through e-office (computer no. 43687) on 10.06.2024 and physically on 11.06.2024 vide letter no. F5(99)/Misc./EE/HCD-5/DDA/2024-25/442 dated 07.06.2024. The case was presented by Sh. Ashwani Kumar, CE(Hort.).

The meeting was attended by the following officers: -

1. Shri Sanjay Kumar Khare	CE(HQ) DDA	Chairman
2. Shri Ashwani Kumar	CE(Hort.)	Executive Member
3. Shri Ajay Gupta	Director(Finance)	Member
4. Shri Vinod Kumar	Dy. CLA-III	Member
5. Shri Amit Singh	Dir. (Works)	Member, Secretary

BRIEF HISTORY OF THE CASE IS AS UNDER: -

1. The above cited work was awarded to M/s CXL Titon Electronics Pvt. Ltd. vide letter No.F8(03)A/c/EE/ND-1/17-18/439 dated 11.04.2017 with the date of start and completion as 21.07.2017 and 20.07.2018 respectively. The work was determined vide letter No.F2(84)EE/ND-5/DDA/2017-18/116 dated 27.10.2018 by the competent authority.
2. Sh. Hemant Gupta was appointed as Sole Arbitrator by Hon'ble High Court of Delhi vide its order dated 17.11.2020 passed in the Arbitrator petition no. 240 of 2020 titled as CXL Titon Electronics Pvt. Ltd. V/s DDA. Subsequently Sh. Santosh Kumar was appointed as substitute Arbitrator by Hon'ble High Court on 01.05.2023.
3. M/s CXL Electronics Pvt. Ltd. filed their statement of claims on dated 17.11.2020 containing five claims with a total claims amount Rs. 29,62,730.00 plus interest (Interest computed @18% per annum).
4. DDA has submitted a statement of defence before the learned arbitrator on dated 25.08.2021. There was no counter claim from the department.
5. The Ld. Arbitrator, after hearing both parties pronounced his award on 23.04.2024, awarded a sum of Rs. 29, 62,730.00 plus 12% interest on Claim No.1, 2 & 3. The interest has been calculated from 31.12.18 to 23.04.24 to amounting Rs.18,10,527.00 and total amounting to Rs.47,73,257.00. The award was received in this office on dated 25.04.2024 by hand from the Lt. Arbitrator.

LEGAL OPINION OF PANEL LAWYER

"The impugned Award merits to be challenged inter alia on the aforesaid grounds. However, please note that the undersigned does not propose to limit the challenge, if any, to the aforementioned grounds and the Award would be dealt in greater detail subject to the instructions from the Department. Moreover, please note that the aforesaid grounds are only a few grounds of challenge which appear from a bare perusal of the impugned Award. The same have been prepared in order to expedite the process which may be undertaken to challenge the impugned Award".

OPINION OF CHIEF LEGAL ADVISOR.

According to the comments of legal department that are "the Panel Lawyer has already given its detailed opinion which appears to be justified" and also mentioned "the department may be advised to act accordance with the Panel Lawyer" which are provided on e-office computer no. 43687 vide note #30 dated 27.05.2024, duly forwarded by CLA vide note #33 dated 28.05.2024 and recommended "to challenge the award because the arbitrator has acted against the agreement conditions and totally ignored the scope of work".

Comments of EE/HCD-5/DDA

The arbitrator has totally ignored the facts and awarded the claim in favour of the agency which is totally wrong and against the public policy. Hence the award is to be challenged and the detailed of comments attached as under: -

Sr. No.	Claim No.	Description of Claim	Claim Amount in Rs.	Claim Awarded by Ld. Arbitrator and Ground	Comments of EE
1.	1.	Declaration that decision of invocation /retention and invocation of bank guarantee of Rs.85,500/- and 36,500/- provided on account of performance of the work & earnest money as null and void with further directions to release the aforesaid amount of Rs.85,500/- & Rs.36,500/- illegally retained /uncashed by the respondent with 15% interest per annum.	1,22,000/-	Rs. 1,22,000/- (A) I have already held that it was responded who did not performed its obligation which was required to be performed by the responded for the effective execution of the work. Therefore, determination of the contract was illegal and in correct. Consequently, the client in title aforesaid amount of Rs. 85,500/- and Rs. 36,500/- paid by claimant prior to and during the execution of the work on account of Bank guarantee.	<p>The Arbitrator has awarded an amount of Rs.1,22,000/- which is forfeit of B.G. & P.G. The notice has been sent to the agency several time to complete the work in time but the agency has not given any attention to their notice which leads to forfeiter of B.G. & P.G. The work was wrongfully delayed by the agency as per the conditions of agreement and not completed within the stipulated date of completion.</p> <p>The Arbitrator has totally ignored the facts and awarded the claim in favour of the agency which is totally wrong and against the public policy, hence the claim is to be challenged.</p>

		floating boom machine.		<p>held that the respondent is responsible for breach of contract and the determination has been held to be illegal. Therefore, in the light of the aforesaid observation, I am of the view that Claimant is entitled for the amount of Rs. 12, 50,000/- paid by it to purchase the floating Boom Machinery which was supplied and installed by the Claimant at the site.</p>	<p>site. As per the BOQ mentioned at special condition number 01 of the agreement, the machinery/ Equipment mentioned in serial number 01 will become the property of DDA, once it is installed at site.</p> <p>The agency will be paid only its supply & installation only after cleaning the lake water to the satisfaction of Engineer-in-Charge. If water is not cleaned to the desired level of transparency and odour free, no payment will be released and the entire machinery/Equipment shall be removed and no claim of any payment for the same shall be entertained.</p> <p>The Arbitrator has totally ignored the facts of agreement & BOQ conditions and awarded the claim in favour of the agency which is totally wrong and against the public policy, hence the claim is to be challenged.</p>
3.	3.	Claim on account of payment of wages and salaries paid to the staff deployed at site during execution of work.	14,67,127/-	<p>Rs. 14,67,127/-(C)</p> <p>As regards Claim No. 3, from the pleadings and the discussion made hereinabove it is clear that Claimant was at site during the entire period of contract and respondent deployed the required number of technical staff and laborers at the site for execution of the work. The Claimant has also placed the ESIC Record</p>	<p>The Arbitrator has awarded an amount of Rs.14,67,127/- which is against the required number of technical staff and labour at site for execution of the work. In this regard, all the cost is included in this work i.e. operation & maintenance of the machinery/ Equipment also include all costs of fuel/lubricants, repairs & maintenance cost, operational watch &</p>

				<p>claimed and amount of Rs.14,67,127/-, which in view of the aforesaid is entitled to be granted in his favour.</p>	<p>The Arbitrator has totally ignored the facts of terms & conditions of the agreement and awarded the claim in favour of the agency which is totally wrong and against the public policy; hence the claim is to be challenged.</p>
4.	4.	Claim on account of interest.	18%	<p>12%</p> <p>The Arbitral Tribunal, after taking due notice of the findings arrived under various claims raised by the Claimant, is of the view that a reasonable rate of interest ought to be awarded to the Claimant. The Arbitral Tribunal notes that the rate of interest in respect of commercial borrowings by scheduled commercial banks has been in the range of around 12% per annum. Therefore, in absence of any other compelling factors to award a higher rate of interest to Claimant in respect of all claims allowed except the Claims for Costs of Arbitration at the rate of 12% per annum.</p>	<p>Since Claim no.1, 2 & 3 are challenged so this claim stands to be challenged.</p>
5.	5.	Claim for costs, lawyer fee and other incidental expenses.	-	<p>Rs. 1,23,606/-(D)</p> <p>During the Arbitral Proceedings, the undersigned calculated Arbitrator's fees as per IVth schedule of the Arbitration and Conciliation Act, 1996 was Rs. 1, 53,340/- which was calculated after excluding the interest to be awarded on the claim amount. However the Hon'ble</p>	<p>Since Claim no.1, 2, 3 & 4 are challenged so this claim stands to be challenged.</p>

				<p>Cost and Arbitrators Fees) Rules, 2018 as amended vide notification dated 15th November, 2022. The calculation of Arbitrator's fee on the basis of said rules including the pendent lite interest on the claim amount is Rs. 2,65,207/-.</p> <p>The difference between both the calculations is Rs. 1, 11,867/-. Therefore, both the parties are directed to pay remaining amount of fees within seven days of pronouncement of award. With regard to the aforesaid claim, Section 31A of the Act empowers the arbitral tribunal to pass an order for claim of arbitration in form of fee and legal expenses incurred by the respective parties. Since the Claimant did not specify any amount of claim for arbitration fee and legal expenses, in such situation according to the opinion of Arbitral Tribunal, the Claimant is entitled for the fee of Rs. 2,65,207/- paid by the Claimant to the undersigned. To sum up and to clarify, it is thus ordered that the respondent shall also pay a consolidated amount of Rs.2,65,207/- to the Claimant on account of arbitral fee and legal expenses.</p>	
--	--	--	--	--	--

Comments of Superintending Engineer, DDA.

Agreed with the comments of EE/HCD-5/DDA and recommended that award to be challenged.

Recommendation of the Chief Engineer (Hort.), DDA.

The claim wise recommendation of ASB are as under: -

Claim No. 1: As informed by the EE/HCD-5 that the Rs. 1,22,000/- had been withheld as work was determined as per the clause 3(a) of the agreement and subsequently PG and EMD was forfeited but Ld. Arbitrator ignored the submissions and awarded in favour of claimant, the same must be challenged.

In view of the above, ASB recommended for challenging the award in respect this claim.

Claim No. 2: As informed by the EE/HCD-5 that as per the statement of defence it was clearly mentioned that agency has to be submitted the invoice/bill of the floating boom machine. Neither agency produced the same nor the agency had handover the machine to the department. Therefore, the claims are false and baseless and Ld. Arbitrator deliberately ignored the submission and awarded in favour of claimant, the same must be challenged.

In view of the above, ASB recommended for challenging the award in respect this claim.

Claim No. 3: As informed by the EE/HCD-5 that as per the statement of defence submitted before Ld. Arbitrator that agency had neither inform to department regarding the deployment of the labour/staff at site nor taken any approval from the concerned department i.e. Labour Department Therefore, the claims are false and baseless and Ld. Arbitrator deliberately ignored the submission and awarded in favour of claimant, the same must be challenged.

In view of the above, ASB recommended for challenging the award in respect this claim.

Claim No. 4: As informed by the EE/HCD-5 that claims of the claimant are false and baseless, and no breach of contract has been committed by the department as alleged by claimant. Therefore, the claimant is not entitled to interest.

In view of the above, ASB recommended for challenging the award in respect this claim.

Claim No. 5: As informed by the EE/HCD-5 that claims of the claimant are false and baseless, and no breach of contract has been committed by the respondent, as alleged by claimant. Therefore, the claimant is not entitled to any for costs, lawyer fee and other incidental expenses.

In view of the above, ASB recommended for challenging the award in respect this claim.

As per revised delegation of power issued vide no. EM1(10)2018/Del. Of Power/DDA/260 dated 29.01.2019 by CE (HQ) DDA, Hon'ble EM/DDA is the Competent Authority in r/o award amount more than Rs. 25 lacs and upto Rs. 100 lacs in consultation of CAO/DDA with due scrutiny by Arbitration Scrutiny Board headed by CE(HQ)/DDA.


-sd-
Amit Singh
Dir.(Works)
Member Secretary

-sd-
Vinod Kumar
Dy. CLA-III
Member

-sd-
Ajay Gupta
Dir.(Finance)
Member

-sd-
Ashwani Kumar
CE(Hort.)
Executive Member

-sd-
Sanjay Kumar Khare
CE(HQ)
Chairman


Director(Works)

Copy to: -

1. EM/DDA for kind information.
2. All concerned.
3. Director (System) for uploading on DDA website.