

निदेशक (प्रणाली) दि.वि.प्रा.
हायरी नं. 113
दिनांक 11-4-23

DELHI DEVELOPMENT AUTHORITY
EM's SECRETARIAT

No. EM2 (3)2023/SPORTS/14/03/DDA/142

Dated: 06/4/23

MINUTES OF THE 861st MEETING OF ASB HELD ON 17.03.2023 IN
THE CHAMBER OF FINANCE MEMBER, DDA

861st meeting of Arbitration Scrutiny Board (hereinafter mentioned ASB) under the chairmanship of Finance Member, DDA was held on 17.03.2023 in 3.30 PM in his chamber to deliberate arbitration award in the matter of M/S WATCON WATER SPECIALISTS PVT. LTD vs. DDA in respect of the following work:

PROJECT: 1

Name of work	:	C/o Indoor Stadium for Badminton and Squash Court for CWG-2010 at Siri Fort Sports Complex
Sub Head	:	SITC of filtration Plant and other accessories of Swimming Pool
Name of Agency	:	M/s WATCON WATER SPECIALIST PVT. LTD.
Agreement No	:	20/EE/ED(CWG-3)/(T)/DDA/2009-10

PROJECT: 2

Name of work	:	Refurbishment of training venues at Yamuna Sports Complex
Sub Head	:	SITC of filtration Plant and other accessories of Swimming Pool
Name of Agency	:	M/s WATCON WATER SPECIALIST PVT. LTD.
Agreement No	:	25/EE/ED(CWG-1)/DDA/2009-10

PROJECT: 3

Name of work	:	C/o Common Wealth Games village for Commonwealth Games near Akshardham Temple (hereinafter 'Project no. 3') from all eligible contractors
Sub Head	:	SITC of filtration Plant and other accessories of Swimming Pool
Name of Agency	:	M/s WATCON WATER SPECIALIST PVT. LTD.
Agreement No	:	22/EE/ED(CWG-2)/DDA/2009-10

Agenda note was submitted by the Chief Engineer (Sports) vide file no F.1/CE(Sports)/Misc./DDA/2022-23/170 dated 27.02.2023 in the office of Director (Works)/ Member Secy. ASB. The meeting was attended by the following:

1.	Sh. Vijay Kumar Singh	FM, DDA	Chairman
2.	Sh. Ravi Kant	CE (NZ)	Executive Member
3.	Sh. Gajendra Kumar	CE/Sports	Member
4.	Sh. Vinod Kumar	Dy. CLA-II	Member
5.	Sh. R.K. Bhanwaria	Dir. (Works)/Consultant	Member Secy.

The case was presented by Sh. Gajendra Kumar, CE/Sports, DDA.

The brief history of case is as under:

Delhi Development Authority issued tenders regarding (a) C/o Indoor Stadium for Badminton and Squash Court for CWG-2010 at Siri Fort Sports Complex (hereinafter 'Project no. 1'); (b) Refurbishment of training venues at Yamuna Sports Complex (hereinafter 'Project no. 2'); and (c) C/o Common Wealth Games village for Commonwealth Games near Akshardham Temple (hereinafter 'Project no. 3') from all eligible contractors.

Pursuant to the said NIT, the M/S WATCON WATER SPECIALISTS PVT. LTD. submitted its bids for executing the Projects on 02.01.2010 and the same was accepted by DDA.

It is submitted that as per terms and conditions mentioned in the Agreements, DDA agreed to reimburse the agency/claimant for the service tax payable/applicable. However, the reimbursement was contingent upon the submission of proof of payment to the concerned department. DDA was required to pay the agency/claimant the charges for airlifting of equipment as provided by the agency/claimant in its tender.

The dispute arose between the parties and the agency/claimant approached the Hon'ble Court by way of a petition under Section 11 of the Arbitration & Conciliation Act i.e., Arb. Petition No 121/2012 and requested for the appointment of a sole arbitrator to adjudicate the disputes between the parties. The said petition was allowed by the Hon'ble Court and by an order dated 25.05.2012; Hon'ble Court referred the parties to arbitration and appointed Mr. K. B. Rai as a Sole Arbitrator.

Before Ld. Arbitrator published the Award on 30.10.2014. By the impugned award dated 30.10.2014, Ld. Arbitrator awarded an amount of ₹1,15,79,283/- under various claims and also awarded pendente lite interest on the amount of awarded interest at ₹32,42,199/-. The total amount awarded by the Ld. Arbitrator was ₹1, 48, 21,482/- + future interest @12% simple interest per annum on the awarded amount if the payment of the awarded amount of ₹1, 48, 21,482/- is not made within

90 days of the Award. There were no counter claims of the Department in the present case.

After the publication of the Award dated 30.10.2014, the case was put up before Arbitration Scrutiny Board in its meeting held on 21.01.2015 in the chamber of FM/DDA to discuss the agenda submitted by CE/Elect. The ASB after due discussion and deliberation, decided to challenge the Award dated 30.10.2014. It was decided to challenge the claims with reference to airlifting charges and interest on interest compound. It was also decided to accept service tax with interest as recommended by the Chief Engineer (Elect.).

DDA challenged the claims with reference to airlifting charges and interest on interest compound and filed an objection against the award dated 30.10.2014 under section 34 of the Arbitration and Conciliation Act, 1996 before Hon'ble High Court. The case was registered as O.M.P. 214/2015, New Case No O.M.P. (COMM) 300/2020 title DELHI DEVELOPMENT AUTHORITY Vs. WATCON WATER SPECIALISTS PVT. LTD. & ANR. DDA challenged the Claim nos. 3, 4, 7, 8, 9, 12, 13, 15 and 16. The Claim nos. 3, 8 and 12 relate to award of airlifting charges in respect of the Agreements and Claim nos. 4, 9 and 13 are claims for interests on the airlifting charges as claimed under Claim nos. 3, 8 and 12 respectively. The Claim no.7 is in respect of interest on Claim no.5 and Claim no.15 is for pendente lite interest. The case was registered as OMP(COMM)-300/2020.

After hearing the arguments of both the parties Hon'ble High Court vide order dated 19.04.2022, pleased to reject the objections of DDA against Claim nos. 3, 4, 8, 9, 12 and 13, but Hon'ble Court pleased to set aside the impugned award qua claims 7 and pendente lite interests on interests awarded against Claim nos. 2, 4, 6, 7, 9, 11 and 13.

The order dated 19.04.2022 passed by Hon'ble High Court was placed before the ASB in its 851st meeting held on 10.08.2022 in the chamber of Finance Member, DDA to discuss the agenda submitted by CE/Sports. The ASB after due discussion and deliberation, decided to challenge the order dated 19.04.2022 passed by Hon'ble High Court as the very prerequisite for seeking reimbursement towards air-lifting charges by producing documents of actual expenses incurred not produced by the agency/claimant. It was decided that in the absence of such documents the amount to be reimbursed cannot be determined.

DDA challenged the Judgment dated 19.04.2022 passed by Hon'ble High Court in OMP(Comm)- 300/2020 under section 37 of the Arbitration

and Conciliation Act, 1996 before Hon'ble High Court. The case was registered as FAO(OS)(COMM)- 285/2022. After hearing the arguments of both the parties Hon'ble Court vide order dated 15.11.2022, pleased to dismiss the Appeal i.e., FAO(OS)(COMM)- 285/2022 title DELHI DEVELOPMENT AUTHORITY Vs. WATCON WATER SPECIALISTS PVT. LTD. & ANR filed by DDA on the ground of limitation.

After the dismissal of appeal i.e., FAO(OS)(COMM)- 285/2022, Panel lawyer, sent the court case with her opinion through the legal department.

After the dismissal of the objection, the Panel lawyer sent the court case with her opinion through the legal department.

Comments of Panel Lawyer: In this case, panel lawyer has not given her opinion, but has mentioned in her note dated 16.11.2022 that the statutory time granted within which an Appeal under section 37 of the Arbitration and Conciliation Act 1996 is to be preferred is 60 days (As per section 13(1A) of the Commercial Court Act). She has further mentioned in her opinion that as per recent judgment of Hon'ble Supreme Court, the Courts can condone a maximum delay of 60 days thereafter, hence the total time available being 120 days from the date of impugned decision under section 34 of the Arbitration and Conciliation Act 1996. The 120 days' time period in this matter got over on 17.08.2022.

Recommendation of CLA: In this case, SLO/Engg vide note dated 26.12.2022 advised that department may see for challenging the order dated 15.11.2022 and decision with respect to going in for appeal may be taken administratively. He submitted the file before Dy. CLA-III. Thereafter, Dy. CLA-III submitted the file before CLA mentioning therein that he agrees with the view of SLO/Engg. Thereafter, CLA marked the file to SE(E) Sports.

After the receipt of the file from legal department with the opinion mentioned above, the matter was placed before ASB in its 857th meeting held on 23.01.2023 and all members of the ASB after ASB after due discussion and deliberation, decided that the department may take a chance to challenge the order/judgment dated 15.11.2022 passed by Hon'ble High Court in DELHI DEVELOPMENT AUTHORITY Vs. WATCON WATER SPECIALISTS PVT. LTD. & ANR, FAO(OS)(COMM)- 285/2022. Thereafter file was put up before, CLA DDA for entrustment on 20.02.2023, but CLA returned the file mentioning therein that "she has not given opinion to file appeal. The

Appeal was dismissed on ground of limitation and the department may reconsider filing of appeal or SLP as it is bound to get dismissed. The case may be closed."

Recommendation of EE (Elect)/ELD-3: I agree with the comments of the given recommendation of CLA dated 20.02.2023 to close the case.

Recommendation of SE (Elect) Sports: I agree with the comments of the given recommendation of CLA dated 20.02.2023 & EE/ELD-3 to close the case.

Recommendation of CE (Sports): This office is of the view that in view of the opinion of CLA dated 20.02.2023, DDA have no other option except to accept the judgment of Hon'ble High Court. Hence as per recommendation of CLA case may be closed.

Recommendation of ASB:

After due discussion and deliberation, all members of the ASB are of the view to accept the Judgment dated 15.11.2022 passed by Hon'ble High Court in DELHI DEVELOPMENT AUTHORITY Vs. WATCON WATER SPECIALISTS PVT. LTD. & ANR, FAO(OS)(COMM)- 285/2022, since CLA, DDA has categorically advised to accept the Judgment mentioning herein that Appeal (FAO(OS)(COMM)-285/2022) was dismissed on ground of limitation and if reconsiders to file SLP, it is bound to get dismissed.

As per revised delegation of power vide no EM1(10)2018/Del. Power/DDA/260 dated 29.01.2019 by CE(HQ) DDA, Hon'ble VC/DDA is the competent Authority in r/o award amount up to Rs 500 Lakhs in consultation with FM/DDA with due scrutiny by Arbitration Scrutiny Board headed by FM/DDA.

-SD-
Dir. (Works)/Consultant
Member Secretary

-SD-
Dy. CLA-III
Member

-SD-
CE(Sports)
Member

-SD-
CE (NZ)
Executive Member

-SD-
FM/DDA
Chairman

Director (Works)/Consultant

Copy to:

- 1) EM/DDA for kind information
- 2) All concerned
- 3) Director (system) for uploading on DDA website
- 4) EE/ELD-3, DDA

Bluco
06/04/2023
Director (Works)/Consultant