

उप निदेशक (प्रणाली) दि.वि.प्र.
Dy. Director (Systems) M. D.D.A.
द्वारा नं. / Dairy No. 3385
दिनांक / Date 25/6/24

निदेशक (प्रणाली) दि.वि.प्र.
द्वारा नं. 2050
दिनांक 24-6-24



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

No. EM2(3)2024/RZ/144/DDA/505

Dated: 21.6.24

MINUTES OF THE 886th MEETING OF ASB HELD ON 20.06.2024 IN THE CHAMBER OF FM, DDA

886th Meeting of Arbitration Scrutiny Board (ASB) under the chairmanship of FM, DDA was held on 20.06.2024 at 12:30 P.M. in the chamber of FM, DDA to deliberate the Arbitral award in the matter of M/s Subhash Chander Vs DDA for the following work: -

N.O. W : C/o Multipurpose community hall in LSC/OCF-3 pocket A/1, Sector- 8, Rohini (location change) C/o multipurpose community hall plot no. 9, 10 & 11 in community Centre, Sector- 8, Rohini.
Agency : M/s Subhash Chander
Agmt .No. : 39/EE/RPD-10/DDA/2016-17
05/EE/RMD-8/DDA/2020-21

The agenda note was submitted by CE(Rohini) vide e-file Computer No. 80849 on 14.06.2024. The case was presented by Sh. Deepak Suyal, CE(Rohini).

The meeting was attended by the following officers: -

1. Shri Vijay Kumar Singh	FM, DDA	Chairman
2. Shri Sanjay Kumar Khare	CE (HQ)	Member
3. Shri Deepak Suyal	CE (Rohini)	Executive 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: -

The above stated work was awarded to M/s Subhash Chander vide award letter No. F.4(35)EE/RPD-9/A/DDA/2016-17/193 dt. 20.02.2017. The time allowed to complete the work was 365 days. As per agreement stipulated date of completion was 06.03.2018 whereas the work was actually completed on 30.04.2021. The EOT was granted by the competent Authority without levy of compensation. The agency vide his letter dated 25.03.2022 requested to Engineer Member, DDA for

25/6/24
Dr. J. S. D. DDA

appointment of arbitrator. However, the Hon'ble Delhi high court vide order no. ARB.P. 594/2022 dated 12.07.2022 appointed Sh. Dinesh Kumar as Sole Arbitrator. The agency submitted 25 Nos claims through their advocate Sh. Bhupesh Narula having total amount of claims as Rs. 6,79,62,796/-

After completion of the proceedings the Ld. Arbitrator has pronounced the award dated 21.03.2024 amounting to Rs. 1,75,81,482/- plus BG Release plus interest plus GST declaratory in favour of claimant. The award was referred to panel lawyer Sh. Vaibhav Agnihotri.

LEGAL OPINION OF PANEL LAWYER

- The Impugned Award is riddled with perversity and is based on unsubstantiated conclusions that are beyond legal rational. The delay, though considerably and admittedly attributable to the Claimant, the Ld. Sole Arbitrator has let the Claimant go scot-free and all liability has been fastened upon the DDA. This conclusion is against the fundamental and public policy of India.
- The Ld. Arbitrator has also hooked the responsibility on DDA for acts that are admittedly beyond the control of DDA i.e. public outrage and covid pandemic. Such conclusion is so perverse that it amounts to shocking the very conscience of the Court.
- The Ld Sole Arbitrator has also failed to consider that the express undertaking of the Claimant is best evidence to dismiss its claims at a preliminary stage in the absence of cogent evidence to the contrary.
- The Department may take administrative decision in challenging the decision of the Ld Sole Arbitrator under Section 34 being time bound.

OPINION OF CHIEF LEGAL ADVISOR.

The Award has been passed by the sole Arbitrator Mr. Dinesh Kumar. Ld. sole Arbitrator has partly allowed the claims of the claimant and dismissed the counter claims of the DDA.

The sole Arbitrator has awarded Rs. 1,75,81,482 along with lite interest @10% p.a. and 12% future interest.

The sole Arbitrator has allowed the some of claims in favor of claimant without considering the contention of DDA i.e. the intended date of completion of the project was 06.03.2018 and project was actually completed on 30.04.2021 there was delay of 1151days. The delay, though considerably and admittedly attributable to the claimant and all liability has been fastened upon the DDA.

The claimant was well aware of the possibility of working at an alternative site and the change of site was agreeable to the claimant hence claimant ought to have mitigated its losses.

The Agreement between the parties itself provided for suspension of work and force majeure, the claimant ought to have acted in accordance thereof, hence the present claim is nothing but a speculative after thought despite the claimant giving express representations and undertakings.

The sole arbitrator failed to consider that claimant had failed to produce any documentary evidence in support of its claims and the award is based on unsubstantiated conclusion that are beyond legal rational.

I am in agreement with views of Panel Lawyer that the impugned award is bad in law and must be challenged on the grounds explained by P/L in his opinion.

Recommendation of EE/RMD-8:-

It is recommended to challenge the award pronounced by the Arbitrator dt. 21.03.2024 as the Ld. Sole Arbitrator has passed majority of the claims on assumptions and presumptions. Moreover, the Ld. Arbitrator has traversed beyond the agreement and has supplemented several clauses of the Agreement with his own interpretations that are not only perverse, but are also beyond reasoning. Further the responsibility is on DDA for acts that are admittedly beyond the control of DDA i.e. public outrage & covid pandemic. Further the Agreement between the parties itself provided for suspension of work and force majeure, the claimant ought to have acted in accordance thereof, hence the present claim is nothing but a speculative after thought despite the claimant giving express representations and undertakings. The claimant had failed to produce any documentary evidence in support of its claims and the award is based on unsubstantiated conclusions that are beyond legal rational.

Recommendation of SE/RCC-3:-

Agreed with the comments of Panel Lawyer, CLA & EE/RMD-8.

Recommendation of the Chief Engineer (Rohini):-

In view of above recommendations of Panel Lawyer, CLA EE/RMD-8, SE/RCC-3 this office is also of the view that award of Arbitrator is challenged.

The case is submitted to the Arbitration Scrutiny Board for consideration.

RECOMMENDATION OF ASB:

After due discussion and deliberation, the ASB unanimously recommended to challenge the award against claim no. 1, 3, 4.3, 6, 7, 8, 9, 12, 15, 16, 17, 19, 21, 22, 23, 24 & 25 and counter claim no. 1, 2 & 3. ASB recommended to accept the claims no. 2, 4.1, 4.2, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 5, 10, 11, 13, 18, 14 & 20 being Nil award.

ASB has also observed that the location of construction site has been changed twice in this case. It was suggested that in future before project conception, DPR/Project formulation should be prepared and site feasibility should be evaluated to prevent these issues in future.

It has been viewed seriously in the ASB meeting that the case was sent only 2-3 days before last date of limitation period to challenge the award.

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-
Amit Singh
Dir(Works)
Member Secretary

-sd-
Vinod Kumar
Dy. CLA-III
Member

-sd-
Deepak Suyal
CE (Rohini)
Executive Member

-sd-
Sanjay Kumar Khare
CE (HQ)
Member

-sd-
Vijay Kumar Singh
FM, DDA
Chairman

Director(Works)

Copy to: -

1. EM/DDA for kind information.
2. All concerned.
3. Director (System) for uploading on DDA website.
4. EE/RMD-8, DDA Office Complex, Madhuban Chowk, New Delhi – 110085 for information please.

Director(Works)