



EO-1 To EM
Dy. No. 1324
31/7/20

**DELHI DEVELOPMENT AUTHORITY
E.M.'s OFFICE**

मुख्य अभियंता (मुख्यालय) कार्यालय
Office of Chief Engineer (HQ)
आवरी संख्या 1402
Diary No
दिनांक 28/07/2020
Date

No: EM2(3)2020/RZ/132/DDA/921

Date: 24.7.2020

**MINUTES OF THE 818th MEETING OF ASB HELD ON 20th July, 2020
IN THE CHAMBER OF FINANCE MEMBER, DDA**

818th Meeting of Arbitration Scrutiny Board (here in after called ASB) under the Chairmanship of Finance Member, DDA was held on 20/07/2020 at 3:00 PM in his Chamber to deliberate arbitration award in the matter of M/s K.R. ANAND Vs DDA in respect of the following work:-

N.O.W. : Development of land of Rohini Phase II
S.H. : C/o Peripheral S.W. Drain No. 3d to 3f.
Agreement No. : 04/EE/RPD-4/DDA/89-90

Dir./w/
29/07

EO-1

Agenda-note was submitted by the Chief Engineer (RZ) vide no. F.4(14)EE/RPD/DDA/Pt./147 dated 09.07.2020 in the office of Director (Works) /Member Secy., ASB (received on 10.07.2020). The meeting was attended by the following officers:-

ASB
31/07/2020

- | | | |
|-------------------------|------------------|------------------|
| 1. Sh. Vijay Kr, Singh | FM, DDA | Chairman |
| 2. Sh. Sham Sunder Garg | CE (HQ) | Member |
| 3. Sh. Ashwini Kumar | CE(RZ) | Executive Member |
| 4. Sh. Ravi Dahiya | Addl. CLA | Member |
| 5. Sh. D. V. Raghav | Director (Works) | Member, Secy. |

Steno/aem
Please file 04/08

The case was presented by Sh. Ashwini Kumar (RZ), DDA.

In this case, the work was executed by the M/s. K.R. Anand vide award letter No. F4(14)89-90/EE/RPD-4/DDA/2270 dated 30.06.1989, the estimated cost of the work Rs. 1,90,69,051/- and tendered amount was Rs.2,59,00,507/- and the Actual Amount of work Executed Rs.5,11,15,726/-. The date of start of the work was 9-9-1989 and stipulated date of completion was 10-6-1990, actual date of completion was 5-6-1992. The claimant despite being requested by the DDA (Respondent) vide letter No.F.5(31)92/RPD-4/2219-21 to submit the final bill but he did not submit the final bill. After the claimant failed to prepare the final bill and the same was prepared by the DDA which was duly accepted by the claimant without any protest on 12-3-1996 and paid a sum of Rs.91,245/- on 25.4.1996. After that some dispute arose between the parties and agency invoked Arbitration on 05.07.1996. Accordingly Sh.N.K. Sharma, SE(Arbitration) was appointed by EM/DDA vide No. FO/CE(R)/2(90)/DDA/631 dated 08.10.1998. However the agency did not participate in the Arbitration proceedings and did not submit claims, Sh. N.K. Sharma, SE(Arbitration) terminated the proceedings vide letter No. SE(ARBN)/NKS/98/22 dated 01-03-2001. It is the agency again moved to the High Court for appointment of Arbitrator vide Case No. AA/82/2002 in which Hon'ble High Court vide order dated 21-7-2003 directed to EM/DDA to appoint the Arbitrator and refer all dispute to him. EM/DDA vide order dated 02-1-2004 appointed Sh. K.S. Chauhan, as an Arbitrator and referred the claims, counter claims of the DDA. However, the agency filed the write petition 2760/2004 to challenge the order of appointment Sh. K.S. Chauhan

and requested for change of Arbitrator. The Hon'ble High Court vide order dated 26-4-2006 appointed Sh. S.K. Aggarwal, Retd. Judge Delhi High Court as an Arbitrator. However the same was challenged by the department by filing SLP CA 5186/2007. During the pendency of the SLP of the department, agency filed OMP 348/2006 and finally vide order dated 12-4-2017, Hon'ble Supreme Court appointed Sh. Anil Kumar as a Sole Arbitrator, Justice Anil Kumar (Former Judge) has pronounced the award on dated 27-4-2020 received in RPD-4 vide Diary No. 517 dated 29-4-2020. Out of 8 claims Ld. Arbitrator has awarded claim No 1(1). 1(2)i, 1(2)ii, 1(2)iii, 1(2)iv, 1(3), 2(1), 2(2), 2(3), 2(4), 3(1), 3(2), 3(3), 3(4), 3(5), 3(6), 3(7), and 7 & 8 amounting to Rs. 8,63,10,027/- including pre reference interest @ 12% pendent elite and future interest @ 9% against the claim amount of Rs. 12,14,79,019/- in favour of claimant and NIL award for claim No.4(1), 4(2), Claim No.5 & Claim No.6. Also the counter claim of DDA& interest has been dismissed.

The details of the claim/counter claims vis-a-vis award published by the Sole Arbitrator are as under:-

Claim No.	Brief description of claim	Amount of claim Rs.	Amount of Award by the arbitrator in Rs.
1(1)	Claimant claim an amount of Rs. 91245/- on account of Delayed payment of final bill pending with Department * Further interest @ 22.5% Per Annum	Rs. 91,245/-	Rs. 57,563/-
1(2)i	Claimant claim an account Claim of Rs.6,54,722/- on a/c of Extra for additional lift of 1.5m or part thereof	Rs. 6,54,722/-	Rs. 6,54,722/-
1(2)ii	Claimant claim amounting to Rs.22,00,605/- on account of Extra item disputed by the department at the time of final Bill. Extra item No.(EIS No.3.1, E.I.No.3.2, E.I.No.5.1, E.I.No.5.2, E.I.No.6.1, E.I.No.6.2)	Rs. 22,00,605/-	Rs. 21,67,726/-
1(2)iii	Claimant claim an amount of Rs. 54,453/- on account of wrongful deductions made by the department against agreement item No.1.3 Deduct for not stacking surplus earth by Mechanical transport i/c loading, unloading and stacking complete within area of Rohini as per	Rs. 54,453	Rs. 54,453

	direction of Engineer in Charge.		
1(2)iv	Claimant claim an amount of Rs. 12,35,633/- on account of Extra rate for banking/filling surplus Disposed earth	Rs. 12,35,633/-	Rs. 12,35,633/-
1(3)	Claimant claim an amount of Rs. 12,73,749/- on account of Payment against Clause of 10CC on claim No. 1(2)	Rs. 12,73,749	Rs. 12,73,749/-
2(1)	Claimant claim an amount of Rs.6,80,500/- on account Due to short supply of cement	Rs. 6,80,500/-	Rs. 6,80,000/-
2(2)	Claimant claim amounting to Rs.61,18,000 on account to Due to erotic supply of cement, delay decision about chambers and providing drawings.	Rs. 61,18,000/	Rs.61,18,000/-
2(3)	Claimant claim amounting to Rs.11,12,500/- on account due to orders dated 4/6/91 to suspend the work.	Rs. 11,12,500/-	Rs. 11,12,500/-
2(4)	Claimant claim amounting to Rs.11,74,427/- on account of payment of against Clause 10-CC on Claim No.2(1) to 2(3)	Rs. 11,74,427/-	Rs. 11,74,427/-
3	Claimant claim on account of Extra expenditure incurred on idle pumping of sub soil water due to delay on the part of DDA to support 2-MCD rising mains crossing alignment		
3(1)	Pumping of sub soil water during the period from 01/2/92 to 23/2/92	Rs 17,38,800/-	Rs. 17,38,800/-
3(2)	Pumping of sub soil water during the period from 24/2/92 to 4/3/92	Rs. 7,56,000/-	Rs. 7,56,000/-
3(3)	Pumping of sub soil water during the period from 5/3/92 to 14/3/92	Rs. 7,56,000/-	Rs. 7,56,000/-
3(4)	Pumping of sub soil water during the period from 15/3/92 to 24/3/92	Rs. 7,56,000/-	Rs. 7,56,000/-

3(5)	Pumping of sub soil water during the period from 25/3/92 to 3/4/92	Rs. 7,56,000/-	Rs. 7,56,000/-
3(6)	Pumping of sub soil water during the period from 4/4/92 to 14/4/92	Rs. 8,31,600/-	Rs. 8,31,600/-
3(7)	Payment of 10CC on Claim No.3(1) to 3(6)	Rs. 17,52,033/-	Rs. 17,52,033/-
4(1)	Claimant claim amounting to Rs. 2,28,800/- Additional expenditure on retention of site staff & tools and plants due to prolongation of work for extra one year, caused by failure of the deptt. In carrying out its reciprocal obligations within stipulated period of one year. On staff Annexure-4	Rs. 2,28,800/-	Nil
4(2)	Claimant claim amounting to Rs. 49,80,000/- Additional expenditure on retention of site staff & tools and plants due to prolongation of work for extra one year, caused by failure of the deptt. In carrying out its reciprocal obligations within stipulated period of one year. On T&P Annexure-4	Rs. 49,80,000/-	Nil
5	Claimant claim amounting to Rs. 5,94,427/- on account of Extra expenditure on office establishment for additional one year due to failure of the department in carrying out its reciprocal obligation on time.	Rs. 5,94,427/-	Nil
6	Claimant claim amounting to Rs. 11,88,855/- on account of Loss of profit on re-investment of capital had the department carried out its reciprocal in time	Rs. 11,88,855	Nil
7	Claimant claim on account of interest on pending payments and claims @ 12% P.A.	Rs. 9,20,44,670/-	Rs. 6,39,34821/-
8	Cost of Arbitration L.S. Rs.	Rs. 5,00,000/-	Rs. 5,00,000/-

	5,00,000/-		
	Total	Rs. 12,14,79,019/-	Rs. 8,63,10,027/-
	Counter Claims		
1	Counter claim No.1 amounting to Rs.4,25,646/- on account of over payment made by DDA under 10 CC Interest @ 18% on the amount of counter claim 26/4/1993 to 5/6/2002.	Nil Nil	Nil Nil

Opinion of Sh. Dhanesh Relan Standing Council of DDA, dated 08.06.2020 and 21.07.2020:-

As already stated in the opinion dated 08.06.2020 the entire award is surmised on letters which DDA had all throughout refuted of not having been received by DDA. The letters which form the sole basis of the award as a matter of record are also not available in files/records of DDA. The letters on the basis of which the Tribunal has passed the entire award appear to be letters which have now been created by the claimant to subserve its claim.

It is also a matter of fact that the DDA had taken specific plea to the effect that the claim petition as was filed by the claimant was a claim petition which did not have any grounds as mandated under the Act and therefore the alleged claim petition warranted dismissal under section 26 of the Act.

In my view the award dated 27.04.2020 deserves to be challenged under section 34(2)(b) of the Act, it being in conflict with public policy of India.

Recommendation of Ld. CLA, DDA dated 30.06.2020

In view of the opinion/advice of the standing counsel and the senior law officer, Administration department may kindly see for taking the final administrative decision to accept or challenge the award in question within period of limitation.

Recommendation of Chief Engineer (RZ)

In view of the recommendation of standing counsel, EE/RPD-2 & SE/RCC-3 & CLA, this office is also of the view that the award of the Arbitrator may be challenged.

Recommendation of ASB:-

After due discussion and deliberation the ASB observed the following:-

1. In view of the recommendation of Standing Counsel, Ld. CLA, CE(RZ) ASB is of the view to challenge the award dt. 27.04.2020 under section 34(2)b of the Act.
2. The recommendation of ASB may be put up to the Competent Authority as per revised delegation of powers issued vide no. EM1(10)2018/Del. of Power/DDA/260 dated 29.01.2019 for acceptance/challenge the award.

Sd/-

(D. V. Raghav)
Director (Works)
Member, Secy.

Sd/-

(Ravi Dahiya)
Addl. CLA-I
Member

Sd/-

(Ashwani Kumar)
CE (RZ)
Executive Member

Sd/-

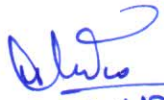
(Shyam Sunder Garg)
CE (HQ)
Executive Member

Sd/-

(Vijay Kumar Singh)
FM/DDA
Chairman

Copy to:-

1. EM/DDA for kind information.
2. All Concerned. *Sh. Shyam Sunder Garg, CE (HQ)*
3. Director (System) for uploading on DDA Website
4. EE/RPD-2 (old RPD-4).


24/7/2020
(D. V. Raghav)
Director Works