

निदेशक (प्रणाली) दि.वि.प्रा.  
खयरी नं. 3707  
दिनांक. 4/2/25



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

No. EM2(3)2024/EZ/225/DDA/83

Dated: 4/2/25

903<sup>rd</sup> Meeting of Arbitration Scrutiny Board (ASB) under the chairmanship of FM, DDA was held on 03.02.2025 at 12:00 P.M. in the chamber of FM/DDA to deliberate the Arbitral award in the matter of M/s Brijesh Kumar & Associates Vs DDA for the following work: -

**N.O.W.** : Restoration/Upgradation of internal roads at facility Centre Khajoori Khas, Delhi.  
**Agency** : M/s Brijesh Kumar & Associates  
**Agmt. No.** : 19/EE/ED-2/DDA/2018-19

The agenda was submitted by CE(EZ) vide e-file computer no. 87807 on dt. 28.01.2025.

The meeting was attended by the following officers: -

1. Shri Vijay Kumar Singh	FM,DDA	Chairman
2. Col. Tejpal Singh Mann	CE(East)	Executive Member
3. Shri Sanjay Kumar Khare	CE(HQ), DDA	Member
4. Shri Manohar Lal	Addl. CLA	Member
5. Shri Amit Singh	Dir. (Works)	Member, Secretary

The case was presented by CE(East)/DDA.

**BRIEF HISTORY OF THE CASE IS AS UNDER: -**

In performance of above said agreement/contract, there arose some disputes between the agency and the department, resulting in the agency invoking Arbitration Clause-25 of the Agreement vide its letter dated 10-06-2022 to EM/DDA. Engineer Member, DDA, vide his Order No. EM2(7)/2022/Arbn./Vol-VIII/Pt-176/DDA/13 dated 05-01-2023 appointed Shri D. P. Singh, Chief Engineer (Civil), DDA (Retd.), as Sole Arbitrator to decide as per the Arbitration & Conciliation (Amendment) Act, 2015 (3 of 2016) and make award regarding the claims/disputes raised by the contractor, as shown in the statement of claims attached with the letter and further counter claims of the Department to follow, subject always to their admissibility under clauses of the Works Agreement for settlement of disputes as arbitrator.



Total 21 nos. claims were made by the agency amounting to Rs. 2,94,20,592/- plus interest. The first hearing was held on 20-01-2023 and total 9 (Nine) hearings were held. Ld. Arbitrator after 9 hearings finally concluded the hearing on 23-09-2024 and the award was pronounced on 30-11-2024 awarding the amount of Rs. 2,03,91,127 plus interest in the favor of the agency. However, a notice under section 33(3) of the A&C Act, 1996 as Amended was received from the Ld. Arbitrator on 28-12-2024 for correction in the typographical error in mentioning the number of days as 899 instead of 900 days. The awarded amount remains unchanged i.e. Rs. 2,03,91,127 plus interest.

The Ld. Arbitrator has allowed 90 days from the date of receipt of the award i.e. up-to 27-02-2025 in order to complete the formalities and make the payment to the claimant. Thereafter, it will carry a future simple interest @ 10% p.a. on entire awarded amount i.e. Principal + Interest from next day of award till the date of actual payment as per Clause No.29.15(d) Page-190 of the Award.

There were total 21 nos. claims of the agency amounting to Rs.2,94,20,592/- plus interest and the amount awarded by the Ld. Arbitrator is Rs. 2,03,91,127/- plus interest.

**The opinion of panel lawyer has been sought in the matter, which are reproduced as under:**

**\*\*Note: The following 3 issues form the basis of all the claims raised by the Claimant. So, the decisions taken with regard to these 3 issues form the basis of the decision taken for the claims.**

**1. Para 28.1 (Page 114) Whether the work is an original work or upgradation work with respect to the application of Clause 12 of the Agreement?**

- Our shortcomings- Claimant has placed a circular wherein the Engineer member, DDA has declared that 'CPWD Works Manual shall follow mutatis mutandis', therefore CPWD works manual-2014 has been applied.

- DDA has not mentioned anything regarding the type of work in Schedule F of the Agreement. (Page 123-126 of the Agreement), and which they also have not denied. To which Arbitrator has pointed out that it is mandatory to define in Schedule F of NIT regarding the Nature/Type of work.

- The Arbitrator has also pointed out and laid great emphasis on BOQ, that the BOQ (Bill of quantity) of Agreement contains all items for New/Original work and there is 'no mention of dismantling/demolition' item in BOQ which is generally required for Maintenance work.

- Reference to Claimant's letter 12.10.2020(C-38) has been made wherein the Claimant has specifically mentioned detailed analysis of rates based on market rate as per clause 12.2(A) of Agreement. The Claimant further in the said letter has requested DDA to approve the rated to avoid dispute. DDA has not placed any letter on record, repudiating the contents of the said letter. The Arbitrator has pointed out that the Respondent was contractually bound to reject the analysis of rates submitted by the Claimant and Clarify that the work is not covered under



Clause 12.2(A) and the rates so submitted are rejected. Since DDA has not placed any letter repudiating such claims, DDA is at fault and cannot now go back. The conduct of DDA showed implied acceptance.

- Our contention/documents- DDA has merely relied on the name of the work saying that it itself shows that the work was for restoration/upgradation, hence Cl. 12.2 should be applicable.

- DDA has not placed any material record communication to prove that the work was only an upgradation work. We have merely made a statement to the effect that the name of the work itself shows that it was for restoration/upgradation and therefore it was maintenance work, hence the Arbitrator has denied our contention that the work was only an 'upgradation and restoration' work and not original work. Whereas the Claimant has placed enough records and communications to prove his contention.

- The Arbitrator therefore has concluded that it was an original work.

**2. Para 28.2 (Page 122) Whether the work was defective, and could the recoveries be made without notice?**

- The Arbitrator at the outset has referred to his interim award regarding the final completion certificate dated 15.04.2021 that has been issued without recording any defects or any list of any outstanding balance item to be executed.

- Our shortcomings- Pt. v. to xiii of the Award clearly highlights the shortcomings of DDA's case. On a careful reading of those pointers, one would conclude that there were indeed no timely and explicit communications made by DDA actually raising concerns about the defective work to the Claimant.

- More specifically DDA has not placed on record any letter granting approval as sought in the letter dated 12.05.2022. Whereas the Claimant has placed enough records and communications to prove his contention.

- DDA has not placed on record any notice as per Clause 17 of the Agreement for any defects or any faults appearing in the work.

- The Arbitrator therefore has concluded that there was no defect attributable to the Claimant.

**3. Para 28.3 (Page 132) Whether EOT has been decided in the right manner? and whether recoveries can be made against delay in EOT without any notice to the Claimant?**

- The Arbitrator has made a special note of Annexure A-2 filed with the Rejoinder Arguments filed by DDA that the same were placed on record without permission.

- Our shortcomings- DDA has not complied with the provisions of the Agreement relating to EOT and neither has placed any reasonable communication/decision taken regarding the same.

- The Arbitrator therefore has rightly concluded this issue as well.



**4. Claim no. 3 and 5**

- The Ld. Arbitrator in preliminary issue 1 has already decided that the work was original and not an upgradation work. The arbitrator has built up the reasoning for these claims on the 1st preliminary issue.
- Contrary to our contention the Arbitrator has observed that there was due compliance with Clause 12.4 by the Claimant and that it is not a mandatory provision. He has stated that the consequence of non-submission of claims for additional work is neither final nor fatal and is saved by the discretionary powers of the SE. (as per clause 12.4)
- The Arbitrator has come up with the total amount to be granted under these claims by considering the work as 'original work'.
- Since the main issue has already been decided and the reasoning given by the Arbitrator is justified, the claim has been awarded and possibly doesn't have a scope of challenge.

**5. Claim no. 6**

- The Arbitrator has not given due importance to our Annexure R-9, an undertaking given by the Claimant vide letter dated 16.04.2019. In fact regarding this undertaking he has stated that it clearly seems that the same was taken involuntarily and under duress and that there is no bar to a contractor raising claim even after submission of a 'no claim undertaking' if the claim is genuine. The Arbitrator in this claim has repeatedly stated that the DDA acted with mala fide.
- The Arbitrator has highlighted that there exists anomaly in the terms of item no. 7 and 11. He has stated that the wordings of Item 7 appear arbitrary and unfair.
- This Claim may be challenged on the ground that there was no coercion or undue influence while giving undertaking and therefore the decision has been based on conjectures and surmises. However, in the scheme of things a conscious decision would be required at your end.

**6. Claim no. 7**

- The Arbitrator has reliance has been placed on serial no. 7 of hindrance register, Page 209 of Rejoinder filed by the Claimant- "The Respondent has acknowledged the hindrance on the account of BSES work and has not attributed the same to the Claimant"
- Since DDA accepted the hindrance by BSES and accordingly suggested the amount for the work, the Arbitrator has followed the same and awarded accordingly.

**7. Claim no. 8**

- Claim not awarded.

**8. Claim no. 10, 15, 16, 17 and 18- claims for damages for prolongation of the contract**

- The arbitrator has rejected all our contentions. In deciding these claims, the Arbitrator has relied on his decision majorly in Prelim Issue no. 2.



- He has stated that as per clause 5 of the contract time was never of the essence and therefore, the contract is not hit by second part of Sec. 55 of the Indian Contract Act and accordingly the claimant deserves compensation as per sec. 73 of the Indian Contract Act.

- He has further held that the entire delay in completion of the work was attributable to the Respondent only hence Claimant is entitled to be compensated. But at para xx he has also stated that a delay of 176 days is not attributable to Respondent for reasons that were beyond their control. So, he has calculated compensation for a period of 370 days.

- Since the main issue has already been decided and the reasoning given by the Arbitrator is justified, the claim has thus been awarded and doesn't show scope of challenge.

**9. Claim no. 11**

- He has stated that this Claim has been decided under the interim award.

**10. Claim no. 12**

- He has stated the Respondent has opposed this claim during arguments. He has further stated that the said withholding of amount was without jurisdiction and that the DDA's contention that the amount was withheld on account of QAC inspection reports is untenable.

- Since the reasoning given by the Arbitrator is justified, the claim has thus been awarded and doesn't show scope of challenge.

**11. Claim no. 13**

- To decide claim no. 13 the Arbitrator has placed reliance in Preliminary issue 2 and his decision in earlier findings "based on DDA's own admission that no defective work is attributable to the Claimant." Hence DDA is indeed at fault in withholding the claimed amount and the decision made is justified.

**12. Claim no.14**

- The Arbitrator has negated our contention, that the claim has been raised belatedly and the department was not notified about the increase after the actual increase in wages had taken place. The Arbitrator has observed that the Claim has been raised during the currency of the contract and it being a recurring cause of action, thereafter on 11.07.2022 upto 6th RA Bill, i.e. within 3 years of the completion of work, the same is not belated. Further the increase in labour wages by Government Notification was in public domain.

- The decision taken by the Arbitrator is correct and as per law. Hence this claim has also been awarded rightly.

**13. Claim no. 19**

- Claim not awarded.

**14. Claim no. 20**

- This is regarding various interests, for which the Arbitrator has followed RBI notification dated 30.08.2022.



**15. Claim no. 21**

- This is regarding cost of litigation and is at Arbitrator's discretion.

In our humble opinion there is very little scope to challenge the award. This was even discussed at the earlier stages of arbitration, since our scope and records did not support our case at hand. The DDA may act as per the above inputs and as received from the departments and take an informed decision keeping in mind the legal cost, the interest that may accrue incase the challenge goes against the DDA, inter alia.

**The opinion from the Legal Cell of the department has also been sought, the comments offered by the SLO(Engg.) through CLA are as under: -**

Claimant had filed 21 claims including claim no.20 of interest. Out of which the claimant has succeeded in 14 claims and 04 claims have not been pursued by claimant.

Claim no.1 has been dropped by the claimant. And claim no.02 is awarded as NIL.

Claim no.03 & 05 are being dealt together and a sum of Rs.88,78,418/- awarded under claim 03 & 05(combined). Tribunal has not considered the defense of DDA that work done by the claimant has been rejected due to non-conformity of core cut samples and claimant has not submitted any details of all claims for additional payment. Hence, these claims be challenged by concerned department.

Claim no. 04 is not pressed by claimant.

Claim no. 06 : tribunal awarded a sum of Rs. 11,49,327/- to the claimant. The tribunal has ignored the reliance of DDA upon two documents i.e annexure R-3 and R-9 where, claimant has given an undertaking that no additional claim for extra use of cement. Thus, this claim should be challenged.

Claim no. 07 is decided in favour of claimant and tribunal awarded amount of Rs.14,259/- to the claimant. In this claim DDA disputed claim on the ground that the claimant was handed over a hindrance free site. And also relied upon condition no.1 and 40 of agreement. So, the same may be challenged.

Claim no. 08 and 09 are NIL.

Claims no. 10,15 to 18 have been taken together. The tribunal awarded a sum of Rs. 27,88,205.00 as a damages towards extra expenditure on overheads combined due to prolongation of contract under claim no. 10, 15, 16, 17 and 18. Tribunal has not considered the argument of respondent that claimant has not given any proof of payment of proof of loss. The Respondent has also stated that the delay is attributable to the claimant and a penalty of Rs. 15 lakh has been imposed on the claimant, therefore the claimant is not entitled to any claim for the prolongation period. The respondent has also argued that the extension of time granted under clause 5 was provisional. This awarded amount should be challenged.

Claim no. 11 and 19 is NIL.

Claim no. 13 tribunal awarded a refund of the security deposit in favour of claimant. In this regard Respondent relied upon clause no.17 of the agreement and the same is ignored by tribunal.

Claim no. 14: Tribunal awarded Rs. 27,01,016/- towards clause 10C under claim no. 14. The plea of respondent is not considered by tribunal that letters were submitted by the claimant only after the payment the 6th R/A bill i.e. after a delay of an unreasonable amount of time and is not in accordance with clause 10C. Hence, this claim should be challenged.



Claim no. 19 is NIL.

Claim no. 20 is regarding interest on each and every claim @18% which is very high this should be challenged.

In my view concerned department should challenge the award.

**Recommendation/Comments of EE/EMD-1:**

Claim No. 2 and 3: The 7<sup>th</sup> & Final bill passed by this office Net Payable amounting to Rs. 4,83,178.25 is only acceptable amount in this award, rest deserve to be challenged.

The arbitrator failed to acknowledge that the defects in the work executed by the claimant were both apparent and verifiable. Despite repeated requests and persistent efforts to persuade the claimant to rectify these defects, no corrective actions were undertaken. The imposition of compensation on the claimant was due to the delays directly caused by the claimant in completing the work.

The absence of prior notice to the claimant before imposing the levy does not absolve claimant of the responsibility to pay compensation for the deliberate delays in work completion. Clause 2 of the related agreement does not mandate the issuance of prior notice to the claimant before levying compensation for such delays. Furthermore, the provisions of the CPWD Manual are not applicable under the terms of this contract and cannot be invoked to extend undue favor to the claimant.

Claim No. 5: The Arbitrator, in their award, favored the claimant by categorizing the work as "Original Work" rather than upgradation/restoration work as the Name of Work suggests. Consequently, the Arbitrator determined that the rates for extra items should be derived under the provisions of Clause 12.2A, applicable to original work. However, the work in question is clearly a upgradation/restoration work, and the tender for the work was explicitly invited under clauses applicable to maintenance work including works of upgradation, specifically Clause 12.2B.

It is evident that the Arbitrator has deviated from the established provisions, thereby extending undue favor to the claimant. This award warrants a formal challenge.

Claim No. 6: The Arbitrator has ruled in favor of the claimant in this matter, citing that the claimant was under coercion when submitting an undertaking not to claim additional compensation for the use of extra cement. However, the Arbitrator failed to acknowledge that the undertaking was submitted voluntarily and without any evidence of duress. If the claimant believed he was under any duress, he had the option to request a redesign of the design mix at that time."

In light of these considerations, it is recommended that the award for this claim be challenged.

Claim No. 7: The only amount acceptable against this claim is Rs. 8,833/- against the awarded amount of Rs. 14,259/- as Clause 12.2B will be applicable for any extra work done. Rest amount deserves to be challenged.



Claim No. 12: The arbitrator has awarded the release of the withheld amount, which had been retained due to pending settlement paras of QAC inspection report. There is no merit in challenging this award. Therefore, it is recommended to accept the decision.

Claim No. 13: The Arbitrator failed to acknowledge that the work remains under the maintenance period as stipulated in Clause 17 of the agreement. Furthermore, the claimant has failed to redo or rectify the apparent defective work during this period. Therefore, it is recommended that this award against the claim be challenged.

Claim No. 14: The Arbitrator has given the award to the claimant for the payment under Clause 10C right upto the actual date of completion. The agreement condition provides that "The contractor shall, within a reasonable time of his becoming aware of any alteration in the price of any such materials and/or wages of labour, give notice thereof to the Engineer-in-Charge stating that the same is given pursuant to this condition together with all information relating thereto which he may be in position to supply."

The claimant did not submit any claim related to payment under clause 10C within reasonable time. Thus, the amount given in the award is illegal and against the provisions of the clause 10C. Hence, this award is recommended to be challenged.

Claim No. 10, 15, 16, 17, and 18: The awards related to these claims are directly correlated with the arbitrator's decision, which ruled that the delays in the completion of work were not attributable to the claimant. The decision absolves the claimant of responsibility for the delays and compensates for the imposed penalties. Therefore, it is essential to challenge all these awards.

Claim No. 20: The interest on accepted awarded amount is acceptable, rest deserves to be challenged.

Claim No. 21: Since Claimant is at the fault in majority of the claims, hence this awarded claim deserves to be challenged.

The only acceptable amount of the award is Rs. 5,12,011.25 plus interest as applicable. Rest award deserves to be challenged.

**Recommendation/Comments of SE/ECC-2/EZ:**

SE/ECC-2, also in agreement with the recommendations of EE/EMD-1 and is also of the considered view that the award allowed by the Sole Arbitrator may be challenged as the claims of the claimant is found preposterous.

**Recommendation/Comments of CE/EZ/DDA:**

Ongoing through the copy of award, opinion of Panel Lawyer, Ld. CLA, DDA recommendation of concerned EE & SE. I am also of the considered view that the arbitral claims may be challenged.



**RECOMMENDATION OF ASB:**

1. After due discussion and deliberation, ASB has recommended to challenge the entire award except Rs. 5,12,011.25/- plus interest as applicable.
2. Hon'ble Chairman of ASB i.e. FM/DDA has viewed the huge quantum of award made in this case very seriously and CE(HQ)/DDA has been directed to constitute a Technical Committee for conducting enquiry for lapses made at the time of execution of work and during the arbitration proceedings which led to the award of this enormous amount in the favour of the claimant.

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. The power to accept/reject the claim shall be Hon'ble Vice Chairman, DDA is the Competent Authority in r/o award amount more than Rs. 100 Lakhs and less than 500 lakhs, in consultation with FM/DDA, with due scrutiny by Arbitration Scrutiny Board headed by FM, DDA to accept/challenge.

-Sd-  
Amit Singh  
Dir(Works)  
Member Secretary

-Sd-  
Manohar Lal  
Addl. CLA  
Member

-Sd-  
Sanjay Kumar Khare  
CE(HQ)  
Member

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Col. Tejpal Singh Mann  
CE(EZ)  
Executive Member

-Sd-  
Vijay Kumar Singh  
FM, DDA  
Chairman

Director(Works)/DDA

**Copy to: -**

1. EM/DDA for kind information.
2. All concerned.
3. Director (System) for uploading on DDA website.
4. EE/EMD-1, DDA Pocket 1, Dilshad Garden, Delhi-110095 for information please

Director(Works)/DDA