

निदेशक (प्रणाली) दि. वि. प्रा.  
उपरी नं. 2569  
दिनांक 6-9-24



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

No. EM2(3)2024/EZ/223/Pt./DDA/ 747

Dated: 05/09/24

895<sup>th</sup> Meeting of Arbitration Scrutiny Board (ASB) under the chairmanship of FM, DDA was held on **04.09.2024** at **11:00 A.M.** in the chamber of FM to deliberate the Arbitral award in the matter of **M/s Kanwarji Construction Company Vs DDA** for the following work: -

<b>N.O.W.</b>	:	C/O 2 BHK Housing at Chilla Village along Ghazipur Drain. Sub Head: C/O 95 EWS Houses (or as per actual) & 200 Cat-II Houses (or as per actual) at Chilla Village Extension along Ghazipur Drain including all civil works, internal development, horticulture, boundary wall and internal electrification works (Design & Build basis).
<b>Agency</b>	:	M/s Kanwarji Construction Company
<b>Agmt. No.</b>	:	05/EE/ED-14/DDA/2015-16 [Dated: 01.07.2015]

The instant case has been submitted vide e-file computer no. 83272 on dt. 29.08.2024.

The meeting was attended by the following officers: -

- |                            |              |                   |
|----------------------------|--------------|-------------------|
| 1. Shri Vijay Kumar Singh  | FM, DDA      | Chairman          |
| 2. Shri Arun Kumar         | CE(EZ)       | Executive Member  |
| 3. Shri Sanjay Kumar Khare | CE(HQ), DDA  | Member            |
| 4. Shri Anil Kumar Sharma  | Add. CLA     | Member            |
| 5. Shri Amit Singh         | Dir. (Works) | Member, Secretary |

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

13/09/24  
Sh. Sanjay Khare  
Joshi



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

The bids for construction of 2 BHK Housing at Chilla Village along the Ghazipur drain SH: C/o 95 EWS Houses and 200 Cat-II 2 houses at Chilla Village along Ghazipur drain including all the civil works, internal development, horticulture, boundary wall and internal electrification works (design and build basis) were invited on 23.09.2014 on an estimated cost of Rs. 77,26,33,146/-(based on the Plinth Area rates 2012). Kanwarji Construction Co. was declared a successful bidder and work was awarded to Kanwarji Construction Co. on 29.06.2015 for tendered amount of Rs. 62,61,26,200/-.

The scope of work in the original tender was for C/o 95 EWS houses & 200 Cat -II or MIG houses at Chilla Village extension along Gazipur Drain including all civil works, internal development, horticulture, boundary wall and internal electrification works (Design & Build basis). However, the scope of the work was modified on account of change in the unified building bye-laws (the work was awarded with UBBL 1983 and the new UBBL 2016 became effective in March 2016). The number of basements were increased for 2 to 3, and dwelling units were changed from 200 MIG & 95 EWS to 156 MIG and 58 EWS, and the height of basement was increased from 2.4m to 4.2 m.

Due to delay in the execution of the project work, a show cause notice dated 04.06.2022 was issued to the Claimant/Agency under Clause 3(a) & (b) of the Agreement calling upon him to show cause as to why action under the said clauses of the Agreement should not be taken against him. Subsequently, vide letter dated 27.06.2022, the action was taken against the Claimant under Clause 3 of the Agreement and the contract for the aforementioned work was determined on 27.06.2022.

Thereafter the Claimant/Agency approached the Hon'ble High court of Delhi and filed the following two petitions before Hon'ble High Court of Delhi:

- 1) ARB.P. 797/2022 title KANWARJI CONSTRUCTION COMPANY vs DELHI DEVELOPMENT AUTHORITY
- 2) O.M.P.(I) (COMM) 209/2022 title KANWARJI CONSTRUCTION COMPANY vs DELHI DEVELOPMENT AUTHORITY.

In ARB.P. 797/2022 title KANWARJI CONSTRUCTION COMPANY vs DELHI DEVELOPMENT AUTHORITY the Claimant filed petition under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator before Hon'ble High Court of Delhi.



In the O.M.P.(I) (COMM) 209/2022 title KANWARJI CONSTRUCTION COMPANY vs DELHI DEVELOPMENT AUTHORITY, the agency filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 and sought urgent measures of interim protection / injunction restraining the DDA from fraudulently and illegally forfeiting its earnest money and performance Bank Guarantee as also taking action pursuant to notice dated 22.06.2022.

The Hon'ble High Court vide its common order dated 20.10.2022 disposed off both the aforementioned cases and appointed Sh. Rakesh Mishra as the Sole arbitrator for adjudicating the dispute between the parties.

Before Ld. Arbitrator, the Claimant/Agency filed its claims and Delhi Development Authority filed its counter claims and reply. After hearing the arguments of both the parties the learned Arbitrator published the Award on 24.06.2024.

In the instant matter, the agency has submitted **19 nos. of claims** amounting to **Rs. 22,14,37,021.71/-** plus cost of arbitration, pre-suit pendente lite interest and future interest. DDA had submitted **5 nos. of counterclaims** amounting to **Rs.26,33,00,120/-** plus future interest and cost of litigation.

Ld. Sole Arbitrator has awarded an amount of **Rs.13,86,55,456** (including cost of litigation, presuit and pendente lite interest) + GST in favour of claimant and awarded **NIL against DDA's counterclaims** vide award dated 24.06.2024.

**Comments of Panel Lawyer:** In this case, panel lawyer given his opinion that arbitrator's decisions inadequately addressed key defenses and evidence presented by DDA, resulting in awards that do not align with contract terms or reflect the Claimant's documented performance failures. The counterclaims are well-founded based on contractual agreements and project circumstances, offering a strong basis for challenging the arbitral award and seeking a more balanced resolution. And has advised to challenge the Award under section 34 of the Arbitration and Conciliation Act 1996.

**Recommendation of CLA:** In this case, CLA has agreed with the opinion of Panel Lawyer and has advised to **challenge the Award dated 24.06.2024.**

**Recommendation of EE/EMD-6:** In this case, EE/EMD-6 has also agreed with the opinion of Panel Lawyer and has advised file objection against **the Award dated 24.06.2024.**

Claim-wise recommendations are as under: -



Claim No	Claim Amount	Awarded Amount	Arbitrator Award	Comment Of Panel Lawyer	Comment of CLA	Comment of EE/EMD-6	Comment of SE/ECC-2	Comment of CE/EZ/DDA
1. Declaration that termination of contract by letter dated 27.06.2022 and any action taken pursuant there to including letter dated 08.07.2022 is unlawful and un-contractual.			<p>Ld. Arbitrator Award that the action taken by Respondent under clause 3 of the contract vide letter dated 27.06.2022 to determine the contract, lacks valid forfeiture of Earnest money, Security deposit and Performance guarantee also declare invalid and unlawful. Respondent is accordingly directed to release the same in favor of the claimant and withdrawn any action taken for encashment of the bank guarantees submitted by the claimant against aforesaid deposits.</p>	<p>The Claimant sought a declaration that the termination of the contract by letter dated 27/06/2022 was unlawful. The arbitrator supported this claim, stating the termination was wrongful. However, this decision inadequately considered the contractual provisions allowing termination due to significant delays. DDA's defense highlighted that only about 5% of the work was completed by the termination date, justifying their decision to terminate based on Clause 3 of the contract, which allows termination</p>	<p>I agree with the opinion of Panel Lawyer. In view of this the <b>Arbitral Award may be challenged.</b></p>	<p>It is stated that the Claimant could only complete approximately 5% physical progress of work till the time of contract determination. Delay is on account of Claimant for non-execution of work. Hence it is justified the decision to terminate the contract under <b>Clause-3</b> of the contract. Upon such determination, the Earnest money deposit, security deposit already recovered and performance guarantee under the contract shall be liable to be forfeited and shall be absolute disposal of DDA. The action Hence <b>this Arbitral Award may be</b></p>	<p>Agree with the opinion of P/L and recommendation of EE/EMD-6&amp; SE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b></p>	<p>Agree with the opinion of P/L and recommendation of EE/EZ/DDA</p>



2. Declaration that show cause dated 22.06.2022 and any action taken pursuant thereto is unlawful and un-contractual.			Ld. Arbitrator that analysis of events and pleadings under Claim No.1 and 2 and give conclusion that the show cause notice issued under clause 2 is bereft of any legal grounds under the contract and the applicable laws. Therefore, any action taken or proposed to be taken pursuant to the same shall be unlawful and hence invalid.	for lack of progress.	The Claimant contended that the show cause notice dated 22/06/2022 was unlawful. The arbitrator agreed, failing to properly evaluate the procedural compliance of the notice per contractual requirements. DDA issued this notice following multiple reminders and based on significant delays and underperformance by the Claimant, which warranted such action under the contract.	I agree with the opinion of Panel Lawyer. In view of this the <b>Arbitral Award may be challenged.</b>	challenged. I also agree with the opinion of panel lawyer.	Agree with the opinion of P/L and recommendation of EE/EMD-6& SE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b>	
3. Claim for Rs.6,01,74,074/- (Rupees Six crore one lakh seventy four thousand seventy four only) on account of work done by the	Rs.3,72,86,000/-	Rs.6,01,74,074/-	Ld. Arbitrator an amount of Rs.3,72,86,000/- in favour of the claimant after adjusting the mobilization advance and	The Claimant demanded Rs.6,01,74,074 for work done but not paid, and the arbitrator awarded Rs.3,72,86,000. This decision overlooked	I agree with the opinion of Panel Lawyer. In view of this the <b>Arbitral Award may be challenged.</b>	The Claimant demanded Rs. 6,01,74,074 for work done but claimant submitted revises bill to answering respondent vide its letter dated	Agree with the opinion of P/L and recommendation of EE/EMD-6& SE/ECC-2. In view of this the <b>Arbitral Award</b>	Agree with the opinion of P/L and recommendation of EE/EMD-6& SE/ECC-2. In view of this the <b>Arbitral Award</b>	



<p>Claimant but not paid.</p>		<p>interest thereupon, to be paid by the respondent against work executed, subject to Bank Guarantee against mobilization advance to be released in favour of the Claimant.</p>	<p>discrepancies in the claimed amounts and the actual work completed. DDA argued that the Claimant's billing did not match the work performed and that the quality of work was below contractual standards, which the arbitrator did not sufficiently consider.</p>	<p>06.12.2021 which amounted to Rs. 1,94,47,574/- and the same was scrutinized and was duly accepted for Rs. 1,85,39,476/-.</p> <p>Due to termination of the contract under Clause 3 contractor is liable to pay the Mobilization advance Rs. 2,81,75,679/- and interest on mobilization advance Rs. 1,26,79,056/-.</p> <p>Total amounting to Rs. 4,08,54,735/-.</p> <p>Rest amount liable to pay by the claimant to respondent is Rs. 4,08,54,735-Rs. 1,85,39 476/- = Rs.2,23,15,259/-.</p> <p><b>Hence this Arbitral Award may be challenged. I also agree with the opinion of panel lawyer.</b></p>	<p>may be challenged</p>	<p>may be challenged</p>
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4. Claim of Rs.51,77,359.71 (Rupees Fifty one lakh seventy seven thousand three hundred fifty nine and seventy one paisa only) on account of banking charges incurred on various bank guarantees during extended period due to the delay attributable to the respondent.	Rs.51,77,359.71/-	Rs.25,43,700/-	Ld. Arbitrator Award amount of Rs.25,43,700/- in favour of the claimant on account of banking charges incurred on various bank guarantees during extended period due to the delay attributable to the respondent.	The Claimant claimed Rs. 51,77,359.71 for banking charges incurred due to delays attributed to DDA, and the arbitrator partially awarded Rs.25,43,700. The arbitrator attributed the entire delay to DDA without considering the Claimant's role in not mobilizing resources and adhering to project timelines. Evidence of contributory delays by the Claimant was ignored.	I agree with the opinion of Panel Lawyer. In view of this the <b>Arbitral Award may be challenged.</b>	It is stated that agency contractual obligation to renew the bank guarantee on account of inordinate delay which in the present case was occasioned on account of the Claimant. Hence <b>this Arbitral Award may be challenged.</b> I also agree with the opinion of panel lawyer.	Agree with the opinion of P/L and recommendation of EE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b>
5. Claim of Rs.2,90,64,560/- (Rupees Two crore ninety lakh sixty-four thousand five hundred sixty only) on account of idling/under utilization charges of plant and machinery from	Rs.2,90,64,560/-	Rs.65,00,000/-	Ld. Arbitrator Award amount of Rs.65,00,000/- in favour of the claimant on account of idling/under utilization charges of plant and machinery from 14.07.2018	The Claimant sought Rs.2,90,64,560 for idling and underutilization of plant and machinery, and the arbitrator awarded Rs.65,00,000. This decision did not adequately link the idling directly to	I agree with the opinion of Panel Lawyer. In view of this the <b>Arbitral Award may be challenged.</b>	It is stated that No T&P, machinery were ever deployed at site by the Claimant before March 2021. Further, Feb 2021 to 27.06.2022, the T&P and machineries were utilized by the	Agree with the opinion of P/L and recommendation of EE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b>



<p>14.07.2018 to 27.06.2022 due to the delay attributable to the respondent.</p>			<p>to 27.06.2022 due to the delay attributable to the respondent.</p>	<p>DDA's actions and overlooked the Claimant's inefficiencies in site preparation. DDA's evidence of the Claimant's mismanagement was not given due consideration.</p>		<p>Claimant for physical execution of the Contract, hence there is no idling for this period. Hence <b>this Arbitral Award may be challenged.</b> I also agree with the opinion of panel lawyer.</p>	
<p>6. Claim for Rs.4,85,594/- (Rupees Four lakh eighty five thousand five hundred ninety four only) on account of reimbursement of testing charges paid by the claimant to the third parties upon directions of the respondent.</p>	<p>Rs.4,85,594/-</p>	<p>Rs.4,85,600/-</p>	<p>Ld. Arbitrator Award an amount of Rs.4,85,600/-in favour of the claimant on account of reimbursement of testing charges paid by the claimant to the third parties upon directions of the respondent.</p>	<p>The Claimant demanded Rs.4,85,594 for testing charges paid to third parties at DDA's direction. The arbitrator awarded this claim without fully evaluating whether the Claimant's delays contributed to additional testing requirements. DDA argued that some charges were unnecessary due to the Claimant's own procedural lapses.</p>	<p>I agree with the opinion of Panel Lawyer. In view of this the <b>Arbitral Award may be challenged.</b></p>	<p>It is stated that on production of bills for testing charges along with the request of the Claimant to reimburse the same, the respondent can reimburse these testing charges. After the termination of the contract under <b>Clause-3</b> of the contract the claimant liable to pay the amount remaining in the mobilization advance which is Rs. 2,23,15,259/- .<b>Hence this claim</b></p>	<p>Agree with the opinion of P/L and recommendation of EE/EMD-6&amp; SE/ECC-2.In view of this the <b>Arbitral Award may be challenged</b></p>



<p>7. Claim for Rs.10,08,000/- (Rupees Ten lakh eight thousand only) on account of land rent paid by the claimant to the respondent beyond the contractual period of completion due to delays/default attributable to the respondent.</p>	<p>Rs. 10,08,000/-</p>	<p>Rs.3,85,000/-</p>	<p>Ld. Arbitrator Award an amount of Rs.3,85,000/- in favour of the claimant on account of land rent paid by the claimant to the respondent beyond the contractual period of completion due to delays/default attributable to the respondent.</p>	<p>The Claimant sought Rs.10,08,000 for land rent paid to DDA beyond the contractual period due to alleged delays by DDA. The arbitrator awarded this claim without considering the Claimant's responsibility for project delays that extended the rental period.</p>	<p>I agree with the opinion of Panel Lawyer. In view of this the <b>Arbitral Award may be challenged.</b></p>	<p>It is stated that Clause 37 of <b>Agreement Pg. 14:</b> Claimant bound to pay rental charges. Dated 10.09.2018DDA gave the permission to establish Batching Plant to the Claimant, [Physical execution of actual work was started on 06.07.2021] Claimant failed to vacate the said land after the termination of the contract and is still in the possession of the said land even after repeated requests made by the Answering Respondent for vacating the</p>	<p>Agree with the opinion of P/L and recommendation of EE/EMD-6&amp; SE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b></p>	<p>Agree with the opinion of P/L and recommendation of EE/EMD-6&amp; SE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b></p>	<p>may be challenged. I also agree with the opinion of panel lawyer.</p>
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8. Claim for Rs.7,92,152/- (Rupees Seven lakh ninety two thousand one hundred fifty two only) on account of expenditures incurred by the claimant for purchasing the P.M. car along with its maintenance, anti-smog gun and reverse osmosis plant.	Rs. 7,92,152/-	Rs.3,36,000/-	Ld. Arbitrator Award an amount of Rs.3,36,600/-in favour of the claimant on account of expenditure incurred by the claimant for purchasing the p.m. car along with its maintenance, anti-smog gun and reverse osmosis plant.	The Claimant claimed Rs.7,92,152 for expenditures on a car, anti-smog gun, and reverse osmosis plant. The arbitrator awarded this claim without examining the necessity and contractually stipulated requirement of these expenditures, which DDA argued were unwarranted.	I agree with the opinion of Panel Lawyer. In view of this the <b>Arbitral Award may be challenged.</b>	It is stated that the claims of PM Car, Anti-Smog Gun and RO Plant comes under the category of <b>Project Overheads. Pg. 139 CPWD Manual, 2014. Hence this Arbitral Award may be challenged.</b>	I also agree with the opinion of panel lawyer.	I also agree with the opinion of panel lawyer.	Agree with the opinion of P/L and recommendation of EE/EMD-6& SE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b>



	smog gun and reverse osmosis plant.		Ld. Arbitrator Award an amount of Rs.5,00,00 0/-in favour of the claimant on account of watch and ward charges incurred by the claimant during extended period due to the delay attributable to the respondent	Rs.5,00,000/-	Rs. 6,43,346/-	9. Claim for Rs.6,43,346/- (Rupees Six lakh forty thousand three hundred forty-six only) on account of watch and ward charges incurred by the claimant during extended period due to the delay attributable to the respondent.
The Claimant sought Rs.6,43,346 for watch and ward charges during the extended period due to alleged delays by DDA. The arbitrator awarded this claim without adequately considering whether the security needs arose from delays attributable to the Claimant.	I agree with the opinion of Panel Lawyer. In view of this the <b>Arbitral Award may be challenged.</b>	It is stated that Claimant is duty bound to protect the site and its material. There is no provision as per contract imposing the duty upon the DDA to protect the site after award of work. Hence, no extra charges payable for the same. <b>Hence this Arbitral Award may be challenged.</b>	I also agree with the opinion of panel lawyer.	Agree with the opinion of P/L and recommendation of EE/EMD-6& SE/ECC-2.In view of this the <b>Arbitral Award may be challenged</b>	Agree with the opinion of P/L and recommendation of EE/EMD-6& SE/ECC-2.In view of this the <b>Arbitral Award may be challenged</b>	Agree with the opinion of P/L and recommendation of EE/EMD-6& SE/ECC-2.In view of this the <b>Arbitral Award may be challenged</b>
The Claimant claimed Rs.3,93,82,304 for loss of profit due to contract termination, which the arbitrator awarded in full. This decision	I agree with the opinion of Panel Lawyer. In view of this the <b>Arbitral Award may be challenged.</b>	It is stated that the Claimant could only complete approximately 5% physical progress of work till the time of contract determination. Hence, the said	The Claimant awarded Rs.1,42,95,000/-in favour of the claimant on	Rs. 1,42,95,000/-	Rs.3,93,82,304/-	10. Claim for Rs.3,93,82,304/- (Rupees Three crore ninety three lakh eighty two thousand three hundred four only) on account of loss of profit due to



<p>illegal termination of the contract by the respondent.</p>			<p>account of loss of profit due to illegal termination of the contract by the respondent</p>	<p>overlooked the contractual grounds for termination based on the Claimant's significant delays and non-performance.</p>	<p>I agree with the opinion of Panel Lawyer. In view of this the <b>Arbitral Award may be challenged.</b></p>	<p>claim of the Claimant is totally denied. Hence <b>this Arbitral Award may be challenged.</b> I also agree with the opinion of the panel lawyer.</p>		<p>may be challenged</p>
<p>11. Claim for Rs.56,48,976/- (Rupees Fifty six lakh forty eight thousand nine hundred seventy six only) on account of consultancy charges for drawing, soil investigation etc.</p>	<p>Rs.56,48,976/-</p>	<p>Rs.21,00,000/-</p>	<p>Ld. Arbitrator Award an amount of Rs.21,00,000/-in favour of the claimant on account of consultancy charges for drawing, soil investigation etc.</p>	<p>The Claimant demanded Rs.56,48,876 for consultancy charges related to drawings and soil investigation. The arbitrator awarded this claim, failing to consider DDA's argument that these services were not rendered to the agreed or standard schedule.</p>	<p>I agree with the opinion of Panel Lawyer. In view of this the <b>Arbitral Award may be challenged.</b></p>	<p>It is stated that DDA pays 0.08% of the tendered amount to the Claimant for preparation and submission of drawings which is fixed as per <b>Payment Schedule on Pg. 295 Agreement.</b> Hence, there is no provision for additional payment of consultancy charges. Further, Claimant in 1<sup>st</sup> RA Bill has submitted the above percentage of payment for the preparation and submission of drawings. Hence <b>this Arbitral</b></p>	<p>Agree with the opinion of P/L and recommendation of EE/EMD-6. In view of this the <b>Arbitral Award may be challenged</b></p>	<p>Agree with the opinion of P/L and recommendation of EE/EMD-6&amp; SE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b></p>



12. Claim for Rs.30,17,221/- (Rupees Thirty lakh seventeen thousand two hundred twenty-one only) on account of unused/construction material purchased by the claimant for the present work.	Rs.30,17,221/-	Rs.7,65,900/-	Ld. Arbitrator Award an amount of Rs.7,65,000/- in favour of the claimant on account of unused/construction material purchased by the claimant for the present work.	The Claimant claimed Rs.30,17,221 for unused construction material. The arbitrator awarded this claim without adequately assessing whether the excess materials resulted from the Claimant's failure to manage inventory and project needs effectively.	I agree with the opinion of Panel Lawyer. In view of this the <b>Arbitral Award may be challenged.</b>	It is stated UNUSED MATERIAL does not fall under the ambit of joint measurements as these measurements are only for the quantum of work executed which is payable by the DDA and not for the material procured by the Claimant. Hence <b>this Arbitral Award may be challenged.</b>	I also agree with the opinion of panel lawyer.	Award may be challenged. I also agree with the opinion of panel lawyer.	Agree with the opinion of P/L and recommendation of EE/EMD-6& SE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b>	Agree with the opinion of P/L and recommendation of EE/EMD-6& SE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b>	Agree with the opinion of P/L and recommendation of EE/EMD-6& SE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b>
13. Claim for Rs.5,10,39,260/- (Rupees Five crore ten lakh thirty-nine thousand two hundred sixty only) on account of damages for	Rs.5,10,39,260/-	Rs.4,42,00,000/-	Ld. Arbitrator Award an amount of Rs.4,42,00,000/- in favour of the claimant on account of damages for escalation due	The Claimant sought Rs.5,10,39,260 for damages due to material and labor price escalation during the extended period. The arbitrator	I agree with the opinion of Panel Lawyer. In view of this the <b>Arbitral Award may be challenged.</b>	It is stated DDA has issued Show Cause Notice under <b>Clause 2</b> of the Agreement to levy compensation for delay. <b>Clause 10 CA &amp; 10 CC at</b>	I also agree with the opinion of panel lawyer.	Award may be challenged. I also agree with the opinion of panel lawyer.	Agree with the opinion of P/L and recommendation of EE/EMD-6& SE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b>	Agree with the opinion of P/L and recommendation of EE/EMD-6& SE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b>	Agree with the opinion of P/L and recommendation of EE/EMD-6& SE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b>



<p>escalation due to increase in price of materials and labour on the work executed in the extended period as per actual indices.</p>	<p>Rs.2,43,96,538/-</p>	<p>Rs.33,00,000/-</p>	<p>to increase in price of materials and labour on the work executed in the extended period as per actual indices.</p>	<p>awarded this claim without considering that the delays causing escalation were partly due to the Claimant's own inefficiencies.</p>	<p>Pg. 147 &amp; 150 of Agreement are applicable only when there is no action under Clause 2 of the Agreement. Hence this Arbitral Award may be challenged.</p> <p>I also agree with the opinion of panel lawyer.</p>	<p>may be challenged</p>	<p>may be challenged</p>
<p>14. Claim for Rs.2,43,96,538/- (Rupees Two crore forty three lakh ninety six thousand five hundred thirty eight only) as per actuals or in the alternative calculation as per hudson formula towards damages/compensation for on-site/off-site expenses during extended period of contract.</p>	<p>Rs.2,43,96,538/-</p>	<p>Rs.33,00,000/-</p>	<p>Ld. Arbitrator Award an amount of Rs.33,00,000/-in favour of the claimant on account of damages/compensation for on-site/off-site expenses during extended period of contract.</p>	<p>The Claimant claimed Rs.2,43,96,538 as calculated by the Hudson formula for damages during the extended contract period. The arbitrator awarded this claim without assessing whether the Claimant's actions contributed significantly to the extended period.</p>	<p>I agree with the opinion of Panel Lawyer. In view of this the Arbitral Award may be challenged.</p> <p>I also agree with the opinion of panel lawyer.</p>	<p>Agree with the opinion of P/L and recommendation of EE/EMD-6. In view of this the Arbitral Award may be challenged</p>	<p>Agree with the opinion of P/L and recommendation of EE/EMD-6&amp; SE/ECC-2. In view of this the Arbitral Award may be challenged</p>
<p>15. Claim for Rs.6,07,737/- (Rupees Six lakh seven thousand</p>	<p>Rs.6,07,737/-</p>	<p>Rs.6,07,700/-</p>	<p>Ld. Arbitrator Award an amount of Rs.6,07,700/-in</p>	<p>The Claimant sought Rs.6,07,737 for interest on the</p>	<p>It is stated that Claimant never accepted the measurements of</p>	<p>Agree with the opinion of P/L and recommendation</p>	<p>Agree with the opinion of P/L and recommendation</p>



<p>seven hundred thirty-seven only) on account of interest on delayed payment of first running bill.</p>			<p>favour of the claimant on account of interest on delayed payment of first running bill.</p>	<p>delayed payment of the first running bill. The arbitrator awarded this claim without examining if the delays in payment were justified due to discrepancies in work completion and quality.</p>	<p>the <b>Arbitral Award may be challenged.</b></p>	<p>the 1<sup>st</sup> RA Bill. That the intimation of acceptance of the said bill was given to the Claimant and a requested was made to send a authorized representative to receive the said bill. That as a matter of fact, none appeared on behalf of the Claimant to receive the bill till 17.05.2022.</p> <p>Subsequently the Contract was determined on 27.06.2022 and arbitration was invoked.</p> <p><b>Hence this Arbitral Award may be challenged.</b> I also agree with the opinion of panel lawyer.</p>	<p>of EE/EMD-6. In view of this the <b>Arbitral Award may be challenged</b></p>	<p>of EE/EMD-6&amp; SE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b></p>
<p>16. Claimant seeks declaration that GST is reimbursable by the respondent on</p>	<p>GST reimbursement @18%</p>	<p>GST on the entire awarded amount, if found payable by GST authorities, and</p>	<p>Ld. Arbitrator Award as per the award in favour of the claimant on account of</p>	<p>The Claimant demanded reimbursement for GST at 18% on amounts awarded,</p>	<p>I agree with the opinion of Panel Lawyer. In view of this the <b>Arbitral</b></p>	<p>It is stated that DDA is still ready and willing to pay the legitimate GST, if the</p>	<p>Agree with the opinion of P/L and recommendation of EE/EMD-6. In</p>	<p>Agree with the opinion of P/L and recommendation of EE/EMD-6&amp;</p>



<p>payment under this contract at 18% and actual reimbursement be directed on the amount quantified/paid/a warded.</p>		<p>actually paid accordingly, shall be reimburse to the claimant in full production of proof payment.</p>	<p>claimant seeks declaration that GST is reimbursable by the respondent on payment under this contract at 18% and actual reimbursement be directed on the amount quantified/paid/a warded.</p>	<p>which the arbitrator granted. However, the decision did not consider whether the GST amounts were correctly calculated and applicable under the specific contract terms.</p>	<p><b>Award may be challenged.</b></p>	<p>Claimant submits the proper and justifiable original documents in proof of the same only on the quantum of work and not on the amount awarded if any. Hence this claim may be challenged. I also agree with the opinion of panel lawyer.</p>	<p>view of this the <b>Arbitral Award may be challenged</b></p>	<p>SE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b></p>
<p>Claim 17: On account of pre-suit and pendente lite interest on claims nos. 3-15.</p>	<p>PRE-SUIT AND PENDENTE LITE INTEREST</p>	<p>PRE-SUIT AND PENDENTE LITE INTEREST @10%</p>	<p>Ld. Arbitrator Award against all the claims are by way of damage except claim no.3, which have been determined by this AT in these proceedings. Interest has already been awarded against claim no.3 as per terms of the contract up to 22.06.2022 under claim no.15. Therefore Ld. Arbitrator decided that the claimant is eligible to be</p>	<p>The Claimant sought interest on claims 3-15, which the arbitrator awarded without assessing whether the interest calculations were consistent with the contractual and legal standards governing such payments.</p>	<p>I agree with the opinion of Panel Lawyer. In view of this the <b>Arbitral Award may be challenged.</b></p>	<p>It is stated that this claim does not arise in favour of the claimant in accordance with the fact that the delay occasion in the execution of the work solely on account of the claimant. Hence <b>this Arbitral Award may be challenged.</b> I also agree with the opinion of panel lawyer.</p>	<p>Agree with the opinion of P/L and recommendation of EE/EMD-6. In view of this the <b>Arbitral Award may be challenged</b></p>	<p>Agree with the opinion of P/L and recommendation of EE/EMD-6&amp; SE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b></p>



<p>Claim 18: On account of future interest at 12% on claims nos. 3-17.</p>	<p>FUTURE INTEREST @12%</p>	<p>FUTURE INTEREST @12%</p>	<p>paid simple interest @ 10% (Ten percent) P.A on the amounts awarded against these claims from 05.07.2022 up to date of award.</p>	<p>The Claimant demanded future interest at 12% on claims 3-17, which was awarded by the arbitrator. This decision did not sufficiently evaluate whether the interest rate was reasonable or aligned with the contract.</p>	<p>I agree with the opinion of Panel Lawyer. In view of this the <b>Arbitral Award may be challenged.</b></p>	<p>It is stated that this claim does not arise in favour of the claimant in accordance with the fact that the delay occasion in the execution of the work solely on account of the claimant. Hence <b>this Arbitral Award may be challenged.</b> I also agree with the opinion of panel lawyer.</p>	<p>Agree with the opinion of P/L and recommendation of EE/EMD-6&amp; SE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b></p>	<p>Agree with the opinion of P/L and recommendation of EE/EMD-6&amp; SE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b></p>	<p>Agree with the opinion of P/L and recommendation of EE/EMD-6&amp; SE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b></p>
<p>Claim 19: cost of arbitration</p>	<p>FUTURE INTEREST @12%</p>	<p>FUTURE INTEREST @12%</p>	<p>Ld. Arbitrator Award an amount of Rs. 30,00,000/-in favour of the claimant on account of cost of arbitration</p>	<p>The Claimant sought the cost of arbitration, which was awarded without considering the extent to which the Claimant's actions may have unnecessarily</p>	<p>I agree with the opinion of Panel Lawyer. In view of this the <b>Arbitral Award may be challenged.</b></p>	<p>It is stated that this claim does not arise in favour of the claimant in accordance with the fact that the delay occasion in the execution of the work solely on account of the</p>	<p>Agree with the opinion of P/L and recommendation of EE/EMD-6&amp; SE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b></p>		



					prolonged proceedings.			claimant. Hence this Arbitral Award may be challenged. I also agree with the opinion of panel lawyer.				may be challenged
<b>Counterclaims:</b>												
Counterclaim no.1: Claim of compensation amount of Rs. 6,26,12,620/- as per clause 2 of the agreement for delay occasioned on account of the claimant in execution of the work.	Rs. 6,26,12,620/-	NIL	Ld. Arbitrator Award an NIL against the respondent and stated that show cause notice issued under clause 2 is bereft of any legal grounds under the contract and the applicable laws. Therefore, any action taken or proposed to be taken pursuant to the same shall be unlawful and hence invalid. In view of the above this counterclaim raised by the respondent is also not valid and hence rejected	DDA claimed Rs.6,26,12,620 as compensation under Clause 2 of the agreement for delays caused by the Claimant. The arbitrator rejected this claim without adequately considering the documented delays and their attribution to the Claimant. The contract explicitly allows for such compensation, which was supported by extensive evidence.	I agree with the opinion of Panel Lawyer. In view of this the <b>Arbitral Award may be challenged.</b>	It is stated that this claim does not arise in favour of the DDA in accordance with the fact that the delay occasioned on the execution of the work solely on account of the claimant. Hence <b>this Arbitral Award may be challenged.</b> I also agree with the opinion of panel lawyer.	Agree with the opinion of P/L and recommendation of EE/EMD-6. In view of this the <b>Arbitral Award may be challenged</b>	Agree with the opinion of P/L and recommendation of EE/EMD-6& SE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b>				



<p>Counterclaim no.2: Claim of Rs. 6,87,500/- on account of non-payment of rental charges of casting yard allotted to the claimant with dues for a period with effect from 11.09.2021 till date.</p>	<p>Rs. 6,87,500/-</p>	<p>NIL</p>	<p>Ld. Arbitrator Award an NIL against the respondent and stated that since the contract is no more operative, Respondent's case of charging of land rent, resting on it's provisions, for post determination period cannot be upheld. Rent for the period 11.09.2021 to 27.06.2022 (not paid by Claimant) has already been adjusted in the award against claim No.7.</p>	<p>DDA sought Rs.6,87,500 for unpaid rental charges for the casting yard. The arbitrator rejected this claim without sufficient evaluation of the contractual terms that justified these charges and the evidence showing the Claimant's use of the yard.</p>	<p>I agree with the opinion of Panel Lawyer. In view of this the <b>Arbitral Award may be challenged.</b></p>	<p>It is stated that this claim does not arise in favour of the DDA in accordance with the fact that the delay occasion in the execution of the work solely on account of the claimant. Hence <b>this Arbitral Award may be challenged.</b> I also agree with the opinion of panel lawyer.</p>	<p>Agree with the opinion of P/L and recommendation of EE/EMD-6&amp; SE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b></p>	<p>Agree with the opinion of P/L and recommendation of EE/EMD-6&amp; SE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b></p>
<p>Counterclaim no.3: Claim of Rs. 20 crores on account of redoing the tender process on account of failure to execute the present award of work by the claimant.</p>	<p>Rs. 20 crores</p>	<p>NIL</p>	<p>Ld. Arbitrator Award an NIL against the respondent</p>	<p>DDA claimed Rs.20 crores for the costs of redoing the tender process due to the Claimant's failure to execute the work. The arbitrator rejected this claim, disregarding the contractual breach by the Claimant</p>	<p>I agree with the opinion of Panel Lawyer. In view of this the <b>Arbitral Award may be challenged.</b></p>	<p>It is stated that DDA have to float a new tender for the remaining/ balance work on the prevailing rates. Which are more than the previous rates on which agreement was made. Hence <b>this Arbitral Award may be</b></p>	<p>Agree with the opinion of P/L and recommendation of EE/EMD-6&amp; SE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b></p>	<p>Agree with the opinion of P/L and recommendation of EE/EMD-6&amp; SE/ECC-2. In view of this the <b>Arbitral Award may be challenged</b></p>



Counterclaim no.4: future interest @ 12% on liquidated damages as claimed vide claim no.s 1-3.	Interest @12%	NIL	Ld. Arbitrator Award an NIL against the respondent	that led to additional costs for DDA in seeking new contractors.	I agree with the opinion of Panel Lawyer. In view of this the <b>Arbitral Award may be challenged.</b>	challenged.I also agree with the opinion of panel lawyer.	Agree with the opinion of P/L and recommendation of EE/EMD-6& SE/ECC-2.In view of this the <b>Arbitral Award may be challenged</b>
Counter claim no.5: Cost of arbitration	-	NIL	Ld. Arbitrator Award an NIL against the respondent	DDA also claimed the cost of arbitration, which was rejected. This decision failed to recognize the Claimant's responsibility for procedural delays and non-compliance that contributed to increased arbitration costs.	I agree with the opinion of Panel Lawyer. In view of this the <b>Arbitral Award may be challenged.</b>	It is stated that this claim does not arise in favour of the claimant in accordance with the fact that the delay occasion in the execution of the work solely on account of the claimant. <b>Hence this Arbitral Award may be challenged.</b> I also agree with the opinion of panel lawyer.	Agree with the opinion of P/L and recommendation of EE/EMD-6& SE/ECC-2.In view of this the <b>Arbitral Award may be challenged</b>



**Recommendation of SE/ECC-2:** In this case, **SE/ECC-2** has also agreed with the opinion of Panel Lawyer and has advised to **challenge the Award dated 24.06.2024.**

**Recommendation of CE/EZ:** This office is also agreed with the opinion of Panel Lawyer and is of the view that DDA should have to file objection against **the Award dated 24.06.2024.**

**RECOMMENDATION OF ASB:**

After due discussion and deliberation, the ASB is of the view that the Ld. Arbitrator in the instant case while awarding the claims to the claimant has failed to consider the contractual obligations of the claimant. The counter claims of DDA which were well grounded based on contractual provisions have been rejected, ignoring the documentary evidence presented before the Ld. Arbitrator. Therefore, it has been decided that award dt. 24.06.2024 published by Ld. Arbitrator in the instant matter should be challenged

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 Chairman, DDA/Hon'ble LG, Delhi is the Competent Authority in r/o award amount more than Rs. 500 Lakhs in consultation with FM/DDA, with due scrutiny by Arbitration Scrutiny Board headed by FM, DDA to accept/challenged.

-Sd-  
Amit Singh  
Dir(Works)  
Member Secretary

-Sd-  
Anil Kumar Sharma  
Addl. CLA  
Member

-Sd-  
Sanjay Kumar Khare  
CE(HQ)  
Member

-Sd-  
Arun Kumar  
CE (EZ)  
Executive 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/EMD-6/DDA for information please

  
Director(Works)