

4/10/24
Sh. Joshi DDA/151

निदेशक (प्रणाली) दि.वि.प्रा.
हाथी नं. 2802
दिनांक 4-10-24



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

No. EM2(3)2024/RZ/141/DDA/Pt-2/850

Dated: 04/10/24

MINUTES OF THE 897th MEETING OF ASB HELD ON 03.10.2024 IN THE CHAMBER OF CE(HQ), DDA

897th meeting of Arbitration Scrutiny Board (ASB) under the chairmanship of CE(HQ), DDA was held on 03.10.2024 at 05:00 P.M. in the chamber of CE(HQ), DDA to deliberate the judgement dt. 16.07.2024 pronounced by District Court, Rohini in the matter of **M/s Integrated Techno Systems Pvt Ltd Vs DDA** for the following work: -

N.O. W : Protection of Vacant Land in Rohini Zone, DDA.
SH: Total Survey Station of Vacant Land in Sector-26, 31, 32, 33, 38, 39, 40 & 41 at Rohini.
Agency : M/s Integrated Techno Systems Pvt Ltd.
Agmt.No. : 07/EE/RPD-XI/A/2015-16

The case was submitted by CE(Rohini) vide e-file Computer No.84949 on 27.09.2024.

The meeting was attended by the following officers: -

1. Shri Sanjay Kumar Khare	CE (HQ)	Chairman
2. Shri Deepak Suyal	CE (Rohini)	Executive Member
3. Shri Anil Kumar Sharma	Addl. CLA	Member
4. Shri Ajay Gupta	Director(Finance)	Member
5. Shri Amit Singh	Dir. (Works)	Member Secretary

The case was presented by Sh. Deepak Suyal, CE (Rohini).

BRIEF HISTORY OF THE CASE IS AS UNDER: -

The above cited work was awarded to M/s INTEGRATED TECHNO SYSTEMS PVT. LTD, with period of completion 45 days. Accordingly, the date of start of work was 01.09.2015 and stipulated date of completion of the work was 15.10.2015, but the

work could not be completed on scheduled date of completion and work was completed on 16.08.2016.

The disputes arose between DDA and agency (claimant) in aforesaid work. Accordingly the claimant had moved an application dated 20.08.2019 before Sh. Shailendra Sharma, Engineer Member, DDA under clause 25 of the contract Agreement Sh. Shailendra Sharma, Engineer Member, DDA vide communication No. EM2(07)2019/Arbn./Vol.VIII/Pt.-144/DDA/3176 dated 28.10.2019 appointed Sh. R.N. Dandekar, Addl. D.G.(Retd.), CPWD as Sole Arbitrator to decide the disputes raised as per provisions of The Arbitration and Conciliation Act, 1996 (in short: "Act of 1996") as amended upto date by way of passing the Award. The parties completed their pleadings before the said learned Sole Arbitrator. Thereafter, the Claimant filed a petition before Hon'ble High Court of Delhi under Sections 14(2) read with Section 15 and 12(5) of the Act being O.M.P.(T) COMM.) 34/2020 seeking termination of mandate of Arbitrator unilaterally appointed by the Respondent. Allowing the said petition Hon'ble High Court appointed Sh. S. K. Sarvaria, Former District & Sessions Judge Delhi as Sole Substitute Arbitrator by terminating the mandate of Sh. R.N. Dandekar, Addl. D.G (Retd.). CPWD vide Order dated 03.01.2022 with specific direction that the proceedings already conducted before erstwhile Arbitrator shall not be repeated before the Substitute Arbitrator. Accordingly, Sh. S. K. Sarvaria have made declaration under Section 12 of Arbitration and Conciliation Act, 1996 as on 11.01.2022 and gave it to the parties accordingly, on the same day.

After completion of proceeding the Ld. Arbitrator has pronounced the award dated 27.02.23 amounting to Rs. 57,09,128/- including interest (pre-arbitration calculated @ 9% p.a. payable for 947 days i.e. upto 180 days after date of submission of final bill i.e. 25.03.2017 to 28.10.2019 date of appointment of arbitrator and pendent elite calculated @ 9% p.a. payable for 1217 days from 29.10.2019 to 27.02.23-date of award). The future interest has awarded @11% p.a. from 28.02.23 till payment. The award was referred to Panel Lawyer Sh. Tarun Sharma for his comments. The awarded amount in respect of Claim No. 1, 2, 3, 5, 6, 7 & 8 were challenged in Hon'ble District Court, North West, Rohini. Now, Hon'ble Court has dismissed the objections of DDA and upholding the Award vide the judgment orders dated 16.07.2024. Panel Lawyer has concluded that there are reasonable grounds to challenge the District Court judgment before the Hon'ble High court of Delhi under Section 37 of the Arbitration Act. The primary contention would be the non-consideration of specific claims and the apparent over-reliance on the arbitrator's findings without independent judicial scrutiny. The legal department, DDA has agreed with the opinion of Panel Lawyer and also of the opinion that concerned department may take decision to challenge the order of District Court, however, the final decision is to be taken by ASB.

Judgment dated 16.07.2024:

The Hon'ble Court stated that to successfully raise a challenge against an Arbitral Award, the petitioner ought to satisfy this Court that the grounds as provided in the Section 34 of the Arbitration Act are met. It is, therefore, clear that the decisive test is that first, the Arbitrator had to adopt a judicial approach; second, the principles of natural justice have to be upheld; and third, the decision must not have been egregious, or rather, perverse. In the instant petition, the petitioner has raised the grounds of contravention of Public Policy and fundamental policy, however, has not been able to show or establish that the findings of the learned arbitrator are so patently illegal so as to shock the conscience of this Court. The petitioner has also raised the grounds of non-appreciation of material on record and submissions of on behalf of the petitioner, however, a perusal of the impugned Award shows that while deciding Claims No. 1, 3, 4, 7, 9 and 10, the learned arbitrator has given extensive findings and elaborate reasoning for such findings after considering the entire material before him. The petitioner has also raised challenges that are substantially on the merits of the case. However, it is settled position of law that a Court while exercising jurisdiction and powers under Section 34 of the Arbitration Act shall not sit in appeal by examining and re-examining the case on its merits. The Hon'ble Court has submitted that the decision of the learned arbitrator, passed after thorough consideration of the material on record and the submissions of the parties, is final and this Court is not required to carry out an exercise of re-adjudicating the disputes. An Arbitral Award may be set aside on the limited grounds and only under the conditions as explained by the Hon'ble Supreme Court in *Delhi Airport Metro Express Pvt Ltd vs. Delhi Metro Rail Corporation*, (2022) 1 SCC 131, in the terms as re-produced hereunder: -

“The limited grounds available to Courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the courts. There is a disturbing tendency of Courts of setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. 29. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression “patent illegality”. Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression “patent illegality”. What is prohibited is for Courts to re-appreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and

dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression "patent illegality".

Accordingly, the Hon'ble Court submitted that this Court shall also not indulge into the arguments on merits that have been raised by the petitioner, keeping in view the spirit, purpose and essence of the Arbitration Act. To enter into merits of arbitral proceedings and an arbitral award and re-appreciate all arguments while also re-adjudicating the disputes between the parties would mean to defeat the purpose of the legislation itself. The Hon'ble Court has decided that the impugned Award dated 27.02.2023, passed by the learned Arbitrator is logical, the same has been passed after due consideration of the material on record and the petitioner has miserably failed to point out any flaw therein. The petition is, therefore, found to be meritless; same accordingly stands dismissed.

Comments of Panel Lawyer: -

The Panel Lawyer has given his comments against each awarded claim. Panel Lawyer has concluded that there are reasonable grounds to challenge the District Court judgment before the Hon'ble High court of Delhi under Section 37 of the Arbitration Act. The primary contention would be the non-consideration of specific claims and the apparent over-reliance on the arbitrator's findings without independent judicial scrutiny. The legal department, DDA has agreed with the opinion of Panel Lawyer and also of the opinion that concerned department may take decision to challenge the order of District Court, however, the final decision is to be taken by ASB. In nut-shell Panel Lawyer has suggested impugned award may be challenged.

Recommendation of CLA: -

The legal department, DDA has agreed with the opinion of Panel Lawyer and recommended to challenge the decision of Hon'ble District Court. Further, stated that concerned department may take decision to challenge the order of Hon'ble District Court.

Recommendation of EE/RMD-3: -

Agreed with the opinion of Panel Lawyer & Ld. CLA and recommended to challenge the Hon'ble District Court's judgment before Hon'ble High Court of Delhi under Section 37 of Arbitration Act. Claim wise recommendation are as under :-

S. No.	CLAIM NO.	Brief Description of Claim/Counter claim as justified by Arbitrator	Amt. of claim	Amt. of Award	Comments of Panel Lawyer	Comments of CLA	Comments of EE/RMD-3	Comments of SE/RCC-1
1	1	Claimant claim of Rs. 3,80,152/- On Account of Non-Release of due payment against Item No. 1 of the agreement.	Rs. 3,80,152/-	Rs. 2,95,081/-	The Ld. Arbitral while passing the arbitral award, in Para 85 of the award to reach the conclusion that land under litigation is to be supplied by DDA as reciprocatory obligation is against the terms of Contract. Subsequent inter set communication cannot become basis of altering the terms & conditions of work after going through the terms & conditions, scope, hurdles, in implementing the contract. Hence Duty cannot be casted on DDA to assist the contractor in his job while performing his scope of work. There are litigations on land where DDA is not	Agreed with the recommendation of Panel Lawyer to challenge this award.	Agreed with the recommendation of Panel Lawyer & Ld. CLA and recommended to challenge this award.	Agreed with the comments of EE/RMD-3. Hence, agreed to challenge the Hon'ble District Court's decision.

2	2	Claimant claim of Rs. 18,24,891/- on account of Additional cost for carrying out Topographical Survey work for the three DDA Parks (i.e. Avantika Park, Swaran Jayanti Park, District Park).	Rs. 18,24,891/-	Rs. 9,12,445/-	<p>even a party, therefore it was the duty was rightly casted on external agency in a manner that the department may concentrate on planning.</p> <p>The arbitral award, in Para 116 of award is only supposition, the scope of work for the 3 parks were same as was of original contract. The Scope of work can be termed lesser as litigation part was not to be included only superimposition of the ground reality was to be done for 3 parks.</p>	Agreed with the recommendation of Panel Lawyer to challenge this claim.	<p>The nature and technique and experts carried out survey for these parks is same as utilized under Agreement Item 1, i.e. topographical survey. Hence, agreed with the opinion of Panel Lawyer & Ld. CLA and recommended to challenge this award.</p>	<p>Agreed with the comments of EE/RMD-3. Hence, agreed to challenge the Hon'ble District Court's decision.</p>
3	3	Claimants claim of Rs.8,50,123/- on account of clearing of Jungle including uprooting of	Rs. 8,50,123/-	Rs. 6,50,000/-	<p>The additional work and the rates quoted are unreal and beyond the scope of work (Para-142-144) Exorbitant rates</p>	Ld. CLA agreed with the recommendation of Panel Lawyer to challenge this claim.	<p>The approaches were made to site for survey by clearing jungle and that to cover under condition</p>	<p>Agreed with the comments of EE/RMD-3. Hence, agreed to</p>

		rank vegetation, grass, brush, wood, trees and saplings of girth up to 30 cm measured at a height of 1m above GL and removal of rubbish up to a distance of 50m outside the periphery of the area cleared.			taking refuse of clause 12 is claimed. Reasoning of Ld. Arbitrator in Para 117 of award is also surmises and conjectures. The agency/respondent has already received the payment for additional work as per terms of contract, the award of half of claimed amount was not appropriate.		No. 5 at Page No. 93, condition No. 17 at page No. 14 and condition 1 at page No. 93 of the Agreement. Whereas, Arbitrator has ignored these condition, as these conditions are applicable for standard work whereas this work is specialized. The Hon'ble District Court failed to appreciate this fact. Hence, recommended to challenge this award.	challenge the Hon'ble District Court's decision.
4	5	Claimant claim of Rs. 31,11,000/- on account of loss of profits and overhead charges during	Rs. 31,11,000/-	Rs. 24,75,000/-	While considering the Claim no. 5 i.e. "Against loss of profits and overhead charges during the period of prolongation of contract", failed to	Ld. CLA agreed with the recommendation of Panel Lawyer to challenge this claim.	Agreed with the recommendation of Panel Lawyer. Also work duration extended on account of superimposition	Agreed with the comments of EE/RMD-3. Hence, agreed to challenge

		<p>the period of prolongation of contract.</p>		<p>consider that the Extension of time (EOT) was granted without levy of compensation up to the provisional completion of the work the claimant/respondent has not completed the work as recorded in the provision completion certificate and did not perform the obligation required as per the agreement. Further, no work force was sitting idle at site and no such information with details was given at any point of time during the execution of work.</p> <p>Hudson Formula is not applicable as per the facts and circumstances as well as the type of contract.</p>		<p>of Sajara, that is a clerical work, is only about 20% of total work done. Hence, recommended to challenge the award.</p>	<p>the Hon'ble District Court's decision.</p>
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5	6	Claimants claim on account of interest payment.	Rs. 31,00,508/-	Rs. 9,76,602/-	While passing award failed to appreciate that the interest is not payable to the claimant as claimant is defaulter and have not completed the scope of work. For the rest of the period of delay EOT has been granted without levy of charge.	Ld. CLA agreed with the recommendation of Panel Lawyer to challenge this claim.	The award needs to be challenged w.r.t. award of claim No. 1, 2, 3 & 5.	Agreed with the comments of EE/RMD-3. Hence, agreed to challenge the Hon'ble District Court's decision.
6	7	The claimants on account of amount payable against GST (Goods and service tax) @ 18% on Claim No. 1, 2, 3, 5, 6 & 8 as payable under the clause 38 of the agreement.	To be calculated based upon the claims on Claim No. 1, 2, 3, 5, 6 & 8 @ of GST as applicable at the time of payment (presently 18%)	Declaratory award based on the claims awarded under claim nos. 1, 2, 3, 5, 6 & 8 by this Tribunal @ of GST as applicable at the time of payment (presently 18%)	No Comment offered.	No Comment offered.	Accepted, paid as per rule.	Agreed with the comments of EE/RMD-3.

7						No Comment offered.	Award accepted against the terms & condition of agreement. Hence, liable to be challenged.	Agreed with the comments of EE/RMD-3. Hence, agreed to challenge the Hon'ble District Court's decision.
8	The claimants of claim of Rs.6,00,000/- on account of cost of Arbitration and Legal expenses.	Rs. 6,00,000/-	Rs. 4,00,000/-					
	Total including Interest & Arbitration Cost & Legal expenses	Rs. 1,00,70,674/-	Rs. 57,09,128/-					

Recommendation of SE/RCC-1: -

Agreed with the comments given by EE/RMD-3. Hence, recommended to challenge the Hon'ble District Court's decision.

Recommendation of CE(Rohini): -

Agreed with the recommendations of Panel Lawyer, CLA, EE/RMD-3 and SE/RCC-1 and recommended to challenge the decision of Hon'ble District Court's judgment before Hon'ble High Court of Delhi under Section 37 of Arbitration Act.

RECOMMENDATION OF ASB:

After due discussion and deliberation, the ASB has decided to challenge the award given by Hon'ble District Court against claim no. 1, 2, 3, 5, 6 & 8.

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, EM/DDA with consultation of CAO is the Competent Authority in r/o award amount more than 25 lacs and less than Rs. 100 lacs with due scrutiny by Arbitration Scrutiny Board headed by CE(HQ)/DDA to accept/challenge.


-Sd-
Amit Singh
Dir(Works)
Member Secretary

-Sd-
Anil Kumar Sharma
Addl. CLA
Member

-Sd-
Ajay Gupta
Director(Finance)
Member

-Sd-
Deepak Suyal
CE (Rohini)
Executive Member

-Sd-
Sanjay Kumar Khare
CE (HQ)
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-3/DDA Deepali Chowk, Sector-3, Rohini, Delhi-110085 for information please.


04/10/2024
Director(Works)