

उप निदेशक (प्रणाली) - दि.वि.आ.
Dy. Director (Systems) - D.D.A.
आयरी नं. / Dairy No. 3158
दिनांक / Date 31/05/24

निदेशक (प्रणाली) दि.वि.आ.
आयरी नं. 1848
दिनांक 24/5/24



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

No. EM2(3)2024/DWK/216/DDA/399

Dated: 24-5-24

MINUTES OF THE 884th MEETING OF ASB HELD ON 22.05.2024 IN THE CHAMBER OF CE(HQ), DDA

884th Meeting of Arbitration Scrutiny Board (ASB) under the chairmanship of CE(HQ), DDA was held on 22.05.2024 at 04:00 P.M. in the chamber of CE(HQ), DDA to deliberate the Arbitral award in the matter of **M/s Deepali Consulting Engineers Vs DDA** for the following work: -

- N.O. W** : D/o 346 (M.S.) MIG Houses i/c internal Development and Electrification at Sector-16B, Pocket-11, Dwarka Phase-11
- SH** : Consultancy services for design & obtaining approval thereof as per given scope.
- Agency** : M/s Deepali Consulting Engineers.
- Agmt .No.** : 21/EE/WD-8/DDA/2013-14(01/EE/DPD-4/DDA/2022-23)

The Agenda note has been submitted by the CE (Dwarka) through e-office (Computer No. 64667) on dated 14.05.2024.

The meeting was attended by the following officers: -

- | | | |
|----------------------------|-------------------|-------------------|
| 1. Shri Sanjay Kumar Khare | CE(HQ) DDA | Chairman |
| 2. Shri Deepak Suyal | CE(Dwarka) | Executive Member |
| 3. Shri Ajay Gupta | Director(Finance) | Member |
| 4. Shri Vinod Kumar | Dy. CLA-III | Member |
| 5. Shri Amit Singh | Dir. (Works) | Member, Secretary |

BRIEF HISTORY OF THE CASE IS AS UNDER: -

1. The above cited work was awarded to M/s Deepali Consulting Engineers vide award letter number F.81(24)/A/cs/WD-8/DDA/13-14/463 dated 15.10.2013. The agency approached to Engineering Member (EM), DDA on 21.01.2022 for the appointment of Sole Arbitrator, to settle the disputes. EM, DDA issued order for the appointment of Sole Arbitrator to Sh. Arun Kumar Trivedi, former Additional Director General (Retd.) CPWD vide order no. EM2(7)/2020/ Arbn./Vol-VIII/Pt.163/DDA/285 dated 17.03.2022

to adjudicate the matter but Sh. Arun Kumar Trivedi resigned from the appointment on 19.05.2023 through email due to some hearing-time issues with DDA counsel. Then EM, DDA issued another order for the appointment of Sole Arbitrator to Sh. Vijay Kumar Gupta (Retd.), former Member (Water Supply), DJB, vide order no. EM2(7)/2020/Arbn./Vol.VIII/Pt.163/DDA/451 dt. 06.09.2023 to adjudicate the matter. The Ld. Arbitrator Sh. Vijay Kumar Gupta issued 1st Order on 25.09.23 through e-mail and published the Award on 28.03.2024 and it was delivered to this office on 30.03.2024 Copy placed below (within 6 months the award published).

2. Total 7 (Seven) number of claims were put forth by the claimant, against which the Sole Arbitrator has awarded 05 claims in favor of the claimant on 28.03.2024.
3. The total amount awarded in favour of the claimant is INR 37,18,250/- (Rupees Thirty seven lacs Eighteen thousand Two hundred fifty only) with the interest @ 12 % per annum.

After receiving the said award from the Ld. Arbitrator, EE/DPD-4 approached to Panel Lawyer entrusted for the case and the SLO (Engineering) for their legal opinion in this matter. Panel Lawyer & SLO (Engineering) along with Ld. CLA post deliberation of the facts of the case, rendered their valuable opinion and the same are given below: -

LEGAL OPINION OF THE PANEL LAYWER (Ms. KRITIKA GUPTA):-

1. The Award passed in the matter has been duly examined. It is my considered opinion in the matter that this Award should be challenged by filing objections under Section 34 of the Arbitration and Conciliation Act, 1994. The Award has been passed without considering the defence of DDA. The Award notes arguments raised by DDA incorrectly.

2. Some of the inconsistencies of the Award are as follows:

- a. **Claim No.1 of Rs 19,50,000 + 18% GST for redesigning the foundation due to change in column locations of tower blocks by the respondent and for redesigning the basement to meet the requirement in air changes for ventilation system.**

While at page 13 of the Award, the Ld. Arbitrator has made note of the Clause 3.30 of the Contract, however there is absolutely no discussion about its impact and/or the defence raised by DDA based on the Clause 3.30 of the Contract. The case of Respondent/DDA, as raised in the Statement of Defence and the Written submissions was that "Revisions had to be incorporated in the structural drawings issued by the Claimant due to these changes the re-proof checking was requested to be done but as explained above, the changes were minor and also as per Condition No. 3.30 of the subject Contract same were not payable. The Claimant was bound to incorporate the revisions in structural design and re-do the same without any extra charge. The subject Contract does not provide that if the structural designs have been proof-checked, revisions cannot be incorporated." The Ld. Arbitrator has not even considered the language of Clause 3.30 and its applicability/non-applicability in the present case. A hefty amount of Rs. 19,50,000/- has been awarded in this background.

b. Claim No. 2: Rs 1,20,000 + 18% GST for preparation and making of blocks mode:

In a previous order dated 06-02-2024 and 15-02-2024, the Ld. Arbitrator was pleased to note the objection of Respondent/DDA that no proof has been submitted by the Claimant of actually having spent the amount now been asked for in arbitration. Rather, the Ld. Arbitrator provided an opportunity to the Claimant, despite the objection of the Respondent/DDA, to submit proof of incurring expense which has now been sought under Claim No. 2. The Claimant did not submit the proof. Yet the Ld. Arbitrator has awarded a sum of Rs. 90,000/- under this claim based on his whims and fancies.

c. Claim No. 3: of Rs 29,89,421 + 18 % GST is for redesigning the whole building to make compliant of IS 18931PT. 1.2016 & IS: 1392012016:

On page 22 of the Award, it is noted that the "The Respondent did not deny that the design was not done 3, time." And has made this as the basis to grant Rs. 16,78,250/- under this Claim. The Ld. Arbitrator has noted the arguments of Respondent/DDA incorrectly. The Respondent/DDA has categorically stated in its Statement of Defence and Written Submissions that it had not received the alleged third revised drawing prepared by the Claimant. The Respondent/DDA has stated in its written submissions that –

"g. It is also pertinent to point out that there is no record available with the Respondent which shows the revised structural drawing prepared by the Claimant were received in the office of the Respondent or forwarded by the Respondent to CBRI. Since CBRI only took up work of proof checking on payment in advance, no drawing were proof checked and issued by CBRI either.

h. The Claimant's alleged letter dated 30-08-2017 alleging that the Claimant submitted to the Respondent that the structural design based on the latest seismic code /drawings have been provided to CBRI for their approval is false as no such letter has been found in the records of the Respondent. The Claimant has equally not been able to provide the service proof thereto" Still the Ld. Arbitrator has held that Respondent/DDA has not denied that design was not done the 3rd time.

d. Claim No. 4 and 5 for 18% interest pa: An interest of 12% pa has been granted from 24-02-2017 from Claim No. 1 and 2 and from 06-07-2017 for Claim No. 3. The Ld. Arbitrator has not even discussed the defence of the Respondent/DDA which was "It is also of note here that the claims raised are hit by severe delay and latches, and deserve to be dismissed on this ground alone. Since 13-08-2021, the Claimant was aware that the Engineer Member of DDA had appointed the Ld. Arbitrator as the Sole Arbitral Tribunal in the matter. It is astonishing that despite being aware of the appointment of the Ld. Arbitrator, the Claimant did not show any prudence or diligence to seek adjudication of its alleged claims from the Ld. Arbitrator or made any attempt to present its Statement of Claims before the Ld. Arbitrator or seek any relief whatsoever. Thus, without prejudice, it is respectfully submitted that for this reason alone, the Claimant is disentitled to seek any interest from 13-08-2021". There is not even a whisper of this defence in the Award and interest of 6 years has been imposed on Respondent/DDA.

3. I am aware that the scope to challenge an Award under Section 34 of the Arbitration and Conciliation Act, 1994 is narrow and limited. However, the inconsistencies present

in this Award should come within the scope of Section 34 of the Arbitration and Conciliation Act, 1994, as understood by me.

4. The soft and hard copies of the entire arbitral record is with the concerned Department. Kindly also note that the Award notes that written submissions were filed by Claimant in the matter. However, these written submissions were never served upon the Counsel.

LEGAL OPINION OF SLO (ENGINEERING):-

In this matter total seven (7) claims were put forth by the claimant, and five (5) of claims have been awarded in favor of the claimant.

In the first claim amount was claimed Rs. 19,50,000 + 18% GST by the claimant and arbitrator awarded Rs. 19,50,000+ 12% interest without considering the applicability of condition no. 3.3 of an agreement and a hefty amount has been awarded. Hence this should be challenged.

Claim no. two(2) is also not payable and award to be challenged as per condition No. 8 at Page 8 of the agreement it mandated that "the tenderer shall be responsible for arranging and maintaining at his own cost all materials, tools & plants, water, electricity, access, facilities for workers and all other services required for executing the work unless otherwise specifically provided for in the contract document.

Claim no. three(3) was regarding redesigning the whole building to make compliant of IS 18931PT. 1.2016 & IS: 13920/2016. DDA has categorically stated in its statement of defense that it had not received the alleged third revised drawing prepared by claimant, but arbitrator has recorded the arguments of DDA incorrectly. Hence, this should be challenged.

In claim no.4 & 5 Arbitrator has granted 12% interest. In view of reply of claim no. 1 to 3, the claim is not payable, and the same should be challenged.

Claim no.6 & 7 are accepted by concerned branch of engg. deptt. so, need not to challenge.

claims raised are hit by severe delay and latches and deserve to be challenged. I am of the view, that department should challenge the Award as some claims have been awarded without considering the contentions/defense of DDA.

May please see for final views.

LEGAL OPINION OF DEPUTY CLA-III:-

I am in agreement with the above views of SLO, however, may kindly see for final view.

LEGAL OPINION OF THE LD. CHIEF LEGAL ADVISOR: -

I am in agreement with the above views of SLO and Dy. CLA-III.

RECOMMENDATION OF EE/DPD-4/DDA

Claim No.	Brief of claim by claimant	Amount Claimed (Rs.)	Amount Awarded (Rs.)	Recommendations of EE/DPD-4
1	For redesigning the foundation due to change in column locations of tower blocks by the DDA and for redesigning the basement to meet the requirement in air changes for ventilation system.	Rs. 19,50,000 + 18% GST	19,50,000/- +12% interest	The award to be challenged. As the changes were minor and also as per Condition No. 3.30 of the agreement and the same were not payable
2	For preparation and making of blocks module	Rs 1,20,000 + 18% GST	90,000/- +12% interest	The award to be challenged. The Claimant did not submit the proof of incurring expense for making block module of actually having spent the amount claimed.
3	For redesigning the whole building to make compliant of IS 18931/PT. 1:2016 & IS: 13920/2016	Rs. 29,89,421 + 18 % GST	16,78,250/- +12% interest	The award to be challenged. As DDA had not received the alleged 3rd revised drawing prepared by the Claimant the claim is not payable.
4	For the interest of 18% pa on claim no. 1, 2 and 3	-----	12% interest	The award to be challenged. In view of above reply of Claim No 1 to 3, the claim is not payable.
5	For the interest of 18% pa on claim no. 1 to 4	-----	12% interest	The award to be challenged. In view of above reply of Claim No 4, the claim is not payable.
6	For the cost of arbitration	Rs. 2,00,000	Nil Award	The award accepted
7	Additional claim no 7 for interest on delayed release of payment of Final Bill, PG & Security amount	-----	Nil Award	The award accepted
Total Awarded Amount =		Rs.	37,18,250/- plus 12% interest	

RECOMMENDATION BY SE/DCC-2/DDA

I agree with the recommendation of EE/DPD-4/DDA.

RECOMMENDATION BY CE (DWARKA)/DDA

The matter under reference is related to arbitration award published by the Sole Arbitrator. I agree with the recommendation of EE/DPD-4/DDA and SE/DCC-2/DDA.

RECOMMENDATION OF ASB:

After due discussion and deliberation, the ASB unanimously recommended to challenge the award against claim no. 1,2,3,4,5 and to accept the award against claim no. 6 and 7.

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


-Sd-
Amit Singh
Dir.(Works)
Member Secretary

-Sd-
Vinod Kumar
Dy. CLA-III
Member

-Sd-
Ajay Gupta
Dir.(Finance)
Member

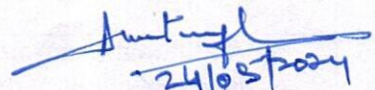
-Sd-
Deepak Suyal
CE(Dwarka)
Executive Member

-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/DPD-5/DDA, Central Nursery, Sector – 5, Dwarka, New Delhi – 110075 for information please.


24/05/2024
Director(Works)