

निदेशक (प्रणाली) दि.वि.प्रा.
डायरी नं. 3132
दिनांक 14.11.24



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

Sh. Joshi DDA

No. EM2(3)2024/RZ/150/DDA/984

Dated: 14-11-24

**MINUTES OF THE 901th MEETING OF ASB HELD ON 13.11.2024 IN THE
CHAMBER OF CE(HQ), DDA**

901th meeting of Arbitration Scrutiny Board (ASB) under the chairmanship of CE(HQ), DDA was held on **13.11.2024** at **02:00 P.M.** in the chamber of CE(HQ)/DDA to deliberate the Arbitral award in the matter of **M/s R.R. Constructions Vs DDA** for the following work:

N.O. W : Construction of DDA Utsav Sthal on Design and Built basis at District Centre, Sector-24, Rohini.
Agency : M/s R.R. Constructions.
Agmt.No. : 11/EE/RMD-2/DDA/2020-21.

The Agenda note has been submitted by the CE (Rohini) through e-office (Computer No. 86394) on dated 03.11.2024.

The meeting was attended by the following officers: -

1. Shri Sanjay Kumar Khare	CE (HQ)	Chairman
2. Col. Deepak Suyal	CE (Rohini)	Executive Member
3. Shri Vinod Kumar	Dy. CLA (in absence of Addl.CLA)	Member
4. Shri Ajay Gupta	Director(Finance)	Member
5. Shri Amit Singh	Dir. (Works)	Member Secretary

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

BRIEF HISTORY OF THE CASE IS AS UNDER: -

The above stated work was awarded to M/s RR Construction vide award letter No. F.2(22)A/Cs/RPD-10/DDA/2019-20/pt/1172 dated 06.07.2020. The time allowed to complete the work was 270 days. But physically work was not taken up at site, only few prerequisites were done by agency and disputes arose. The agency vide his letter dated 20.05.2022 requested to Engineer Member, DDA for appointment of arbitrator.

The agency submitted 5 Nos. claims through their advocate Sh. Siddharth Joshi having total amount of claims as Rs. 80,75,948.00/-

After completion of the proceedings the Ld. Arbitrator has pronounced the award dated 19.08.2024 amounting to Rs. 80,75,948.00/- in favour of claimant.

Comments of Panel Lawyer: -

1. With respect to Claim No. 1, for refund of PBG, the DRC had also recommended the same for which the claim is granted and no counter claim is to be put against the Claimant. Hence a challenge to this claim may not be successful.

2. With respect to Claim No 2, the Department should challenge the claim because the claimant never retained any plant machinery on site, so there can be no question of site expenses.

3. With respect to Claim No 3, the finding in principal claim 2 is faulty and rate of interest of 9% is steep and unjustified. Therefore, the claim will have to be challenged.

4. With respect to Claim No 4, the reasoning given by Ld. arbitrator for claim 4 for loss of profits is entirely faulty. The claim has been given on approximations which are absolutely against the law settled by the Hon'ble Supreme Court on this aspect. The Ld. Arbitrator has overlooked the submission of the Respondent that the claimant intentionally did not enter the site and later made these hefty claims. The evidence put up by us shows that claimant's case was based on falsehood that he did not know about the status of site before handing over. This claim should be challenged by the Department.

5. With respect to Claim No 5, the claimant did not have due bills yet the same has been awarded by the Arbitrator and findings of Claim nos. 2 & 4 are incorrect, therefore, Claim No. 5 should be challenged.

Recommendation of CLA: -

The Arbitrator awarded the claim no. 2, 3, 4 & 5 in favour of claimant which are required to be challenge as stated by P/L that with respect to claim no. 2 arbitrator himself noted that claimant has failed to present evidence for expenses yet has given a hefty sum. In claim no 3 arbitrator awarded rate of interest very high which is steep and unjustified. Reasoning given by Arbitrator for loss of profits is entirely faulty. Arbitrator has totally overlooked the submission of the respondent (DDA). In view of opinion given by Panel Lawyer, department should challenge the award. I am in agreement with the views of Panel Lawyer.

Recommendation of EE/RMD-2: -

The recommendations are as under: -

1. With respect to award of Claim No. 1, as decided by DRC, Department has not suffered any direct losses on account of determination of work under reference, in this matter and instructed to refund the performance guarantee of the claimant. Arbitrator has also decided the same, therefore, agreed with the recommendation of Panel Lawyer and Legal branch and recommended to accept this award.
2. With respect to award of Claim No 2, the structural drawings as submitted by claimant was not relevant as per the requirement of site and not as per the condition of agreement, hence, payment of the same by the department is against public policy. Moreover, as per claimant, technical staff and Security staff deployed on this work was never deployed at site of work and it cannot be established that the same staff utilized exclusively for this work only, hence again payment of the same by department is against public policy. Therefore, sufficient ground available to challenge this award, hence recommended to challenge the same.
3. With respect to award of Claim No 3, award of Claim No. 3(a) recommended to be accepted in view of acceptance of award of Claim No. 1 whereas award of Claim No. 3(b) recommended to be challenged in view of challenging of award of Claim No.2.
4. With respect to award of Claim No 4, the award of Claim No. 4 is totally against the agreement Clause 3. Therefore, payment of the same is also against the public policy, hence, recommended to be challenged.
5. With respect to Claim No 5, since, award pronounced by Ld. Arbitrator is bad in law and against public policy. Hence, department cannot pay the same, hence recommended to be challenged

S. No.	CLA IM 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-2	Comments of SE/RCC-1
1	1	Claimant claim of Rs. 24,99,099/- on account of non-refund of performance guarantee against the clause of the contract.	Rs. 24,99,099/-	Rs. 24,99,099/-	Agreed to accept this Claim of award.	6 Agreed with the recommendation of Panel Lawyer to accept this award.	6 Agreed with the recommendation of Panel Lawyer and Legal branch. Hence, agreed to accept this award.	7 Agreed with the comments of EE/RMD-2. Hence, agreed to accept this award.
2	2	Claimant claim of Rs. 10,50,451/- On Account of expenses incurred at site.	Rs. 10,50,451/-	Rs. 8,21,136/-	Agreed to challenge this Claim of award.	Agreed with the recommendation of Panel Lawyer to challenge this award.	The drawings submitted by the claimant was not relevant as per the requirement of site and not as per the condition of agreement. Further, the technical staff and Security staff deployed on this work. Hence agreed to challenge this award.	Agreed with the comments of EE/RMD-2. Hence, agreed to challenge this award.
3	3	Claimant claim of Rs. 35,07,239/- and Rs. 10,08,140/- on account of	Rs. 35,07,239/- and Rs. 10,08,140/-	Nil	Agreed to challenge this Claim of award.	Agreed with the recommendation of Panel Lawyer to challenge this award.	Claim No. 3(a) is recommended to accept in view of the acceptance of award	Agreed with the comments of EE/RMD-2. Hence, agreed

4	4	claims of pre-suit, pendent-lite and future interest @ 18 per annum on the balance payments from the date of its due till realization of amount of which shall be decided at appropriate time..	Rs. 49,98,198/-	Rs. 32,59,694/-	Agreed to challenge this Claim of award.	Agreed with the recommendation of Panel Lawyer to challenge this award.	The claim is totally Against the agreement Clause No. 3. Hence, agreed to challenge this award.	of Claim No. 1 whereas Claim No. 3(b) recommended to be challenged in view of Claim No. 2.	to challenge this award.
5	5	Claimant claim of Rs. 49,98,198/- On Account of loss of profit for the work not executed by the claimant @ 15% of the tender amount.	Rs. 9,90,000/-	Rs. 4,35,000/-	Agreed to challenge this Claim of award.	Agreed with the recommendation of Panel Lawyer to challenge this award.	The claim is against the public policy. Hence, agreed to challenge this award.	Agreed with the comments of EE/RMD-2. Hence, agreed to challenge this award.	

Recommendation of SE/RCC-1: -

Agreed with the comments given by EE/RMD-2. Hence, recommended to accept the award of claim No. 1 and rest award is recommended to be challenged.

Recommendation of CE(Rohini): -

Agreed with the recommendations of Panel Lawyer, CLA, EE/RMD-2 and SE/RCC-1 and recommended to accept the award of claim No. 1 and rest award is recommended to be challenged.

RECOMMENDATION OF ASB:

After due discussion and deliberation, the ASB has decided to challenge the complete award dt. 19.08.2024 i.e. award against claim no. 1, 2, 3, 4 & 5, since, while awarding the claims to the claimant, Ld. Arbitrator has failed to consider the contractual obligations 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, 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 to challenge/accept.

-Sd-
Amit Singh
Dir(Works)
Member Secretary

Sd-
Vinod Kumar
Dy. CLA (in absence of
Addl. CLA)
Member

-Sd-
Ajay Gupta
Director(Finance)
Member

-Sd-
Col. Deepak Suyal
CE (Rohini)
Executive Member

-Sd-
Sanjay Kumar Khare
CE (HQ)
Chairman

EO-I to EM/DDA

Copy to: -

1. EM/DDA for kind information.
2. All concerned.
3. Director (System) for uploading on DDA website.
4. EE/RMD-2, 6th Floor, Madhuban Chowk, Sector-14, Rohini- 110085 for information please.

EO-I to EM/DDA