

निदेशक (प्रणाली) दि.वि.प्र.
डायरी नं. 2953
दिनांक. 23/10/24



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

No. EM2(3)2024/RZ/114/DDA/Pt-2/9/6

Dated: 23/10/24

**MINUTES OF THE 900th MEETING OF ASB HELD ON 22.10.2024 IN THE
CHAMBER OF CE(HQ), DDA**

900th meeting of Arbitration Scrutiny Board (ASB) under the chairmanship of CE(HQ), DDA was held on **22.10.2024** at **02:30 P.M.** in the chamber of CE(HQ)/DDA to deliberate the Hon'ble District Court Order dt. 06.06.2024 in the matter of **DDA Vs Azad Singh Khatri** for the following work:

**N.O. W : M/o services under NA-II, Rohini Zone.
SH: Improvement and repair of 28-meter R/W roads in Sector-23,
Rohini, Phase-III.**
Agency : M/s Azad Construction Co.
Agmt .No. : 13/EE/RPD-11/DDA/2013-14.

The Agenda note has been submitted by the CE (Rohini) through e-office (Computer No. 85478) on dated 11.10.2024.

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 Azad Construction Co. vide award letter no. F.67(29)A/RPD-11/DDA/2013-14/197, dated 19.02.2014 with period of completion 03 months. Accordingly, the date of start of work was 01.03.2014 and stipulated date of completion of the work was 31.05.2014. The site was free from any

type of encroachment but the agency failed to start the work within stipulated time period. It is further submitted that in the interest of execution of work, DDA granted provisional extension of time upto 30.06.2014. When the claimant failed to start the work despite grant of extension of time, DDA was constrained issue show cause notice under clause 3(ii) and (iii) of the agreement dated 16.06.2014 on account of breach of contract on the claimant's part.

DDA vide its letter dated 27.06.2014 granted another provisional extension of time upto 31.07.2014, keeping in view the urgency of the work without prejudice to the right of DDA to recover liquidate damages in accordance with Clause 2 of the said arrangement.

As the claimant still failed to start the execution of work, DDA was constrained vide letter dated 18.07.2014 to terminate/determine the Contract under sub-clause 3(a) & (b) of the agreement and forfeited the Earnest Money and Performance Guarantee of the claimant.

Judgment dated 06.06.2024:

The Hon'ble Court stated that the dispute only is with respect to the releasing of Performance Bank Guarantee & refund of Earnest Money, which the contractor had deposited with DDA. The Ld. Sole Arbitrator has denied the release of the Earnest Money and directed DDA to refund Performance Bank Guarantee with interest @ 12% per annum.

The Hon'ble Court heard the arguments of both the parties and stated that first of all, Objection/Petition under Section 34 of the Arbitration and Conciliation Act, 1996 are not like an appeal where in this court can substitute its opinion. The Hon'ble Court place reliance on the recent judgement titled as Wepecos Ltd. Vs. Jyoti Mittal decided on 12.12.2023 passed by Hon'ble High Court of Delhi.

The Hon'ble High Court agreed with the forfeiture of Earnest Money but also stated that the contention of DDA that they should be given the Performance Bank Guarantee as well is completely without any merit. Reliance has been placed in clause no. 3, which cannot be held to be devoid of power of Ld. Arbitrator to conclude that whether any damages were actually sustained or not. The word "shall" does not *ip so facto* means that the loss suffered or quantum thereof would not be considered by the Ld. Sole Arbitrator. Ld. Arbitrator had concluded that in absence of there any loss, this clause amounts to be a penalty and Performance Bank Guarantee cannot be forfeited. The said finding is not a perverse finding. The project was nonstarter since beginning. DDA has also not given any details of the cost hike involved in re-tendering. In absence of documents qua the said fact the contention of the DDA appears to be reasonable too.

The Hon'ble Court has decided that the impugned Award dated 17.02.2017, passed by the Ld. Arbitrator is logical. Hence, both the petitions are meritless and disposed of.

Comments of Panel Lawyer: -

Panel Lawyer stated that there were objections filed by DDA as well as the contractor against the award dated 17.02.17 passed by Ld. Sole Arbitrator Sh. Jayant K. Mehta. The dispute is only w.r.t. release of Performance Bank Guarantee & refund of Earnest Money. The Sole Arbitrator had allowed the forfeiture of the Earnest Money but denied the forfeiture of Performance Bank Guarantee. Aggrieved by this, both the parties had filed objections. Hon'ble Court has upheld the award & dismissed both the objection. The Performance Bank Guarantee was directed to be refunded with the interest @ 12 % p.a. The Earnest Money has been allowed to forfeited.

The award is reasonable award and it is based on the settled law. The objection filed by the DDA as well as the contractor were based on no good reasons to be falling within the parameter of section 34. No purpose would be served in challenging the judgement dated 06.06.2024.

Recommendation of CLA: -

The legal department, DDA has agreed with the opinion of Panel Lawyer and recommended to accept the decision of Hon'ble District Court. Further, stated that the Award is reasonable award & based on the settled law. The objection filed by the DDA as well as the contractor were based on no good reason to be falling within parameter of section 34 and no purpose would be served in challenging the judgment dated 6.6.24.

Recommendation of EE/RMD-3: -

Agreed with the recommendation of Panel Lawyer & Ld. CLA. As per Ld. Sole Arbitrator there is no evidence of law or damages suffered by DDA and in absence of there any loss, the amount of Performance Bank Guarantee cannot be forfeited. Hence, agreed & recommended to pay this award.

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	2	3	4	5		6	6	7
1	2	Claimant claim of Rs. 3,58,441/- on account of refund of earnest money.	Rs. 3,58,441/-	Nil	Accepted	Accepted	Accepted	Accepted
2	3	Claimant claim of Rs. 8,96,533/- On Account of Non-Release of Performance Bank Guarantee.	Rs. 8,96,533/-	Rs. 8,96,533/-	Panel Lawyer stated that there were objections filed by DDA as well as the contractor against the award dated 17.02.17 passed by Ld. Sole Arbitrator Sh. Jayant K. Mehta. The dispute is only w.r.t. release of Performance Bank Guarantee & refund of Earnest Money. The Sole Arbitrator had allowed the forfeiture of the Earnest Money but denied the forfeiture of Performance Bank Guarantee. Aggrieved by this, both the parties had filed objections. Hon'ble Court has upheld the award & dismissed both the objection. The	Agreed with the recommendation of Panel Lawyer to pay this award.	Agreed with the recommendation of Panel Lawyer & Ld. CLA. As per Ld. Sole Arbitrator there is no evidence of law or damages suffered by DDA and in absence of there any loss, the amount of Performance Bank Guarantee cannot be forfeited. Hence, agreed & recommended to pay this award.	Agreed with the comments of EE/RMD-3. Hence, agreed to pay this award.

3						Performance Bank Guarantee was directed to be refunded with the interest @ 12 % p.a till realization. The Earnest Money has been allowed to forfeited. The award is reasonable award and it is based on the settled law. The objection filed by the DDA as well as the contractor were based on no good reasons to be falling within the parameter of section 34. No purpose would be served in challenging the judgment dated 06.06.2024.					Accepted	Accepted	Accepted
4	4	Claimant claim of Rs. 17,000/- on account of payment for design of Job Mix.	Rs. 17,000/-	Nil	Accepted						Accepted	Accepted	Accepted
4	5	Claimant claim for interest pre-suit, pendent lite and future @18% per annum from its due date.	--	Claimant would be entitled to interest @ 12% per annum from 18.07.2014 untill realization	Accepted						Accepted	Accepted	Accepted
5	6	Claimant claim the cost of Arbitration proceedings.	--	Nil	Accepted						Accepted	Accepted	Accepted

Recommendation of SE/RCC-1: -

Agreed with the comments given by EE/RMD-3. Hence, recommended to accept the decision of Hon'ble District Court's judgment and agree to pay the award.

Recommendation of CE(Rohini): -

Agreed with the recommendations of Panel Lawyer, CLA, EE/RMD-3 and SE/RCC-1 and recommended to accept the decision of Hon'ble District Court's judgment and agree to pay the award.

RECOMMENDATION OF ASB:

After due discussion and deliberation, the ASB has decided to accept the decision of Hon'ble District Court's judgment dt. 06.06.2024 and accept the award against claim no. 2, 3, 4, 5 & 6 being reasonable award and based on settled law.

However, the delayed submission of case before ASB, after the expiration of limitation period, has been viewed seriously.

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-
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.

Director(Works)