

निदेशक (प्रणाली) दि.वि.प्रा.
डायरी नं. २९५७
दिनांक. २८/१०/२४



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

No. EM2(3)2024/Dwk/217/DDA/ 917

Dated: 23/10/24

898th Meeting of Arbitration Scrutiny Board (ASB) under the chairmanship of FM, DDA was held on 22.10.2024 at 03:00 P.M. in the chamber of FM/DDA to deliberate the Arbitral award in the matter of **M/s Rajinder Prashad Gupta Vs DDA** for the following work: -

N.O.W. : Construction of Community Hall at Village Pochanpur, Adjoining Sector-23B, Dwarka, Phase-II
Agency : M/s Rajinder Prashad Gupta.
Agmt. No. : 62/EE/WD-3/DDA/2014-15.

The instant case has been submitted vide e-file computer no. 85323 on dt. 11.10.2024.

The meeting was attended by the following officers: -

1. Shri Vijay Kumar Singh	FM, DDA	Chairman
2. Shri Deepak Suyal	CE(Dwarka)	Executive Member
3. Shri Sanjay Kumar Khare	CE(HQ), DDA	Member
4. Shri Anil Kumar Sharma	Addl. CLA/DDA	Member
5. Shri Amit Singh	Dir. (Works)	Member, Secretary

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

BRIEF HISTORY OF THE CASE IS AS UNDER: -

1. The above cited work was awarded to Sh. Rajinder Prashad Gupta vide letter number F.31(1640) A/c/WD-3/DDA/257 dated 02/03/2015.
2. The agency approached the Hon'ble High Court, Delhi under Section 11(6) of the Arbitration and Conciliation Act for the appointment of an arbitrator.
3. The Hon'ble High Court, Delhi appointed Mr. O.P. Gupta, District Judge (Retd.), as a sole arbitrator to adjudicate the disputes between the parties vide order dated 15.03.2021.
4. Initially, the agency claimed an amount of Rs. 3,05,11,850 plus applicable interest @ 24% w.e.f. 09.05.2018 on account of the 11th & Final bill, 10CC Bill, GST Refund, withheld amount of the 10th Running Bill, Security Deposit, and Litigation Fees.

5. The sole arbitrator published the arbitration award on 12.06.2024. After receiving the said arbitration award, the EE/DPD-5/DDA approached the panel lawyer to move an application for correction of inadvertent clerical/typographical errors in the award dated 12.06.2024, particularly regarding the GST amount and differential GST amount due to the increase in GST from 12% to 18%. The revised arbitration award was published on 29.07.2024, partially allowing the respondent's application. This correction related to a differential amount of Rs. 5,36,000/-, which works out to Rs. 1,96,999/- due to the GST rate increase from 12% to 18%. The sole arbitrator rejected the respondent's application regarding the correction in the GST amount.

Comments of Panel Lawyer:

"This is based on facts. Legal flaw got corrected by moving application under section 33. On factual part we can challenge if anything is contrary to contract. Arbitrator is the creature of contract. Any decision /award outside the contract is a patent illegality. On that ground alone it can be challenged. Re-appreciation of evidence is not maintainable under section 34 objections."

Recommendation of CLA:

We may challenge the award. Since the limitation is running and will expire within this month i.e. 26.10.2024. The matter may be placed immediately before ASB for administrative decision to challenge the award.

RECOMMENDATION BY EE/DPD-5/DDA:

The total amount awarded in favour of the claimant is INR 1,12,55,485/- (Rupees One crore twelve lacs fifty-five thousand & four hundred eighty-five only).

Total awarded amount:	1,12,55,485/-
Total amount to be accepted:	Nil
Total amount to be challenged:	1,12,55,485/- (award no. 1 to 6)

Claim-wise recommendations are as under:

Sr. No.	Brief claim of claimant	Brief Claim Awarded by Sole Arbitrator	Total awarded amount	The amount may be rejected	The amount may be accepted	The reason/ recommendation of EE/DPD-5
1	i) Interest on amount of Rs.95,49,598/- which was the amount of 11th & Final Bill from 09.05.2018 till 15.02.2022 when part payment was made, @ 12% P.A.	i) Interest on amount of Rs.95,49,598/- which was the amount of 11th & Final Bill from 09.05.2018 till 15.02.2022 when part payment was made, @ 7.5% P.A./	2699550.00	2699550.00	Nil	11th and Final Bill was prepared on 24.10.2020 which was duly accepted by the Claimant on 26.10.2020 to his accord and satisfaction of an amount of Rs.95,49,558/ (as per record MB No. 24539). In view of above, the agency had not raised any dispute of protest during acceptance of bill. Hence, award may be rejected.
2	Interest on amount of Rs.22,00,000/- withheld from 4th running Final Bill from 19.09.2016 when the amount was withheld till 28.03.2022 date of part payment, @:12% P.A.	Interest on amount of Rs.22,00,000/- withheld from 11th & Final Bill from 19.09.2016 when the amount was withheld till 28.03.2022 date of part payment, @:7.5% P.A.	912021.00	912021.00	Nil	An amount of Rs. 22,00,000/- was withheld on account of 10CA and 10CC bill as the department has estimated that a recovery under the clause 10CA and 10CC would be made from the final bills. However, the said amount was released as the final bill was processed. It is pertinent to note that finally a recovery of Rs. 21,81,107/- is proposed under the clause 10CA and 10CC as calculated above. It is now an established fact that the department has appropriately withheld the amount of Rs. 22,00,000/- in estimation of recovery. Hence, interest on the withheld amount of Rs.22,00,000/- for the period claimed by the claimant is denied. In view of the above interest on withheld amount may be rejected.
3	Interest on amount of Rs.35,63,806/- withheld by Respondent from 10th RA Bill from 09.05.2018/ date of completion of work till 04.02.2022 when the same was	Interest on amount of Rs.35,63,806/- withheld by Respondent from 10th RA Bill from 09.05.2018/ date of completion of work till 04.02.2022 when	624398.00	624398.00	Nil	The 10th R/A bill was generated on 21.09.2019 post acceptance of the quantities by Executive Engineer in charge and the claimant. The claimant accepted the bill itself on 04.10.2019 in the physical MB No. 24546 (Pg No. 82). The said bill was submitted to the Accounts branch and the bill got passed on 18.10.2019. The agency was well aware of the procedures of the DDA that in the event of exhaustion of the A/A & E/S, revised PE (RPE) is initiated and the sum would be paid only after obtaining the approval of such RPE. As soon as the

<p>RPE got approved, the payment of Rs.35,63,806/- was made to the agency. In view of above, interest may be rejected.</p>			<p>the same was released, @.7.5% P.A</p>	<p>released, @.12% P.A</p>
<p>1. As per Clause 10CC of the Agreement, All India Wholesale Price Index shall be used for calculating the variations in the material part. However, the claimant has not used the same indices as prescribed by the Agreement (Pg 45 of the Agreement). While calculating the amount of work eligible for price escalation under clause 10CC, extra items / deviated quantities which have been paid in the quarter need to be deducted from the gross amount of work done to arrive at the eligible amount of work to be considered for escalation of materials as well as labour. However, the claimant has inappropriately used the total deviated quantities/ extra item sanctioned instead of extra items / deviations paid in the bill (Pg 44 of the Agreement).</p> <p>2. As per Clause 10CC of the agreement, XM = Components of materials (except cement, structural steel, reinforcement bars POL and other materials covered under 10 CA) expressed as percent of the total value of work. However, the claimant is claiming the % of materials should be quarter-wise. Hence, there is a variation in the calculation as per the claimant and the Department. (Pg 225-226 of the Agreement).</p> <p>3. The claimant is claiming that Central Government rates for the labour should have been paid and as per the terms of the agreement, Central Government rates has been considered for calculation of labour variation under 10CC. However, the Claimant has not submitted his books of accounts and other relevant records to establish the fact that whether the Claimant has paid the labour as per the rates of Central Government, as claimed by the claimant.</p>	<p>Nil</p>	<p>3669763.00</p>	<p>3669763.00</p>	<p>4</p> <p>1. Rs. 36,69,763/- towards 10CC Bill & 10CA Bill</p> <p>1. Rs. 36,69,763/- towards 10CC Bill & 10CA Bill</p>

4. Corrigendum vide letter no. F.3 (Misc.)/AE(P)/WD 3/DDA/1352 dated 10.12.2014 forming part of the agreement was issued to the claimant wherein formula to derive XM was prescribed. In the said formula, it was mentioned that percentage for material for clause 10CC shall be worked out as $XM = 100 - \% \text{ of Materials covered under } 10 \text{ CA} - \text{Labour Component (25\%)}$. The claimant hasn't used the same formula for calculating the 10CC Bill. As a result, he is claiming an inflated amount for 10CC.

5. As per the clause 10CC, the benefit for variations in the price of materials as well as labour shall be limited to the indices prevailing at the time of updated stipulated date of completion considering the effect of extra work done by the claimant and accordingly freezing the indices at such date which is calculated by adding the stipulated number of days into the extra days calculated as "Extra work done / total tendered cost * number of Stipulated days". The claimant hasn't considered this effect and has raised the bill without considering this limitation. **(Pg 45 of the Agreement)**.

6. that as per the clause 10CC of the agreement, formula of the calculation of variations in material and labour is as below:
 $VM = (W \times Xm) / 100 \times MI - MIo / MIo$
 $VL = (W \times Y) / 100 \times LI LI$
 However, the claimant has not applied the formula mentioned in the agreement as above. **(Pg 45 of the Agreement)**.

7. As per the clause 10CA, the benefit for the variations in the price shall be limited to the indices prevailing at the time of updated stipulated date of completion considering the extra work done by the claimant and freezing the indices at such date which is calculated by adding the stipulated number of days into the extra days calculated as "Extra work done / total tendered cost * number of Stipulated days". The claimant hasn't considered this effect while calculating 10CA variations in respect of Cement consumption and has submitted the bill without considering this limitation for Cement

						<p>Part only. For Steel Part, the calculation of the claimant and DDA is on the same page. (Pg 42 of the Agreement).</p> <p>8. The Claimant has already been paid Rs. 14,18,375/- on 24th March 2022 Exhibit RW1/6. Accordingly, an amount of Rs. 21,81,106.82/- is recoverable from the claimant as stated above. In view of the above amount awarded by the arbitrator may be rejected.</p>
	<p>2. Rs. 36,69,763/- towards 10CC Bill & 10CA Bill Ex.PW-1/14A (Ex.PW-1/18 exhibited again) along with interest @ 12% P.A. from the date of bill till the date of payment in pursuance of this Award.</p>	<p>2. Rs. 36,69,763/- towards 10CC Bill & 10CA Bill Ex.PW-1/14A (Ex.PW-1/18 exhibited again) along with interest @ 7.5% P.A. from the date of bill till the date of payment in pursuance of this Award.</p>	<p>611543.00</p>	<p>611543.00</p>	<p>Nil</p>	<p>In respect of para no. 4, the interest may be rejected.</p>
<p>5</p>	<p>Reimbursement of GST Bill</p>	<p>Reimbursement of GST Bill</p>	<p>2738210.00</p>	<p>2738210.00</p>		<p>The agency has filed its GST return under B2C i.e. not mentioning the GST number of DDA for the invoices raised for the work done. In this connection, as per Standard Operating Procedure for GST Reimbursement issued vide circular no. F.1/AO(GST)/2024-25/22 dated 14.08.2024 by O/o CAO, DDA, it is mentioned at point no. 01 & 03 as under: - "if DDA's TDS registration No. is entered in the invoice instead of GSTIN, it will lead to disallowance of ITC (input tax credit). DDA's GSTIN is 07AAALD0031A1Z7. This will enable tax consultants to reconcile tax paid by the supplier with DDA's GSTR 2B. This is important from the point of view of ensuring that no loss of input tax credit is inflicted upon DDA. Verification and Payment: A. Invoice-wise tax summary to be sent to the tax consultant for verification of GST payments made by the supplier. B. The tax</p>

	Award for additional gst on account of GST rate being increase from 12% to 18%	Award for additional gst on account of GST rate being increase from 12% to 18%		196999.00	196999.00			
6	Award for additional gst on account of GST rate being increase from 12% to 18%	Award for additional gst on account of GST rate being increase from 12% to 18%	<p>consultant will confirm the admissibility of refund based on the information furnished. C. After the verification, GST may be re-imbursed to the supplier.”</p> <p>Also, as per mail dated 21.08.2024, the tax consultant has stated that the agency has shown the transactions under B2C because of which they can't verify the transaction from their end as the same is not being reflected in GSTR-2B. Since the agency has submitted CA certificates as a proof of deposit of GST by the agency, the same has to be decided by the concerned department of DDA whether to reimburse the GST or not on the basis of available documents and contract entered with the agency. The opinion of the tax consultant, T.R. Chadha & Co LLP dated 23.03.2023 annexed by Sh. Rajinder Parshad Gupta with his submissions stands superseded by the above stated circular.</p> <p>From the above, it is clear that non quoting of the DDA's GSTIN will lead to disallowance of the input credit and in turn inadmissibility of the claim of reimbursement.</p>	196999.00	196999.00	<p>Kindly refer to above para, it is re-iterated that as the transactions has been reported under B2C by the agency, this has led to disallowance of the input credit and in turn inadmissibility of the claim of reimbursement.</p>		
	Total awarded amount (in rs.)	Total awarded amount (in rs.)		11255485.00	11255485.00			11255485.00

RECOMMENDATION BY SE/DCC-3/DDA:

I agree with the recommendation of EE/DPD-5/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-5/DDA and SE/DCC-3/DDA.

RECOMMENDATION OF ASB:

After due discussion and deliberation, the ASB is of the view that the award published by Ld. Arbitrator in the instant case is contrary to the provisions of the contract and hence, it has been decided to challenge the award dt. 29.07.2024 published by Ld. Arbitrator

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, VC/DDA is the Competent Authority in r/o award amount more than Rs. 100 Lakhs and less 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-
Deepak Suyal
CE (Dwarka)
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/DPD-5/DDA for information please

Director(Works)