

निदेशक (प्रणाली) दि.वि.प्रा.
डायरी नं. २९५६
दिनांक २४/१०/२४



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Azadi Ka
Amrit Mahotsav

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

No. EM2(3)2024/SZ/220/DDA/18

Dated: 24/10/24

24/10/24
S. P. Singla DDA

899th Meeting of Arbitration Scrutiny Board (ASB) under the chairmanship of FM, DDA was held on **22.10.2024 at 03:30 P.M** in the chamber of FM, DDA to deliberate the Arbitral award in the matter of **M/s S.P. Singla Construction Pvt. Ltd. Vs DDA** for the following work: -

N.O.W. : Construction of flyover cum ROB on UER-I at Narela.
Agency : M/s S.P. Singla Construction Pvt. Ltd.
Agmt. No. : 06/EE/MPR-II/DDA/2017-18

The instant case has been submitted vide e-file computer no. 84779 on dt. 30.09.2024.

The meeting was attended by the following officers: -

1. Shri Vijay Kumar Singh	FM, DDA	Chairman
2. Shri Kamal Singh Meena	CE(SZ)	Executive Member
3. Shri Sanjay Kumar Khare	CE(HQ), DDA	Member
4. Shri Vinod Kumar	Dy. CLA-III	Member
5. Shri Amit Singh	Dir. (Works)	Member, Secretary

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

BRIEF HISTORY OF THE CASE IS AS UNDER: -

The above said work was awarded to S.P. Singla Construction Pvt. Ltd. vide F.1(5)/AC's/EE/MPR-II/DDA/2017-18/348 dated 08.01.2018. The agency started the work from 11/01/2018 and completed the straight portion of this project on 06.04.2021. However, the remaining work of the loop and ramp could not be executed due to trees coming in alignment and non-permission of forest department for tree transplantation/shifting/felling. Therefore, to avoid unnecessary delay this work was foreclosed w.e.f. 30.06.2021, minutes of which was issued by WAB vide No. WAB.1(76)/Vol.42/Secy./V/2022/1040 on dated 21.09.2022. During site inspection

some defects are pointed out within defect liability period as per clause 17 of agreement. In this regard, this office sent various letters to agency to get rectified the defect at site which falls under defect liability period as per clause 17 of the agreement. But no rectification work was done. As per clause 25 of the agreement, agency filed claim before DRC, However, DRC gave its decision on 8/10/2021 rejecting the claims of the claimant. Therefore, in terms of the arbitration clause 25 of agreement, the claimant initiated the arbitration process. In these circumstances, the claimant filed a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 for the appointment of an arbitrator on behalf of the respondent. In the petition filed by the claimant, the Hon'ble High Court appointed Justice Arijit Passayat former Judge of Supreme Court of India as arbitrator. And in the petition filed by the claimant, the Hon'ble court appointed D. K Jain, former Judge of Supreme Court of India as arbitrator on behalf of. These two arbitrator appoint Justice A.K. Sikri as the presiding arbitrator. Vide mail dated 07/10/2022 Justice A.K. Sikri accepted the request of Co-Arbitrator. and Decided by the member of the Arbitral tribunal to hold the preliminary procedural Hearing on 28/10/2022 at 4:30PM via video conferencing. The final hearing was done on dated 19,20 and 21/02/2024. Meanwhile CTE has inspected the above said work on dated 20.07.2023 to 21.07.2023 and 14.12.2023 to 15.12.2023 and sent the inspection report for compliance vide no. 07-23-H-02-12-NH-12/2954/2024 dated 22.03.2024 and CTE has also pointed out defects which was already informed to agency but agency has not taken any action. This office has already given a final notice to agency under clause 14 of agreement for rectification of defect on risk and cost of contractor but now as per Arbitral Award the final bill need to settle within two months from published date of award on 26/07/2024 and also awarded that all the Bank Guarantees against the security should be released.

Recommendation of Panel Lawyer: -

This office has already asked for opinion of panel lawyer on the Arbitration award, but Panel replied on email as "As you know the claims of the claimant stand rejected, as such please specify on what issue the opinion is required". After that this office asked specifically as below. As per clause 17 of agreement, the agency is liable to rectify the defect of work within liability period. But agency has not rectified the defect in liability period and CTE team has also pointed out these defect during site inspection.

As per Para 166 of award, the claimant should be paid interest @ 10% p.a. from the date of invocation of arbitration i.e. 31/10/2021 since that notice is dated 31/10/2021, interest shall be payable from 01/11/2021 till date of award. But till date No Reply from standing counsel is received.

Recommendation of EE: -

S. No.	Claim No.	Brief Description of Claim/Counter Claim	Amount in INR	Amount Awarded	Tribunal Decision	Comments of EE/PD-6
1.	1	Increase in cost of work due to prolongation.	232.57 crore	NIL	Rejected	In favour of DDA and it is accepted.
2.	2	Towards continuing prolongation contract beyond 15/07/2021.	29.42 crore	NIL	Rejected	In favour of DDA and it is accepted.
3.	3	Towards increase in rates to cater for escalation in construction.	20.88 crore	NIL	Rejected	In favour of DDA and it is accepted.
4.	4	Cost from under clause 10CA and 10CC.	16.91 crore	NIL	Rejected	In favour of DDA and it is accepted.
5.	5	Compelled deletion of work for want of possession of the site.			As per the three direction given in para 162.	The claimant has not submitted final bill and not completed any codal formalities, the agency has not rectified the defect under liability period. This office has requested to agency several time to rectify but has not done and also CTE has inspected the site on dated 20.07.2023 to 21.07.2023 and 14.12.2023 to 15.12.2023 and raised various observation. Just inform to agency for rectification but till date agency has not

6.	6	Interest			<p>162 (i) Settle the final bill of the claimant at the earliest and release the outstanding payment thereunder, in any case, within two months</p> <p>162(ii) Issue completion certificate.</p> <p>162(iii) Discharge the Security Deposit Guarantees of the claimant.</p> <p>In terms of para 166</p>	<p>rectified defect. The Arbitration has awarded for settle final bill within two month and release security deposit. However, this office has already uploaded tender for rectification of defect and same amount will be deducted from final bill/security deposit. Submitted for decision and this may be challenged.</p> <p>162(i) Final bill will be paid after making all Recovery on account of CTE observation para for defect rectification.</p> <p>162(ii) This is accepted.</p> <p>162(iii) This is accepted.</p> <p>Total amount submitted by agency (including withheld amount and on account of part rate) = Rs1,90,99,818/</p>
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<p>Amount of Electrical Bill provided by EE/ELD-5 = Rs. 13,81,138 (including withheld amount)</p>					
<p>Gross Amount = Rs. 2,04,80,956(Approx.) ------(X)</p>					
<p>Before Recovery interest on gross amount @ 10% p.a. from 01/11/2021 to till date = Rs. 56,32,263/-</p>					
<p>i) Recovery on account of CTE observation para1 for payment made in pile cap for 50mm pile embedded in pile cap=Rs.5,44,272/------(A)</p>					
<p>ii) Recovery on account of CTE observation para2, 10CC Revised as per indices published by CPWD for others material under clause 10cc for civil component in place of all commodity=Rs21,01,895/----- (B)</p>					
<p>iii) Recovery on account of CTE observation para3 royalty paid to the contractor for earth=Rs15,49,897/------(C)</p>					
<p>iv) Recovery on account of CTE observation para7 for payment of expansion joint in place of MS angle=Rs1,39,500/----- (D)</p>					
<p>v) Recovery on account of non-submission of two nos. bearing of 4.13B(a)Vide letter</p>					

									<p>No. F1(03) A/EE/MPR-II/DDA/Vol.-V/94 dated 06/07/2023. =2x100000 =Rs20000/------(E)</p>
									<p>vi) As per clause 13(ii) of agreement for 238Nos. of Bearings handed over by agency to DDA, payment will be made as per purchase price=Rs59,38,687/----- (F)</p>
									<p>Already paid up to date=Rs85,92,680/----- -----(G)</p>
									<p>Now Amount to be recovered=G-F =Rs26,53993/------(H)</p>
									<p>vii) Recovery on account of tender for rectification work to comply the CTE observation para</p>
									<p>Approx. (Estt. Cost) =Rs 1,01,30,213/------(I)</p>
									<p>Sub Total: (i to vii) = A+B+C+D+E+H+I =Rs.1,73,19,860/------(Y)</p>
									<p>Payable amount after recovery Z=X-Y=Rs.31,61,096/-</p>

	7	Cost				<p>Interest after recovery @ 10% p.a. from 01/11/2021 to till date = Rs. 8,69,301/-</p> <p>In view of above award of claim No. 1,2,3 and 4 interest on after recovery Rs.8,69,301/-, this may not be challengeable.</p>
7.		Parties to bear their respective cost.	Total Payment of 45 lakh has been made i.e. 15 lakh to each of three arbitrator As per fourth schedule of Arbitration and conciliation Act 1996			

Recommendation of Legal: -

CLA recommended that immediately put the matter before Arbitration Scrutiny Board for the appropriate consideration and decision.

Recommendation of SE: Not available in agenda.

Recommendation of CE/SZ: Agreed with the comments of EE/PD-VI.

RECOMMENDATION OF ASB:

As mentioned in e-file computer no. 82929 that the claimant had filed an application U/S 33(1) and 33(4) to seek clarification of the Arbitral Award dt. 26.07.2024. Now, Ld. Arbitral Tribunal has passed an order dt. 16.10.2024 and clarified the objections of the claimant.

After due discussion and deliberation, it has been observed by the ASB that as per the Clause 17 of the agreement, it is the responsibility of the contractor to rectify the defects during liability period. Hence, CE(SZ) may be filled objection in respect of the award of claim no. 5, in consultation with Panel Layer and CLA.

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 Chairman, DDA/Hon'ble LG, Delhi is the Competent Authority in r/o award amount more than Rs. 500 Lakhs in consultation with FM/DDA, with due scrutiny by Arbitration Scrutiny Board headed by FM, DDA to accept/challenge.


-Sd-
Amit Singh
Dir(Works)
Member Secretary

-Sd-
Anil Kumar Sharma
Addl. CLA
Member

-Sd-
Sanjay Kumar Khare
CE(HQ)
Member

-Sd-
Kamal Singh Meena
CE (SZ)
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/PD-VI/DDA for information please


24/10/2024
Director(Works)