

निदेशक (प्रणाली) वि. वि. प्रा. .
डायरी नं. 2461
दिनांक 29.8.24



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

No. EM2(3)2024/EZ/222/DDA/ 684

Dated: 27/08/2024

MINUTES OF THE 894th MEETING OF ASB HELD ON 27.08.2024 IN THE CHAMBER OF CE(HQ), DDA

894th meeting of Arbitration Scrutiny Board (ASB) under the chairmanship of CE(HQ), DDA was held on 27.08.2024 at 03:00 P.M. in the chamber of CE(HQ), DDA to deliberate the Arbitral award in the matter of **M/s Y K Goyal Vs DDA** for the following work: -

N.O. W : C/o Utsav Sthal (Temporary) at I.P. Extension.
Agency : M/s Y K Goyal.
Agmt .No. : 03/EE/EMD-2/DDA/2022-23

The agenda note was submitted by CE(EZ) vide e-file Computer No.81109 on 22.08.2024. The case was presented by Sh. Arun Kumar, CE (East Zone).

The meeting was attended by the following officers: -

1. Shri Sanjay Kumar Khare	CE (HQ)	Chairman
2. Shri Arun Kumar	CE (East Zone)	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: -

The letter of acceptance of above said work was issued to **M/s Y K Goyal** vide letter No. F15(12)/EE/EMD-2/DDA/2021-22/229 dated 25-04-2022 and letter of commencement was issued vide letter No. F15(12)/EE/ EMD-2/DDA/2021-22/280 dated 12-05-2022 by this office. The stipulated date of start and completion of the work was 05-05-2022 and 29-01-2023 respectively and the work comprised of Civil, Electrical and Horticulture components.

The contract/agreement for this work was rescind/determined under Clause-3 of the agreement on 10-01-2023 by the department due to non-compliance to the instructions issued to the agency by this office.

Due to disputes between the agency and respondent, resulting the agency invoking Arbitration Clause-25 of the Agreement vide its letter dated 16-12-2022 to Chief Engineer. Subsequently, the agency vide its notice dated 07-02-2023 approached the Engineer Member/DDA for appointment of Arbitrator and thereafter, the agency approached the Delhi High Court u/s 11(6) if A&C Act, 1996 (Amended) for appointment of Arbitrator, vide arbitration petition No. ARB.P.429/2023

In the meantime, Engineer Member, DDA, vide his Order No. EM2(7)/2023/Arbn./Vol-VIII/Pt-201/DDA/338 dated 17.07.2023, also appointed Shri Ani Kumar Verma, Special DG, CPWD (Retd.), as Sole Arbitrator to decide as per the Arbitration & Conciliation (Amendment) Act, 2015 (3 of 2016).

Hon'ble Delhi High Court, vide its Order dated 18.07.2023, disposed of the petition by appointing Shri Anil Kumar Verma, Special DG, CPWD (Retd.) as the Sole Arbitrator for adjudication of the dispute in relation to the work order dated 12.05.2022.

Total 6 nos. claims were made by the agency amounting to **Rs. 55,29,918/- plus interest that was referred to Engineer Member** and **Rs. 67,26,578/- plus interest that was claimed as per Statement of claims.**

The Ld. Arbitrator after 6 hearings has finally concluded the hearing on 08.04.2024 and the award was pronounced on 22-05-2024 awarding the amount of **Rs.4,31,497/- plus interest.** in the favor of the agency and was received in this office on 22-05-2024 through E-mail. However, a notice under section 33(3) of the A&C Act, 1996 as Amended was received from the Ld. Arbitrator on 07-06-2024 for correction in the award amount due to certain Typographical/Clerical errors. The corrected award amount comes out to **Rs. 4,09,697/- plus interest.**

The Ld. Arbitrator has allowed 90 days from the date of receipt of the award up-to 20-08-2024. In order to complete the formalities and make the payment to the claimant. Thereafter, it will carry a future Simple interest @ 9% p.a. from the date of award to till actual payment as per Clause No.57.1 Page-95 of the Award (copy enclosed). There were total 6 nos. claims of the agency amounting to Rs.67,26,578/- plus interest against which the Ld. Arbitrator has allowed only 2 nos. (one fully and one partially) plus interest. The amount awarded by the Ld. Arbitrator is Rs. 4,09,697/- plus interest.

The Claim wise observations, findings and determination/award published by the Arbitral tribunal is as under: -

Claim no	Contractors Claim	Award by the Sole Arbitrator
1.	Claimant seeks Rs. 3,10,000/- towards release of Performance Guarantee	Tribunal in its award submits that the Respondent was in fundamental breach of the contract and thereby not justified in its action to forfeit the

		Performance Guarantee. Hence sum of Rs. 3,10,000/- plus interest is awarded against Claim no.-1 in favour of claimant.
2	Claimant seeks Rs. 43,26,578/- on account of expenditure incurred on material, soil testing, structural design, Water bills, electricity, cement bricks, dust, rodi, steel TMT steel, shuttering, GI sheets barricading, Electricity, Graduate Engineer, Project Manager T& P, Diesel Dewatering pump etc. labour wages and labour huts and other logistic expenses/overheads.	Tribunal has awarded a sum of Rs. 99,697/- (Rs. 41,488.80 for soil investigation, Rs. 39,853/- for supplying and filling screened soil and Rs. 18,355/- for electricity charges) plus interest against Claim no.-2 in favour of claimant.
3	Claimant seeks Rs. 5,00,000/- for Damages on Account of Breach of contract	Tribunal has award NIL amount to the claimant against this claim no.-3.
4	Claimant seeks Rs. 10,90,000/- towards loss of profit.	Tribunal has award NIL amount to the claimant against this claim no.-4.
5	Claimant seeks Rs. 5,00,000/- towards Cost of Litigation	Tribunal has award NIL amount to the claimant against this claim no.-5.
6	Claimant seeks Pre-suit Interest @12 % p.a., Pendent elite interest @ 15% p.a. and future interest @ 18% p.a.	Tribunal has awarded Pre-award and Post Award (Future) interest as Simple Interest @9% p.a.

The opinion of panel lawyer has been sought in the matter, which are reproduced as under:

This is to inform that the Ld. Arbitrator has passed the award dated 22.05.2024 directed to the respondent to pay Principal amount of Award Rs.4,31,497/- (Rupees Four Lakhs Thirty-One Thousand, Four Hundred Ninety-Seven Only) (in case FDR submitted by the Claimant against Performance Guarantee has not been encashed by the Respondent, Principal sum will be Rs. 1,21,497/- only & FDR will be released to the Claimant, duly discharged),

Further the Ld. Arbitrator has awarded simple interest @ 9% on account of award under claim No.-1 i.e. Rs. 3,10,000/- from the date of encashment of F.D.R. Submitted by the claimant in lieu of performance Guarantee. In regard to claim no. 2 i.e Rs 1,21,497/ the interest from the date of first reference i.e. 16.12.2022 till date of award i.e. 22.05.2022.

The Ld Arbitrator has awarded the claim No 1 and 2 in favour of Claimant. The Ld Arbitrator has directed the respondent to release the Performance of Bank Guarantee of Rs 3,10,000/- in favour of Claimant. The Ld Arbitrator is grossly erred in observing that the hindrance free site was not handed over to the Claimant. In fact the site was handed

over to claimant on 17-05-2022 (site book R-1 at page No 20) showing handing/taken over document. After handover of site, the testing of soil was carried out by claimant, the videos of which were shared by claimant to the respondent [to the then AE-in-charge].

The Ld Arbitrator failed to appreciate that the Respondent has paid major amount in time to the claimant to rectify the improper execution of work at site and to submit the revised drawings, but the claimant was reluctant upon his will and did not entertain the instructions of this office. Three notices under Clause-3 were issued to the claimant for **the sake of giving ample amount of time**, the last being sent on 25-10-2022 vide letter no. F15(12)EE/EMD-2/DDA/2021-22/625 dated 25-10-2022 and the same document has been relied upon by the claimant and exhibited as **Annexure- C17** of Statement of Claim, which in details has mentioned all the defects clearly explained and informing the claimant for not resuming the work at site even after the Ram leela celebration has concluded, but still the claimant was adamant and endorsed his improper work and rather than executing the work properly, the claimant addressed the respondent vide his letter dated 16-12-2022 (enclosed as **Annexure – R29**) of Statement of Defence for invoking Arbitration under Clause-25 of agreement.

The Ld Arbitrator is grossly erred in observing that the Respondent has not informed to the claimant about the booking of the Ramleela. In fact, the booking of Ram leela has no effect in the execution of the work awarded to the Claimant. The claimant has failed to execute the work as per the work order and hence not entitled for any claim.

The Ld Arbitrator awarded a sum of Rs.1,21,497/- on account of expenditure incurred on material, soil testing, structural design, water bills, electricity, cement, bricks, dust, rodi, steel TMT steel, shuttering, G.I. sheets barricading, Electricity, Graduate Engineer, Project Manager, T&P, Diesel de-watering pump etc. Labour wages and labour huts and other logistic expenses/overheads,

The amount of Rs 63,288.80 has been awarded by the Ld Arbitrator towards the soil investigation conducted by the claimant arbitrarily. The claimant failed to produce any proof of payment made by the claimant to the Syrotech Geocon Pvt Ltd. In absence of proof of payment, the claim is not admissible.

The Amount of Rs 39,853/- is not admissible as the proof of payment was not placed on record.

The amount awarded to the claimant towards the electricity bill from June 2022 to August 2023 is paid as Rs 18,355/-. is not admissible.

The Ld Arbitral Tribunal arbitrarily awarded the interest @ 9% to the Claimant to the amount which is not admissible in law. As per law the Ld Arbitrator has to be awarded the interest at the prevalent rate in the market. The interest point has not been referred to the Arbitration Tribunal and hence the same is not justifiable.

The Claimant has filed the frivolous claims and not entitled for any relief. The Tribunal has to be dismissed this claim as it is not maintainable.

In my opinion this is the fit case to be challenge before the court under section 34 of Arbitration and Conciliation Act.

The opinion from the Legal Cell of the department has also been sought, the comments offered by the SLO(Engg.) through CLA are as under:

I have gone through the entire file as well as opinion of Panel Lawyer and i am in agreement with the views of Panel Lawyer that this is a fit case to challenge before the court under section 34 of Arbitration and Conciliation Act.

In this matter Arbitration has passed the award dated 22.05.2024 and directed to DDA to pay Principal amount of Award Rs. 4,31,497/-.

The Ld. Arbitrator has awarded the claim no. 1 and 2 in favour of claimant. The Ld. Arbitrator failed to appreciate that the Respondent (DDA) has paid major amount in time to the claimant to rectify the improper execution of work at site.

Ld. Arbitrator has failed to observe that the booking of Ram leela has no effect in the execution of the work awarded to the claimant.

The amount of Rs. 63,288.00 has been awarded was arbitrarily as no proof of payment made by claimant to the Syrotech Geocon Pvt.Ltd.

The amount of Rs. 39,853/- is also not proved by claimant.

The claimant has filed the frivolous claims.

Hence, this award should be challenged.

Recommendation/Comments of EE/EMD-2:

The Ld. Sole Arbitrator has awarded Claim no. 1 and 2 in favor of claimant and the recommendation/comments for challenging the Arbitral award from the Panel lawyer and Ld. CLA are justifiably correct.

The Claim wise recommendation/comments from this office is as under:

Claim no.-1: The Performance Guarantee in Claim no.-1 awarded by Ld. Arbitrator has been forfeited lawfully giving ample time to Claimant to rectify the improper execution of work at site which the Ld. Arbitrator has also failed to appreciate that the Respondent has paid major amount in time in favor of the claimant for rectification.

However, the amount of Claim no.-1 is solely on part of the claimant as Performance Guarantee was submitted by the agency and challenging this claim may incur additional interest and litigation cost to the Govt. exchequer.

Claim no.-2: The sum of Rs. 99,696.80/- (Rs. 41,488.80, Rs. 39,853.00 and Rs. 18,355.00/-) for Soil investigation, supplying and filling of screened soil at site and electricity charges paid to BSES respectively has been awarded by Ld. Sole Arbitrator but, the claimant has neither submitted any solid evidence in respect of payment made to Spyrotech Geocon Pvt. Ltd. For soil investigation, it could not be established that the vouchers submitted by the claimant for screened soil were for this site of work only as they were not addressed for this work location and the payment receipts of BSES electricity charges submitted by claimant neither comprises the meter no. nor the location for which the bill is generated.

However, the amount awarded of Claim no.-2 i.e. Rs. 99,696.80/- against the claimed amount of Rs. 43,26,578.00/- is reasonable in assessment with challenging this claim, as challenging this may incur additional interest and litigation cost to the Govt. exchequer.

The overall claim submitted by the claimant was Rs. 67,26,578/- plus interest and in lieu of which the Ld. Arbitrator has only awarded a total of Rs. 4,09,697.00/- (Rs. 3,10,000/- + Rs. 99,696.80/-) plus simple interest @ 9% only in which the major amount of Rs. 3,10,000/- has been the PG amount which was submitted by the claimant itself.

In view of above, the arbitral award can be accepted keeping in consideration that challenging the same may burden the department with additional cost of litigation and interest charges on the award amount which might be more than the Arbitral amount of claims itself. Hence, the final decision in this matter as deemed fit by ASB shall be taken considering the financial interest of public exchequer.

Recommendation/Comments of SE/ECC-2/EZ:

SE/ECC-2, also in agreement with the recommendations of EE/EMD-2 and is also of the considered view that the award allowed by the Sole Arbitrator is reasonable in comparison to the amount claimed by the claimant. Hence, the arbitral award may be considered for acceptance keeping in consideration that challenging the same may burden the department with additional cost of litigation and interest charges on the award amount which might be more than the Arbitral amount of claims itself

Recommendation/Comments of CE/EZ/DDA:

The claimant initially sought an amount of Rs. 67,26,578/- plus interest. However, the learned Arbitrator has awarded a significantly lower sum of Rs. 4,09,697/-, which includes Rs. 3,10,000/- (the performance guarantee amount deposited by the claimant) and Rs. 99,696.80/- along with simple interest at a rate of 9%. Given the substantial reduction in the awarded amount and the fact that Rs. 3,10,000/- pertains to the claimant's own performance guarantee, the arbitral award may be considered for acceptance. Pursuing further legal challenges may result in additional costs, including litigation expenses and interest charges. The final decision, in line with the financial interests of the public exchequer, be made by the ASB after due consideration.

RECOMMENDATION OF ASB:

CE(EZ) has recommended to accept the award since out of the initially claimed amount of Rs. 67,26,578/- plus interest, a significantly lower amount of Rs. 4,09,697/- plus interest has been awarded. The ASB after due discussion and deliberation recommended to accept the award, keeping in view the future cost of litigation and future interest that may accrue as the award pronounced by the arbitrator seems to be reasonable.

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, Chief Engineer is the Competent Authority in r/o award amount less than Rs. 25 lacs 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
Director(Finance)
Member


-Sd-
Arun Kumar
CE (EZ)
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/EMD-2/DDA, Pkt-I, Dilshad Garden, Delhi-110095 for information please.


27/8/2019
Director(Works)