

23/8/24

Sh. Joshi (D/18)



निदेशक (प्रशासकीय) वि. वि. प्र.
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दिनांक 23-8-24

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

No. EM2(3)2022/PROJ/13/Pt./DDA/677

Dated: 22/8/24

893rd Meeting of Arbitration Scrutiny Board (ASB) under the chairmanship of FM, DDA was held on 22.08.2024 at 11:00 A.M. in the chamber of FM, DDA to deliberate whether the order dt. 26th July 2024 in OMP(Comm)/128/2023 passed by the Hon'ble Delhi High Court in the matter of **DDA Vs M/s Gammon Engineers and Contractors Private Limited (Gammon)** with respect to Arbitral award given for the following work should be challenged or not: -

N.O. W : Construction of flyover/grade separators in Delhi at the junction of: -

- | | |
|--------------------------|--------------|
| 1. Mathura Road (NH-2) - | Road No. 13A |
| 2. NH-24 - | Noida Road |
| 3. Vikas Marg - | Road No. 57 |
| 4. Wazirabad Road - | Road No. 66 |

Agency : M/s Gammon India Ltd
Agmt .No. : 03/EE/FD-6/DDA/98-99.

The agenda in the instant case has been submitted vide file no. F.1(Misc.) EE/PD-2/DDA/2024-25 (part file) on 21.08.2024.

The meeting was attended by the following officers: -

- | | | |
|---------------------------|--------------|-------------------|
| 1. Sh. Vijay Kumar Singh | FM,DDA | Chairman |
| 2. Shri Kamal Singh Meena | CE(SZ) | Executive Member |
| 3. Shri Kamal Singh Meena | 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-mentioned work was awarded to M/s Gammon India Ltd. The work was completed but later on the agency proceeded for arbitration. The then EM/DDA appointed SE(Arbitration-I) as sole arbitrator and referred 4 claim and 1 subclaim including interest claim of M/s Gammon India Ltd. amounting to Rs. 7,75,30,237/- and one counter claim of DDA amounting to Rs.14,87,500/- for adjudication of claims and counter claim. The first arbitration award was published on dt 11.09.2008 by the then Sole Arbitrator i.e. SE

(Arbitration I) and out of 4 claims and 1 counter claim, he allowed claim 1 (b) amounting to Rs. 35,10,000/- against Rs. 3,96,71,904/-. Also the sole arbitrator allowed claim 2(5) amounting to Rs. 3,50,000/- and claim 3 towards interest @18% per annum for aforementioned sums from 14.12.2004 to 11.09.2008 at that time and all other claims of the agency were rejected however DDA's counter claim of Rs. 14,87,500/- was awarded.

M/s Gammon India Ltd. approached Hon'ble High Court against the award and filed objection under section 34 of the Arbitration act i.e. OMP-674/2008. The Hon'ble High court set aside the award vide order dt 18.04.2017 however as per the decision taken in the ASB meeting dt 15.06.2017, DDA preferred two appeals before division bench under section 37 of the Arbitration and Conciliation Act, 1996 against the orders dt 18.04.2017. The division Bench of the Hon'ble High Court vide order dt 10.10.2018 also dismissed both appeals of DDA and upheld the order dt 18.04.2017 passed by the Single Judge of the Hon'ble High Court.

The case was put up before the arbitration scrutiny board under the Chairmanship of CE/HQ on 11.02.2019 and after discussions, board was of the view to accept the order dt 10.10.2018 and after approval of the competent authority, the same was accepted. M/s Gammon India Ltd. vide their letter dt 26.12.2018 requested Hon'ble VC/DDA for appointing a Sole arbitrator again to adjudicate the claims rejected by the previous Arbitrator and EM/DDA appointed Sh. Rakesh Mishra as Sole arbitrator vide letter dt 29.01.2019. Sh. Rakesh Mishra, the Sole arbitrator published an award dt 15.11.2021 amounting to Rs. 5,96,35,114/- (Rs. Five Crore Ninety Six Lakh Thirty-Five thousand one hundred Fourteen only) plus interest to be calculated in terms of the award under Claim No.-3, in favour of M/s Gammon India Ltd.

After the arbitration award, the then appointed P/L Sh. Sanjeev Sagar opined to challenge the award and Ld. CLA also suggested the same. The then EE/PD-1, SE/SCC-1 and CE(Prj.) also recommended to challenge the award. Further, as per the recommendations of ASB meeting held dt 11.03.2022, the file was finally sent to the P/L Sh. Sanjeev Sagar to file a petition under section 34 to challenge the award.

Sh. Sanjeev Sagar filed the petition on 14.03.2022, which was the last day to file petition. Later on Sh. Sanjeev Sagar resigned from the panel of DDA on 01.05.2022 and sent the file to DDA with comments of her assistant Miss Nazia Parveen dt 10.05.2022 stating that "The said filing was done as defective filing due to limitation period".

Ld. CLA appointed Sh. Sanjay Katyal and Miss Chand Chopra as P/L dt 19.07.2022. After pursuing the matter and as per directions of Hon'ble VC issued in the meeting held dt 27.01.2023, finally a fresh petition along with application for condonation of delay was filed by the P/L dt 28.02.2023 with diary No. 367702/2023. After several hearings, the Hon'ble Justice of High Court passed an order dt 26.07.2024 vide which both the petition under section 34 and application for condonation of delay were dismissed, as the court found that the petition containing only 59 pages filed dt 14.03.2022 was not a defective one but a non-est filing as no relevant copy of arbitration award and no sufficient relevant documents were enclosed along with the petition.

Recommendations of Panel Lawyer: -

1. The subject Petition was filed under Section 34 of the Arbitration and Conciliation Act, 1996 seeking to challenge an Arbitral Award dated 15.11.2021 passed by the Sole Arbitrator in the arbitration titled "M/S. Gammon India Ltd. vs. Delhi Development Authority" in Case No. ARB/DDA/RM/101.
2. The Section 34 Petition was filed on 14th March 2022 which was the 120th day from the date of the Award. Since this was the last day to challenge the Award, the petition (in law) had to be a proper filing by itself.
3. However, as the Department is already aware, the Petition, as filed on 14th March 2022, was nothing but a bunch of 59 pages that were unrelated to the case. The filing done was (i) challenging the wrong Award, (ii) did not annex the Award being challenged, (iii) was not accompanied by the requisite affidavits or the statement of truth, (iv) had the wrong Prayer, (v) had no Grounds in the Petition and a few other procedural defects which can be seen from the 'defects sheet' placed on record by the Registry of High court in terms of directions of the Hon'ble Court.
4. The Court, after summoning the records of the said original filing from the Registry saw the defects in the filing dated 14th March 2022 itself and came to a conclusion that the filing done on that date was completely non-est, i.e., an invalid filing. The Hon'ble Court relied upon judgments, i.e., U.O.I. v. Panacea Biotech Ltd. (Judgement dt. 19 December 2023 in FAO (OS) (Comm) 81/2020) and Boston Scientific India Pvt. Ltd. v. Advanced Medtech Solutions Pvt. Ltd. (2023 SCC OnLine Del 4656).
5. The observations of the court in para 6 of the Judgement in this case are significant since the court holds that while technical defects may not render a filing non est, on the other hand if a petition is filed without even the award under challenge, the filing has to be treated as no filing at all in the eyes of law or in other words non est.
6. The law on the timelines for filing a Section 34 Petition is very well settled. If a Petition as mandated by law is not filed within the 120 days period, there is no leeway given to the Courts to condone the delay. Despite our appeal to the Court, the Hon'ble Court observed that Section 34 does not make an exception for Government departments and any delay beyond 120 days is statutorily not condonable. Delay in re-filing is liberal but the delay in original filing is strict.
7. In light of the settled law, (as cited in the Judgment itself) filing on 14th March 2022 was not a filing at all, which is confirmed after seeing the 'defects sheet' provided by the registry of High court.
8. In the matter of Durga Construction Company (see UOI v Panacea) the Division bench of our High court explained the difference between a non est filing and re-filing. It observed that where initial filing is complete but certain documents are not clear (etc.), then though the re filing is beyond the 120 days period, it cannot be said that the court does not have the jurisdiction to condone the delay in re filing. However, if a petition is so blatantly insufficient or flawed and contains flaws that are essential to the very institution of the proceedings, such filing would be deemed to be non est and meaningless. Further, the court in ONGC v Joint venture of Sai Rama (see UOI v Panacea) held that a section 34 petition has to be accompanied by the impugned Award otherwise it would be impossible to appreciate the grounds of challenge. The court further in Brahmputra Cracker v Rajshekhar Construction (see UOI v Panacea) held that filing of a section 34 petition without an Award

should not be lightly countenanced especially when the same may be merely presented in order to stall the limitation period.

9. In face of the above 'consistent' position in law on the aspect of non est filing, examined in the backdrop of the 'defect sheet' of instant matter, the appeal, if filed, shall be without merit.

Opinion of CLA/DDA:

The Order of the Court dealing with the delay on part of the DDA is self-explanatory. After dismissal of OMP filed by DDA, the Standing Counsel Sh. Sanjay Katyal has given his opinion vide e-mail dated 19th August, 2024. The undersigned had the meeting with the concerned engineer, the Standing Counsel and the Officers of the Law Department on 19th August, 2024. During the course of discussion, it was noticed that there was a delay on the part of DDA in challenging award. Therefore, no ground is made out for further challenge. However, the decision whether the order of the Court dismissing the challenge of DDA against the arbitral award is to be further challenged has to be taken by the Arbitration Scrutiny Board(ASB).

Recommendations of Executive Engineer /PD-2/DDA: -

The petition was filed within allowed limitation period of 120 days but the filing done by P/L Sh. Sanjeev Sagar was non est filing and he misguided by informing that it was a defective one. It is pertinent to mention here that as per the Hon'ble High court rules further a limitation period of 30 days is allowed to remove the defects and correct petition filing against a defective one. Also, the limitation period for removing defects was already over after 30 days from 14.03.2022 i.e. 14.04.2022 and the information and comments regarding defective filing by the assistant of P/L Sh. Sanjeev Sagar were dt 10.05.2022. Due to non-est filing which might have been done intentionally by the P/L despite being well versed with all court rules and limitation period, the petition was dismissed by the Hon'ble High court.

Keeping in view the aforementioned facts and high stake and huge public money involved as the award amount calculated with interest is very high, it is recommended that a further appeal in this matter should be filed before the Division Bench of the Hon'ble High Court against the orders passed by the single judge of Hon'ble High Court dt 26.07.2024.

Recommendations of Supdt. Engineer /SCC-1/DDA: -

It is highly recommended to take up the matter to appeal against the court judgement.

Recommendations of Chief Engineer(SZ):

Chief Engineer (SZ) is also in agreement with the recommendations of EE/PD-2 & SE/SCC-1/SZ.

RECOMMENDATION OF ASB:

After due discussion and deliberation, the ASB unanimously has decided that order dt. 26th July 2024 in OMP(Comm)/128/2023 passed by the Hon'ble Delhi High Court in the matter of **DDA Vs M/s Gammon Engineers and Contractors Private Limited (Gammon)** shall be challenged on following grounds:

1. Sh. Sanjeev Sagar filed the petition on 14.03.2022, which was the last day to file petition. Later on Sh. Sanjeev Sagar resigned from the panel of DDA on 01.05.2022 and sent the file to DDA with comments of her assistant Miss Nazia Parveen dt 10.05.2022 stating that "The said filing was done as defective filing due to limitation period". However, the Hon'ble Justice of High Court passed order vide dt 26.07.2024 has found that the petition containing only 59 pages filed on 14.03.2022 was a non-est filing as no relevant copy of arbitration award and no sufficient relevant documents were enclosed along with the petition. Therefore, the delay is not an actual delay in filing the petition as no filing has been done in eyes of law.
2. It has also been observed that the Ld. Arbitrator has award payment of interest on awarded amount under claim no. 1 & 2 at the @18% p.a. from 14.12.2004 to 02.09.2017 which is penal rate causing huge burden on the public exchequer, therefore, needs to be challenged.

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.


-Sd-
Amit Singh
Dir(Works)
Member Secretary

-Sd-
Vinod Kumar
Dy. CLA-III
Member

-Sd-
Kamal Singh Meena
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-II/DDA for information please


23/08/2024
Director(Works)

