

निदेशक (प्रणाली) दि.वि.प्रा.

डायरी नं. 2657

दिनांक 18/9/24



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

No. EM2(3)2024/EZ/224/DDA/ 789

Dated: 17-9-24

896th Meeting of Arbitration Scrutiny Board (ASB) under the chairmanship of FM, DDA was held on 11.09.2024 at 04:30 P.M. in the chamber of FM/DDA to deliberate the Hon'ble Delhi High Court order dated 04.03.2024 in the matter of **DDA Vs M/s Sportina Payce Infrastructure Pvt Ltd** for the following work: -

- N.O.W.** : C/o Indoor Stadium for Badminton & Squash for Commonwealth Games- 2010 at Siri Fort Sports Complex, Ph-I
SH: Providing Raft Foundation.
- Agency** : M/s Sportina Payce Infrastructure Pvt Ltd.
- Agmt. No.** : 03/EE/CGD-3/DDA/A/2007-08.

The instant case has been submitted vide e-file computer No. 80463 on dated 29.08.2024.

The meeting was attended by the following officers: -

- | | | |
|----------------------------|--------------|-------------------|
| 1. Shri Vijay Kumar Singh | FM,DDA | Chairman |
| 2. Shri Arun Kumar | CE(EZ) | Executive Member |
| 3. Shri Sanjay Kumar Khare | CE(HQ), DDA | Member |
| 4. Shri Anil Kumar Sharma | Addl. CLA | Member |
| 5. Shri Amit Singh | Dir. (Works) | Member, Secretary |

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

BRIEF HISTORY OF THE CASE IS AS UNDER: -

The contractor M/s Sportina Payce Infrastructure Pvt. Ltd. has entered for execution the above work through Agmt. No. 03/EE/CGD-3/DDA/A/2007-08 in DDA. While execution of work certain disputes arose between M/s Sportina Payce Infrastructure Pvt. Ltd. and Delhi Development Authority which were referred for adjudication through arbitration. Sh. J.K. Garg was appointed as Sole Arbitrator by Engineer Member/DDA vide letter No. EM2(7)96/Arbn./4/Pt./499 dated 08.02.2010 enclosing list of claims and subsequent letter No. EM2(7)96/Arbn./4/Pt./1296 dated 08.04.2010 enclosing list of additional claims of the claimant. Sh. J.K. Garg, the then Arbitrator resigned from the matter on 06.08.2012 and

Sh. Gurmukh Bhatia was appointed as Sole Arbitrator vide letter No. EM2(7)96/Arbn./Vol.VI/Part X/4128 dated 31.08.2012 who also resigned on 18.4.2013.

On resignation of Sh. Gurmukh Bhatia, the Engineer Member, DDA appointed Sh. Lakhvinder Chaudhary, SE(Arbn.) as Sole Arbitrator vide letter No. EM2(7)96/Arbn./Vol.VI/Pt.-X/1756 dated 07.05.2013.

Sh. Lakhvinder Chaudhary, SE(Arbn.) published the award in favour of Respondent M/s Sportina Payce Infrastructure Pvt. Ltd. on dated 8th August 2013. The Arbitration award amounting to Rs. 1,20,00,887/- out of which Rs. 20,96,775/- has already been paid vide cheque No. 000017 dated 27/02/2020 through NEFT in the bank a/c No. 0119201003266 IFSC Code: CNRB0000119 of Respondent M/s Sportina Paycee Infrastructure Pvt. Ltd. and remaining amount of Rs. 99,04,112/- has been challenged by Delhi Development Authority in Delhi High Court.

As per Hon'ble High Court order's dated 05.03.2020, DDA has deposited a sum of Rs.50,00,000/- on dated 09/06/2020 with the Registry of the Hon'ble High Court of Delhi.

Now as per Hon'ble High Court Judgement dated 4th March 2024, Justice Sachin Datta has passed the judgement and affirmed the following claims in favour of Respondent M/s Sportina Paycee Infrastructure Pvt. Ltd.

Sr. No.	Claim No.	Amount awarded by the Ld. Arbitrator	Judgement of Hon'ble High Court passed
1.	<u>Claim No.1:</u> Sum of Rs.2,61,21,600/- on account of payment for idle men and machineries.	Rs.21.40 lakh	Award Set aside.
2.	<u>Claim No.2:</u> Sum of Rs.1,56,00,000/- on account of overhead expenses at site due to non-availability / delay in issue in drawings.	Rs. 21.40 lakh	Award set aside.
3.	<u>Claim No.3:</u> Sum of Rs.7,92,000/- on account of additional cost incurred in carrying out survey work.	Rs.82500.00	Rs.82500.00
4.	<u>Claim No. 4:</u> Sum of Rs.25,51,360/- on account of air freight cost for shipping water proofing material	Rs.8,65,640.00	Rs.8,65,640.00
5.	<u>Claim No.5:</u> Sum of Rs.19,80,000/- on account of work done not measured for water proofing.	Nil (Withdrawn by the respondent).	Nil (Withdrawn by the respondent).
6.	<u>Claim No. 6:</u>	Nil (Not pressed by the respondent).	Nil (Not pressed by the respondent).

	Sum of Rs.23,05,647/- on account of steel escalation as per clause 10CA.		
7.	<u>Claim No.7:</u> Sum of Rs.28,88,352/- on account of difference in cost market price vs. price paid as per clause 10CA	Rs.18,33,140.00	Rs.18,33,140.00
8	<u>Claim No. 8:</u> Sum of Rs.5,76,60/- on account of cement escalation as per clause 10 CA	Nil (Withdrawn by the respondent).	Nil (Withdrawn by the respondent).
9	<u>Claim No. 9:</u> Sum of R.33,75,787/- on account of wrong deduction in the quantity of soil transported from site.	Rs.1257,423.00	Rs.1257,423.00
10.	<u>Claim No. 10:</u> Sum of Rs.4,84,308/- on account of additional cost for draining of excess water due to rainfall.	Nil	Nil
11.	<u>Claim No. 11:</u> Sum of Rs.91,50,240/- on account of loss of profit on curtailment of work	Nil	Nil
12.	<u>Claim No. 12:</u> Sum of Rs.18,66,000/- on account of interest on wrong withholding of mile stone	Nil	Nil
13.	<u>Claim No. 13:</u> Sum of Rs.1,63,02,924/- on account of los of bonus	Nil	Nil
14	<u>Additional Claim No. 1:</u> Slum of Rs.11,57,184/- on account of refund of balance security deposit ling with the department under the contract.	Rs.11,57,184.00	Rs.11,57,184.00
15.	<u>Additional Claim No. 2:</u> Sum of Rs.25,25,000/- towards refund of withheld amount made in the final bill.	Rs.25,25,000.00	Rs.25,25,000.00
16.	<u>Additional claim No. 3:</u> Interest @18% p.a. for the amounts due for pre-suit, pendente lite and future	Simple interest @9%p.a. from the date of invocation of arbitration i.e. 14.01.2010 to actual date of payment.	Simple interest @9%p.a. from the date of invocation of arbitration.

The total amount of claims affirmed by the Hon'ble High Court is Rs.77,20,887/- against Claim No. 3,4,7,9 and Additional Claim No. 1 & 2 + Additional claim No. 3 with Simple interest @ 9%p.a. from the date of invocation of arbitration out of which an amount of

Rs.20,96,775/- against Additional Claim No. 2 for security deposit of water proofing has already been released on 27/02/2020.

DDA has already deposited a sum of Rs.50.00 lakh on 09/06/2020 with the Registry of the Hon'ble High Court of Delhi. Now the remaining amount payable to the Respondent M/s Sportina Paycee Infrastructure Pvt. Ltd. is calculated as under:

S. No.	Claim No.	Amount awarded by the Arbitrator	Amount affirmed by the Hon'ble High Court
1	<u>Claim No.3:</u> Sum of Rs.7,92,000/- on account of additional cost incurred in carrying out survey work.	Rs.82,500.00	Rs.82,500.00
2	<u>Claim No. 4:</u> Sum of Rs.25,51,360/- on account of air freight cost for shipping water proofing material	Rs.8,65,640.00	Rs.8,65,640.00
3	<u>Claim No.7:</u> Sum of Rs.28,88,352/- on account of difference in cost market price vs. price paid as per clause 10CA	Rs.18,33,140.00	Rs.18,33,140.00
4	<u>Claim No. 9:</u> Sum of Rs.33,75,787/- on account of wrong deduction in the quantity of soil transported from site.	Rs.12,57,423.00	Rs.12,57,423.00
5	<u>Additional Claim No. 1:</u> Sum of Rs.11,57,184/- on account of refund of balance security deposit lying with the department under the contract.	Rs.11,57,184.00	Rs.11,57,184.00
6	<u>Additional Claim No. 2:</u> Sum of Rs.25,25,000/- towards refund of withheld amount made in the final bill.	Rs.25,25,000.00	Rs.25,25,000.00
	Total		Rs.77,20,887.00
	<u>Additional claim No. 3:</u> Interest @18% p.a. for the amounts due for pre-suit, pendente lite and future from the date of invocation of arbitration i.e. 14.01.2010 to actual date of payment.	Simple interest @9%p.a. from the date of invocation of arbitration i.e. 14.01.2010	Simple interest @9%p.a. from the date of invocation of arbitration. Rs.74,10,412.00 (Calculation sheet attached at CP-32)

Total amount affirmed by the Court i/c interest	Rs.1,51,31,299.00
Less amount already paid against Additional Claim No.-2 on dated 27/02/2020	(-) Rs.20,96,775.00
Amount deposited with Registry, Hon'ble High court Delhi on dated 09/06/2020	(-) Rs.50,00,000.00
Balance payable	Rs.80,34,524.00

The Hon'ble Delhi High Court has set aside claim No. 1 & 2 and rest of the award of Rs.77,20,887/- plus 9% p.a. interest awarded against the challenged amount of Rs.1,20,00,887/- plus 9% p.a. interest awarded by Arbitrator on 8th August 2013. The Total amount including 9% p.a. simple interest up to 30.06.2024 thereon works out to **Rs. 1,51,31,299/-**. Out of which Rs. 20,96,775 + 50,00,000/- has already been paid and the remaining net amount payable to the agency comes to **Rs.80,34,524/-** i/c 9% p.a. simple interest up to 30.06.2024.

Comments of Sh. Nitin Mishra, Panel Lawyer:

The award is balanced and equitable but since monetary aspect is involved, it is appropriate that the Department takes a final decision on challenging the award.

Recommendation of CLA:

The limitation period has already been expired to file an appeal and after gone through the calculations it seems that balance award has been passed by Hon'ble Court and moreover, department is intended to execute decision of court.

Recommendation of EE/CGD-3:

Going through the judgement, it is felt that DDA is on weak footing and in such a situation any further appeal on delay in releasing the due amount to the respondent agency M/s Sportina Payce Infrastructure Pvt Ltd will only increase the interest payable.

Recommendation of SE(ECC-2)/DDA:

As limitation period has already been expired to file an appeal & as recommended by EE/CGD-3, department is on weak footing & any further appeal on delay will only increase the interest payable, so agreeing with comments of EE/CGD-3.

Recommendation of CE(EZ)/DDA:

Agree with comment of EE & SE.

RECOMMENDATION OF ASB:

The Panel Lawyer and Legal Department has recommended that a balance and equitable award has been passed by the Hon'ble High Court. Earlier, the then EM/DDA had recommended that DDA is on a weak footing in this case and DDA should withdraw the matter pending before Hon'ble High Court with respect to this arbitration matter. CE(EZ) has recommended any further appeal on delay will only increase the interest payable in this case. However, it has been observed that the matter has been placed before ASB after the limitation period has expired to challenge the appeal, leaving ASB with no option but to accept the award. After due discussion and deliberation, the ASB has decided to accept the award.

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 Vice- Chairman, 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/challenge.


-Sd-
Amit Singh
Dir(Works)
Member Secretary

-Sd-
Anil Kumar Sharma
Addl. CLA
Member

-Sd-
Sanjay Kumar Khare
CE(HQ)
Member

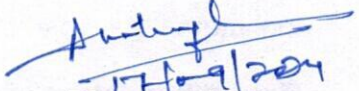
-Sd-
Arun Kumar
CE (EZ)
Executive Member

-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/CGD-III/DDA for information please


17/09/2019
Director(Works)