

उप निदेशक (प्रणाली) न. दि. वि. प्र.
Dy. Director (Systems) F. B. D. A.
आदेश नं० / Dsry No. 3685
दिनांक / Date 19/7/24

निदेशक (प्रणाली) दि. वि. प्र.
आदेश नं० 2218
दिनांक 19-7-24



7
Azadi
Amrit Mahotsav

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

19/7/24
Sh. Jashti (Dy. Dir.)

No. EM2(3)2024/Sports/04/DDA/580

Dated: 19-7-24

MINUTES OF THE 890th MEETING OF ASB HELD ON 18.07.2024 IN THE CHAMBER OF CE(HQ), DDA

890th Meeting of Arbitration Scrutiny Board (ASB) under the chairmanship of CE(HQ), DDA was held on **18.07.2024** at **02:30 P.M.** in the chamber of CE(HQ), DDA to deliberate the Arbitral award in the matter of **M/s Subhash Chander Vs DDA** for the following work: -

- N.O. W :** Proposal for deficient facilities in Bhalswa Golf Course located along outer Ring Road near Mukarba Chowk,
SH: Construction of club house building store room & worker rest room at Bhalswa Golf Course.
- Agency :** M/s Subhash Chander.
- Agmt .No. :** 04/EE/Sports Division 2/ DDA/2016-17

The agenda note was submitted by CE(Sports) vide e-file Computer No. 80877 on 05.07.2024. The case was presented by Sh. Arun Kumar, CE(Sports).

The meeting was attended by the following officers: -

- | | | |
|----------------------------|--------------------|-------------------|
| 1. Shri Sanjay Kumar Khare | CE (HQ) | Chairman |
| 2. Shri Arun Kumar | CE (Sports) | 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: -

1. The above cited work was awarded to M/s Subhash Chander vide letter No. F.50(6)Sports Divn.2/DDA/A/2016-17/319 Dated 08.09.2016 with the stipulated date of start and completion as on 18.09.2016 and 17.03.2017 respectively. The work was finally completed on 31.07.2017.
2. Dispute arose between the parties and the arbitration clause was invoked by the contractor/claimant. Thereafter, Sh. Subhash Chand Jindal was appointed as a sole arbitrator in the matter on 04/11/2019.

3. There was a total of 18 claims as made by the claimant. The total claim amount of Rs. 68,09,113/- with interest was made in these 18 claims. Out of the 18 claims, 3 of the claims were withdrawn during the course of the arbitration proceeding by the claimant/contractors.
4. Detail arguments were advance by the DDA before the Ld. Sole Arbitrator and after going through the document submissions as made by the Respondent and Claimant, the Ld. Arbitrator Sh. Subhash Jindal has passed the arbitration award on 07.06.2024

LEGAL OPINION OF PANEL LAWYER

As per the legal opinion of Panel Advocate/DDA, Sh. Rishikant Singh that, it was opined that the department's view has been upheld by the Ld. Arbitrator and the Ld. Arbitrator had only awarded a fraction of the claim made by the claimant which according to the Ld. Arbitrator had some rational. The panel lawyer had further opined that DDA may consider to comply with the awarded amount and can engage the claimant for some modification in the interest part to the claimant/contractor.

Opinion of Chief Legal Advisor

The matter was forwarded/submitted to CLA through proper channel by e-office vide file No. ENGG/CESP/0001/2024/F1/GC- O/o EE (Sports Div-II) (Computer No. 80877) for opinion w.r.t. the Arbitration Award. As per the opinion received in the e-office dated 25.06.2024 it was informed inter alia that the Ld. CLA is in agreement with the views of the panel lawyer. The Ld. CLA was also in agreement with the views of the Panel Lawyer that DDA may consider to comply with the award amount and can engage the claimant for some modification in the interest part. (The copy of legal opinion is attached)

Comments of EE/Sports Division-2/DDA

1. It is submitted that out of the total claim amount of Rs. 68,09,113/- the Ld. Arbitrator has awarded only an amount of Rs. 7,38,853/- plus interest of Rs. 3,44,798/- (Rs. 7,38,853/- + Rs. 3,44,798/- = Rs.10,83,651/-) on the awarded amount in favor of the claimant.
2. From a perusal of the arbitration award dated 07.06.2024, the major claims as made by the claimant has been rejected by the Ld. Arbitrator and most of the submissions and contentions as made by the DDA has been accepted by the Ld. Arbitrator and this fact has been reflected in the final award. It is clear that the department's view has been upheld by the Ld. Arbitrator and as such the award reflects this position.
3. In furtherance to the legal opinion of panel lawyer and Ld. CLA, a letter was sent to the claimant vide letter dated 25.06.2024 with a request to consider a modification in the interest part of the Award
4. That the claimant in reply to the letter dated 25.06.2024, vide his letter dated 26.06.2024 has informed that he is willing to give his consent to withdraw the 50% of the interest amount i.e. Rs. 1,72,399/- out of Interest amount of Rs. 3,44,798/- awarded as per the Arbitral Award on 07.06.2024.
5. The final amount which has to be paid to the claimant will be Rs. 9,11,252.00 (including principle amount of Rs. 7,38,853/- and 50% of Interest amount i.e. Rs. 1,72,399.00).

Comment & Recommendation of this office in respect of claims awarded

S.No /Claim No.	Description of Claim	Claim Amount in Rs.	Claim Awarded by Ld. Arbitrator and Ground	Comment of EE	Comment of SE	Comment of CE
1/1	Contractor claims a sum of Rs. 77,457/- on account of rates of agreement items paid lesser than agreement rates in the so-called 6 th and final bill.	77,457/-	77,457/-	Contractor claimed for Agreement Rate for the quantities beyond the deviation limit specified in Scheduled-F of the agreement i.e. 30%. Department has paid rate lesser agreement rate in the 6 th and Final Bill. The Ld. Arbitrator had held that the contractor is entitled for agreement rate for quantities beyond limit on 30% and the claim of the contractor was accepted by Ld. Arbitrator amounting to Rs. 77,457/-. Since, the award is reasonable and justified, hence we may accept the award as passed by Ld. Arbitrator.	Agreed with the comments of the EE and the claim may be accepted.	Agreed with the comments of the EE & SE and the claim may be accepted.
2/2	Contractor claims a sum of Rs. 7,53,345/- on account of difference in full rates sanctioned in 5 th RA bill but subsequently reduced illegally in the so-called final bill against extra items.	7,53,345/-	3,33,820/-	The Ld. Arbitrator had held that in the 6 th RA bill/ Final Bill, for some of extra items, rates have been paid higher than rates determined by Competent Authority and reflected in the 5 th RA bill and some of extra items, the rates has been reduced as compared to rates determined by Competent Authority and reflected in the 5 th RA Bill. The Total amount claim by the claimant is Rs. 7,69,543/- less amount of Higher Rate already paid to the claimant Rs. 1,01,903/-. So the net amount after deducting this amount comes to Rs. 6,67,640/-. The Ld. Arbitrator noted that both the parties have failed to	Agreed with the comments of the EE and the claim may be accepted.	Agreed with the comments of the EE & SE and the claim may be accepted.

					follow the provision of contract agreement and as such it reasonable if 50% of the amount of items where rates have reduced i.e. 50% of Rs. 6,67,640/- =Rs. 3,33,820/- is allowed. That the Ld. Arbitrator has only allowed this amount on account of reduction on rates and had disallowed the full claim. Since, the award is reasonable and justified hence we may accept the award as passed by Ld. Arbitrator.			
3/3	Contractor claim a sum of Rs. 4,36,939/- on account of difference in market rate payable for quantities of agreement items and deviated beyond permissible deviation limit and rates paid in 6th bill.	4,36,939/-	NIL	Claim not awarded by Ld. Arbitrator hence agreed with award.	Agreed with the comments of the EE & SE and the claim may be accepted.	Agreed with the comments of the EE & SE and the claim may be accepted.		
4/4	Contractor claims a sum of Rs. 1,00,679/- on account of difference in rates wrongly computed against various extra items.	1,00,679/-	NIL	Claim not awarded by Ld. Arbitrator hence agreed with award.	Agreed with the comments of the EE and the claim may be accepted.	Agreed with the comments of the EE & SE and the claim may be accepted.		
5/5	Contractor claims a sum of Rs. 15,11,843/- (corrected to	15,11,843/- (corrected to	7,997/-	The Ld. Arbitrator had allowed only a fraction of the claim on account of increase in the wages of labour	Agreed with the comments	Agreed with the comments of the		

	15,11,843/- on account of increase in wages of labor in terms of clause 10C of the agreement	7,34,318/- due to calculation error)		under clause 10 C and has justified it in the table at page no.26 in the award. Since, the award is reasonable and justified hence we may accept the award as passed by Ld. Arbitrator.	of the EE and the claim may be accepted.	EE & SE and the claim may be accepted.
6/6	Contractor claims a sum of Rs. 1,97,180/- on account of amount illegally deducted under the name of reduction items.	1,97,180/-	NIL	Claim not awarded by Ld. Arbitrator hence agreed with award.	Agreed with the comments of the EE and the claim may be accepted.	Agreed with the comments of the EE & SE and the claim may be accepted.
7/7	Contractor claims a sum of Rs. 16,133/- on account of amount illegally deducted under the name of deduction items	16,133/-	NIL	Claim not awarded by Ld. Arbitrator hence agreed with award.	Agreed with the comments of the EE and the claim may be accepted.	Agreed with the comments of the EE & SE and the claim may be accepted.
8/8	Contractor claims a sum of Rs. 9,72,433/- against release of security.	9,72,433/-	Withdrawn by the claimant.	Claim withdrawn by the Claimant hence agreed with award.	Agreed with the comments of the EE and the claim may be accepted.	Agreed with the comments of the EE & SE and the claim may be accepted.
9/9	Contractor claims a sum of Rs. 50,000/- on account of amount withheld against QC paras.	50,000/-	50,000/-	The Ld. Arbitrator had held that there is no provision under the contract to withhold any amount on account of QAC Paras. The Ld. Arbitrator has noted that the QAC paras had already been complied with/rectified/needful done except for one item where RIS approved by Competent Authority. The	Agreed with the comments of the EE and the claim may be accepted.	Agreed with the comments of the EE & SE and the claim may be accepted.

				Ld. Arbitrator had held that DDA has already implemented RIS Items as per the QAC para observation and there is no pending compliance. Since, the award is reasonable and justified hence we may accept the award as passed by Ld. Arbitrator.				
10/10	Contractor claims a sum of Rs. 74,753/- on account of illegal withholding against waterproofing.	74,753/-	Withdrawn by the claimant.	Claim withdrawn by the Claimant hence agreed with award.	Agreed with the comments of the EE & SE and the claim may be accepted.	Agreed with the comments of the EE & SE and the claim may be accepted.		
11/11	Contractor claims a sum of Rs. 1,00,000/- on account of illegal withholding against defects.	1,00,000/-	50,000/-	The sum of Rs. 1,00,000/- was withheld by Department from 5 th RA bill on Account of minor defects. The Ld. Arbitrator has noted that the department has not produced any evidence /documents that defect has been rectified at cost of claimant and neither claimant has produced any evidence/documents that the defects so notified where rectified by him. The Ld. Arbitrator has held that as per the provisions of contract agreement, maintenance period is one year from the date of completion certificate. Date of completion certificate is 31.07.2017, hence the maintenance period is upto 31.07.2018. The Ld. Arbitrator noted that claimant is entitled for refund of 50% of the withheld amount i.e. Rs. 50,000/- Since, the award is reasonable and justified hence we may accept the award as passed by Ld. Arbitrator.	Agreed with the comments of the EE and the claim may be accepted.	Agreed with the comments of the EE and the claim may be accepted.		

12/12	Contractor claims a sum of Rs. 3,28,236/- on account of work executed by the claimant under agreement items and extra items, measured and in previous bill but completely and arbitrarily recovered in subsequent bills and also work executed and not measured.	3,28,236/-	8,614/-	The Ld. Arbitrator had allowed only a fraction of the claim as out of the seven sub-claim under this head only one claim is found in rational. Since, the award is reasonable and justified hence we may accept the award as passed by Ld. Arbitrator.	Agreed with the comments of the EE and the claim may be accepted.	Agreed with the comments of the EE & SE and the claim may be accepted.
13/13	Contractor claims a sum of Rs. 1,33,200/- against watch and ward of building from the physical date of completion till the date of taking over possession.	1,33,200/-	NIL	Claim not awarded by Ld. Arbitrator hence agreed with award.	Agreed with the comments of the EE and the claim may be accepted.	Agreed with the comments of the EE & SE and the claim may be accepted.
14/14	Contractor claims a sum of Rs. 12,89,493/- on account of damages including additional	12,89,493/-	2,10,965/-	The Ld. Arbitrator had only partially allowed this claim on account of delays on various grounds as mentioned in the Para 25.6.15 of the Award. The Ld. Arbitrator had held that out of 136 days EOT granted by the DDA only 44.5 days can be considered as	Agreed with the comments of the EE and the claim may be accepted.	Agreed with the comments of the EE & SE and the claim may be accepted.

	overhead due to diminution of productivity, idle labour, supervisory staff and resources etc. due to prolongation of contract.			attributable to the respondent. Out of this the Ld. Arbitrator had held that a 50% of delay of 44.5 days i.e. 22.25 days can be consider for relay compensation to the claimant. The Ld. Arbitrator had thus held that claimant is entitled for delay compensation for 22.25 days calculated on pro-rata bases as Rs. 12,89,493/- x 22.25/136= Rs. 2,10,965/- in favour of the claimant. Considering the reason and the logic applied by the Ld. Arbitrator and declining a claim of Rs. 12,89,493/-, the award is reasonable and justified hence we may accept the award as passed by Ld. Arbitrator.		
15/15	Contractor claims a sum of Rs. 3,75,000/- against left out measurement.	3,75,000/-	Withdrawn by the Claimant.	Claim withdrawn by the Claimant hence agreed with award.	Agreed with the comments of the EE and the claim may be accepted.	Agreed with the comments of the EE & SE and the claim may be accepted.
16/16	Contractor claims a sum of Rs. 80,755/- on account of interest for delay in payment of so-called final bill.	80,755/-	NIL	Claim not awarded by Ld. Arbitrator hence agreed with award.	Agreed with the comments of the EE and the claim may be accepted.	Agreed with the comments of the EE & SE and the claim may be accepted.
17/17	Contractor claims interest @18% from the date of due till the date of invocation. i.e. 17.09.2018 which	5,89,192/- +pendent lite+ future interest	3,44,798/-	The claimant has already communicated his consent for withdrawing 50% of this claim vide a letter dated 26.06.2024. The claim would now be Rs. 1,72,399/- instead of Rs. 3,44,798/- awarded by Arbitrator. Hence, the claim of Rs. 1,72,399/- maybe accepted.	Agreed with the comments of the EE and the claim may be accepted.	Agreed with the comments of the EE & SE and the claim may be accepted.

18/18	amounts to Rs. 5,89,192/-, pendent lite interest @ 18% per annum from the date of invocation of arbitration till date of award and future interest @ 20% p.a. from the date of award till realization	Contractor claims sum of Rs. 5,00,000/- plus reimbursement of fee to be paid to Ld. Arbitrator towards arbitration proceedings towards cost of litigation/arbitration proceedings.	5,00,000/- + Arbitrator Fee	NIL	Claim not awarded by Ld. Arbitrator hence agreed with award.	Agreed with the comments of the EE & SE and the claim may be accepted.	Agreed with the comments of the EE & SE and the claim may be accepted.
-------	---	--	-----------------------------	-----	--	--	--

Comments of Project Director (Sports)/DDA

Agreed with the comments of EE/Sports Division-2 and recommended for acceptance of arbitration award amounting to Rs. 9,11,252.00 (including principle amount of Rs. 7,38,853/- and 50% of Interest amount i.e. Rs. 1,72,399.00).

Recommendation of Chief Engineer (Sports)/DDA

I agree with the recommendation of EE/Sports Division-2 & PD (Sports) and recommended for acceptance of arbitration award amounting to Rs. 9,11,252.00 (including principle amount of Rs. 7,38,853/- and 50% of Interest amount i.e. Rs. 1,72,399.00).

RECOMMENDATION OF ASB:

1. After due discussion and deliberation, the ASB unanimously recommended to accept the award against **Claim no. 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 16 & 18** as the award given by arbitrator is reasonable and justified.
2. With respect to award against **claim no. 17**, it has been decided to accept 50% of the awarded amount, as mutually agreed with claimant.
3. **Claim no. 8, 10 & 15** stand withdrawn by the claimant.

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, concerned Chief Engineer is the Competent Authority in r/o award amount less than Rs. 25 lacs in consultation of CAO/DDA 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 (Sports)
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/Sports Division-2, Seedbed Park, Shakarpur, Delhi-110092 for information please.

Director(Works)