

उप निदेशक (प्रणाली) दि.वि.प्रा.  
Dy. Director (Systems)-E, DDA  
आवक नं० / Dairly No. 3735  
दिनांक / Date 25/7/24

निदेशक (प्रणाली) दि.वि.प्रा.  
आवक नं० 2243  
दिनांक 24/7/23



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Amrit Mahotsav

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

No. EM2(3)2024/RZ/148/DDA/603

Dated: 23-7-24

**MINUTES OF THE 891<sup>th</sup> MEETING OF ASB HELD ON 19.07.2024 IN THE CHAMBER OF CE(HQ), DDA**

891<sup>th</sup> Meeting of Arbitration Scrutiny Board (ASB) under the chairmanship of CE(HQ), DDA was held on 19.07.2024 at 04:00 P.M. in the chamber of CE(HQ), DDA to deliberate the Arbitral award in the matter of **M/s P C Sharma & Co. Vs DDA** for the following work: -

**N.O. W : Construction of 1960 Houses in Block A & B Sec. XVIII, Rohini,  
SH: Construction 432, LIG houses in Block- A, Pkt 5,6,7 & 8 in Sector XVIII, Rohini.**  
**Agency : M/s P C Sharma & Co.**  
**Agmt .No. : 19/A/RPD-VI/DDA/85-86.**

The agenda note was submitted by CE(Rohini) vide e-file Computer No. 82143 on 17.07.2024. The case was presented by Sh. Deepak Suyal, CE(Rohini).

The meeting was attended by the following officers: -

1. Shri Sanjay Kumar Khare	CE (HQ)	Chairman
2. Shri Deepak Suyal	CE (Rohini)	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 above mentioned work was awarded to M/s. P.C. Sharma & Co. vide letter No. F1(53)/A/RPD-VI/85-86/1806 dated 18.12.1985 with the stipulated date of start and completion 28.12.85 & 21.12.86. The work was physically completed on 27.08.1991 with a justified delay of 1710 days and an EOT was granted by competent authority without levy of compensation.

Further certain dispute arose between the Department & Agency and the Agency invoked Arbitrator clause and on 28.04.1993 made a request to the Engineer Member, DDA to appoint an arbitrator. Subsequently as per direction of the court brought by the claimant, the Engineer Member vide letter dated 20.09.1995 appointed Superintending Engineer(Arbn)- I/ DDA as sole Arbitrator. During the pendency of the case, there were number of changes at the level

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of SE (Arbitrator-I). Further there was again change of incumbency of SE (Arbn)- I and the SE (Arbn)- I who took over, however, adjourned the case sine die on 11.09.1998 due to refusal by both the parties to extend time for making and publishing the award. The case was re-opened by Sh. S S Jain, SE(Arbn)-I/ DDA but in the hearing held on 19.10.2006, the claimant submitted a letter dated 08.10.2006 refusing to extend the time for making and publishing the award and mentioning therein that the arbitrator has become *functus officio*. With the consent of both parties, DELHI HIGH COURT ARBITRATION CENTRE (DAC) vide letter no. 366 /DAC /DHC /DR dated 03.02.2012 appointed Sh S. R. Pandey as a sole arbitrator.

There are 21 Nos. of claims of the petitioner/contractor amounting to Rs.32, 23,848 + interest @24% p.a. pre suit pendent lite and future. The Ld. Arbitrator awarded Rs.17,22,311/- + pendent lite interest (simple) @10% w.e.f. 28.04.1993 (date of invocation of arbitration) up to 22.08.2012 (date of award). Further, Arbitrator also awarded future interest @ 12% p. a &. (Simple) on the awarded amount w.e.f. 22.8.2012 if the amount + interest is not paid within 90 days from the date of receipt of award by the DDA. The awarded amount in respect of Claim No. 3, 4, 5, 10, 14, 15, 17, 18, & 21 plus claim no. 20 regarding amount of interest were challenged in Hon'ble Court. Now, Hon'ble Court has dismissed the objections of DDA and upheld the Award vide the judgment orders dated 22.04.2024. Panel Lawyer has opined that the judgment dated 22.04.2024 is liable to be challenged, however may also be kept into consideration that the scope of Section-34 in Arbitration and Conciliation Act 1996 are very narrow. The Department may consider the case and take decision accordingly in respect of whether the judgment is required to be challenge or not. The legal department, DDA has agreed with the opinion of Panel Lawyer and is also of the opinion that concerned Engineering department may examine the case and take decision accordingly.

#### **Judgement dated 22.04.2024:**

The Hon'ble District Court examined each awarded claim under the provision of Section 34 of Arbitration & Conciliation Act. The Hon'ble Court vide its judgment explained that under Section 34 the role of court is limited to considering only the aspects mentioned in sub section 2 of the Section. It is settled law that the court u/s 34 of Arbitration & Conciliation Act cannot sit in appeal and examine the evidence led before the Arbitrator and the consideration of same by the Ld. Arbitrator. Hon'ble Court is of the opinion that Ld. Arbitrator had considered the entire material on record and had given a finding on facts and the court cannot go into the evidence for the all objections. **All the grounds argued are with respect to the appreciation of the evidence by the Ld. Arbitrator. It has been held in catena of the judgments that once the Arbitrator has written a finding after appreciation of evidence, the court cannot sit in appeal against the said order and re-appreciate the evidence or discern it afresh. Perusal of Arbitral record would show that the Ld. Arbitrator had discussed each claim of the claimant minutely and discerning the evidence led by both the parties and has decided the claims. There is no error apparent in the finding written by the Arbitrator. Hence, the court of the opinion that as the evidence cannot be tested, the present Court cannot interfere with the findings of the arbitrator unless it is covered under clause of Section 34(2).** Further, section 31(7)(b) permits an arbitrator passing an award for the payment of money to include in the sum for which the award is made, interest at such rate as it deems reasonable on the whole or any part of money for the whole or any part of period between the date on which cause of action arose and the date on which award is made. The section does not have any qualification as to in what circumstances the interest can and cannot be granted. The Hon'ble Court has decided that none of the grounds raised by DDA



qualify the conditions mentioned in the sub clause (ii) of Section 34 of Arbitration & Conciliation Act, 1996 for which the award of Ld. Arbitrator can be interfered with. Since none of the conditions are satisfied, accordingly objection raised by the DDA through petition under Section 34 of Arbitration & Conciliation Act 1996 stand dismissed.

**Recommendation of Panel Lawyer:**

The awarded amount in respect of Claim No. 3, 4, 5, 10, 14, 15, 17, 18, & 21 plus claim no. 20 regarding amount of interest were challenged in Hon'ble Court. The objection filed by DDA have been dismissed vide judgment dated 22.04.2024, merely on the point of that the role of court is limited to considering only the aspect mentioned in sub-section to of Section-34. The court has held that it is a settled law that the court under Section-34 cannot sit in appeal and examine the evidence led before the Arbitrator and consideration of the same by the Arbitrator. The Hon'ble has relied upon number of judgments in this regard. It is true that the scope of Section-34 is very narrow and the courts should refrain from interfering with the Award passed by the Ld. Arbitrator. However, it is also settled law that award without evidence is also bad in law and is liable to be set aside. Therefore in my opinion the judgment dt 22.04.2024 is liable to be challenged. However, they may also keep into consideration that scope of Section -34 is very narrow.

**Recommendation of Legal Department:**

I am in the agreement with the version of Panel lawyer that the judgment dated 22/04/2024 is liable to be challenged. The Ld. Arbitrator had decided so many claims in favor of claimant. DDA filed objections under Section-34 of Arbitration and Conciliation Act against the award passed by Arbitrator and the objection petition has been dismissed without going into the merits of case by stating that role of court is limited.

The Ld. Arbitrator has passed an award without considering the evidence and it is settled law that the award passed without leading evidence is bad in law and other claims have also been accepted by the Ld. Arbitrator without any basis and granted in favor of claimant which is also liable to be challenged.

**Recommendation of EE/RMD-2:**

Examined the judgment dated 22.04.24 wherein the limitation of Section 34 of Arbitration & Conciliation Act 1996 explained by Hon'ble Court. The finding of the Ld. Arbitrator, while published the award dated 22.08.2012 w.r.t. facts submitted by claimant and department before arbitrator, also examined. I am of the opinion that we should accept the award of claim No. 3, 4, 5, 10, 14, 15, 17, 18, 20 & 21 amounting to Rs. 66,07,005.00 {15,12,435 (principle award) + 29,24,179 (pendente lite interest @10%) + 1000 (arbitration cost) + 21,68,956 (future interest @ 12% till 31.07.24)}, as it is clearly seen that interest has become major constraint in award amount and it is increasing day by day. The challenged filed by Department under Section 34 in 2012 and concluded by Apex Court in 2024 about after 12 years with the conclusion of narrow scope under Section 34. Hence, by seeing the narrow scope under Section 34 as explained by Hon'ble Court in its judgment dated 22.04.24, it is not advisable to challenge this award dated 22.08.2012 further, therefore it is recommended to accept the award of claim No. 3, 4, 5, 10, 14, 15, 17, 18, 20 & 21 amounting to Rs. 66,07,005.00 {15,12,435 (principle award) + 29,24,179 (pendente lite interest @10%) + 1000 (arbitration cost) + 21,68,956 (future interest @ 12% till 31.07.24)}. The claim wise recommendations are as under:-



Comments on the claims that were challenged in the Hon'ble Court.

S. No	CLA IM NO.	Brief Description of Claim/Counter claim as justified by Arbitrator	Amt. of claim	Amt. of Award	Comments of Panel Lawyer	Comments of CLA	Comments of EE/ RMD-2	Comments of SE/RCC-1
1	2	3	4	5		6	6	7
1	3	Claimants claims Rs.54,094/- on account of refund of amount recovered illegally for alleged deficiencies in work	Rs. 54,094/-	Rs.40,157/-	Panel Lawyer recommended to challenge this award.	CLA recommended to challenge this award.	Examined the finding of the Arbitrator and submission of the department, it is noticed that the department was failed to produce the approval/sanction accorded by Superintending Engineer of reduced rate. Therefore, it is difficult to stand with the challenge of the award. Therefore, it is recommended to accept the award of claimant.	Agreed with the comments of EE/RMD-2. Hence, agreed to accept this award.
2	4	Claimants claim of Rs.23,268/- on account of refund of amount deducted as cost of stipulated material (cement & SCI pipes) at double issue rate for alleged	Rs. 23,268/-	Rs.23,268/-	Panel Lawyer recommended to challenge this award.	CLA recommended to challenge this award.	It is observed that in case where Penal rate recovery required to be done, a prior notice was needed to be served to agency before recovery. The penal rate recovery needed to be justified that department was suffering losses on account of consumption of stipulated material beyond theoretical consumption, whereas department failed to do so. Therefore, there is no logic to	Agreed with the comments of EE/RMD-2. Hence, agreed to accept this award.



3	5	excessive use etc.	Rs. 3,50,000/-	Rs. 1,86,806/-	Panel Lawyer recommended to challenge this award.	CLA recommended to challenge this award.	challenge this award and it is recommended to accept the award.	Agreed with the comments of EE/RMD-2. Hence, agreed to accept this award.
4	10	Claimants claim of Rs.1,72,808/- for undertaking additional operation of straightening and cutting of steel in execution item No.3.10	Rs. 1,72,808/-	Rs. 69,123/-	Panel Lawyer recommended to challenge this award.	CLA recommended to challenge this award.	It is justified, since operations which not included in the nomenclature of an item that should be paid separately. Hence, it is recommended to accept the award in favor of claimant.	Agreed with the comments of EE/RMD-2. Hence, agreed to accept this award.
5	14	Claimants claim of Rs.24,539/- as payment made short due to wrong deviation of rat of extra/substituted item.	Rs. 24,539/-	Rs. 24,539/-	Panel Lawyer recommended to challenge this award.	CLA recommended to challenge this award.	Agreed with the finding of Ld. Arbitrator, the rebate offered by the claimant on tendered amount only, whereas the same should not be applicable on extra & substituted item. Hence, it is recommended to accept the award.	Agreed with the comments of EE/RMD-2. Hence, agreed to accept this award.
6	15	The claimants claim Rs.2,019 on a/c of refund of amount withheld by way of	RS.2,019/-	Rs.2,019/-	Panel Lawyer recommended to challenge this award.	CLA recommended to challenge this award.	There was no prior intimation was served to the agency before recovery on account of incomplete execution of item. Hence, recovery so made was not completely	Agreed with the comments of EE/RMD-2.



	operating item No.73			challenge this award.	this award.	justifiable. Hence, it is recommended to accept the award.	Hence, agreed to accept this award.
7	17	The claimants of claim Rs.4923/- on a/c. of refund of interest recovered on alleged over payment.	Rs.4,923/-	Panel Lawyer recommended to challenge this award.	CLA recommended to challenge this award.	The interest recovered in compliance of Audit observation for over payment vide three bills of 10CC, since department had not filed said bills on record in spite of direction during hearing held on 27.05.1996. Hence, it is difficult to challenge this claim in absence of said record. Therefore, it is recommended to accept this award.	Agreed with the comments of EE/RMD-2. Hence, agreed to accept this award.
8	18	The claimants claim of Rs.17.5 lacs replenishment of losses in the shape of under utilization of services of Engineers, staff, plant and machinery and shuttering and centering, watch and ward of houses due to contact.	Rs. 17,50,000/-	Panel Lawyer recommended to challenge this award.	CLA recommended to challenge this award.	The Arbitrator under his finding concluded that claimant suffered the losses due to prolongation of contract. But also not agreed with the method adopted by the claimant as supporting details had not been furnished. Arbitrator adopted Hudson Formula to work out reasonable compensation in this case and worked out Rs. 13,20,430/- however, awarded Rs. 11,61,600/- as claimed by claimant. Since, there is no provision under Section 34 to challenge the method adopted by the Arbitrator as decided by Hon'ble District Court vide its judgment dated 22.04.2024 and department is suffering with overload of interest, increasing day by day. Therefore in present scenario, it is recommended to	Claim may be challenged. However it can be seen that total principle award of all claims is Rs. 15,12,435/-, while total award including interest is 66,07,005/- so interest amount is more than 3 times the award amount. Further District Court observation "arbitrator considered each of the objection of petition while awarding Rs.



9	20	The claimants claim interest @ 24% per annum per-suit, pendentalite and future on claimed amount.	Interest @ 24%	(i) No pre suit interest (ii) pendentalite interest (simple) @10% = <b>29,24,179.00</b> (iii) future simple interest @12% =	Panel Lawyer recommended to challenge this award.	CLA recommended to challenge this award.	accept the award in the interest of department.	11,61,600/- qua claim No. 18" and "Court is not in agreement with argument of petitioner (DDA) that the Arbitrator did not give cogent reasons in support of his finding in the award". So there is very limited chances challenge to be accepted by higher court under Section 34 of Arbitration & Conciliation Act.
								Agreed with the comments of EE/RMD-2. Hence, agreed to accept this award.



10	21	The claimants of claim Rs.35,000/- as cost proceedings.	RS.35,000/-	Rs.1,000/-	2168956.00 (till 31.07.24)	Panel Lawyer recommended to challenge this award.	CLA recommended to challenge this award.	The cost of Arbitration was awarded by the then Arbitrator on 09.02.1998. Since, there is no ground to challenge the same, hence it is recommended to accept this award.	any qualification as to in what circumstances the interest can and cannot be granted. Since, there is no provision to challenge this award under Section 34 and department is suffering with overload of interest increasing day by day. Therefore in present scenario, it is recommended to accept the award in the interest of department.	Agreed with the comments of EE/RMD-2. Hence, agreed to accept this award.
		Total excluding Interest & Arbitration Cost	Rs.32,23,848/-	Rs.15,12,435/-						
		Total including Interest & Arbitration Cost		Rs. 66,07,005/-						



#### **Recommendation of SE/RCC-1:**

I mostly Agreed with the comments & recommendation offered by EE/RMD-2. Though, claim No. 18 may be challenged. However, it can be seen that total principle award of all claims is Rs. 15,12,435/-, while total award including interest is Rs. 66,07,005/- so interest amount is more than 3 times the award amount. Further as per District Court observation "arbitrator considered each of the objection of petition while awarding Rs. 11,61,600/- qua claim No. 18" and "Court is not in agreement with argument of petitioner (DDA) that the Arbitrator did not give cogent reasons in support of his finding in the award". So, there is very limited chances challenge to be accepted by higher court under Section 34 of Arbitration & Conciliation Act 1996.

#### **Recommendation of CE(Rohini):**

In view of above recommendations of EE/RMD-2, & SE/RCC-1 and in the interest of department, it is recommended to accept the award of claim No. 3, 4, 5, 10, 14,15, 17, 18, 20 & 21 amounting to Rs. 66,07,005.00 {15,12,435 (principle award) + 29,24,179 (pendente lite interest @10%) + 1000 (arbitration cost) + 21,68,956 (future interest @ 12% till 31.07.24)}.

#### **RECOMMENDATION OF ASB:**

1. In the instant arbitration matter, 316<sup>th</sup> meeting of ASB was held on 21.09.2012 under the chairmanship of FM/DDA. After due discussions and deliberations, the Board was of the view to accept the award under claim no. 1 & 2 and to challenge the rest of the award dt. 22.08.2012 by Ld. Arbitrator.
2. Accordingly, DDA challenged the award in Competent Court under Section 34 of Arbitration & Conciliation Act on the grounds that "... *the impugned award dated 22.08.2012 in respect of claims under challenge is absolutely bad in law and is liable to be set-aside.... The Arbitrator had committed serious irregularity by traveling outside the purview of the agreement. The Arbitrator has exceeded his jurisdiction and without considering the evidence, specific terms of agreement and the specifications placed on record had passed an award which is liable to be set-aside as the same is against the public policy.*"
3. However, Hon'ble Court vide the judgement orders dated 22.04.2024 has dismissed the objections of DDA and has upheld the Award stating that "...*after perusal of the award the court is of the considered opinion that the Arbitrator considered each of the objection of the petitioner while awarding Rs 11,61,600 qua claim no.18.... as per the law laid down under Section 34 of the Arbitration & Conciliation Act cannot entertain such facts and merits of the case. Under section 34 of Arbitration & Conciliation Act, the role of court is limited to considering only the aspects mentioned in sub section 2 of the Section.... The court is not in agreement with argument of the petitioner that the Arbitrator did not give cogent reasons in support of his findings in the award. The petitioner cannot claim that the awards is unsupported by evidence or is based on conjunctures or surmises.....The grounds raised by the petitioner do not disclose as to how the award is perverse or against public policy.*"
4. With respect to interest on the claims, the court gave the order that "...*further, Section 31(7) (b) permits an Arbitrator passing an award for the payment of money to include in the sum for which the award is made, interest at such rate as it deems reasonable on the whole or any part of money for the whole or any part of period between the date on which*



cause of action arose and the date on which award is made. The section does not have any qualification as to in what the circumstances the interest can and cannot be granted."

5. The P/L in instant matter, is of the opinion that "the judgement dated 22.04.2024 is liable to be challenged as it is a settled law that award without evidence is also bad in law and is liable to be set-aside, however, the department may also keep into consideration that scope of section 34 is very narrow." The Ld. CLA is also in agreement with the opinion of panel lawyer that the judgement dated 22.04.2024 is liable to be challenged.
6. However, Chief Engineer (Rohini) has recommended to accept the award since there is limited scope under Section 34 of Arbitration & Conciliation Act and high interest burden has accrued on principal amount.
7. After due discussion and deliberation, the ASB unanimously recommended to accept the award against remaining claims i.e. claim no. 3, 4, 5, 10, 14, 15, 17, 18, 20 & 21, as recommended by CE(Rohini), as the scope to challenge the court order dt. 22.04.2024 in higher court under Section-34 of Arbitration and Conciliation Act 1996 is very limited. Further, the interest is also accruing on the Awarded Amount which is not in the favour of the department.
8. ASB is of the view that that interest calculation sheet shall be checked by Finance wing before making any payment.

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 EM/DDA is the Competent Authority in r/o award amount more than Rs. 25 lacs and upto Rs. 100 lacs in consultation of CAO/DDA with due scrutiny by Arbitration Scrutiny Board headed by CE(Q)/DDA.

-Sd-  
Amit Singh  
Dir(Works)  
Member Secretary

-Sd-  
Vinod Kumar  
Dy. CLA-III  
Member

-Sd-  
Ajay Gupta  
Director(Finance)  
Member

-Sd-  
Deepak Suyal  
CE (Rohini)  
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)