

निदेशक (प्रणाली) वि. वि. प्र.
डायरी नं. 1501
दिनांक 21/12/23

DELHI DEVELOPMENT AUTHORITY

E.M's Secretariat

No: EM2(3)2023/SZ/219/DDA/ 345

Dated:- 20/7/23

उप निदेशक (प्रणाली)-I वि. वि. प्र.
Dy. Director (Systems)-I DDA
डायरी नं. / Dairly No. 121
दिनांक / Date 25/7/2023

**MINUTES OF THE 864TH MEETING OF ASB HELD ON
11.05.2023 IN THE CHAMBER OF FINANCE MEMBER, DDA**

864th Meeting of Arbitration Security Board (ASB) under the chairmanship of CE(HQ) was scheduled to be held on 11.05.2023 at 05:00 P.M. in the chamber to deliberate Arbitral Award in the matter of "M/s Stallion Security Vs Executive Engineer, SMD-4 DDA" in respect of the following work:-

Name of Work	:-	M/o various colonies under South Zone.
Sub-Head	:-	Deployment of Security Guard for watch and ward in DDA Community Halls, Offices and other DDA buildings etc. under jurisdiction of South Zone.
Name of Agency	:-	M/s Stallion Security
Agreement No.	:-	09/EE/SMD-4/DDA/2020-21

The Agenda note submitted by the CE(SZ) vide file no. CE(SZ)12(12)23/DDA/386 dated 01.05.2023.

The meeting was attended by the following officers:-

1. Sh. Sanjay Kumar Khare	CE (HQ)	Chairman
2. Sh. K.S. Meena	CE (SZ)	Executive Member
3. Sh. Vinod Kumar	Dy. CLA-III	Member
4. Shri Raj Pal Singh	Dir. (Finance, Consultant)	Member
5. Sh. R.K. Bhanwaria	Dir. (Works)/Consultant	Member, Secretary (busy on other assignment)

The case was presented by Sh. K.S. Meena, CE(SZ), DDA.

Brief history of the case is as under:-

The above work was awarded to M/s Stallion Security vide letter no. F5(245)SMD-4/DDA/A/c/20-21/365 dt. 08.06.2020. The date of commencement and completion of the work was 22.06.2020 & 21.06.2021 respectively. The actual date of completion was 17.08.2021. The 3rd and final bill was passed on 28.10.2021 and already paid to the claimant.

Dispute arose between agency and DDA during execution of work therefore the agency M/s Stallion Security has filed the arbitration case before MSME facilitation council, Delhi Arbitration Centre (DAC) and DAC has appointed Sh. Vijay Singla, Advocate, Signus Arbitrator Chambers C-1/11, LGF, West Enclave,

Pitampura, New Delhi-110034 as arbitrator vide letter no. DAC/MSME/A/D-101-197 dt. 14.09.2022. The copy of statement of claim of the claimant M/s Stallion Security was sent to the DDA on 20.09.2022 by the Ld. Arbitrator, Sh. Vijay Singla.

Sh. Sanjay Katyal, Advocate was appointed as Panel Lawyer by the Legal Cell, DDA in the above referred case on dt. 30.09.2022.

The application under Section 12,13 & 16 of the Arbitration and Conciliation Act, 1996 was filed on 15.12.2022 before Sh. Vijay Singla, the Ld. Arbitrator as the Arbitrator was appointed in violation of Clause 25 of the agreement. Vide this application, kind attention of the Ld. Tribunal was drawn to clause 25 of the Agreement which clearly provided that only those persons be appointed as Arbitrator who is graduate Engineer with experience in handling public works contract at a level not lower than Chief Engineer, which was the mandatory qualification to be appointed as Arbitrator.

Vide order dt. 16.12.2022 the Ld. Arbitrator, Sh. Vijay Singla, has dismissed the application filed by this office under section 12, 13 & 16 of the Arbitration of Conciliation Act, 1996.

After the submission of SOD, evidence and written arguments, Sh. Vijay Singla, Ld. Arbitrator has published the award on 15.02.2023 in favour of the claimant amounting to Rs. 28,35,243/- (Rs. 23,02,486/- + payment of interest Rs. 4,22,182/-) + Future interest at the rate of interest as per RBI guidelines in accordance with Section 16, MSMED Act per annum on awarded amount from 15.02.2023 till realization + Litigation cost Rs. 35,000/- + Cost of Arbitration fee of DDA's share Rs.75,575/- and this award was received in the office of EE/SMD-4 on 03.03.2023 through Delhi Arbitration Centre.

Legal Opinion of Panel Lawyer

While passing the impugned Award, the Ld. Arbitrator has lost sight of the Law laid down by the Hon'ble Supreme court that an Arbitrator is a creature of the Contract and its Award in disregard of the Contract renders the Award arbitrary and in certain cases in excess of his Jurisdiction or even malafide.

The respondent DDA specifically relied upon the express and clear clauses of the contract; para 18 page 20 and clause 33 page 68 (of NIT). These clauses clearly provide that the DDA has no liability in respect of reimbursement of GST/any other Taxes.

The petitioner/claimant relied upon clause 40 of NIT which is of no help to the claimant and it rather corroborates the stand of DDA. The office orders relied upon by claimant again are of no help to the petitioner.

However, the Ld. Arbitrator has not at all appreciated the aforesaid contentions raised by the DDA and passed an Award which merits challenge on the Grounds which shall be available to DDA as laid down by the Hon'ble Courts and under the statute.

Opinion of Dy. CLA-III

'Agreement with the opinion of Panel Lawyer'.

Recommendation of CLA

'Department may please decide to file appeal on urgent basis'.

Recommendation of CE(SZ).

S. No.	Particulars of Item	Amount claimed by the agency/claimant	Amount awarded by the Arbitrator	Accepted/ Challenged of CE/SZ
1.	GST reimbursement charges.	Rs. 20,67,004/-	Rs. 20,67,004/-	To be challenged
2.	Reimbursement of security amount.	Rs. 2,05,482/-	Rs. 2,35,482/- (Withheld amount of Security is Rs.2,05,482/- may be released)	Accepted
3.	Reimbursement of QC/Audit.	Rs. 30,000/-	Rs. 30,000/-	To be challenged
4.	On account of interest payment	Rs. 3,39,049/-	Rs. 4,22,182/-	To be challenged
5.	On account of cost of litigation of legal expenses	Rs. 1,00,000/-	Rs. 35,000/-	To be challenged
6.	Cost of arbitration fees paid by the petitioner	Rs. 75,575/- (Claimant Share)	Rs. 75,575/- (DDA's Share)	To be challenged

The award published by the Arbitrator may be challenged as it is against the agreed terms and conditions of the agreement and may also act as a precedent for all future contracts where GST is stated to be not payable. Keeping in view the limitation period for filing the objections against the Award, the file was sent to CLA, DDA to entrustment and the same has been entrusted to Sh. Sanjay Katyal, Standing Counsel.

Recommendation of ASB:-

The ASB was informed that in a similar case (863rd ASB under the chairmanship of FM/DDA), as the per opinion of CLA/DDA, the Delhi Arbitration Centre is competent to entertain the dispute for the purpose of arbitration, provided the registration of M/s Stallion Security is prior to the date of execution of the agreement with DDA.

The date of Udyam Registration of agency M/s Stallion Security is 20.09.2020 (P-98/C) and date of agreement with DDA is 08.06.2020. Therefore, the registration of M/s Stallion Security in Ministry of Micro, Small and Medium Enterprises is after the commencement of agreement with DDA. Therefore DAC was not competent in term of the advice.

Therefore as per the recommendations of CE(SZ), ASB is of the view that, claim no. 1,3,4,5&6 to be challenged and claim no. 2 i.e. release of security deposit is to be accepted as payment has already been made to the agency as per clause 17 of the agreement.

Therefore after due discussion and deliberation of the ASB, this Arbitrational award is to be challenged.

(busy on other assignment)
R.K. Bhanwaria
Dir(Works)/Consultant
Member Secretary

-sd-
Vinod Kumar
Dy. CLA-III
Member

-sd-
Raj Pal Singh
Dir(Finance)/Consultant
Member

-sd-
K.S. Meena
CE(SZ)
Executive Member

-sd-
Sanjay Kumar Khare
CE(HQ)
Chairman

EO-I to EM

Copy to:-

1. EM/DDA for kind information.
2. All concerned.
3. Director(System) for uploading on DDA website.
4. EE/SMD-4/DDA.

25.7.23

Sh. Jishi D15

EO-I to EM

Sh. Dev, Website Engineer