

उप निदेशक (प्रणाली) - व.नि.प्र.
Dy. Director (Systems) M. D.D.A.
आयरी नं० / Dairy No. 2296
दिनांक / Date 04/03/24

निदेशक (प्रणाली) दि.वि.प्रा.
आयरी नं० 1135
दिनांक 1/3/24

04. 1.3/24

Sh-Subhash Chander



7/11/24

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

No. EM2(3)2024/DWK/214/DDA/115

Dated: 29/02/2024

MINUTES OF THE 882nd MEETING OF ASB HELD ON 29.02.2024 IN THE CHAMBER OF FINANCE MEMBER, DDA

882nd Meeting of Arbitration Scrutiny Board (ASB) under the chairmanship of FM, DDA was held on 29.02.2024 at 04:00 P.M. in the chamber of FM, DDA to deliberate the Arbitral award in the matter of **M/s Subhash Chander Vs DDA** for the following work: -

N.O. W : Construction of Utsav Sthal on design and built basis at Community Centre Sector 10, Dwarka.
Agency : M/s Subhash Chander.
Agmt .No. : 17/EE/WD-10/DDA/2019-20

The Agenda note was earlier submitted by the CE (Dwarka) vide e-office (Computer No. 74267) on dated 17.01.2024 and 880th ASB meeting in this matter was held on 24.01.2024 at 10:00 AM under the chairmanship of FM/DDA the ASB in the said meeting had recommended that CE (Dwarka) should re-examine the award and re-submit the agenda with detailed comments before the ASB to decide whether award is to be accepted or challenged. Accordingly, CE (Dwarka) has re-submitted the agenda note through e-office (Computer No. 74267) on dated 21.02.2024.

The meeting was attended by the following officers: -

1. Shri Vijay Kumar Singh	FM, DDA	Chairman
2. Shri Sanjay Kumar Khare	CE(HQ)	Member
3. Shri Ajay Kumar Agrawal	CE(Dwarka)	Executive Member
4. Shri Vinod Kumar	Dy. CLA-III	Member
5. Shri R.K. Bhanwaria	Dir. (Works)/Consultant	Member, Secretary

BRIEF HISTORY OF THE CASE IS AS UNDER: -

1. The above cited work was awarded to **M/s Subhash Chander** vide award letter number F.54(16)/EE/WD-10/DDA/2019-20/147 dated 26.02.2020.
2. The agency approached to Engineering Member (EM), DDA on 02.12.2022 & 07.02.2023 for the appointment of Sole Arbitrator, to settle the disputes. EM, DDA issued order for the appointment of Sole Arbitrator **Sh. Dhanesh Gupta**, former CE/TSP, Northern Railway

(Retd.) vide order No. EM2(7)/ 2023/Arbn./Vol.VIII/Pt.197/DDA/193 dt. 09.05.2023 to adjudicate the matter. The Ld. AT informed for preliminary hearing to be held on **20.05.23** vide his letter dt. 15.05.2023 and published the award on **25.11.2023** (within 6 months the award published).

3. Total **16** (Sixteen) number of claims were put forth by the claimant, against which the Sole Arbitrator has awarded **07** claims in favor of the claimant on 25.11.2023.
4. The total amount awarded in favour of the claimant is **INR 1,80,64,414/-** (Rupees one crore eighty lacs sixty-four thousand four hundred fourteen only).

After receiving the said arbitration award from the Ld. AT, EE/DPD-4 approached to Panel Lawyer entrusted for the case and SLO(Engineering) for their legal opinion in this matter. PL & SLO (Engg.) post deliberation of the facts of the case, rendered their valuable opinion and the same are given below: -

RECOMMENDATION BY EE/DPD-4/DDA

As opinion by the Panel Lawyer and endorsed by the SLO undersigned has evaluated the claims and a summary of the decisions regarding the acceptance / challenge of the award is elucidated as below: -

The total awarded amount in favour of the claimant is **INR 1,80,64,414/-** (Rupees One Crore Eighty Lacs Sixty Four Thousand Four Hundred Fourteen only). The arbitrator has taken a decision that the **"project facilities has been inaugurated by Honorable LG during Aug 2023 & department has taken over the structure & structure has been put to public use"**. Merely inauguration doesn't mean it is complete and has been put to public use. Therefore, the complete award amount is to be challenged in the court in the interest of the department & the public money. The details are as below: -

Claim No.	Brief of claim by claimant	Amount Claimed (Rs.)	Amount Awarded (Rs.)	Reasons / Recommendations of EE
1	Regarding Completion Certificate	Completion certificate w.e.f 20.09.2022	Provisional completion certificate w.e.f 20.09.2022	As per Clause 8 of the agreement, provisional certificate may be issued in 2 conditions i.e., a) defects to be rectified by the contractor and/or b) defects for which payment will be made at reduced rates. In this case, the contractor did not execute the items of work such as GRC Jali, installation of lift, refurbishment of horticulture work, etc. That is why, the provisional certificate cannot be issued because the work which is not executed by the contractor does not comes under the purview of above-mentioned conditions. Hence, the award in this claim is to be challenged.
2	Regarding balance payment against work executed at site.	2,40,28,909/- + 15% interest	1,65,92,705/- Without any pre arbitration interest.	The award to be challenged. The reasons are given below:-

Item No 1	2,46,232.05	2,46,232.05	The award of this claim is to be challenged as this item is still to be completed.
Item No 2	1,28,061.00	1,28,061.00	The award of this claim is to be challenged as this item is still to be completed.
Item No 4	1,52,677.20	1,52,677.20	The award of this claim is to be challenged as this item is still to be completed.
Item No 5	2,91,847.50	2,91,847.50	The award of this claim is to be challenged as this item is still to be completed.
Item No 6	1,70,925.00	1,70,925.00	The award of this claim is to be challenged as the payment of actual-qty executed at site has already been paid.
Item No 7	90,955.50	90,955.50	The award of this claim is to be challenged as the Installation of lift & NOC for the same is still to be completed.
Item No 8	40,555.00	40,555.00	The award of this claim is to be challenged as the amount already paid to claimant.
Item No 9	10,555.00	10,555.00	The award of this claim is to be challenged as the amount already paid to claimant.
Item No 11	8,55,531.00	8,55,531.00	The award of this claim is to be challenged as the payment of actual qty executed at site has already been paid.
Item No 12	8,480.40	8,480.40	The award of this claim is to be challenged as the amount is withheld for rectification of defects which has not been attended by the claimant yet.
Item No 21	12,64,198.74	12,64,198.74	The award of this claim is to be challenged as the item is not payable as per agreement.
Item No 22	9,03,833.06	9,03,833.06	The award of this claim is to be challenged as the item is not payable as per agreement.
Item No 23	10,93,677.25	10,93,677.25	The award of this claim is to be challenged as the item is not payable as per agreement.
Item No 26	13,86,823.48	13,86,823.48	The award of this claim is to be challenged as the claimant has not submitted the required documents (GST invoice) for scrutiny and approval of this item.
Item No 27	5,20,974.00	5,20,974.00	The award of this claim is to be challenged as the claimant has not submitted the required documents (GST invoice) for scrutiny and approval of this item.
Item No 28	3,80,558.30	3,80,558.30	The award of this claim is to be challenged as the claimant has not submitted the required documents (GST invoice) for scrutiny and approval of this item.
Item No 29	13,41,100.60	13,41,100.60	The award of this claim is to be challenged as the claimant has not submitted the required documents for scrutiny and approval of this item.
Item No 30	3,15,057.20	3,15,057.20	The award of this claim is to be challenged as the claimant has

				not submitted the required documents for scrutiny and approval of this item.
	Item No 33	0.00	0.00	Nil Award.
	Item No 35	43,59,688.30	43,59,688.30	The award of this claim is to be challenged as the claimant has already claimed this item under Item no 26 above.
	Item No 36	1,08,372.03	1,08,372.03	The award of this claim is to be challenged as textured finishing on boundary wall has not been executed at site.
	Item No 37	52,121.54	52,121.54	The award of this claim is to be challenged as the painting of grill of boundary wall and gates are within the scope of work as per agreement.
	Item No 38	9,69,450.00	9,69,450.00	The award of this claim is to be challenged as the claimant has not submitted the required documents for scrutiny and approval of this item.
	Item No 39	50,092.16	50,092.16	The award of this claim is to be challenged as the amount of award is more than the sanctioned amount.
	Item No 40	35,904.00	35,904.00	The award of this claim is to be challenged as the amount of award is less than the sanctioned amount.
	Item No 41	68,635.00	68,635.00	The award of this claim is to be challenged as the amount of award is more than the sanctioned amount.
	Item No 42	17,46,400.00	17,46,400.00	The award of this claim is to be challenged as the item is not payable as per agreement.
3	Regarding Release of amount illegally and arbitrarily withheld on various accounts on various running bills	5, 35,545/- + 15% Interest.	3,75,000/- without any pre-arbitration interest.	<p>a) Rs. 50,000/-: The observations and defects raised by QAC is not cleared by the contractor.</p> <p>b) Rs. 25,000/-: The observations & defects raised by QAC is not cleared by the contractor.</p> <p>c) Rs. 1,50,000/-: The amount is withheld as per schedule F (page 145) of the agreement.</p> <p>d) Rs. 1,50,000/-: The part payment is withheld from running bill because deviation statement is still not sanctioned/passed.</p> <p>Hence, the awarded amount of this claim is to be challenged.</p>
4	Regarding excess recovery of labour cess in various running bills	Amount not given (+15% interest till realisation)	Nil	Accepted.
5	Claim under Clause 10C and 10CA	8,13,090/- +15% interest per annum.	To be workout jointly	The running 10C & 10CA bill has already been paid up to 10 th R/A bill. The work is not completed, Hence the final 10C and 10CA bill cannot be paid at this stage.

6	Claim for Extra Work	1,15,15,245/- +15% interest per annum.	Nil	Accepted.
7	Claim for Security Deposit	9,51,000/- +15% interest per annum.	50 % Performance Guarantee 9,51,000/- Without any pre arbitral interest.	As per Clause 1 of the agreement, 50% PG is to be released after recording completion certificate and remaining 50% PG shall be retained as security deposit, which shall be returned year wise proportionately. The completion certificate is still not recorded, that's why 50% PG i.e., Rs. 9,51,000/-, which is to be released after recording completion certificate, shall be not released. Hence, the awarded amount in this claim is to be challenged.
8	Reimbursement of unanticipated and unwarranted expenditure.	1,45,709/- +15% interest per annum.	1,45,709/- without any pre arbitral interest.	As per the Clause 1, (ii), "In case the time for completion of work gets enlarged, the contractor shall get the validity of performance guarantee extended to cover such enlarge time for completion of work." As per Clause 1A para 3 "Bank guarantee submitted against security deposit shall initially be valid up to stipulated date of completion of the work plus maintenance period as defined under clause 17 which shall be extended from time to time depending upon extension of the contract granted under provision of Clause 2 & 5. As per these conditions of the agreement, it is the responsibility of the contractor to extend the validity of bank guarantees to get it renewed. Hence, the awarded amount in this claim is to be challenged.
9	Regarding watch & ward charges.	6,22,977/- +15% interest per annum.	Nil	Accepted.
10	Regarding idling/under-utilization of manpower.	34,76,072/- +15% interest per annum.	Nil	Accepted.
11	Regarding idling/under-utilization of T&P and machinery resources.	9,26,952/- +15% interest per annum.	Nil	Accepted.
12	Regarding loss of profit/profitability due to prolongation of contract.	22,94,207/- +15% interest per annum.	Nil	Accepted.
13	Regarding pre-suit and pendente-lite for all claims.	Amount not given	12% simple interest to be paid, if awarded	

		+18% interest per annum.	amount is not paid in 60 days to the petitioner from the date of award published.	The award is to be challenged in court.
14	Regarding Arbitration proceedings cost.	20,00,000/-	Nil	Accepted.
15	Regarding claims GST @18% on the payment of the awarded amount against all the above claims except claims.	Amount not given	Nil	Accepted.
16	Regarding reserves his right to add/amend/modify/deduct/alter/withdraw or supplement the above demand at any time in future if any new facts or any calculation mistake etc. comes to his knowledge.	Amount not given	Nil	Accepted.
Total Award Amount =		Rs. 1,80,64,414/-		

RECOMMENDATION BY SE/DCC-2/DDA

I agree with the recommendation of EE/DPD-4/DDA

OPINION OF THE PANEL LAYWER (SH. DIVIJ SONY): -

Claim No.	Brief of claim by claimant	Claimed Amount (Rs.)	Awarded Amount (Rs.)	Reasons / Recommendations of EE
1	Regarding Completion Certificate	Completion certificate w.e.f 20.09.2022	Provisional completion certificate w.e.f 20.09.2022 subject to minor leftover work as award in para 9.1.3.2 of the award	As per Clause 8 of the agreement, provisional certificate may be issued in 2 conditions i.e., a) defects to be rectified by the contractor and/or b) defects for which payment will be made at reduced rates. In this case, the contractor did not execute the items of work such as GRC Jali, installation of lift, refurbishment of horticulture work, etc at the time of award. Also the observation qua 95% of completion of work is vague and without any basis. Hence, the provisional certificate cannot be issued because the installation of lift, refurbishment

				<p>of horticulture work and other minor work is still left to be completed by the Claimant till date. Hence the provisional certificate cannot be awarded to the claimant.</p> <p>Hence, the award qua this claim should be challenged</p>
2	Regarding balance payment against work executed at site.	2,40,28,909/- + 15% interest	1,65,92,705/- Without any pre arbitration interest.	The amount awarded should be challenged for the reasons as mentioned in below :
	Item No 1	2,46,232.05	2,46,232.05	The item is still to be completed by the claimant and if not, a deduction Amounting to Rs 1,25,732/- to be made for constructing less height of Security Guard rooms. Therefore only Rs 2,46,232-1,25,500= 1,20,500/- can be paid.
	Item No 2	1,28,061.00	1,28,061.00	The item is still to be completed by the claimant. Hence the Claim is not to be paid at this stage.
	Item No 4	1,52,677.20	1,52,677.20	The item is still to be completed by the claimant by attending the defects and the amount can be paid only after that. Hence the Claim is not to be paid at this stage.
	Item No 5	2,91,847.50	2,91,847.50	This amount can be paid, only if the work of Horticulture and Landscaping could be executed by the claimant as per the direction of DD(Hort)Dwk). This item is still to be completed by the claimant. Hence the Claim is not to be paid at this stage.
	Item No 6	1,70,925.00	1,70,925.00	The claimant is paid for actual qty executed at site i.e. 117 Sqm but the claimant is claiming a Total 215 Sqm qty, which is not payable.
	Item No 7	90,955.50	90,955.50	This amount can be paid, only if the work of Installation of lift be completed and NOC for

				the same be obtained by the claimant. Even till date i.e. 28.12.2023 the lifts has not been installed by the claimant.
	Item No 8	40,555.00	40,555.00	Amount already paid to claimant as per EE(Eld-5).
	Item No 9	10,555.00	10,555.00	Amount already paid to claimant as per EE(Eld-5).
	Item No 11	8,55,531.00	8,55,531.00	The plinth area of the two security cabins constructed by the claimant measured as 54.00 Sqm as per CPWD PAR and not 99.00 Sqm. Accordingly Part-rate payment of the same has already been made, as some of the work is pending. The claim for the quantity 99.00 sqm is totally false, fabricated and not tenable at all.
	Item No 12	8,480.40	8,480.40	The details of the main item has been mentioned in item no. 3 of this statement and very small amount has been held for defects as mentioned in item no. 3 above. However this payment can be released.
	Item No 21	12,64,198.74	12,64,198.74	The agreement is on design and built basis and deep pits / undulations were there at site and undoubtedly the pandal should not be constructed at level deeper than the general ground level and the approach road constructed at + 150, pandal constructed at + 300 and utility building at + 450 mm above general ground level. Initially in principle approval for executing the work and timely action for approval of Extra Item was given on dated 19.01.2021, however during process of sanctioning of item, it was observed that this Extra Item is not payable due to the following mentioning of the agreement. 1. Page No. 39/Para No 17 Tenderes are advised they may required

				<p>and in general shall themselves obtain all necessary information as to risks, contingencies and other circumstances, which may influence or affect their cost. A tenderer shall be deemed to have knowledge of site.2. Page No. 56/ Page No 8.1(iii) in case of discrepancy, the drawings to be referred. and as per drawings, no such Extra Item Statement is admissible.3. Page No. 161/ Scope of work. para No-1.- The work shall be executed with the approved layout plan and structural drawings submitted by the agency- the scope of work shall include but not limited to as under for any of the activity required for completion and commissioning of project.4. PAGE no. 166/ Para No 13- As per this Para the earth obtained from excavation of foundation shall be used shall disposed the surplus earth outside the premises. And no where it was mentioned for payment of the earth required to fill the depression etc.5. Page No 172/Para No. 8- Says that filling up to formation level shall be done by the contractor including supply of earth.</p>
	Item No 22	9,03,833.06	9,03,833.06	<p>The agreement is on design and built basis and deep pits / undulations were there at site and undoubtedly the pandal should not be constructed at level deeper than the general ground level and the approach road constructed at + 150, pandal constructed at + 300 and utility building at + 450 mm above general ground level. Initially in principle approval for executing the work and timely</p>

				<p>action for approval of Extra Item was given on dated 19.01.2021, however during process of sanctioning of item, it was observed that this Extra Item is not payable due to the following mentioning of the agreement.</p> <p>1. Page No. 39/Para No 17 Tenderes are advised they may require and in general shall themselves obtain all necessary information as to risks, contingencies and other circumstances, which may influence or affect their cost. A tenderer shall be deemed to have knowledge of site.</p> <p>2. Page No. 56/ Page No 8.1(iii) in case of discrepancy, the drawings to be referred. and as per drawings, no such Extra Item Statement is admissilbe.</p> <p>3. Page No. 161/ Scope of work. para No-1.- The work shall be executed with the approved layout plan and structural drawings submitted by the agency- the scope of work shall include but not limited to as under for any of the activity required for completion and commissioning of project.</p> <p>4. PAGE no. 166/ Para No 13- As per this Para the earth obtained from excavation of foundation shall be used shall disposed the surplus earth outside the premises. And nowhere it was mentioned for payment of the earth required to fill the depression etc.</p> <p>5. Page No 172/Para No. 8- Says that filling up to formation level shall be done by the contractor including supply of earth.</p>
	Item No 23	10,93,677.25	10,93,677.25	<p>The reply is same as above. The Item is Not Payable.</p>

	Item No 26	13,86,823.48	13,86,823.48	<p>During active consideration of sanctioning of this item, the claimant applied for the arbitration. Rate for item yet to be sanctioned and till date provisional rate for have already been paid and however the quantity is to be assessed as per agreement condition, because the claimant had executed many other agreement/ extra item using the same double scaffolding, which were also having components of scaffolding for itself too.</p> <p>In this regard it is also submitted that the rates of Extra Item could not be asserted by the competent authority because of non-co-operation by the claimant, as the claimant did not submit the required documents yet.</p> <p>The item is in process for approval of competent authority. The quantity and rates shall be paid as per approval of EIS.</p>
	Item No 27	5,20,974.00	5,20,974.00	<p>During active consideration of sanctioning of the item, the claimant applied for the arbitrations. Item rate yet to be sanctioned and till date provision rate for the same have already been paid.</p>
	Item No 28	3,80,558.30	3,80,558.30	<p>During active consideration of sanctioning of the item, the claimant applied for the arbitrations. Item rate yet to be sanctioned and till date provision rate for the same have already been paid.</p>
	Item No 29	13,41,100.60	13,41,100.60	<p>During active consideration of sanctioning of the item, the claimant applied for the arbitrations. Item rate yet to be sanctioned and till date provision rate for have already</p>

				been paid. In this regard it is also submitted that the rates of Extra Item could not be asserted by the competent authority because of non-co-operation by the claimant, as the claimant did not submit the required documents yet.
	Item No 30	3,15,057.20	3,15,057.20	During active consideration of sanctioning of the item, the claimant applied for the arbitrations. Item rate yet to be sanctioned and till date provision rate for have already been paid. In this regard it is also submitted that the rates of Extra Item could not be asserted by the competent authority because of non-co-operation by the claimant, as the claimant did not submit the required documents yet.
	Item No 33	0.00	0.00	The award is accepted.
	Item No 35	43,59,688.30	43,59,688.30	Not payable
	Item No 36	1,08,372.03	1,08,372.03	Not executed at site.
	Item No 37	52,121.54	52,121.54	In this claim, the claimant is asking for payment of synthetic enamel paint done on the grill of boundary wall and gates, however the agreement rate of boundary wall is inclusive of finishing, therefore the claim of the agency is not tenable at all. Moreover, the claimant has already asked for payment of this quantity in Item no- 25 of this statement and now asking again as double claim. Therefore, the claim is also false and Not payable.
	Item No 38	9,69,450.00	9,69,450.00	As per agreement item 2 mm thick FRP sheet is to be provided / fixed by the claimant and accordingly the proposal of providing corrugated sheet of the

				<p>claimant accepted. Before the claimant first time submitted his claim under this item along with final bill submitted by him in July 2023 , however as per 12.2 (i) of the agreement "if there are any deviation in the items of the contractor may within 15 days of receipt of order from the Engineer-in-charge claim the rates, supported by proper analysis for the Items the Engineer-in-charge shall within prescribed time limit of receipt of the claims supported by analysis, after giving consideration to the analysis to the rates submitted by the contractor , determined the rates on the basis of market rates of both of Extra Item or original and substitute items as the case may be (as per invoice , vouchers from the manufacture or supplier submitted by the agency and duly verified by Engineer-in-charge or his representative and the contractor shall be paid in accordance with the rates so determined. The rates shall be paid as per approval of the competent authority.</p>
	Item No 39	50,092.16	50,092.16	Extra item has been sanctioned and will be paid alongwith next bill when the contractor will submit the measurements.
	Item No 40	35,904.00	35,904.00	Extra item has been sanctioned and will be paid alongwith next bill when the contractor will submit the measurements.
	Item No 41	68,635.00	68,635.00	Extra item has been sanctioned and will be paid alongwith next bill when the contractor will submit the measurements.

	Item No 42	17,46,400.00	17,46,400.00	<p>The claimant submitted the structural drawings vide their letter No: NIL Dated 09.07.2020 and this submission by the claimant was totally unconditional (Annexure- H). The drawings were to be endorsed only by the DDA, because the agreement is on design and built basis and the claimant got the design done / vetted as per his convenience. Accordingly the drawings were endorsed by the SE vide letter No: EE(P)/DCC-2/F.3(2084)WD-10/2019-20/66 Dated 18.08.2020 (Annexure-I). As per para-III of this letter dated 18.08.2020, it was mentioned that " the extra claim on this account if any, may be intimated to this office before execution of work. After thoughts could not be entertained".</p> <p>Moreover as per Clause-12.2(i) any deviation in the item, the contractor may within 15 days of the receipt of the order from the Engineer-in-charge, claim the rates supported by proper analysis for the items. keeping in view above, the claim of the contractor is after thought and baseless being time bar case also. The contractor is willing to execute the agreement as per their will and wish which was endorsed and witnessed by DDA.</p> <p>Therefore the claim of the claimant is not payable and tenable at all.</p>
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3	Regarding release of amount illegally and arbitrarily withheld on various accounts on various running bills	5, 35,545/- + 15% Interest.	3,75,000/- without any pre-arbitration interest.	<p>a) Rs. 50,000/-: The observations and defects raised by QAC is not rectified by the contractor.</p> <p>b) Rs. 25,000/-: The observations & defects raised by QAC is not rectified by the contractor.</p> <p>c) Rs. 1,50,000/-: The amount is withheld for not achieving Mile Stone as per schedule F (page 145) of the agreement.</p> <p>d) Rs. 1,50,000/-: The part payment is withheld from running bill because deviation statement is still not sanctioned/passed.</p> <p>Hence, the awarded amount in this claim is to be challenged (as per comments received from the EE and SE)</p>
4	Regarding excess recovery of labour cess in various running bills	Amount not given (+15% interest till realisation)	Nil	Accepted
5	Claim under Clause 10C and 10CA	8,13,090/- +15% interest per annum.	To be workout jointly	The running 10C & 10CA bill has already been paid up to 10 th R/A bill. The work is not completed, Hence the final 10C and 10CA bill cannot be paid. (as per comments received from the Executive Engineer and SE)
6	Claim for Extra Work	1,15,15,245/- +15% interest per annum.	Nil	Accepted
7	Claim for Security Deposit	9,51,000/- +15% interest per annum.	50% Performance Guarantee 9,51,000/- Without any pre arbitral interest.	As per Clause 1 of the agreement, 50% PG is to be released after recording completion certificate and remaining 50% PG shall be retained as security deposit, which shall be returned year wise proportionately. The completion certificate is still not recorded, that's why 50% PG i.e., Rs. 9,51,000/-, which is to be released after recording completion certificate, shall be not released. Hence, the awarded amount in this claim should be challenged.
8	Reimbursement of uncontroverted and unwarranted expenditure.	1,45,709/- +15% interest per annum.	1,45,709/- without any pre arbitral interest.	As per the Clause 1, (ii), "In case the time for completion of work gets enlarged, the contractor shall get the validity of performance guarantee extended to cover such enlarge time for completion of work." As per Clause 1A para 3 "Bank guarantee submitted against security deposit shall initially be

				<p>valid up to stipulated date of completion of the work plus maintenance period as defined under clause 17 which shall be extended from time to time depending upon extension of the contract granted under provision of Clause 2 & 5.</p> <p>As per these conditions of the agreement, it is the responsibility of the contractor to extend the validity of bank guarantees to get it renewed.</p> <p>Hence, the awarded amount in this claim should be challenged.</p>
9	Regarding watch & ward charges.	6,22,977/- +15% interest per annum.	Nil	Accepted
10	Regarding idling/under-utilization of manpower.	34,76,072/- +15% interest per annum.	Nil	Accepted
11	Regarding idling/under-utilization of T&P and machinery resources.	9,26,952/- +15% interest per annum.	Nil	Accepted
12	Regarding loss of profit/ profitability due to prolongation of contract.	22,94,207/- +15% interest per annum.	Nil	Accepted.
13	Regarding pre-suit and pendente-lite for all claims.	Amount not given +18% interest per annum.	12% simple interest to be paid, if awarded amount is not paid in 60 days to the petitioner from the date of award published.	The present award need not to be challenged as it is in consonance with section 31(1)(7)(b) of the Arbitration and Conciliation Act (as amended) for any money to be paid to the Claimant if at all in terms of the award.
14	Regarding Arbitration proceedings cost.	20,00,000/-	Nil	Accepted
15	Regarding claims GST @18% on the payment of the awarded amount against all the above claims except claims.	Amount not given	Nil	Accepted
16	Regarding reserves his right to add/amend/ modify/ deduct/alter/ withdraw or supplement the above demand at any time in	Amount not given	Nil	Accepted

future if any new facts or any calculation mistake etc. comes to his knowledge.			
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OPINION OF SLO (ENGINEERING): -

Claim no.1: Claimant was seeking the certificate of completion of work and this claim was decided in favour of contractor. Whereas, as per clause 8 of the agreement, provisional certificate may be issued in two conditions i.e (a) defects to be rectified by the contractor or (b) defects for which payment will be made at reduce rates. Hence, the provisional certificate cannot be issued because work still left to be completed. The sole arbitrator failed to consider that the site was inspected by SE/DCC-2 and work was not completed and site inspection observations were also, conveyed to the claimant vide letter dated 04.07.23 along with Geo tag photograph of site. Hence, the award qua this claim be challenged.

Claim no.2: Claimant claims was regarding balance payment against work executed along with interest @15% P.A. AT observed that, the reason and remarks given, by the respondent, cannot be considered as justifiable for nonpayment/ withholding of any due payment of claimant. As per respondent(DDA) this claim has included so many items for execution on the part of contractor which were not done as per agreement and still some items are to be completed by the claimant and defects pointed out by respondent are cured. Hence, the amount awarded should be challenged.

Claim no.3: This claim is regarding release of amount illegally and arbitrarily withheld on various accounts on various running bills. AT awarded the amount of Rs.3,75,000/- without any pre-arbitration interest. The contention of DDA was that the observation and defects raised by QAC is not rectified by the contractor. And part payment is withheld for not achieving mile Stone of the agreement and running bill because deviation statement is still not sanctioned/passed.

In this claim AT observed that respondent did not submit any evidentiary document in support of their contention that QAC observation were in fact communicated to the claimant and the reificatory work, arising out of such QAC observations, was yet to **department once again examine the award no.3 before challenging the same.**

Claim no. 4: Claim was regarding excess recovery of labour cess in various running bills. this claim is accepted by DDA.

Claim no.5: Claim was payment for escalation and material escalation during currency of the contract under clause 10 & 10CA applicable under the contract. AT observed that the payable award amount against this claim is required to be

workout jointly by the claimant and respondent. Whereas, the contention of DDA was that the work is still not completed yet. therefore, the amount claimed under this claim is bogus and frivolous. Hence, the final 10C and 10CA bill cannot be paid. So, the same should be challenged.

Claim no.6: Claim was for extra work and the same was accepted.

Claim no.7: Claim was for Security deposit. Claim was awarded in the favour of contractor to release 50% performance Guarantee without any pre arbitral interest. As per contention of DDA the 50% of performance guarantee shall be released after completion of the work and work has not been completed yet. Therefore, the said amount will be released after completion of work. AT failed to consider the DDA's submission. Hence, the awarded amount should be challenged.

Claim no.8: Claim was regarding reimbursement of unanticipated an unwarranted expenditure. DDA's contention was that the as per terms and conditions of the agreement, the bank guarantee to be submitted by the claimant and performance guarantee to be renewed by the claimant till the completion of work and even till date work has not been completed. Here, AT failed to appreciate that if, the time for completion of work gets enlarged, the contractor shall get the validity of performance guarantee extended to cover such enlarge time for completion of work. And as per conditions of agreement, it is the responsibility of the contractor to extend the validity of bank guarantee to get it renewed. Hence, the awarded amount in this claim should be challenged.

Claim no.9,10,11 and 12 are accepted by DDA.

Claim no.13 is regarding pre-suit and pendente-lite for all claims. This claim is need not to be challenged as the provision already defined in section 31(1)(7)(b) of the Arbitration and Conciliation Act.

Claim no.14,15 and 16 are accepted by DDA.

LEGAL OPINION OF THE LD. CHIEF LEGAL ADVISOR: -

In addition to above views of SLO, I would say that the interest @12% on all claim for pre-suit and pendente lite suit, which has been awarded by the AT against claim no. 13, is excessive and exorbitant and should also be considered for challenge

RECOMMENDATION BY CE (DWARKA)/DDA: -

The matter under reference is related to arbitration award published by the Sole Arbitrator. I agree with the recommendation of EE/DPD-4/DDA and SE/DCC-2/DDA.

RECOMMENDATION OF ASB:

After due discussion and deliberation, the ASB has recommend to challenge the award against claim no. 1,2,3,5,7,8,13 & accept the award against claim no. 4,6,9,10,11,12,14,15 & 16.

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 VC/DDA is the Competent Authority in r/o award amount more than Rs. 100 Lacs and upto Rs. 500 Lacs in consultation with FM/DDA, with due scrutiny by Arbitration Scrutiny Board headed by FM/DDA.

-sd-

R.K. Bhanwaria

Dir(Works)/Consultant

Member Secretary

-sd-

Vinod Kumar

Dy. CLA-III

Member

-sd-

Ajay Kumar Agrawal

CE (Dwarka)

Executive Member

-sd-

Sanjay Kumar Khare

CE (HQ)

Member

-sd-

Vijay Kumar Singh

FM, DDA

Chairman

EO-I to EM

Copy to:-

1. EM/DDA for kind information.
2. All concerned.
- ✓ 3. Director (System) for uploading on DDA website.] 04.3124
4. EE/DPD-4/DDA, Central Nursery, Sector - 5, Dwarka, New Delhi - 110075 for information please. 84-Joshi DD(1)

EO-I to EM

2021
10/10/2021