

उप निदेशक (प्रणाली) दि.वि.प्रा.
Dy. Director (Systems) DDA
झयरी नं० / Dairy No. 245
दिनांक / Date 04/8/23



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

निदेशक (प्रणाली) दि.वि.प्रा.
झयरी नं० 16/4
दिनांक 3/8/23

No. EM2(3)2023/DWK/211/DDA/ 371

Dated: 03/8/2023

MINUTES OF THE 868th MEETING OF ASB HELD ON 17.07.2023 IN THE CHAMBER OF FINANCE MEMBER, DDA

868th Meeting of Arbitration Security Board (ASB) under the chairmanship of FM, DDA held on 17.07.2023 at 04.00 P.M. in the chamber of FM, DDA to deliberate Arbitral award in the matter of M/s Y.D. Builder & Hotel Pvt. Ltd. Vs DDA the following work: -

- N.O. W** : D/o main land i/c c/o 60m and 45m Master Plan Road at Dwarka Project, Phase-II.
- Sub-head** : Construction of Box type peripheral RCC SW Drain along 45m R/W road in between Diplomatic Enclave & I.C.C Commercial Area in Sector-24, Dwarka, Ph-I.
- Agency** : M/s Y.D. Builder & Hotel Pvt. Ltd.
- Agmt. No.** : 10/EE/SWD-6/DDA/2016-17

The Agenda note submitted by the CE(Dwk) vide file no. F.5(06)/SWD-6/DDA/2016-17/549 dated 23.06.2023, accordingly 867th ASB meeting was conducted on dated 06.07.2023. In the 867th ASB meeting it was decided that the case may be send to Director (Finance) for further scrutiny, accordingly the case was sent to Director (Finance) for appropriate action with respect to the decision of 867th ASB meeting. The decision of Director (Finance) has been received in the e-office computer no. 59736.

The meeting was attended by the following officers through webex on dated 24.07.2023:-

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

The case was presented by Sh. Ajay Kumar Agarwal, CE(Dwk), DDA.

Brief history of the case is as under:-

1. The above work was awarded to M/s. Y.D. Builder & Hotel Pvt. Ltd. vide this office letter number F.5(06)/SWD-6/DDA/16-17/A/492 dated 19.08.2016.
2. The agency approached the Engineering Member (EM), DDA on 03.09.2020 for appointment of Ld. Arbitrator to settle the disputes. EM, DDA issued order for the appointment of learned Arbitrator Sh.Dinesh Kumar Retd. E-in-C (PWD), Delhi/Spl. D.G CPWD vide order No. EM2(7)/2021/Arbn. /Vol. VIII/Pt.165/DDA/1798 Dated. 16.12.2021 to adjudicate the matter.
3. 07 (Seven) number of claims were put forth by the claimant against which the Ld. Arbitrator has awarded all the seven claims in favor of the claimant on 06.04.2023. The summary of the award is as under:

Claim No.	Brief claim by claimant	Claimed Amount (Rs.)	Awarded Amount (Rs.)	Interest awarded @ 10% p.a. w.e.f. Date 28.04.2018 to 06.04.2023	Total
1	Claim on account of less payment made on extra items.	1,03,65,689/-	65,35,141/-	32,13,110/-	97,48,251/-
2	Claim on account of less payment made on deviated Quantity.	1,84,62,595/-	1,59,34,096/-	78,34,264/-	2,37,68,360/-
3	Claim on account of withhold amount in final bill.	99,500/-	99,500/-	48,921/-	1,48,421/-
4	Claim on account of refund of CGST and SGST.	9,23,080/-	9,23,080/-	4,53,848/-	13,76,928/-
5	Claim on account of interest @ 12% as a compensation on less payment and amount withheld arbitrary.	34,77,500/-	23,73,140/-	Nil	23,73,140/-
6	Interest @ 12% from due 1 to 5.	Interest @12% p.a.	Interest @ 10% p.a. & future interest @12% p.a.	As awarded in para 13.4.6	-
7	Cost of Arbitration	12,19,800/-	9,00,000/-	Declaratory Award para 14.5.7	9,00,000/-
Total			2,67,64,957/-		3,83,15,100/-

4. The total amount awarded in favour of the claimant is INR 3,83,15,100/- (Rupees Three Crore Eighty-three lacks fifteen thousand one hundred only).

After receiving the said award in favour of the claimant, EE/DMD-2/DDA approached the SLO (Engineering) for the opinion of the panel lawyer entrusted for the case. Panel lawyer post deliberating the facts of the case rendered the opinion as below: -

Dated:- 18.04.2023 OPINION OF THE PANEL LAWYER (MS. KANIKA SINGH):-

The present matter was entrusted to the Panel lawyer Ms. Kanika Singh and accordingly she appeared before the Ld. Arbitrator and filed reply and thereafter advanced arguments and filed written submissions. The Ld. Arbitrator has passed his award dated 06.04.2023, received on email only on 11.04.2023 and the undersigned submitted her opinion on the same. The Ld. Arbitrator has partly allowed the claims of the Claimant and in the opinion of the undersigned the award is liable to be challenged as the Ld. Arbitrator has given findings contrary to the pleadings and the evidence. The claims were barred by limitation and estoppel and also the contract provision namely clause 12 and the Ld. Arbitrator has wrongly

rejected the said objections by total non-application of mind. For example, the plea of the respondent was that the claims were barred by limitations as the alleged extra/ deviated work was done in October 2016 and claim for different rates for the same was only raised in June 2020. However, the Ld. Arbitrator, rather than deciding this point has wrongly instead decided the point as to whether claims could be raised within 120 days of receiving intimation of the final bill, which was not even objection of the Respondent. Similarly, the next objection of the Respondent was that complete rate of extra/deviated items had been paid in 3rd RA Bill in 2018 and the same has been duly accepted by the Claimant and no objection as to the rate was taken at the said time and thus claim is barred by estoppel. Again, the Ld. Arbitrator had side stepped deciding this objection and instead has once again decided on the different issue of acceptance of final bill which was not the objection. Similarly, the specific objection supported by case laws, that claims were not raised as per clause 12 of the agreement has been erroneously decided. Further on merits of rates awarded, comments of the department officials be taken for technical aspects of the same. Thus, in the opinion of the undersigned the award is liable to be challenged.

Dated:-02.05.2023 OPINION OF JLO

"As directed by Ld. CLA today on 21.04.2023, this file is forwarded for your opinion as SLO/Engg is on leave.

Dated:-02.05.2023 OPINION OF Dy. CLA-III and CLA

I am in agreement with the above (pre-page) views of panel lawyer Miss. Kanika Singh, however may kindly see for final view.

Dated:-02.05.2023 RECOMMENDATIONS BY EE/DMD-2/DDA

After receiving the opinion of Panel Lawyer, undersigned has evaluated the claims and a summary of the decisions regarding the acceptance / challenge of the award is elucidated as below:

Claim No. 1 – Claim on account of less payment made on extra items

Awarded Amount - Rs. 65,35,141/- plus Interest @ 10% p.a. from date 8.04.2018

Claimant Submission – Claimant submitted that respondent was given notice vide letter dt. 06.09.2016 that we are ready to execute the deviated quantity beyond permissible limit of deviation and extra item as per terms of agreement which provides market rates for extra item and for deviated item beyond permissible as per clause 12 of agreement.

Respondent Submission – Alleged letter is denied as receiving of letter dt. 06.09.2016 is 07.09.2021 and no rate analysis was submitted as per clause 12 of agreement. 10C & 10CA was paid.

Analysis and finding of tribunal – Both parties does not complied clause 12 of agreement. Respondent has reduced the DSR 2014 rates by the contractor enhancement on DSR i.e. (-) 35.94% which is not justified. The AT decides that the rates of EI will be reasonable after removing C.E & correction of DSR 2016 instead of 2014. The increase of rates of materials and labour in two years can be about 10% on DSR-2014 which can be ignored , thus amount as per DSR 16 may be taken same as taken based on DSR 2014.

As per the agreement provisions, the market rates are payable for the extra items and for deviated items beyond the permissible limit as specified in the Schedule "F" of the agreement. Therefore, the award may be accepted in order to save future interest and further litigation cost.

Claim No. 2 – Claim on account of less payment made on deviated qty

Awarded Amount - Rs. 1,59,34,096/- plus Interest @ 10% p.a. from date 28.04.2018

Claimant Submission – Claimant submitted that respondent was given notice vide letter dt. 06.09.2016 that we are ready to execute the deviated quantity beyond permissible limit of deviation and extra item as per terms of agreement which provides market rates for extra item and for deviated item beyond permissible as per clause 12 of agreement.

Respondent Submission – Alleged letter is denied as receiving of letter dt. 06.09.2016 is 07.09.2021 and no rate analysis was submitted as per clause 12 of agreement. 10C & 10CA was paid.

Analysis and finding of tribunal – Both parties does not complied clause 12 of agreement. Respondent has reduced the DSR 2014 rates by the contractor enhancement on DSR i.e. (-) 35.94% which is not justified. The AT decides that the rates of EI will be reasonable after removing C.E & correction of DSR 2016 instead of 2014. Further, it has been noted that the Respondent has paid escalation as per clause 10C and 10CA of the agreement over the deviation items which can't be accepted as DI should be sanctioned on market rates and no escalation can be paid on market rates. Thus, the amount paid for 10C and 10CA has been considered as paid amount of deviation items.

As per the agreement provisions, the market rates are payable for the extra items and for deviated items beyond the permissible limit as specified in the Schedule 'F' of the agreement. The Ld. Arbitrator considering the payments made under 10C and 10CA has reduced the claim amount and accordingly awarded the amount of Rs. 1,59,34,096/- only. Therefore, the award may be accepted in order to save future interest and further litigation cost.

Claim No. 3 – Claim on account of withhold amount in final bill-Rs 99,500/-

Awarded Amount – Rs. 99,500/- plus Interest @ 10% p.a. from date 28.04.2018

Claimant Submission – Amount was withheld arbitrarily on account of QAC inspection.

Respondent Submission – Amount was withheld on account of various defects observed by QAC Inspection Team and the defects were not rectified by the agency. Analysis and finding of tribunal – Defect liability period has been passed and no defects has been intimated to agency.

Since, the defect liability period has been expired and all the defects noticed have been rectified by the claimant. Therefore, the said award may be accepted in order to avoid future interest cost and litigation costs.

Claim no 4-Claim on account of refund of CGST & SGST

Awarded Amount – Rs 9,23,080/- plus Interest @ 10% p.a. from date 28.04.2018

Claimant Submission – It is submitted that the Govt. of India implemented the GST on 01.07. 2017. The rate of GST is 12% for contract whereas DVAT was 6% as adopted composition scheme before 01.07.2017. Hence claimant is entitled for refund of extra 6%.

Respondent Submission – Claimant is under the obligation to give a written notice within period of 30 days to Engineer-in-Charge that any tax or levy or cess have been imposed. Claimant failed to give any notice.

Finding of tribunals - The work has been completed and during construction, the claimant has paid all taxes such as sale tax, service tax etc. and since GST has been introduced w.e.f. 01.07.2017 & is a summation of all taxes including service tax. Thus, Claimant is entitled for reimbursement of the component of service tax of GST which is 15% of 40% cost of work paid after 01.07.2017 i.e., 6% of payment made in GST period. Here in this case the Claimant has claimed only 6% of payment made during post GST period which is allowed i.e., only Rs.9,23,080/-.

After the introduction of GST w.e.f. 01.07.2017, the claimant has paid all the taxes as per the new GST regime and accordingly, the reimbursement of CGST and SGST may be made to the claimant. Therefore, the award may be accepted to save future interest cost and litigation cost.

Claim No. 5 - Claim on account of interest @12% as a compensation on less payment and amount withheld arbitrary

Awarded Amount - Rs. 23,73,140/-

Claimant submission – The claimant submits that A.D.O.C was 28.04.2017 and it was obligation of respondent for payment of final bill by 27.10.2017. Respondent paid 3rd Bill on 28.09.2018. 4th & Final bill was paid on 30.06.2020 after the extra item and deviated item was passed.

Respondent submission – A perusal of the said clause reveals that the contractor is under obligation to submit the final bill within 3 months of the physical completion of the work or within one month of final certificate of completion furnished by Engineer-in-charge. Claimant failed to submit final bill within time prescribed.

Tribunal finding - Both parties failed to comply the contract provision. But it is the primary responsibility of employer to finalize the bill even if the claimant has failed to submit the final bill within prescribed time limit. The Tribunal decides that it will be reasonable that the Respondents should have paid the final bill within a year of actual date of completion. Thus, the Claimant is entitled for the interest on the payment made after a year of the actual date of completion i.e., 28.04.2018 (deemed date of final bill).

After deemed date of final bill the rate of interest is decided is 10%. Thus, the Claimant is entitled for the interest as given below:

i) Interest on Rs.69,44,548/- @ 10% w.e.f., 28.04.2018 to 29.09.2018 (say 5 month) = Rs.2,89,356/-

ii) Interest on Rs.70,00,000/- @10% w.e.f. 28.04.2018 to 30.06.2020, (but claimed w.e.f. 30.09.2018) (say 20 months), hence allowed w.e.f. 30.09.2018 to 30.06.2020 (21-months) = Rs.12,25,000/-

iii) Interest of Rs.39,63,620 @10% w.e.f. 28.04.2018 to 30.06.2020 (26 months) = Rs.8,58,784/-

Thus, the Claimant is entitled for the interest on delayed payment against this claim for Rs.2,89,356 + 12,25,000 + 8,58,784/- = Rs.23,73,140/-

The Ld. Arbitrator has already awarded the said interest due to the delay in the finalization of the bill and therefore the same may be accepted to save future interest and further litigation costs.

Claim No. 6 – Interest @ 12% on the claims due (Claim No. 1 to Claim No. 5)

Awarded amount – A simple interest @ 10% p.a. is awarded on claim no. 1, 2, 3 & 4 w.e.f. 20.04.2018 (Deemed Date of final bill) to 06.04.2023 (Date of award) . No interest is awarded on amount awarded under claim no. 5 & 7. The Claim no. 6 is for interest itself

Tribunal finding – Thus, Tribunal feel it appropriate to allow the rate of interest on the principle of equity as demanded by the claimant. The rate of interest provided under the contract under clause 10 B (ii) for mobilization advance is 10%. But, at the same time the said amount of interest is to be recovered on the monthly basis (since intermediate bills are to be paid monthly). But it is not so in the present case. Moreover, the mobilization advance is a secured loan not unsecured loan. Also, the period of the agreement is also pre-fixed for 10% interest against mobilization advance. Above all, the respondent in this case is the public authority and if he had not given the mobilization advance to the claimant, the respondent was not expected to earn profit by using the said money in business like the claimant who is a business entity. Regarding future interest, it is decided that in case the full and final payment,

including pre-suit, pendente-lite interest and with cost is released by the respondent to the claimant within 60 days from the date of receipt of this award, there will be no future interest. Otherwise, the future interest @ 12% per annum from the date of award to the actual date of payment will also be payable by the respondent to the claimant for the entire awarded amount under this award.

A simple interest @ 7.5% p.a shall be paid to contractor from the date of expiry of prescribed time limit which can be compounded annually is allowable as per the provisions of the agreement in case of the delay in payment of final bills. Hence, the interest award may be accepted to avoid future interest costs and litigation costs.

Claim No. 7 - Cost of arbitration

Awarded Amount – Rs. 9,00,000/-

Finding of tribunal- After overall analyses of the record placed before tribunal, it is found that claimant had to undergo arbitration for their claims which have been found payable to them. Therefore, they are entitled to be compensated for the cost of arbitration.

Considering that Arbitration award has been given in favor of the claimant and interest cost on the same if the same is not paid within the specified timeline of 60 days, the award may be accepted to avoid any future interest on the same and future litigation costs.

The Claimant has further claim that the Respondent to pay GST @18% on the awarded amount as on date of payment by the Respondent. It has been noted that the Claimant has sought an award for reimbursement of GST. Sums found due and payable under this claim petition will attract liability of payment of GST and clause 38 of contract provides for reimbursement of additional burden of tax. It is also noticed that the work has been completed on 28.04.2017 & there was no GST at the time of call of tender. The Claimant has already paid its liability of taxes at the time of purchase of materials etc. & now he will not be able to claim any input credit on any component of work done earlier. Therefore, this Tribunal is of the considered opinion that the Claimant could also be entitled for a declaration by this Tribunal that the Respondent shall pay GST as per the applicable rates, which is presently 18%, on the amount i.e., awarded by this tribunal in this arbitration proceedings. So, I decide & hold that Claimant is entitled to declaratory award for reimbursement of GST. Therefore, the Respondent will reimburse the actual amount of GST paid on this award. 14.5.7. Hence in view of above, I pass a declaratory award for reimbursement of GST applicable on sums found due and payable only upon submission of proof of having actually & genuinely paid and deposited the GST to authorities alongwith its request of reimbursement by Claimant against this claim no. 7. The Respondent is directed to reimburse the paid GST amount within 30 days of submitting the proof of the payment of GST to the Govt. If the payment not reimbursed within 30 days the interest @12% P.A. simple shall be payable to the Claimant on this amount of GST till the actual date of reimbursement.

Considering the specific point regarding future interest pointed out by the Ld. Arbitrator in Claim No. 6, that in case the full and final payment, including pre-suit, pendente-lite interest and with cost is released by the respondent to the claimant within 60 days from the date of receipt of this award, there will be no future interest, otherwise, the future interest @ 12% per annum from the date of award to the actual date of payment will also be payable by the respondent to the claimant for the entire awarded amount under this award.

Hence, the said award may be accepted in favour of the claimant and payments may be made within the timelines set by the Ld. Arbitrator.

Dated:-03.05.2023-OPINION OF SE/DCC-1/DDA

The Law wing opined for challenge the award in general and without any ground, which is mandatory to challenge the case. The EE as recommended to accept the award with his remarks against each award.

Therefore, the case is put up or acceptance of the award, as it appears that the Arbitration cost may increase in case of challenge / delay.

Dated:-03.05.2023OPINION OF CE/DWARKA/DDA

Agrees with the recommendations of EE and SE. The case is put up for deliberations in ASB.

Dated:-26.05.2023RECOMMENDATION OF ASB

After due discussion and deliberation, the ASB is of the view that CE(Dwk) shall provide the detailed claim wise comments as to why the award is to be accepted. Also, CE(Dwk) shall get advice from Legal Department before re-submitting the case to ASB.

Dated:-01.06.2023RECOMMENDATIONS BY EE/DMD-2/DDA

S · N O	Claim	Analysis and finding of the tribunal	Detailed report by Engineering Deptt
1	Claim On Account of less payment made on extra item	<p>This claim is for the less sanctioned rate of extra items as per clause 12 of the agreement. It is admitted fact that the extra items were executed during the progress of work only between 20.08.2016 to 28.04.2017 whereas the extra items were sanctioned and paid only in 3rd bill dated 29.09.2018 & final bill on 30.06.2020. Though Rs.70,00,000/- was withheld for some decision of L-1&L-2. Thus, the said sanctioned amount cannot also be said as final.</p> <p>As per clause-12 the Claimant was to submit the proposed rates with analysis which is said to be submitted by the Claimant vide his letter dated 06.09.2016 (C-2) which is denied by the Respondent. But the Respondent's letter dated 18.10.2016 (C-24) bears the reference of the Claimant's letter dated 06.09.2016. Thus, the submission of analysis of rates by the Claimant is not conclusive.</p> <p>It has been noted that as per Clause – 12, the Claimant may submit the rates with analysis within 15 days whereas the Respondent shall sanction the rates within 60 days after giving consideration of rates submitted by the Claimant. Thus, it is clear that both the parties have failed to follow the clause- 12 provision properly. But even then, the Respondent should sanction the rates within reasonable period & failure of the Claimant cannot be ground for sanction of less rates.</p>	<p>The work was in progress during 2016 & 2017. The required Extra items were got executed at that time.</p> <p>As per Clause-12.2 of the agreement "----- after giving consideration to the analysis to the rates submitted by the contractor, determine the rates on the basis of market rates and contractor shall be paid in accordance with the rates so determined".</p> <p>But the rate of the Extra Items paid @ rate of DSR-2014 – <u>cei.e., 35.94%</u> (below), however it would have been based on market rate during the execution period i.e., 2016 & 2017.</p> <p>The learned AT allowed the rate @ rate of DSR-2014 only, which is logical as per clause of the agreement. On the contrary, the AT would have allowed instant market rate, which would have more than the rate of DSR-2014, hence there is less burden on the part of DDA.</p> <p>Thus, from above it appears that there is no ground exist to challenge</p>

A careful and combined reading of relevant documents available on arbitral record, this Tribunal is of the considered opinion that both the parties have not followed the contractual provisions covered under Clause 12 and analysis of rates for the EI/SI/D items though submitted/not submitted but no quotation /bill were submitted by the claimant in support of rates.

It is also a fact as per my past experience of such works that there is always a scope of difference of opinion in the interpretation of clause 12 & particularly in deciding the prevailing market rates. Thus, there is always a scope of giving different interpretation of each & every item sanctioned, hence minor variation of 10 percent in derivation of rates of such items should be ignored.

The Respondent has reduced the DSR 2014 rates by the contractor enhancement on DSR i.e., (-) 35.94% which is not justified as the DSR rates are itself market rates during the period when DSR is published & the Claimant is to be paid market rates & not as per tendered rates.

The Respondent has adopted DSR 2014 whereas the work was done during 20.08.2016 to 28.04.2017, thus adopting the DSR- 2014 is not justified, whereas the Claimant has claimed as per the market rates during the period of execution of work. However, it will be justified to adopt DSR -2016 instead of DSR - 2014 for deriving the market rates of all the items.

The AT decides that the rates of EI will be reasonable after removing the contractor enhancement & correction of DSR 2016 instead of 2014. Further it has been noted that the Respondent has paid escalation as per Clause 10C & 10CA over the extra items which cannot be accepted as E.I should be sanctioned on market rates & no escalation can be paid on market rates. Thus, the amount paid for 10C & 10CA has been considered as paid amount of Extra items.

As per Annexure-1 filed by the claimant page no. 11 to 13.

Rates of Seven items are disputed. It is seen that except item no. EI-2/2 all items are material plus labour base.

the award of the learned AT for claim as the awarded rates are on lesser side if agreement clauses were strictly followed.

The cost of these items paid by respondent is Rs.45,01,947.00. The work was executed from 2016 to 2017

The increase of rates of materials and labour in two years can be about 10% on DSR- 2014 which can be ignored, thus amount as per DSR 16 may be taken same as taken based on DSR 2014 i.e., Rs.45,01,947/-

The respondent had reduced the DSR 2014 rate by 35.94% in analysis of rate submitted by respondent being tender percentage of rate(-)35.94% of the contractor which is not justified.

After this correction on pro-rata basis, the amount comes to 45,01,947.00 /0.6406(100-35.94)=70,27,704.00 – “A”

(a) The EI-2/2 is labour intensive base being extra lead of Earth work. The respondent has submitted the analysis of rate submission dt. 02.11.2022 page 6.

◆ The amount of this item paid is 44,63,597.00.

◆ The respondent has paid DSR 2014. The labour rate taken Rs. 329.00 per day for unskilled beldar

◆ The wages of labour in 2016 & 2017 was Rs. 374.00 & Rs. 521.00 per day. Thus, the average labour rate is Rs. 447.50.

◆ Thus, the amount payable should be $44,63,597.00 \times \frac{447.50}{329} = \text{Rs. } 60,71,306.00$

◆ The respondent had reduced the rate further by 35.94% (contractor rate) (-)35.94%. Hence amount payable will be $\text{Rs. } 60,71,306.00 / 0.6406 (100-35.94) = \text{Rs. } 94,77,530.00$ – “B”

(b) Thus, the total amount payable will be $A+B = 70,27,704.00 + 94,77,530.00 = 1,65,05,234.00$

(d) Amount already paid $\text{Rs. } 89,65,644.00 + 8,43,622.00 + 1,60,827.00 = \text{Rs. } 99,70,093.00$
(including amount paid in 10C & 10CA)

(e) Thus, the amount now payable will be $1,65,05,234.00 - 99,70,093.00 = \text{Rs. } 65,35,141.00$

Thus, the Claimant is entitled for payment of Rs.65,35,141.00 against this claim.
Keeping in view of above, award Rs.65,35,141.00 in favour of the Claimant against this claim.

<p>2 Claim on account of less payment made on deviated qty</p>	<p><u>Analysis&Finding oftheTribunal:</u></p> <p>This claim is for the less sanctioned rate of deviation items. as per clause 12 of the agreement. It is admitted fact that the deviation items were executed during the progress of work only between 20.08.2016 to 28.04.2017 whereas the deviation items were sanctioned and paid only in 3rd bill dated 29.09.2018 & final bill on 30.06.2020. Though Rs.70,00,000/- was withheld for some decision of L-1 & L-2. Thus, the said sanctioned amount cannot also be said as final.</p> <p>As per clause- 12 the Claimant was to submit the proposed rate with analysis which is said to be submitted by the Claimant vide his letter dated 06.09.2016 (C-2) which is denied by the Respondent. But the Respondent's letter dated 18.10.2016 (C-24) bears the reference of the Claimant's letter dated 06.09.2016. Thus, the submission of analysis of rates by the Claimant is not conclusive.</p> <p>It has been noted that as per Clause – 12, the Claimant may submit the rates with analysis within 15 days whereas the Respondent shall sanctioned the rates within 60 days after giving consideration of rates submitted by the Claimant. Thus, it is clear that both the parties have failed to follow the clause- 12 provision properly. But even then the Respondent should sanction the rates within reasonable period & failure of the Claimant cannot be ground for sanction of less rates.</p> <p>A careful and combined reading of relevant documents available on arbitral record, this Tribunal is of the considered opinion that both the parties have not followed the contractual provisions covered under Clause 12 and analysis of rates for the EI/SI/DI items though submitted/not submitted but no quotation /bill were submitted by the claimant in support of rates.</p> <p>It is also a fact as per my past experience of such works that there is always a scope of difference of opinion in the interpretation of clause 12 & particularly in deciding the prevailing market rates. Thus, there is always a scope of giving different interpretation of each & every item sanctioned, hence minor variation of 10 percent in derivation of rates of such items should</p>	<p>The work was in progress during 2016 & 2017. The required deviated items were got executed at that time.</p> <p>As per Clause-12.2 of the agreement pricing for deviation, deviated quantities, which exceed the limits laid down in Schedule-'F' will be market rate, as mentioned in the clause as under:-</p> <p>“----- after giving consideration to the analysis to the rates submitted by the contractor, determine the rates on the basis of market rates and contractor shall be paid in accordance with the rates so determined”.</p> <p>But the rate of the deviated quantities beyond schedule-'F' limit, were also paid @ rate of DSR-2014 – <u>ce i.e 35.94%</u> (below), however it would have been based on market rate during the execution period i.e. 2016 & 2017.</p> <p>The learned AT allowed the rates of deviated quantities beyond schedule-'F' limit as under:-</p> <p>The amount of these items paid is 1,48,91,758.00 (Corrected amount). The respondent has paid on DSR- 2014. The labour rate taken Rs.329.00 per day for skilled beldar. The wages of labour in 2016 & 2017 was Rs.374.00 & Rs.521.00 per day. The average of labour rate is Rs. 447.50.</p>
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beignored.

The Respondent has reduced the DSR 2014 rates by the contractor enhancement on DSR i.e., (-) 35.94% which is not justified as the DSR rates are itself market rateduring the period when DSR is published & the Claimant is to be paid market rates & not as per tender rates.

The Respondent has adopted DSR-2014 whereas the work was done during 20.08.2016 to 28.04.2017, thus adopting the DSR- 2014 is not justified, whereas the Claimant has claimed as per the market rates during the period of execution of work. However, it will be justified to adopt DSR - 2016 instead of DSR – 2014 for deriving the market rates of all the items.

Modified amount of claim is Rs.1,03,94,020.00 as per letter dt.20.02.2023 page 318- 319. (After deducting payment under 10C)

(a) All items are labour base. The respondent has submitted the analysis of rate submission dt. 02.11.2022 page 10 to 14.

◆ The amount of these items paid is 1,48,91,758.00(Corrected amount).

◆ The respondent has paid on DSR 2014. The labour rate taken Rs.329.00 per day for unskilled beldar.

◆ The wages of labour in 2016 & 2017 was Rs.374.00 & Rs.521.00 per day. The average of labour rate is Rs. 447.50.

◆ Thus, the amount payable will be
 $1,48,91,758.00 \times 447.50 / 329$
=Rs.2,02,55,506.00

◆ The respondent had reduced the rate by 35.94% (contractor enhancement (-) 35.94%) hence amount payable will be
 $Rs.2,02,55,506.00 / 0.6406 (100-35.94)$
=Rs. 3,16,19,585.00

(b) Amount already paid including 10C payments is Rs.1,48,91,758.00 + 7,93,730/- = Rs.1,56,85,488/-

Thus, amount payable will be Rs. 3,16,19,585.00 - 1,56,85,488/- =Rs.1,59,34,096/-

Thus, the claimant is entitled for payment of Rs.1,59,34,096/- against this claim.

Award: Keeping in view of above I award Rs.

Thus, the amount payable will be
 $1,48,91,758.00 \times 447.50 / 329 =$
Rs.2,02,55,506.00

The respondent had reduced the rate by 35.94% (contractor enhancement (-) 35.94%) hence amount payable will be
 $Rs.2,02,55,506.00 / 0.6406 (100-35.94) =$ Rs. 3,16,19,585.00.

This Deviation statement Item contains 5 items and details of the rates of the items is as under:-

S. No	Item	Agmt Rate
1	E/W excavation	40/Cur
2	Extra for Additional lift	45/Cur
3	Filling available	50/Cur
4	C/s Foundation	80/Sqr
5	C/s Column	250/Sq m

Thus the A.T allowed rates in lower side in respect of Item No. 1,3& 4 and rates of item No. 2&5 on higher side. The aspect is seem in depth and it is observed that if **A.T had allowed rate @ DSR rate to all items, which is also very justified as per Clause-12 of the agreement, then the award were on very much higher side. Therefore the overall award in this item is also justified.**

Moreover during deep scrutiny of this item it is found that:-

	<p>1,59,34,096/- in favour of the Claimant against this claim.</p>	<p>i) The claimant had claimed under this item for Rs. 1,84,62,595.80/- initially.</p> <p>ii) There was a sum mistake in above claim of the claimant and the actual claim amount was Rs. 1,47,58,587.80/- instead of Rs. 1,84,62,595.80/-</p> <p>iii) The A.T made award of Rs. 1,59,34,096.00/- against this item, which would have been limited to Rs. 1,47,58,587.80/-</p> <p>iv) On discussion on this issue, the claimant agreed to accept the award of Rs. 1,47,58,587.80/- instead of Rs. 1,59,34,096.00 and submitted their consent letter dated 31.05.2023 (placed opposite).</p> <p>Thus, the above award is also very logical, keeping in view the clause-12 of the agreement. There is no ground exist to challenge the award. Therefore, the award may be accepted.</p>
<p>3 Claim on account of withhold amount in final bill</p>	<p><u>Analysis & Finding of the Tribunal:</u> The first and foremost issue to be decided before adjudicating this claim is regarding the liabilities of the claimant under the contract to arose out of the QAC inspection. Clause 16 deals with this issue which provides that:</p> <p><i>"All works under or in course of execution or executed in pursuance of the contract, shall at all times be open and accessible to the inspection and supervision of the Engineer-in-charge, his authorized subordinates in charge of the work and all the superior officers, officer of the Quality Assurance Unit of the Department or any organization engaged by the Department for Quality Assurance and of</i></p>	<p>Since no defect in the work was remaining and as also mentioned by AT that for removal of defects, the action would had been taken as per relevant clauses/conditions of the agreement. Moreover, the withhold amount had to be released ultimately, as the maintenance period was also already over. Additionally there is no ground to challenge this award. Therefore, the award may be accepted.</p>

the Chief Technical Examiner's Office, and the contractor shall, at all times, during the usual working hours and at all other times at which reasonable notice of the visit of such officers has been given to the contractor, either himself be present to receive orders and instructions or have a responsible agent duly accredited in writing, present for that purpose. Orders given to the Contractor's agent shall be considered to have the same force as if they had been given to the contractor himself.

If it shall appear to the Engineer-in-charge or his authorized subordinates in charge of the work or to the Chief Engineer in charge of Quality Assurance or his subordinate officers or the officers of the organization engaged by the Department for Quality Assurance or to the Chief Technical Examiner or his subordinate officers, that any work has been executed with unsound, imperfect, or unskillful workmanship, or with materials or articles provided by him for the execution of the work which are unsound or of a quality inferior to that contracted or otherwise not in accordance with the contract, the contractor shall, on demand in writing which shall be made within twelve months (six months in the case of work costing Rs. 10 Lac and below except road work) of the completion of the work from the Engineer-in-Charge specifying the work, materials or articles complained of notwithstanding that the same may have been passed, certified and paid for forthwith rectify, or remove and reconstruct the work so specified in whole or in part, as the case may require or as the case may be, remove the materials or articles so specified and provide other proper and suitable materials or articles at his own charge and cost. In the event of the failing to do so within a period specified by the Engineer-in-Charge in his demand aforesaid, then the contractor shall be liable to pay compensation at the same rate as under clause 2 of the contract (for non-completion of the work in time) for this default.

In such case the Engineer-in-Charge may not accept the item of work at the rates applicable under the contract but may accept such items at reduced rates as the authority specified in schedule 'F' may consider reasonable during the preparation of on account bills or final bill if the item is so acceptable without detriment to the safety and

utility of the item and the structure or he may reject the work outright without any payment and/or get it and other connected and incidental items rectified, or removed and re-executed at the risk and cost of the contractor. Decision of the Engineer-in-Charge to be conveyed in writing in respect of the same will be final and binding on the contractor.

As per this clause there is no provision under the contract to withhold any amount on account of QAC para but the contractor is liable to rectify the defects pointed out to him by the Respondent. The contract if read holistically would reveal that in case the contractor does not rectify the defects the Respondent has authority to get the same rectified at the risk and cost of the contractor for which the Respondent had been withholding the retention money under the name of security under clause 1 of the agreement.

On the basis of my experience, the inspection report of QAC Cell consists of various issues, namely quality of work, procedural lapses, undue payments etc. in the instant case, the Respondent has failed to produce any evidence to establish that the paras remained to be settled are related to the default is on the part of the claimant.

Even if, there had been any pending obligation on the part of the contractor, the liability of the contract was limited only up to 12 months after the actual date of completion i.e., only upto 28.04.2018 in the present case, not beyond that.

The Respondent has not produced any evidence on record that he has issued any prior notice to the claimant under the principle of Natural justice before withholding any money of the claimant. He has also not produced any evidence or record to establish that there is any role of the claimant in getting the QAC para settled from QAC Cell.

The date of withholding the said amount is not available on record but, in any case, the Respondent had no authority to retain the said amount after expiry of the defect liability period but as per the parties, the said amount was not released even upto the date of last hearing.

Regarding (QAC Para), it is decided in view of the above findings that the Respondent has arbitrarily and without any provision under the contract had retained the money of

		<p>the Claimant amounting to Rs.99,500/- even in the final bill.</p> <p>Thus, the Claimant is entitled for payment of with the amount of Rs.99,500/- & interest for the withheld period.</p> <p>Award: Keeping in view of above, award Rs.99,500/- against this claim & interest is decided in Claim No.6</p>	
4	<p>Claim no.4: Claim on account of refund of CGST and SGST</p>	<p><u>Analysis & Finding of the Tribunal:</u></p> <p>The stipulated date of start & completion of work were 20.08.2016 & 19.02.2017, whereas the work was completed on 28.04.2017. The GST was applied w.e.f. 01.07.2017.</p> <p>As per the clause 37 of the contract agreement Sale Tax/Vat (except service tax) Building and other construction workers welfare cess or any other tax or cess in respect of this contractor shall be payable by the contractor and government shall not entertain any claim whatever in this respect. However, in respect of service tax same shall be paid by the contractor to the concerned department on demand and it will be reimbursed to him by the Engineer-in-charge after satisfying that it has been actively and genuinely paid by the contractor, But the Government of India introduced G.S.T and issued notification in this regard with and applicable w.e.f. 01.07.2017. G.S.T is a destination-based tax on consumption of goods and services. The G.S.T subsumed all the tax viz state vat central duties service tax etc. applicable to the construction work.</p> <p>Out of which as per contract Agmt. Clause 37 service tax shall be paid by the contractor to the concerned department and the same shall be reimbursed by the Engineer-in-charge. The liability of the contractor/claimant was VAT and other taxes only whereas earlier Service tax was reimbursed by the Engineer-in-charge and now it is included in G.S.T. Therefore, it is reasonable if service tax applicable before introduction of GST, is allowed to the claimant as a compensation of G.S.T.</p> <p>The total value of service portion in the execution of works contract as per Notification no 24/2012-Service Tax dated 06.06.2012 of the Ministry of Finance Govt. of India, is 40 percent of the total amount charged for the work contract in case of</p>	<p>Govt. Of India inducted GST on the construction works w.e.f 01.07.2017, which is also applied on the works, which were in progress as on 01.07.2017 & clause 38 of the agreement stipulates that in the event of introduction of new tax imposed by Govt. after date of receipt of tender, the same shall be reimbursed to the contractor. It is also observed from various assessments, the weightage of weight and exercise was approximately 6% and however the claimant paid GST @ 12%. The liability of the claimant may be slightly differs from 6% but keeping in view the interest and litigation cost, this award is also acceptable. Moreover there is no ground to challenge the award. Therefore, the award may be accepted.</p>

	<p>contract entered into for execution of original works and the charge of service tax was @15% of the value of services in pre-GST on 30.06.2017 (Just before imposing of GST)</p> <p>The agreement of the work i.e., Clause-38 clearly stipulates that in the event of introduction of any new tax imposed by the Govt. after date of receipt of the tender, the same shall be reimbursed to the contractor. The work has been completed and during construction, the claimant has paid all taxes such as sale tax, service tax etc. and since GST has been introduced w.e.f. 01.07.2017 & is a summation of all taxes including service tax. Thus, Claimant is entitled for reimbursement of the component of service tax of GST which is 15% of 40% cost of work paid after 01.07.2017 i.e., 6% of payment made in GST period. Here in this case the Claimant has claimed only 6% of payment made during post GST period which is allowed i.e., only Rs.9,23,080/-.</p> <p>Therefore, the Claimant is entitled for Rs.9,23,080/- under this claim.</p> <p>Keeping in view of above, I award Rs.9,23,080/- in favour of the Claimant against this claim.</p>	
5	<p><u>Analysis & Finding of the Tribunal:</u></p> <p>It has been noted that the work was completed on 28.04.2017 & final bill was paid only on 30.06.2020.</p> <p>As per contract clause 9, the final bill is to be paid within 6 months of the date of completion of work & the contractor has to submit the bill within 3 months of completion of work. But it has been noted in this case that both parties failed to comply the contract provision. But it is the primary responsibility of the employer to finalise the bill even if the Claimant has failed to submit the final bill within prescribed limit.</p> <p>Here it is also noted that the sanctioned extra items & deviation items were delayed even more than a year. Even the two payments are made after actual date of completion i.e., on 29.09.2018 & 30.06.2020. The Tribunal decides that it will be reasonable that the Respondents should have paid the</p>	<p>This claim consist of interest on :--</p> <p>(i) Interest on Rs. 69,44,548/- for 05 months & this amount was of 03rd R.A. bill, which was paid late.</p> <p>(ii) Interest on Rs. 70,00,000/- for 20 months, which was withheld in 3rd R.A. bill.</p> <p>(iii) Interest on Rs. 39,63,620/- for late payment of 4th & final bill.</p> <p>The AT allowed the interest on all above withheld/late payment at the rate of 10% simple interest. In this regard it is submit that the Department is liable to pay the interest on delay in payment of final bill @</p>

	<p>final bill within a year of actual date of completion. Thus, the Claimant is entitled for the interest on the payment made after a year of the actual date of completion i.e., 28.04.2018 (deemed date of final bill).</p> <p>After deemed date of final bill the rate of interest is decided in para 12.4.4. Thus, the Claimant is entitled for the interest as given below:</p> <p>(i) Interest on Rs. 69,44,548/- @10% w.e.f., 28.04.2018 to 29.09.2018 (say 5 months) = Rs. 2,89,356/-,</p> <p>(ii) Interest on Rs. 70,00,000/- @10% w.e.f. 28.04.2018 to 30.06.2020, (but claim ed w.e.f. 30.09.2018) (say 20 months), hence allowed w.e.f. 30.09.2018 to 30.06.2020 (21-months) = Rs. 12,25,000/-</p> <p>(iii) Interest of Rs. 39,63,620/- @10% w.e.f. 28.04.2018 to 30.06.2020 (26 months) = Rs. 8,58,784/-</p> <p>Thus, the Claimant is entitled for the interest on delayed payment against this claim for Rs. 2,89,356 + 12,25,000 + 8,58,784/- = Rs. 23,73,140/-</p> <p>Award: Keeping in view of above, award Rs. 23,73,140/- in favour of the Claimant against this claim.</p>	<p>7.5% as per clause 9 of the agreement & as per clause 10 B(ii) & (iii) a simple interest @10% p.a. allow to recover from the mobilization & plant Machinery & Shuttering Material Advances from the contractor.</p> <p>In the past awards also there are examples of award of interest to the tune of 10%.</p> <p>As per Arbitration act there are provisions of award of interest on the awarded amount, therefore, the award may be accepted.</p>
6	<p>Claim no. 6 Interest @ 12% from due 1 to 5</p> <p><u>Analysis & Finding of the Tribunal:</u></p> <p>It is also noticeable that the agreement does not expressly prohibit the payment of interest. Section 31 (7) (a) of Arbitration and Conciliation Act also mandates inclusion of interest unless otherwise agreed by the parties for the period between date on which cause of action has arisen and the date on which award is made by the Arbitral Tribunal where award is for payment of moneys subject to decision of Hon'ble Tribunal in this regard. It is a settled law that Arbitrator appointed with or without the intervention of the court, has jurisdiction to award interest, on the sums found due and payable, for the pre-reference period, in the absence of any specific stipulation or prohibition in the contract to claim or grant any such interest.</p> <p>The claimant is a business entity and his money now being awarded by this tribunal was blocked for a considerable</p>	<p>This claim is regarding interest on the claims No. 1 to 5 & the AT allowed interest @ 10% on claim 1 to 4 and thus the AT didn't allow on the interest amount i.e. claim no. 5.</p> <p>As per Arbitration act there are provisions of award of interest on the awarded amount, therefore, the award may be accepted.</p>

period and he was deprived of using his own money by the respondent for his business and to make further profit by circulation of money. Thus, it is considered appropriate that, the ends of justice will be met only if interest is awarded to the claimant on his blocked capital.

So far as the rate of interest is concerned, this tribunal is fully convinced that the judgment being relied upon by the claimant to justify his demand of rate of interest as 12% is not applicable in the present case since in that case the principle of equity was applied when the rate of interest was provided under the contract.

Thus, I feel it appropriate to allow the rate of interest on the principle of equity as demanded by the claimant. The rate of interest provided under the contract under clause 10B (ii) for mobilization advance is 10%. But, at the same time the said amount of interest is to be recovered on the monthly basis (since intermediate bills are to be paid monthly). But it is not so in the present case. Moreover, the mobilization advance is a secured loan not unsecured loan. Also, the period of the agreement is also pre-fixed for 10% interest against mobilization advance. Above all, the respondent in this case is the public authority and if he had not given the mobilization advance to the claimant, the respondent was not expected to earn profit by using the said money in business like the claimant who is a business entity.

In view of the above finding. Accordingly, as per my assessment, I decide that it will be reasonable to allow the claimants a simple interest @ 10% per annum against this claim.

Submissions made by both the parties as also the terms and conditions of the contract have been given due consideration and accordingly interest is awarded as under:

- a) The work was completed on 28.04.2017 & final bill was certified and _____ paid on 30.06.2020 with final bill. The deemed

		<p>eddateoffinalbillisdecidedinparano. 12.4.4 as one year after date of completion i.e., 28.04.2018 (Deemed dated of finalbill). The Claimant has already demanded interest vide his letter dated 26.04.2018(C-3, page- 18). Hence, the claim of interest is considered from thedeemed dateof final bill i.e., 28.04.2018 for the claim which should have been paid along withfinalbill&forotherclaimsfromthe dateofinvocationofarbitrationi.e.,19 .01.2021. Therefore, a simple interest @10% p.a. is awarded on claim no.1, 2,3&4 w.e.f. 20.04.2018(Deemed Date of final bill)to06.04.2023 (Date ofaward).</p> <p>b) In view of my aforementioned findings, I award simple interest @10% per annumonamountawardedunderclai mno.1,2,3&4w.e.f.28.04.2018(Dee meddateof Final bill) to 06.04.2023 (Date of award). No interest is awarded on amountawarded under claim no. 5 & 7. The Claim no. 6 is for interest itself. The Detailsaregiven in summary ofawardalso in para-15.1.</p> <p>c) Regarding future interest, it is decided that in case the full and final payment,includingpre-suit,pendente-liteinterestandwithcostisreleasedby therespondent to the claimant within 60 days from the date of receipt of this award,there will be no future interest. Otherwise, the future interest @ 12% per annumfrom the date of award to the actual date of payment will also be payable by therespondenttothe claimantfortheentire awardedamountunder thisaward.</p>	
7	<p>Claim No. 7:Cost forArbitration :-</p>	<p><u>Analysis&FindingoftheTribunal:</u></p> <p>After overall analyses of the record placed before this tribunal, it is found that theClaimants had to undergo arbitration for their claims which havebeen found payabletothem.Therefore, they areentitledtobecompensatedfor thecostof arbitration.</p>	<p>In this claim the claimant, claimed for :-</p> <p>(i) Arbitrators fee-Rs. 6,65,800/- (ii) Cost of Venue- Rs. 1,08,000/- (iii) Consultant Fees – Rs. 5,00,000/- Thus, the claimant made</p>

The claimant has claimed towards cost of proceeding initially during SOC of Rs.5,00,000/- but after the end of the entire proceedings including submission of writtensynopsis, the total cost communicated by the Claimant as calculated on 20.02.2023

isRs.12,19,800/-

However,takingintoconsiderationtheclaimant'sshare towards fee and other expenses, stamp duty payable on the awarded amount and also the expenses incurred in engagement of Counsel and other miscellaneous expenses, this tribunal is of the opinion that the amount of claim towards cost Rs.9.00 is reasonable.

The Respondent has not given counter Claim towards the cost of the arbitration & other expenses of Respondent towards arbitration proceeding but demanded the above amount in favour of the Respondent. After going through the above award, it is clear that the claim has gone in the favour of the Claimant, hence the Claimant cannot be blamed for the arbitration. Thus the counterclaim of the Respondent is rejected.

In view of above, I award Rs. 9.00 lakhs in favour of Claimant under this claim & NIL amount is awarded in favour of the Respondent against cost of Arbitration.

The Claimant has further claim that the Respondent to pay GST @ 18% on the awarded amount as on date of payment by the Respondent.

It has been noted that the Claimant has sought an award for reimbursement of GST. Sums found due and payable under this claim petition will attract liability of payment of GST and clause 38 of contract provides for reimbursement of additional burden of tax. It is also noticed that the work has been completed on 28.04.2017 & there was no GST at the time of call of tender. The Claimant has already paid its liability of taxes at the time of purchase of material etc. & now he will not be able to claim any input credit on any component of work done earlier. Therefore, this Tribunal is of the

claim for Rs. 12,19,800/- & the AT allowed award of Rs. 9,00,000/-, keeping in view the claimants share towards fees & other expenses, stamp duty payable on awarded amounts & all the expenses incurred in engagement in counsel.

The AT have Judicial power & this award also appears not to be against the public policy & therefore, this award also may be accepted.

	<p>considered opinion that the Claimant could also be entitled for a declaration by this Tribunal that the Respondent shall pay GST as per the applicable rates, which is presently 18%, on the amount</p> <p>i.e. awarded by this Tribunal in this arbitration proceedings. So, I decide & hold that Claimant is entitled to declaratory award for reimbursement of GST. Therefore, the Respondent will reimburse the actual amount of GST paid on this award.</p> <p>Hence in view of above, I pass a declaratory award for reimbursement of GST applicable on sums found due and payable only upon submission of proof of having actually & genuinely paid and deposited the GST to authorities along with its request of reimbursement by Claimant against this claim no. 7. The Respondent is directed to reimburse the paid GST amount within 30 days of submitting the proof of the payment of GST to the Govt. If the payment not reimbursed within 30 days the interest @12%</p> <p>P.A. simple shall be payable to the Claimant on this amount of GST till the actual date of reimbursement.</p>	
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The tabulation of the award amount including interests and negotiated amount from the claimant is as below:-

Claim no	CLAIMED AMOUNT (Rs)	AWARDED AMOUNT (Rs)	Interest awarded @10%p.a. from date 28.04.2018 to 06.04.2023	Negotiated amount
1.	1,03,65,689.34	65,35,141/-	32,13,110/-	-
2.	1,84,62,595.00	1,59,34,096/-	78,34,264/-	1,47,58,588/-
3.	99,500.00	99,500/-	48,921/-	-
4.	9,23,080.00	9,23,080/-	4,53,848/-	-
5.	34,77,500.00	23,73,140/-	Nil	-
6.	Interest @12%p.a.	Interest @10% p.a.= 1,15,50,143.00 & Future Interest @12%p.a.	As awarded in Para 13.4.6	Interest @ 10% P.A= 1,09,72,185.00 & Future Interest @12% P.A
7.	12,19,800/-	9,00,000/-	Declaratory Award para 14.5.7	-

Total		3,83,15,100/-		3,65,61,634/-
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Dated:- 01.06.2023 OPINION OF SE/DCC-1/DDA

The case is forwarded with the recommendation of acceptance of negotiated amount.

Dated:- 01.06.2023 OPINION OF CE/DWARKA/DDA

The case is submitted to legal department for getting the revised opinion based on the detailed claim wise comments as per Note#20 above. The earlier opinion given by legal wing to "challenge the award without giving any express technical and legal reasons" is prior to claim wise technical and contractual comments. The case is submitted as per discussion held in ASB dated 17.05.2023. MoM issued vide no 229 dated 26.05.2023 (CP268). The case was deliberated in ASB with view for acceptance of award. As such a need for revised legal opinion was felt after putting detailed analysis and Engineering comments to the legal wing from the legal point of view. On detailed analysis it was found due to some error in the award against claim no 2, the total admissible amount of award after correction comes out to Rs 3,65,61,634/-. The consent letter of the agency is also got obtained vide their letter dated 31.05.2023 (CP276) for the corrected amount of award. The limitation period to challenge the award is 90 days from date of award on 06.04.2023. The case is submitted accordingly.

Dated:-08.06.2023 OPINION OF JLO

The brief facts of this case was given by EE dt 01.05.2023. Hence, same is not repeated herein for the sake of brevity.

Further, detailed comments of Engineering dept. per claim wise as decided in the ASB dt 17.05.2023, is given by the concerned atdt 01.06.2023, wherein the department has clarified its stand for acceptance of Award against the Claims, considering the technical and financial aspects /implications involved.

Dated:-15.06.2023 OPINION OF Dy. CLA-III and CLA

I am in agreement with the above views of JLO and SLO, however, may kindly see for final view.

Legal Examination: I have gone through the matter again and accordingly, adhered with the opinion of panel lawyer. In addition to that I have observed as under:

At the outset, I crave leave to say that the department is keen to accept award against each(07)claims as on today and why this administrative decision was not taken well before initiation of Arbitration proceeding and if did so we could succeed to save our costs of arbitration, venue, litigation, present & future interest on claims, fees of Ld.Arbitrator & Panel Lawyer. Secondly, the plea of the respondent(DDA) was that the claims nos. 01 &02 were barred by limitations as the alleged extra items / deviated work was done in October 2016 and claim for different rates for the same was only raised in June 2020 could not be appreciated by the Ld.Arbitrator.

Thirdly, the next objection of the Respondent(DDA) was that complete rate of extra/deviated items had been paid in 3rd RA Bill in 2018 and the same has been duly accepted by the Claimant and no objection as to the rate was taken at the said time and thus claim is barred by estoppel was also not appreciated by the Ld. Arbitrator.

Claim-wise Examination:

Claim no. 01:

Claimant Submission – Claimant submitted that respondent was given notice vide letter dated 06.09.2016 that we are ready to execute the deviated quantity beyond

permissible limit of deviation and extra item as per terms of agreement which provides market rates for extra item and for deviated item beyond permissible as per clause 12 of agreement.

Respondent(DDA) Submission – Alleged letter is denied as receiving of letter dated 06.09.2016 is 07.09.2021 and no rate analysis was submitted as per clause 12 of agreement. 10C & 10CA was paid.

Ld.Arbitrator's analysis and finding – Both parties does not complied clause 12 of agreement.

My View: Why DDA is solely bound to execute the clause 12 of agreement. The principle of equity must be followed by claimant too.

Comments of EE/DMD-2:-This view of law wing does not suggest anything adverse against the acceptance of the award.

Claim no. 02:

Claimant Submission – Claimant submitted that respondent was given notice vide letter dated 06.09.2016 that we are ready to execute the deviated quantity beyond permissible limit of deviation and extra item as per terms of agreement which provides market rates for extra item and for deviated item beyond permissible as per clause 12 of agreement.

Respondent(DDA) Submission – Alleged letter is denied as receiving of letter dated 06.09.2016 is 07.09.2021 and no rate analysis was submitted as per clause 12 of agreement. 10C & 10CA was paid.

Ld.Arbitrator's analysis and finding – Both parties does not complied clause 12 of agreement.

My View: Why DDA is solely bound to execute the clause 12 of agreement. The principle of equity must be followed by claimant too. However, the department note#20 shows that present claim has already been negotiated with claimant.

Comments of EE/DMD-2:-This view of law wing does not suggest anything adverse against the acceptance of the award.

Claim no. 03:

Claim on account of withhold amount in final bill-Rs 99,500/-and Awarded Amount is Rs. 99,500/- plus Interest @ 10% p.a. from date 28.04.2018

Claimant Submission – Amount was withheld arbitrarily on account of QAC inspection.

Respondent (DDA)Submission – Amount was withheld on account of various defects observed by QAC Inspection Team and the defects were not rectified by the agency.

Ld.Arbitrator's analysis and finding – Defect liability period has been passed and no defects has been intimated to agency.

Since, the defect liability period has been expired and all the defects noticed have been rectified by the claimant. Therefore, the said award may be accepted in order to avoid future interest cost and litigation costs.

My View: The DDA is a public authority and thus, it is in its domain to get executed its work through contract and accordingly, as per clause 16, DDA is duly empowered to inspect the quality of work under contract at any time and also can even withhold amount till the date of rectification of defects by agency. This claim should not be awarded until and unless act of specific arbitrariness on the part of DDA is proved. In this case nothing like this was happened.

Comments of EE/DMD-2:-This view of law wing, does not suggest anything adverse against the acceptance of the award. Only withhold amount have been released.

Claim no. 04:

Claim on account of refund of CGST & SGST and awarded Amount is Rs 9,23,080/- plus Interest @ 10% p.a. from date 28.04.2018.

My view: This is finance aspects and should be got examined from Finance department.

Comments of EE/DMD-2:-. The award is related to the statutory orders of Govt. of India and this view of law wing also does not suggest anything adverse against the acceptances of the award.

Claim no. 05:

Claim on account of interest @12% as a compensation on less payment and amount withheld arbitrary and awarded Amount is Rs. 23,73,140/-

Claimant submission – The claimant submits that A.D.O.C was 28.04.2017 and it was obligation of respondent for payment of final bill by 27.10.2017. Respondent paid 3rd Bill on 28.09.2018. 4th & Final bill was paid on 30.06.2020 after the extra item and deviated item was passed.

Respondent(DDA) submission – A perusal of the said clause reveals that the contractor is under obligation to submit the final bill within 3 months of the physical completion of the work or within one month of final certificate of completion furnished by Engineer-in-charge. Claimant failed to submit final bill within time prescribed.

Ld. Arbitrator's finding - Both parties failed to comply the contract provision. But it is the primary responsibility of employer to finalize the bill even if the claimant has failed to submit the final bill within prescribed time limit. The Tribunal decides that it will be reasonable that the Respondents should have paid the final bill within a year of actual date of completion. Thus, the Claimant is entitled for the interest on the payment made after a year of the actual date of completion i.e., 28.04.2018 (deemed date of final bill).

After deemed date of final bill the rate of interest is decided is 10%. Thus, the Claimant is entitled for the interest as given below:

- i) Interest on Rs.69,44,548/- @ 10% w.e.f., 28.04.2018 to 29.09.2018 (say 5 months) = Rs.2,89,356/-
- ii) Interest on Rs.70,00,000/- @10% w.e.f. 28.04.2018 to 30.06.2020, (but claimed w.e.f. 30.09.2018) (say 20 months), hence allowed w.e.f. 30.09.2018 to 30.06.2020 (21- months) = Rs.12,25,000/-
- iii) Interest of Rs.39,63,620 @10% w.e.f. 28.04.2018 to 30.06.2020 (26 months) = Rs.8,58,784/-

Thus, the Claimant is entitled for the interest on delayed payment against this claim for Rs.2,89,356 + 12,25,000 + 8,58,784/- = Rs.23,73,140/-

My view: When both the party have failed to comply with the contract provisions, why DDA is held solely responsible for the interest on delayed payment, thus ,this finding of Ld. Arbitrator is unreasonable, irrational and untenable in the eyes of law.

Comments of EE/DMD-2:-. The award of interest is within the preview of Arbitration and re-conciliation Act- 1996.

Claim no. 06:

Interest @ 12% on the claims due (Claim No. 1 to Claim No. 5) and Awarded amount i.e. a simple interest @ 10% p.a. is awarded on claim no. 1, 2, 3 & 4 w.e.f. 20.04.2018 (Deemed Date of final bill) to 06.04.2023 (Date of award) . No interest is awarded on amount awarded under claim no. 5 & 7. The Claim no. 6 is for interest itself

Ld. Arbitrator's finding – Thus, Tribunal feel it appropriate to allow the rate of interest on the principle of equity as demanded by the claimant. The rate of interest provided

under the contract under clause 10 B (ii) for mobilization advance is 10%. But, at the same time the said amount of interest is to be recovered on the monthly basis (since intermediate bills are to be paid monthly). But it is not so in the present case. Moreover, the mobilization advance is a secured loan not unsecured loan. Also, the period of the agreement is also pre-fixed for 10% interest against mobilization advance. Above all, the respondent in this case is the public authority and if he had not given the mobilization advance to the claimant, the respondent was not expected to earn profit by using the said money in business like the claimant who is a business entity. Regarding future interest, it is decided that in case the full and final payment, including pre-suit, pendente-lite interest and with cost is released by the respondent to the claimant within 60 days from the date of receipt of this award, there will be no future interest. Otherwise, the future interest @ 12% per annum from the date of award to the actual date of payment will also be payable by the respondent to the claimant for the entire awarded amount under this award.

My view: In the award, on several occasions the Ld.Arbitrator has specifically pointed out the failure on the part of both the party to comply with the provisions of agreement /contract , why DDA is held solely responsible for the payment of interest & future interest etc, thus ,this finding of Arbitrator is unreasonable, irrational and untenable in the eyes of law.

Comments of EE/DMD-2:-. The award of interest is within the preview of Arbitration and re-conciliation Act- 1996.

Claim no. 07 –

Cost of arbitration and awarded Amount is Rs. 9,00,000/-

My view: In the award, on several occasions the Ld. Arbitrator has specifically pointed out the failure on the part of both the party to comply with the provisions of agreement /contract, why DDA is held solely responsible for the payment of costs of arbitration & litigation, thus,this finding of Arbitrator is unreasonable, irrational and untenable in the eyes of law.

The present matter involves finance aspects too, thus, it should also be got examined from Finance department well before putting up the same before ASB.

If agreed, may kindly forward the file to the concerned department for taking administrative decision at their end.

Comments of EE/DMD-2:-. The award is within the preview of Arbitration and re-conciliation Act- 1996.

Overall comments of EE/DMD-2:-Moreover, all issues as described / viewed by the legal wing in their opinion / note mentioned above, were on record in the Arbitration proceedings and instead the learned Arbitrator made an award. Any award should be challenged, where, there are good ground available to challenge the award (whole all part) under Section 34(2) of the Arbitration and Conciliation Act, 1996 and its should not be challenged without recording sufficient reasons to avoid frivolous litigation and interest burden. From above it appears that sufficient ground is not available to challenge the award.

Submitted for acceptances of award after due deliberation in the ASB.

Comments of SE:-The SE is also in agreement with the comments of EE and from above it appears that sufficient ground is not available to challenge the award and the case is submitted for acceptance of award after due deliberation in the ASB.

Comments of CE:- Agrees with the recommendations of EE and SE. The case is put up for deliberations in ASB. Also during ASB meeting CE(Dwarka) informed that there are no sufficient reasons / grounds available to challenge the award (whole or part) under Section 34(2) of the Arbitration and Conciliation Act, 1996, to avoid frivolous litigation and interest burden.

RECOMMENDATION OF ASB IN 867th MEETING:-

After due discussion and deliberation ASB is the view of that the case may be send to Director/Finance for further scrutiny.

Accordingly case was submitted to Director (Finance) and the opinion of Director (Finance) is as under:-

OPINION OF FINANCE:-

1. Refer notes ante in conjunction with minutes of the meeting of ASB held on 06.07.2023 where the Panel Lawyer has opined to challenge the award and the same has been seconded by Dy. CLA&CLA (Refer pg. no. 358/c).
2. Further, CLA has examined the award claim-wise and offered comments and nowhere CLA has agreed to accept the award.
3. In view of forgoing, finance is also of the view that award may be challenged.
4. However, ASB being competent authority, in scrutiny of acceptance or challenge of arbitration award, may take a suitable decision.

RECOMMENDATION OF ASB

After due discussion and deliberation the ASB is of the view that this arbitral award is to be challenged.

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 up to Rs. 500 Lakhs 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 Agarwal
CE(Dwk)
Executive Member

-sd-
Sanjay Kumar Khare
CE(HQ)
Member

-sd-
Vijay Kumar Singh
FM, DDA
Chairman

Director (Works)/Consultant
(Member Secretary)

Copy to:

- 1) DDA to EM/DDA for information.
- 2) All concerned.
- 3) Director (System) for uploading on DDA website.
- 4) EE/DMD-2/DDA, Central Nursey, Sector – 5, Dwarka, New Delhi – 110075.

Sh. Joshi DDU
Director (Works)/Consultant
(Member Secretary)
07/08/2023

Sh. Dev, website Gyman.