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

No. EM2(3)2025/Dwk/221/DDA/ 337

Dated: 21-5-25

**MINUTES OF THE 909<sup>th</sup> MEETING OF ASB HELD ON 16.05.25**

**909<sup>th</sup>** Meeting of Arbitration Scrutiny Board (ASB) under the chairmanship of FM/DDA was held on **16.05.2025** at **11:30 A.M.** in the chamber of FM/DDA to deliberate the arbitration award in the matter of **M/s Rakesh Kumar & Co. Vs DDA** for the following work:

**N.O. W : C/o 30 mtr road no 237 upto Najafgarh drain connecting Hastal DDA flats at PWD road no. 237 upto Najafgarh.**  
**Agency : M/s Rakesh Kumar & Co.**  
**Agmt .No. : 21/EE/WD-7/DDA/2017-18**

The instant case has been submitted by CE(Dwarka) vide e-file computer no. 93477 on dt. 07.05.2025.

The meeting was attended by the following ASB members:

1. Shri Vijay Kumar Singh	FM, DDA	Chairman
2. Col. Deepak Suyal	CE(Dwarka)	Executive Member
3. Shri Sanjay Kumar Khare	CE(HQ)/DDA	Member
4. Shri Manohar Lal	Addl. CLA/DDA	Member
5. Shri Amit Singh	Dir. (Works)	Member, Secretary

The case was presented by Col. Deepak Suyal, CE (Dwarka).

**BRIEF HISTORY OF THE CASE IS AS UNDER: -**

The above stated work was awarded to M/s Rakesh Kumar & Co. vide award letter No. F.55(47) WD-7/DDA/2016-17/1386 Dt. 30.10.2017. The time allowed to complete the work was 180 days. As per agreement stipulated date of completion was

07.05.2018 whereas the work was actually completed on 31.05.2019. The EOT was granted by the competent Authority without levy of compensation.

The M/s Rakesh Kumar & Co. vide their letter dated 26.12.2020 requested Engineer Member, DDA for appointment of arbitrator. EM/DDA appointed Sh. Rajendra Agrawal, Retd. Principal CE Northern Railway as Sole Arbitrator vide letter no. EM2(7)/2021/Arbn. /Vol.VIII /Pt.164 /DDA/1627 Dated- 02.11.2021. However, the Hon'ble High Court of Delhi vide order O.M.P.(T)(COMM.)53/2023 dated 02.08.2023, terminated the mandate of the Shri R.K. Aggarwal and appointed Justice Deepa Sharma Retd., as Sole Arbitrator to adjudicate disputes in respect of agreement dated 02.11.2017.

The agency submitted 8 Nos claims through their advocate Sh. Vivekanand having total amount of claims as Rs. 1,12,42,807/- and there was no Counter-Claim of the department.

After completion of the proceedings the Ld. Arbitrator has pronounced the award dated 30.12.2024, then the claimant has filed an appeal for rectification before the Ld. Arbitrator for correction of errors. Thereafter, an additional award is pronounced by the Ld. Arbitrator vide order no. 26 dated 27.03.2025. Justice Deepa Sharma (Retd.), Sole Arbitrator published the award in favor of Agency in amounting to Rs. 84,28,563/- (Eighty-Four Lakhs Eighty Twenty-Eight Thousand Five Hundred Sixty-Three Only) plus Simple Interest @ 7.5% per annum from the date of award to the actual date of payment including Pre-reference period and Pendente-Lite period for which interest up to 30.04.2025 has been calculated which comes out of the tune of Rs. 31,91,036/-.

**Comments of Panel Lawyer: -**

The Ld. Arbitral Tribunal vide award dated 30.12.2024 had decided the arbitral claim of the claimant wherein claim no. 1, 2, 4, 5 and 7. The claim no. 3 and 6 were rejected by the Ld. Tribunal. I have gone through the award and am of the opinion that the award of granting claims no. 2, 4, 5 and 7 should be challenged before the Ld. Court under section 34 of the Arbitration and Conciliation Act, 1996. My opinion with regard to the claims are as under:

**Claim No. 1:** In my opinion, the claim has been rightly allowed as the contract amount was less than the requisite amount as mentioned in the agreement and thus, there was no requirement of furnishing the bar chart in the Primavera or MS Software. Thus, the claim has been rightly allowed and cannot be challenged before the Ld. Court.

**Claim no. 2:** The claim no. 2 had already been settled and paid by the department and thus, no decision has been given on the said claim, however, interest

has been awarded by the Ld. Tribunal on the said amount in Claim no. 7. The opinion of interest is mentioned against the said claim.

**Claim no. 3:** This Claim has been rejected by the Ld. Tribunal.

**Claim no. 4 and 5:** The Ld. Tribunal has granted these claims on account of extra and deviated items. The Ld. Tribunal has observed that the claimant has proved that he had supplied the market rates for extra and deviated items, however, yet the department had deducted the contractor's enhancement which was not permissible. The Ld. Tribunal failed to appreciate that the deduction was made in first RA bill also, however, the same was never challenged by the claimant and accepted. The claimant's argument that it was only part payment which was required to be settled in final bill as per clause 9 is totally erroneous. The claimant had never protested the contractor's enhancement which was agreed by the claimant in the award letter. Moreover, the claimant had given the undertaking that he shall not claim anything extra for the delay in the work, thus, the claimant was bound by the same. These two claims should be challenged before the Hon'ble Court u/s 34 of the A&C Act, 1996.

**Claim no. 6:** This Claim has been rejected by the Ld. Tribunal.

**Claim no. 7:** The Ld. Tribunal has granted interest @ 7.5% on the awarded amount. Though there is no provision of the grant of interest in the agreement, the law is now settled that the Ld. Tribunal can grant interest on the awarded amount. The claim no. 4 and 5 are required to be challenged before the Hon'ble Court. Secondly, the interest granted is on higher side. Thirdly, while granting the interest granted for claim no. 2 which has already been settled, the covid period was not taken into consideration, thus, the interest ought not to have been granted against the said claim. Thus, this award is also required to be challenged before the Hon'ble Court.

It is also informed that the claimant has now filed an application u/s 33(1) of the Act for rectification of the errors in the award. The copy of the application has already been supplied to the department. The limitation for filing the petition is 90 days from the date of receipt of award. Since the award is less than Rs. 2 crores, the petition for challenging the award has to be filed before the District Judge, Commercial Courts.

#### **Opinion of CLA: -**

#### **After Award dated 30.12.2024.**

In this matter an award has been passed by sole arbitrator vide order dated 30.12.2024. And file has been referred to Law department for legal opinion in the said arbitration matter. In this matter it is submitted that panel lawyer has already examined the case and legal opinion has also been obtained by him attached in 'C' side. And I am in agreement with the views of P/L, wherein he has opined that claim no. 2, 4, 5 and 7 should be challenged before court under section 34 of the Arbitration and

conciliation Act, 1996. Claim no. 4 and 5 in these claims the tribunal failed to appreciate that deduction was made in first RA bill also, however, the same was never challenged by the claimant and accepted. Moreover, the claimant had given the undertaking that he shall not claim anything extra for delay in the work. Claim no. 6 has been rejected by tribunal hence, need not to challenge. In claim no. 7 is regarding grant of interest. The interest granted is on higher side, while granting the interest for claim no. 2, the COVID period was not taken into consideration by the tribunal. Therefore, in view of above and opinion of P/L the award should be challenged before district Judge, Commercial Courts. May please see for final views

#### **After Additional Award dated 27.03.2025**

In this matter claimant has filed an application under section 33 (1) & section 33 (4) of Arbitration and Conciliation Act 1996, before the Ld. Arbitrator for correction of errors in award passed by Ld. Arbitrator vide order dated 30.12.2024. The claimant has filed application seeking two counts. Firstly, for the correction of typographical errors, secondly claiming Pendente-Lite and future interest from the date of filing of the claim till the actual payment. Reply of application was filed by DDA (respondent) where respondent has not disputed the typographical errors but denied the claim of Pendente-Lite and future interest. Tribunal has passed an additional award vide dated 27.03.2025, wherein tribunal has awarded the Pendente-Lite and future interest to the claimant by stating that "the award is silent on this point and tribunal has failed to discuss the claim for Pendente-Lite and future interest. The Tribunal is satisfied that the claim for Pendente-Lite and future interest has been inadvertently omitted." I have already examined the award and opined claim wise vide note #7, however, tribunal has passed additional award and awarded Pendente-Lite and future interest and in my view it may be challenged. Since, Dy. CLA-III is on leave therefore, file may be sent to Ld. CLA. May please see for final views.

#### **Recommendation of EE/DMD-5: -**

In view of the recommendation of Panel Lawyer and CLA it is recommended to challenge the Ld. Tribunal Award dated 30.12.2024 and an additional award pronounced on 27.03.2025 after an application of rectification filed by the claimant on 09.01.2025, except claim no. 1.

Sl. No	Claim No.	Brief Description of Claim/Counter claim as justified by Arbitrator	Amt. of Claim	Amt. of Award	Comments of Panel Lawyer	Comments of CLA	Comments of EE	Comments of SE
1.	1	Amount due on account of withheld amount from Final Bill on account of non-submission of Bar Chart as per Clause 5 of the Agreement i.e. using MS Project/Primavera a software.	Rs. 11,00,000/-	Rs. 11,00,000/-	In my opinion, the claim has been rightly allowed as the contract amount was less than the requisite amount as mentioned in the agreement and thus, there was no requirement of furnishing the bar chart in the Primavera or MS Software. Thus, the claim has been rightly allowed and cannot be challenged before the Ld. Court.	Agree with the Legal Opinion of Panel Lawyer	I Agree, with the opinion of P/L & CLA, case may be sent to ASB/DDA for taking decision.	I agree with the comments given by Panel Lawyer and recommendation of EE/DMD-5 & CLA
2.	2	Amount due on account of withheld amount in the final bill against outlay control.	Rs. 50,000/-	Nil	The claim no. 2 had already been settled and paid by the department and thus, no decision has been given on the said claim, however, interest has been awarded by the Ld. Tribunal on the said amount in Claim no. 7. The opinion of interest is mentioned against the said claim.	Agree with legal opinion of Panel Lawyer. However, interest awarded by the Tribunal may be challenged.	I Agree, with the opinion of P/L & CLA, case may be sent to ASB/DDA for taking decision.	I agree with the comments given by Panel Lawyer and recommendation of EE/DMD-5 & CLA
3.	3	Amount due under Clause 10C of the	Rs. 6,63,376/-	Rejected by Ld. Tribunal	--		The claim has been rejected by	I agree with the comments given by Panel Lawyer

		Agreement not paid Claimant's Case and Arguments						the Ld. Tribunal and the same shall be accepted.	and recommendation of EE/DMD-5 & CLA
4.	4	Amount due on account of extra amount because rates sanctioned by the department are not in accordance of in built clause 12 of the agreement.	Rs. 35,18,980/-	Rs. 35,18,980/-	The Ld. Tribunal has granted these claims on account of extra and deviated items. The Ld. Tribunal has observed that the claimant has proved that he had supplied the market rates for extra and deviated items, however, yet the department had deducted the contractor's enhancement which was not permissible. The Ld. Tribunal failed to appreciate that the deduction was made in first RA bill also, however, the same was never challenged by the claimant and accepted. Moreover, the claimant had given the undertaking that he shall not claim anything extra for delay in the work.	In these claims the tribunal failed to appreciate that deduction was made in first RA Bill also, however, the same was never challenged by the claimant and accepted. Moreover, the claimant had given the undertaking that he shall not claim anything extra for delay in the work.	I Agree, with the opinion of P/L & CLA, case may be sent to ASB/DDA for taking decision to <b>challenge the award.</b>	I agree with the comments given by Panel Lawyer and recommendation of EE/DMD-5 & CLA	

				claimant in the award letter. Moreover, the claimant had given the undertaking that he shall not claim anything extra for the delay in the work, thus, the claimant was bound by the same. These two claims should be challenged before the Hon'ble Court u/s 34 of the A&C Act, 1996.				
5.	5	Amount due on account of payment due on account of less payment made against deviated items.	Rs. 38,09,583/-	Rs. 38,09,583/-	The Ld. Tribunal has granted these claims on account of extra and deviated items. The Ld. Tribunal has observed that the claimant has proved that he had supplied the market rates for extra and deviated items, however, yet the department had deducted the contractor's enhancement which was not permissible. The Ld. Tribunal failed to appreciate that the deduction was made in first RA bill also, however, the same was never challenged by the claimant and accepted. The claimant's argument that it was only part payment which was required to be settled in final bill	In these claims the tribunal failed to appreciate that deduction was made in first RA Bill also, however, the same was never challenged by the claimant and accepted. Moreover, the claimant had given the undertaking that he shall not claim	I Agree, with the opinion of P/L & CLA, case may be sent to ASB/DDA for taking decision to <b>challenge the award.</b>	I agree with the comments given by Panel Lawyer and recommendation of EE/DMD-5 & CLA



					as per clause 9 is totally erroneous. The claimant had never protested the contractor's enhancement which was agreed by the claimant in the award letter. Moreover, the claimant had given the undertaking that he shall not claim anything extra for the delay in the work, thus, the claimant was bound by the same. These two claims should be challenged before the Hon'ble Court u/s 34 of the A&C Act, 1996.	anything extra for delay in the work.		
6.	6	Amount due to profanation of contract for utilisation of technical and other staff, mechanical etc.	Rs. 22,08,000/-	Rejected by Ld. Tribunal		Has been rejected by Tribunal. Hence, need not to be challenged	The claim has been rejected by the Tribunal and the same shall be accepted.	I agree with the comments given by Panel Lawyer and recommendation of EE/DMD-5 & CLA



7.	7	Amount due on account of 18% P.A. on delayed payment for the period i.e. Pre-reference period and Pendente-Lite period.	<p>Claim 1-Rs. 5,66,334/-</p> <p>Claim 2-Rs. 9,567/-</p> <p>Claim 3-Rs. 1,72,462/-</p> <p>Claim 4-Rs. 9,73,552/-</p> <p>Claim 5-Rs. 10,53,950/-</p> <p>Claim 6- Rs. 6,10,860/-</p>	As per interest sheet	<p>The Ld. Tribunal has granted interest @ 7.5% on the awarded amount. Though there is no provision of the grant of interest in the agreement, the law is now settled that the Ld. Tribunal can grant interest on the awarded amount. The claim no. 4 and 5 are required to be challenged before the Hon'ble Court. Secondly, the interest granted is on higher side. Thirdly, while granting the interest granted for claim no. 2 which has already been settled, the covid period was not taken into consideration, thus, the interest ought not to have been granted against the said claim. Thus, this award is also required to be challenged before the Hon'ble Court.</p>	Is regarding grant of interest. The interest granted is on higher side, while granting the interest for claim no. 2, the Covid period was not taken into consideration by the tribunal.	I Agree, with the opinion of P/L & CLA, case may be sent to ASB/DDA for taking decision to <b>challenge the award</b>	I agree with the comments given by Panel Lawyer and recommendation of EE/DMD-5 & CLA
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**Recommendation of SE/DCC-3: -**

I agree with the comments given by Panel Lawyer and recommendation of EE/DMD-5 & CLA to challenge the Arbitral Award passed by Ld. Arbitrator on dated 30.12.2024 and on 27.03.2025 except claim no. 1.

**Recommendation of CE/Dwarka: -**

In the light of advice rendered by Panel Lawyer and CLA this office is also of the view that award of Arbitrator is challenged except claim no. 1.

**RECOMMENDATION OF ASB:**

After due discussion and deliberation, the ASB has recommended the following: -

- i. ASB has recommended to **accept** the award against the claim no. 1 & 2 and to **challenge** the award against claim no. 4 & 5. Further, since claim no. 3 & 6 had already been rejected by Ld. AT, hence, award against claim no. 3 & 6 may also be accepted.
- ii. With respect to claim no. 7, ASB has recommended to **accept** the interest awarded against claim no. 1 & 2. Since the claim no. 4 & 5 are recommended to be challenged by ASB, accordingly, the corresponding interest of the claim no. 4 & 5 awarded under claim no. 7 may also 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 Vice Chairman, DDA is the Competent Authority to accept / challenge the claims in r/o award amount more than Rs. 100 Lakhs and less than 500 Lakhs, in consultation with FM/DDA, with due scrutiny by Arbitration Scrutiny Board headed by FM, DDA.

-Sd-  
Amit Singh  
Dir(Works)  
Member Secretary

-Sd-  
Manohar  
Addl. CLA  
Member

-Sd-  
Sanjay Kumar Khare  
CE(HQ)  
Member

-Sd-  
Col. Deepak Suyal  
CE(Dwarka)  
Executive Member

-Sd-  
Vijay Kumar Singh  
FM, DDA  
Chairman

Director(Works)/DDA

**Copy to: -**

1. EM/DDA for kind information.
2. All concerned.
3. Director (System) for uploading on DDA website.
4. EE/DMD-5, Near Double Tanki, Paschim Vihar, New Delhi-110063.

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*AD(2) Sh. Raman*  
22.5.25

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Sh. Dev. website Engineer

*Antony*  
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Director(Works)/DDA