

उप निदेशक (प्रणाली)-I दि.वि.प्रा.  
Dy. Director (Systems)-I D.D.A.  
डायरी नं० / Dairy No. 660  
दिनांक / Date 13/9/2023

निदेशक (प्रणाली) दि.वि.प्रा.  
डायरी नं० 53  
दिनांक 11/9/23



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

No. EM 2(3)2023/RZ/142/DDA/ 455

Dated: 06/9/2023

**MINUTES OF THE 874<sup>th</sup> MEETING OF ASB HELD ON 05.09.2023 IN THE CHAMBER OF FINANCE MEMBER, DDA**

874<sup>th</sup> Meeting of Arbitration Security Board (ASB) under the chairmanship of FM, DDA held on **05.09.2023** at **05:00 P.M.** in the chamber of FM, DDA to deliberate Arbitral award in the matter of **M/s Swastic Construction Co. Vs DDA** for the following work: -

**N.O. W : Development of 443.44 Hact. of land in Sector 34 & 35, Phase-IV & V Rohini.**  
**Sub-head : C/o SPS No-2 in Sector-35, Rohini, New Delhi.**  
**Agency : M/s Swastic Construction Co.**  
**Agmt. No. : 09/EE/RPD-7/DDA/2017-18**

The Agenda note was submitted by the CE (RZ) vide file no. F.2(222)CB/RPD-2/DDA/346 dated 04.08.2023.

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 S.S. Meena	CE(RZ)	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. S. S. Meena, CE(RZ), DDA.

**Brief history of the case is as under:-**

The above-mentioned work was awarded to M/s Swastic Construction Co. by DDA vide letter no. F55(349)EE/RPD-7/DDA/2015-16/555 dated 05.06.2017. An Agreement No. 09/EE/RPD-7/DDA/2017-18 dated 07.07.2017, was signed between the parties. As per the terms and condition of the agreement between the parties, the date of commencement of the work was 12.06.2017, the Work was to be completed in 11 months and the scheduled date for completion of Work was 11.05.2018. However the Work got delayed by more than 9 months after the expiry of the stipulated date of completion and the actual date of completion of the Work was 15.02.2019. Since there was a delay in the completion of the Work by the agency, so EOT was granted under clause 5 of the agreement imposing liquidated damages under Clause 2 of the Agreement (Compensation for Delay), for 38 days, at the rate of 1.5% per month as determined by the Superintending Engineer.

It is submitted that the agency invoked the arbitration under clause 25 of the agreement and requested EM/DDA to appoint Arbitrator. EM, DDA pleased to appoint Sh. Nand Lal Singh, Sole Arbitrator to adjudicate the disputes of the agency on 30.07.2019 vide letter no EM2(7)/Arb./Vol.VIII/Pt.139/2100. After hearing the arguments of both the parties, Sh. Nand Lal Singh, Sole Arbitrator published the award on 28.07.2020 in favour of the agency amounting to Rs 2,06,41,542/- (Two Crore six lakh forty-one thousand five hundred forty-two only) plus simple interest @9% per annum from 20.10.2019 in claim no. 1, 2, 3, 4, 5, 6, 7, 8, 9 and additional claim 1 & 3 plus a future interest of 9% per annum from the date of award to the actual date of payment to entire awarded amount including pre-award interest, if the awarded amount along with pre-award interest is not paid within 90 days of issue of award i.e. up to 25.10.2020.

After the publication of the Award dated 28.07.2020, the case was put up before Arbitration Scrutiny Board and after due discussion and deliberation, the Board was of the view to challenge the Award against Claim No 1, 2, 3, 6, 7, 8, 9 and additional claim no 1 allowed in favour of agency. DDA challenged the arbitration award on Claim No 1, 2, 3, 6, 7, 8, 9 and additional claim no 1 allowed in favour of agency and filed objection against the award dated 28.07.2020 under section 34 of the Arbitration and Conciliation Act, 1996 before Hon'ble High Court. The case was registered as OMP(Comm)-17/2021. Hon'ble High Court after hearing the arguments of both the parties vide Judgment dated 01.09.2021 (corrected and release on 16.10.2021) upheld the findings of Ld. Arbitrator on Claim No 1, 2, 3, 6, 7, 8, 9 and additional claim no 1.

The Award dated 28.07.2020 and the judgement dated 01.09.2021 were challenged under section 37 of the Arbitration and Conciliation Act, 1996 vide case no. FAO(OS) (COMM) 179/2021 before the Division Bench of the Hon'ble High Court. The challenge was broadly on 4 grounds amongst other grounds i.e. (i) That the claims No. 6 and 7 were excepted matters meaning thereby that the same were not arbitrable at all. (ii) That the award has been passed by the Ld. Arbitrator without any evidence in support thereof qua all of the claims especially Claims no. 6 and 7 (iii) that the Ld. Arbitrator has relied on internal notings of DDA to determine the rates as claimed by the Claimant without considering that the same had no bearing and were not the final decision taken by DDA. (iv) That the Ld. Arbitrator has essentially re-written the Agreement between the parties in contravention of specific contractual provisions. But the appeal dismissed vide judgement dated 20.12.2021.

Thereafter the Judgement dated 20.12.2021 was challenged before the Hon'ble Supreme Court by filling SLP(C) 19116/2022. Apart from the objections already taken before the Hon'ble High Court under section 34 and 37, an additional objection was taken that the Hon'ble High Court had not considered the objection of excepted matters. But the Hon'ble Supreme Court vide Order dated 02.11.2022 dismissed the SLP and granted liberty to DDA to approach the Hon'ble High Court by way of filling review.

Thereafter as per the liberty granted by the Hon'ble Supreme Court, the undersigned had filled Review Petition No. 347 of 2022 before the Hon'ble High Court of Delhi. The High Court dismissed the case vide the judgement dated 30/01/2023.

**OPINION OF PANEL LAWYER:**

The Panel Lawyer provided the legal opinion w.r.t. on the judgement dated 30.01.2023 in Review petition no 347 of 2022 Titled as "DDA Vs Swastic Constructions Pvt. Ltd. In FAO(OS) (COMM) 179 of 2021". The legal Opinion is reproduced as under

" I have examined the record and judgement dated 30.01.2023 passed by the Hon'ble Delhi High Court and I am of the concerned opinion that it is not a fit case for challenging before the Hon'ble Supreme Court of India for the following reasons:

**1. OBJECTIONS OF EXCEPTED MATTERS NOT RAISED IN ARBITRATION PROCEEDINGS AND SECTION 34:**

That the Hon'ble bench has held in paragraphs no. 13 and 14 that DDA had not raised the objection of claims no. 6 and 7 not being arbitrable before the Hon'ble Single Bench and therefore, the review petition was liable to be dismissed on that ground alone.

**2. ISSUE OF EXCEPTED MATTERS DISTINGUISHABLE:**

The Hon'ble High Court while considering the issue of excepted matters has relied upon the judgment of the Hon'ble Supreme Court in J G Engineers v. Union of India (2011) 5 SCC 758 as well as and held as under:

"18. In this view of the matter, we are of the opinion that both Clause 2 and 5 only puts a finality to the determination of the consequential issue relating to quantification of the compensation on account of delayed progress of the contract.

19. The fact whether there was delayed progress or not, and whether the awarded work has been completed within the scheduled time are not covered within the purview of excepted matters.

20. The decision as to whether the respondent was responsible for delay or not, is not an excepted matter and hence, arbitrable

**It is therefore submitted in the opinion of the undersigned it may not be fruitful to challenge the Judgement dated 30.01.2023 before the Hon'ble Supreme Court and incurring further expenses in litigating the issue. The Department may take a final call on this aspect"**

**COMMENTS OF LEGAL WING:**

Please see the noting of the Legal wing DDA where the observations of the Hon'ble High court in the judgement dated 30/01/23 has been noted along with the opinion of the Panel Lawyer. Further the legal opinion of the legal wing is as under:

**COMMENTS OF SLO(ENGG):**

Point 'A' mentioned by JLO(Engg). Above may be taken into account. Department verify it independently if above observation of the Hon'ble court is true. **It would be difficult to sustain the challenge. However Department may see for appeal independently.**

**COMMENTS OF DY. CLA AND LD. CLA:**

I am in agreement with the above views of SLO(Engg) however, may kindly see for final view.

**Details of the M/s Swastic Construction Versus Delhi Development Authority Case No.:-EX464/2020**

In addition to above please see the Note no. 1 and 3 of the undersigned of e-file computer no. 46422. And the final order dated 15/10/2022 in the matter of M/s Swastic Construction Versus Delhi Development Authority Case No.:- EX464/2020 in District Judge (Commercial Court no.6) South East, Saket Court. The order of the Hon'ble Court is reproduced as under:-

"In continuation of the proceedings of the last date, it is informed that the attached amount of Rs 2 crore had been realized into the account of DH. The respondent objector has not initiated any proceedings is surviving anywhere before any court of competent jurisdiction.

The status of FDR/undertaking/ bank guarantee with the Laxmi Nagar Branch, Union Bank of India is informed as "LIVE/Survive". He manager states that in terms of the direction he has no objection to release the same to the DH. In view there of let the bank guarantee be released in favour of the DH. Nothing survives in the execution which is now satisfied."

The opinion of the panel lawyer Sh. Gunjan Kumar w.r.t the judgement dated 15.10.2022 in execution matter before Hon'ble District Court of Saket is reproduced as here under:

"As intimated after passing of award in arbitration execution petition was filed by claimant {Swastic}. In the meantime objection under section 34 was filed by DDA and stay of execution proceedings was granted Delhi High Court in section 34 proceedings. The section 34 proceedings was disposed off in November 2021 and since then there was no stay on execution proceedings. On the premise of filing of section 37 appeal and SLP before I have been requesting the executing court to defer the execution proceedings.

As much time had passed and the proposed SLP could not be listed, the Hon'ble Court proceeded ahead with the execution proceedings, which was intimated by me from time to time.

The Hon'ble court vide an order in August 2022 attached the bank account of DDA and vide the last order dated 15.10.2022 released the money to claimant. **As the Objection petition and Appeal under section 37 filed by DDA were dismissed and no SLP is pending and there was no stay of execution, the execution was carried out and the money was released to claimant. Now no further DDA proceeding can be filed unless there is any calculation error."**

**COMMENTS OF EE/RPD2:**

In view of above, w.r.t the judgement dated 30.01.2023 of the Hon'ble High Court in the review petition 347/2022, order dated 15/10/2022 in the case no. EX464/2020 in District Judge (Commercial Court no. 6) South East, Saket Court. And the opinion of the panel lawyers in both the matters. Also as per the comments/views of the legal wing that, it is evident that it would be difficult to

sustain the challenge to the decision in Supreme Court. The under sign also agrees with opinion of Panel Lawyer and Legal Wing. Therefore, the case may be forwarded to be put up before ASB for Final decision /acceptance in the matter.

**COMMENTS OF SE/RCC-3:-**

In consideration of the Judgement of Hon'ble High Court w.r.t. review petition after the dismissal of the SLP by Hon'ble Supreme Court, I am of the opinion that now this case is not a fit case for challenging before Hon'ble Supreme court. It should be accepted.

**COMMENTS OF CE/ROHINI:**

May kindly persue the note of EE/RPD-2, SE/RCC-3 regarding court case M/s Swastic Construction Co. against order dt 20/12/21 which was dismissed by Hon'ble Supreme court granting liberty to approach the High Court by way of filling the review Hon'ble court delivered judgement dated 30.01.2023, dismissing the review application of DDA. As per the opinion of Panel Lawyer, it may not be fruitful to challenge the judgement dated 30.01.2023 before the Hon'ble Supreme Court and incurring further expenses in litigating the issue. As per legal wing it would be difficult to sustain the challenge. In view of above, it may not be fruitful to challenge the judgement dated 23.01.2023 before the Hon'ble Supreme court and case may be put up before the ASB for final decision/ acceptance in the matter please.

**RECOMMENDATION OF ASB:**

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

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-  
S. S. Meena  
CE(RZ)  
Executive Member

-sd-  
Sanjay Kumar Khare  
CE(HQ)  
Member

-sd-  
Vijay Kumar Singh  
FM, DDA  
Chairman

Director (Works)/Consultant  
Member Secretary

**Copy to:-**

1. EM/DDA for kind information.
2. All concerned.
3. Director (System) for uploading on DDA website.
4. EE/RPD-2/DDA, Rohini Zone, Delhi for information please.

Director (Works)/Consultant  
Member Secretary