

उप निदेशक (प्रणाली)-I दि.वि.प्रा.
Dy. Director (Systems)-I D.D.A.
डायरी नं० / Dairy No. 654
दिनांक / Date 13/9/2023

निदेशक (प्रणाली) दि.वि.प्रा.

डायरी नं० 51

दिनांक 11/9/23



दिल्ली विकास प्राधिकरण

DELHI DEVELOPMENT AUTHORITY

ई.एम. सचिवालय

E.M's Secretariat

No. EM2(3)2023/Hort./03/DDA/ 453

Dated: 06/9/2023

**MINUTES OF THE 870th MEETING OF ASB HELD ON 05.09.2023 IN THE
CHAMBER OF FINANCE MEMBER, DDA**

870th Meeting of Arbitration Security Board (ASB) under the chairmanship of FM, DDA was earlier scheduled to be held on 28.07.2023 at 03:00 P.M. in the chamber of FM, DDA & same was postponed due to some administrative reasons and re-scheduled and held on 04.08.2023 at 03:45 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 : Restoration & Rejuvenation of River Yamuna Flood Plains.
Sub-head : Nizamuddin Bridge to DND Flyway (Western Bank) 100 Hac.
(25 Hac. Which Was leased to AOL + 75 Hac. remaining area).
Agency : M/s Swastic Construction Co.
Agmt. No. : 16/EE/ED-8/DDA/2019-20

The Agenda note was submitted by the CE(Hort.) through e-office vide file no. ENG/CEEZ/0027/2023/ECC1/EMD3-O/o EE(EMD III) (Computer No. 65813) dated 25.07.2023.

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 Ravinder Kumar	CE(Hort.)	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. Ravinder Kumar, CE(Hort.), DDA. After due discussion and deliberation all the members of ASB were of the view that in this matter CE(Hort.) is requested to review his claim-wise comments and after reviewing his comments file may be sent to Director(Finance) for further scrutiny at his end. Accordingly, the file was sent to CE(Hort.) for reviewing his claims and after reviewing his claims for submitting the file to Director(Finance) for further scrutiny at his end. Now, the CE(Hort.) has reviewed his claim-wise comments and Director(Finance) vide his note no. 62 (computer no. 65813) dated 13.08.2023 scrutinized the matter and intimated that the revised legal opinion may be obtained from panel lawyer for change of decision by the ASB in the said meeting however, ASB being competent authority for acceptance or challenge of arbitration award and file was returned to ASB for further necessary action. After that meeting was re-scheduled to be held on 01.09.2023 at 04:00 PM & same has also been postponed, now 870th review meeting of ASB under the chairmanship of FM, DDA in his chamber was again

13.9/23
Sh. Jasti

re-scheduled and held on **05.09.2023 at 04:00 PM** to deliberate arbitration award in the above matter and the meeting was attended by all the ASB members as mentioned above **except Shri Ravinder Kumar, CE(Hort.), Executive Member in place of him meeting was attended by Shri. Ashwini Kumar, CE(Hort.) as Executive Member.**

The supplementary agenda has been submitted on dated 17.08.2023 and agenda was placed by Shri. Ashwini Kumar, CE(Hort.) as Executive Member in place of Shri Ravinder Kumar, CE(Hort.).

Brief history of the case is as under:-

The above said work was awarded to **M/s Swastic Construction Co.** vide letter No. F2(38)2019-20/A/c/ED-8/DDA/900 dated 05.11.2019 by this office. The stipulated date of start and completion of the work was 20.11.2019 and 17.05.2020 respectively. The work comprises of Civil and Horticulture components. The work was actually completed on 15.07.2021 and extension of time has been granted by Competent Authority upto 15.07.2021 without levy of compensation. The final bill of the work has been paid on 17.05.2022 with the gross amount of Rs.12.67 Crores.

During the currency of work some disputes arises between the Construction Agency and DDA resulting the claimant has invoked Arbitration under Clause-25 of the Agreement. The Engineering Member/DDA has appointed Sh. Dinesh Kumar, Retd. Engineer-in-Chief (PWD) as Sole Arbitrator vide his letter No. EM2(7)/2020/Arbn./Vol. VIII/Pt.160/DDA/890 dated 28.07.2021 to adjudicate the claims of the claimants. Total 5 nos. claims were referred with total amount of claim as Rs.15.00 Crores. The first hearing was held on 16.08.2021 and total 18 hearing were held. The last hearing was held on 26.09.2022.

On the request of claimant vide letter dated 03.10.2022, the Engineering Member/DDA referred 18 nos. additional claims in this case to Sh. Dinesh Kumar, The Ld. Arbitrator, vide his Letter No. EM2(7)/2020/Arbn./Vol. VIII/Pt.160/DDA/1147 dated 17.10.2022. The amount of the additional claims was Rs.10,60,59,772/- + interest. The additional hearing were held by the Sole Arbitrator from 19 to 28. The last hearing was held on 08.05.2023 and case is concluded by the Arbitrator.

The Ld. Arbitrator after 28 hearings has finally concluded the hearing on 08.05.2023 and the award was pronounced on 20.06.2023 awarding the amount of Rs.6,59,61,981/- + Rs 1,21,96,742/- interest upto 20.06.2023 in favour of the agency. The award was received by this office on 20.06.2023 through E-mail. The Arbitrator has allowed 60 days from the date of receipt of the award in order to complete the formalities and make the payment to the claimant. Thereafter, it will carry a future interest @ 12% p.a. from the date of award to actual dt. of payment as per Clause No.29.7.6 (B) Page-98 of the Award. There were 5 nos. main claims and 18 nos. additional claims of the contractor amounting to Rs.25,77,27,273/- + interest against which the Ld. Arbitrator has allowed 15 nos. claims + interest. The amount awarded by the Ld. Arbitrator is Rs.6,59,61,984/- + interest part.

There were some disputes related to measurements. The Ld. Arbitrator appointed Sh. Sajal Mitra EE(Retd.) CPWD, as an Expert to check the measurements at site vide his order dated 26.04.2022. The said expert submitted his report on 08.08.2022 vide no. Expert/SM/60/2022.

The said report submitted by Expert was observed by this office as biased, one sided and unjustified. The objection of the Respondent were submitted to Ld. Arbitrator vide this office No.F8(76)22/EMD-3/Pt.-II/ dated 31.08.2022. It was prayed that the said report of Expert is wrong and must be ignored. But the arbitrator rely upon the report of the expert and published the award.

A statement in Tabular form giving the short title claim No., Amount Claimed, awarded amount & interest awarded:-

Claim No.	Description of Claims	Claimed amount (Rs.)	Awarded amount (Rs.)	Interest awarded @ 10% p.a. from
1.	Amount on account balance payment due not paid by the respondent	14,30,91,567/-	3,51,08,186/-	27.11.2020
2.	Amount due on account of item paid upto 2 nd R/A bill but recovered in 3 rd R/A bill	58,33,237/-	58,33,237/-	27.11.2020
3.	Amount due on account of bill for topographical survey for re-design of water body-1	4,72,697/-	4,72,697/-	27.11.2020
4.		Interest @ 12% for presuit, pendente lite and future	Along with additional claim no.16	N.A.
5.		Interest @ 12% for presuit, pendente lite and future	Along with additional claim no.16	N.A.
Additional Claims				
1.	Amount due on account of withheld amount against quality control and labour reports	5,00,000/-	2,66,572/-	03.10.2022
2.	Amount due on account of delay in release of Bank Guarantee	1,58,525/-	1,58,525/-	03.10.2022
3.	Amount due on account of interest payable @ 10% p.a. for the delay in payment of quantity of extra item no.1/4	18,63,371/-	Nil	
4.	Amount due on account of losses	4,70,27,568/-	1,11,92,625/-	03.10.2022

	and damages due to prolongation of contract			
5.	Amount due on account of extra item for jungle clearance	1,98,04,181/-	23,77,589/-	03.10.2022
6.	Amount due on account of prefinished nosing	14,10,253/-	Nil	N.A.
7.	Amount on account of stacking of earth	2,81,786/-	2,64,487/-	03.10.2022
8.	Amount on account of work executed below 3 mtr.	27,59,433/-	Nil	N.A.
9.	Amount due on account of withheld for CTE	2,00,000/-	2,00,000/-	03.10.2022
10.	Amount due on account of interest wrongly recovered in final bill	3,15,851/-	3,15,851/-	03.10.2022
11.	Amount due on account of non-submission of progress chart	1,65,000/-	1,65,000/-	03.10.2022
12.	Amount due on account of increasing rates of material	1,86,98,189/-	35,00,000/-	03.10.2022
13.	Amount due on account of balance payment of Horticulture work	42,61,982/-	32,43,579/-	03.10.2022
14.	Amount due on account of Clause-10C	3,63,633/-	3,63,633/-	03.10.2022
15.	Amount due on account of idle labour	70,00,000/-	Nil	N.A.
16. & 5 and counter claim	Amount due on account of cost of arbitration	35,20,000/-	25,00,000/-	Nil
17.	Amount due on account of GST to the paid on award	GST	Declaratory	As per award under claim no.17
18. & 4		Interest @ 12% for presuit, pendente lite and future	Interest @ 10% p.a. for pendente lite & @ 12% p.a. for future	As per award under Add. Claim no.18 & Claim No.4
Total		25,77,27,273/-	6,59,61,981/-	As per award under Add. Claim No.18 & Claim No.4

Legal opinion of Panel Lawyer:

Panel Lawyer has recommended to challenge the Award Amounting to Rs:6,41,02,050/- against the awarded amount of Rs:6,59,61,981/- and balance

amount for acceptance. The details of recommendation to challenge/accept the award is placed here.

Opinion of the Legal Department:

Legal Department Agrees with the opinion of the Panel Lawyer and being the technical matter the department may decide administratively.

Opinion of the Finance Department:

Finance Department Agrees with the opinion of the Panel Lawyer and being the technical matter the department may decide administratively.

Recommendation of the Chief- Engineer(Hort-DDA):

Claim No. 1/1 For Brickwork

Amount of claim Rs 4,03,605/-

Amount awarded by the Arbitrator Rs. 3,51,004/-

The item of brickwork was actually executed at site as concerned by the EE. The dispute was regarding the height of the brickwork as measured by the field staff and as claimed by the agency however, the field staff has accepted the quantity as assessed by the expert and awarded by the arbitrator. The panel lawyer has also proposed for the acceptance of this award. In view of this, the part of the award is proposed to be accepted.

Claim No. 1/2 Supply and stacking of Moorum

Amount of claim Rs. 1,92,471/-

Amount awarded by the Arbitrator Rs. 1,69,341/-

The award is related to supply and stacking of moorum at site. As per agreement the item is payable by stack measurement before spreading and this item is not susceptible to re-measurement. Although the expert considered the quantity on the basis of presumption by taking a uniform thickness of 80mm and calculated total quantity more than the quantity claimed by the agency. However, as per the Contract condition, only 50 mm thickness was required. Since there is lack of application of mind by the arbitrator to the report of the expert.

Hence the claim is proposed to be challenged.

Claim No. 1/3 Spreading of Moorum at site

Amount of claim Rs. 1,68,293/-

Amount awarded by the Arbitrator Rs. 1,27,987/-

This claim related to spreading of moorum which was considered in claim no. 2 on the basis of assumption and presumption hence for the reasons as mentioned in above claim. This claim is also proposed to be challenged.

Claim No. 1/4 Providing and laying different material in bed layer

Amount of claim Rs. 3,40,731/-

Amount awarded by the Arbitrator Rs. 2,99,783/-

The claim is related to laying of geo textile for retaining of soil and is not subject to the measurement after the work is completed. The work is not actually carried out at site but the expert on the basis of presumption and by wrong interpretation of measurement book has calculated the quantity as claimed by the agency. Hence the claim is proposed to be challenged.

Claim No. 1/5 Providing hydraulic excavator 3D with front loaders of capacity I cum

Amount of claim Rs. 49,337/-

Amount awarded by the Arbitrator Rs. 47,500/-

The claim is related to the difference of rates of the extra item for using a hydraulic excavator and the quantity is acceptable to both parties. The rate sanctioned by the DDA was 7392.10 per day against the rate demanded by the claimant as Rs. 9365.56 per day. The arbitrator held that both parties have not followed the contractual provisions covered under clause 12 as the department did not sanction the rate within the stipulated period as per clause 12 and the claimant has not submitted any quotation/bill and considering the market rate of the machinery awarded an additional rate of 1900 per day. The panel lawyer propose the claim for acceptance along with the concerned EE. Considering their proposal this office is also of the view that the claim may be accepted.

Claim No. 1/6 Extra for every additional lift

Amount of claim Rs. 23,22,744/-

Amount awarded by the Arbitrator Rs. 6,86,386/-

The claim is related to extra for additional lift of 1.5 meter. The quantity excavated of earth was not fully lifted but part of this was laid over geotextile membrane in 100 mm thick directly by labourer. The quantity was verified by the Expert without any base. The Ld. Arbitrator has awarded this part of claim on the quantity calculated by the expert (which is not correct) and keep the rates same as sanctioned by the department. The quantity is not measurable and is based on assumption only hence the claim proposed to be challenge.

Claim No. 1/7 For quantity executed under water for Earth work

Amount of claim Rs. 1,44,372/-

Amount awarded by the Arbitrator Rs. 22,618/-

There is dispute in quantities as well as in rates. The quantities of the items are beyond measurement as of now. There were trees at location of water body no. 2 and it was decided to make a mound in water body no. 2 to avoid removal of trees. As such the layers which was claimant is demanding was not done by him. The expert has recommended & verified the measurements on record basis not as per site measurements. The arbitrator keeping the same rate as sanctioned by the department wrongly increased the quantity as per experts recommendation and awarded the claim which is not acceptable. Hence the claim is proposed to be challenge.

Claim No 1/8 Initial lead for carriage of earth

Amount of claim Rs.1,49,50,211/-

Awarded amount Rs. 89,58,704/-

The claim is related to the deduction of the initial lead for carriage of earth. The dispute was regarding quantity as well as regarding the rates of the item. The EE has recommended this claim for acceptance. The award is based on the difference of the qty/rates claimed by the agency and measured/paid by the field staff. The deduction by the field staff for the initial lead of 50 mtr is wrong as per CPWD specification clause 2.12.2 hence payable. Although The

arbitrator also paid some extra qty of carriage of the earth as claimed by the claimant on the recommendation of the expert without the field measurements amounting to Rs. 13,33,237/- which may be challengeable on this account and the balance amount of Rs. 76,25,467/- is justified and recommended for acceptance.

Claim No. 1/9 for structural steel gratings

Amount of claim Rs. 11,520/-

Amount awarded by the Arbitrator Rs. 11,342/-

The award is based on the difference of the rates claimed by the agency and paid by the field staff. There is no dispute in the qty of the item. But the field staff inadvertently has paid the qty in wrong item having less rates, and the award is reasoned one, hence it is proposed to be accepted.

Claim No. 1/10 for laying different material in bed layer of water body

Amount of claim Rs. 1,08,48,827/-

Amount awarded by the Arbitrator Rs. 73,52,692/-

The award is based on the difference of the qty/rates claimed by the agency and measured/paid by the field staff. The field staff by relying upon the agreement condition 31&32 under the head special conditions at pg 151 which said that 'the rates for all items of work unless clearly specified otherwise, shall include the cost of all labor, materials, dewatering and other inputs involved in the execution of the items' and clause 32 read as 'The rates shall be inclusive of working underwater ----- high or any cause whatsoever,'

These two conditions prevented the field staff from paying for this item during the execution of the work. But the agreement contains the excavation of earth for water bodies up to 1.5M only. There is no item in the agreement that suggests that the execution of work may go deeper than 1.5 mtr. But the work is executed upto 3.5 M depth as per working drawings issued by the Deptt. which makes these two conditions inapplicable in this item. This claim is for extra payment for working in or under water or liquid mud for the quantity executed in agreement item No. 1.12. The award is a reasoned one.

Hence it is proposed for acceptance.

Claim No. 1/11 for filling available earth

Amount of claim Rs. 2,75,123/-

Amount awarded by the Arbitrator Rs. 2,75,123/-

The award is based on the difference of the qty/rates claimed by the agency and measured/paid by the field staff. This claim is related to Extra for filling available excavated earth 100 mm. Thick in-bed layer. This item cannot be measured at the site at this stage.

The Expert appointed by the arbitrator has allowed this item on the mound area which was not executed by the claimant. The Expert has stated "Only the quantity left out around the mound can be added" which has no basis. The rate allowed by the Ld. arbitrator has part of watering & consolidation which was not done at the site by the claimant. The arbitrator has also awarded the higher rate by fully ignoring the contention of the respondent.

Therefore, it is proposed to be challenged.

Claim No. 1/12 for laying available earth 100 mm thick in the bed layer

Amount of claim Rs. 42,11,504/-

Amount awarded by the Arbitrator Rs. 30,77,184/-

The award is based on the difference of the qty/rates claimed by the agency and measured/paid by the field staff. This item is also beyond measurement at this stage. The Expert have allowed this item on mound area which was not done by the claimant. Any extra for this item is not payable as this 100m. thick earth filling was just over the geotextile membrane. The payments to de-watering etc. has already been considered in claim No.1/10. Hence, this claim is proposed to be challenged.

Claim No. 1/13 for CC 1:3:6 up to plinth level

Amount of claim Rs. 1,24,026/-

Amount awarded by the Arbitrator Rs. 72,450/-

The award is based on the difference of the rates claimed by the agency and paid by the field staff. No dispute on the qty of the item. As per prevailing practice the field staff paid the extra item according to the rates circulated by the SE(P), however, the actual market rate may vary at that period. The arbitrator awarded the rate of Rs.6,316/- per Cum against the demanded amount by the claimants as Rs. 6932.50/- per Cum and the rates sanctioned by the Deptt. was Rs. 5450 per Cum. As the difference in rates is not so significant and the amount of claim is also very small, hence it is proposed to be accepted.

Claim No. 1/14 for supplying of RCC post

Amount of claim Rs. 2,52,116/-

Amount awarded by the Arbitrator Rs. 1,69,920/-

The award is based on the difference of the quantity/rates claimed by the agency and measured/paid by the field staff. The fact is that the claimant had used 78 no. post(old) & barbed wire or WB No.2 which were received during the excavation of water body No.2, and the same is the property of the respondents. The old & new poles fixed at site were shown to the Expert during the site visit but the Ld. Expert have not reported the facts to Ld. Arbitrator and asked the Respondent to show the handing over-taken over with the claimant. The Ld. Arbitrator has awarded this part of the claim on the basis of the wrong report submitted by the expert and fully ignore the contention of the respondents and awarded the claim in favour of the claimant. Hence it is proposed for the challenge.

Claim No. 1/15 for EIS 3/3

Amount of claim Rs. 2,800/-

Amount awarded by the Arbitrator Rs. Nil.

Hence no comments are required.

Claim No. 1/17 for EIS 3/5

Amount of claim Rs. 9,24,915/-

Amount awarded by the Arbitrator Rs. Nil

No comments are required.

Claim No. 1/16: for 20mm thick red sand stone

Amount of claim Rs. 6,96,389/-

Amount awarded by the Arbitrator Rs. 1,61,261/- .

The award is based on the difference of the rates claimed by the agency and paid by the field staff. No dispute on the qty of the item. As per prevailing practice the field staff paid the extra item according to the rates circulated by the SE(P), however, the actual market rate may vary at that period. The arbitrator awarded the rate of Rs.1500/- per sqm against the demanded amount by the claimants as Rs. 2451.05/- per sqm and the rates sanctioned by the Deptt. was Rs.1237.65/- per sqm. As the difference in rates is not so significant, hence it is proposed to be accepted.

Claim No. 1/18: for carriage of earth

Amount of claim /Amount awarded by the Arbitrator is Rs. 22,210/-

The award is based on the difference of the rates claimed by the agency and paid by the field staff. No dispute on the qty of the item. As per prevailing practice the field staff paid the extra item according to the rates circulated by the SE(P), however, the actual market rate may vary at that period. The arbitrator awarded the rate of Rs.322.55/- per Cum against the demanded amount by the claimants as Rs. 462.74/- per Cum and the rates sanctioned by the Deptt. was Rs. 277.55/- per Cum. As the difference in rates is not so significant and the amount of claim is also very small, hence it is proposed to be accepted.

Claim No. 1/19 for banking excavated earth

Amount of claim/ Amount awarded by the Arbitrator is Rs.1,25,68,282/-

The award is based on the execution of the qty of the item as claimed by the agency and measured by the field staff. The rates and quantity of the banking was arbitrary and without any logic considered by the arbitrator without paying any attention to the contention of the respondent i.e field staff. No work was ever executed by the claimant under this item. The quantity, as determined by the expert without any logic and only on the basis of presumption, was considered by the arbitrator as payable and seems to be favouring the claimant, which is wrong and against the public policy as the law of contract was breached by this act And hence proposed for the challenge in the court of law under sec 34 of the act, hence it is proposed to be challenge .

Claim No. 1/20 for SIS-1

Amount of claim Amount awarded by the Arbitrator Rs. Nil.

Claim No. 1/22 for EIS 5/1

Amount of claim Amount awarded by the Arbitrator Rs. Nil.

Claim No. 1/24 for EIS 5/3

Amount of claim Amount awarded by the Arbitrator Rs. Nil.

Claim No. 1/25 for EIS 5/4

Amount of claim Amount awarded by the Arbitrator Rs. Nil

No comments are required for all these claims

Claim No. 1/21 for RBT fencing with RCC post

Amount of claim/ Amount awarded by the Arbitrator Rs. 18,638/-

The award is based on the difference of the quantity claimed by the agency and measured by the field staff. There is no dispute on the rates of the item. The fact is that the claimant had used old RBT fencing which was the property of the respondents. The same was shown to the Expert during the site visit but the Ld. Expert have not reported the facts to Ld. Arbitrator and asked the Respondent to show the handing over-taken over with the claimant. The Ld. Arbitrator has awarded this part of the claim on the basis of the wrong report submitted by the expert and fully ignore the contention of the respondents and awarded the claim in favour of the claimant. Hence it is proposed for the challenge.

Claim No. 1/23 for compaction with vibratory roller

Amount of claim/ Amount awarded by the Arbitrator Rs. 7,15,762/-

The award is based on the difference of the nomenclature of the items as claimed by the agency and as considered by the field staff. The arbitrator held that the compaction of brick aggregate and moorum is a must which was not covered in the agreement items and hence made the award in favour of the claimant however the department claimed that the compaction element is already included in the item and separate payment is not justified, but the arbitrator totally ignored the contention of the respondent and award the claim in favour of the claimant. hence it is proposed to be challenge.

Claim No. 2 for working in or under water or liquid mud

Amount of claim Amount awarded by the Arbitrator Rs. 58,33,237/-

The award is based on the consequences of difference of the depth of the water body actually executed by the agency/ measured by the field staff and as given in the agreement during the tendering process. The arbitrator held that the contract clauses no 31 &32 are applicable only upto a depth of 1.5m but due to change in design and drawings the claimant has to work at a depth more than 3.0m hence the item is payable. The then field staff paid the same as extra item in the 2nd R/A bill and deducted in the 3rd R/A bill by considering it as not payable under clause 31 &32. But the arbitrator held it is must & not covered in the agreement items and hence made the award in Favor of the claimant. This item is part of the claim no 1/10 and was paid by the field staff. hence it is proposed to be accepted.

Claim No. 3. For topographical survey for redesign of waterbody

Amount of claim Rs. 4,72,497/- Amount awarded by the Arbitrator Rs. 4,72,497/-

The award is based on the difference of the nomenclature of the items as claimed by the agency and as considered by the field staff. The arbitrator held that the topographical survey has been done by the claimant was not covered in the agreement items and hence made the award in Favor of the claimant although there was neither any need of survey nor was actually done by the claimant still the arbitrator has made award in favour of the claimant and ignored all the contention of the respondent, hence it is proposed to be challenge.

Claim No. 4 & 5 are interlinked with additional claims .

Additional claim no. 1 for withheld amount against QC and labour reports.

Amount of claim Rs. 5,00,000/-

Amount awarded by the Arbitrator Rs. 2,66,572/-

The award is based on the amount withheld in the R/A bills for rectification etc. the arbitrator has released the payment which is not objectionable and hence acceptable, hence it is proposed to be accepted.

Additional claim no. 2 for delay in release of amount against BG.

Amount of claim Rs. 1,58,525/-

Amount awarded by the Arbitrator Rs. 1,58,525/-

The award is based on the bank charges payable to the bank against BG deposited in the DDA by the claimant. However as per the proposal of the P/L section 34 of 'The Arbitration and Conciliation Act, 1996' with up to date amendments provide very limited scope for challenge and considering it as actual point and cannot be a legal ground for challenge' of the arbitration award Hence considering the opinion of the P/L it is proposed for acceptance

Additional claim no. 3 for interest payable at 10% on quantity of extra item no. 1/4

Amount of claim Rs. 18,63,371/-

Amount awarded by the Arbitrator Rs. Nil

No remarks are required as the award is Nil.

Additional claim no. 4 for damages charges due to prolongation of contract period .

Amount of claim Rs. 4,70,27,568/-

Amount awarded by the Arbitrator Rs. 1,11,92,625/-

The award is based on the period of work extended. The main reason for the prolongation of contract period was lockdown due to corona pandemic which was later on declared as force majeure and as per clause 5.2 the contractor shall have no claim of damages for extension of time granted of rescheduling of milestones for such type of hindrances. As neither the respondent nor the claimant is on default hence no payment is admissible on this account the arbitrator has awarded the claim only on the basis of presumption without the submission of concrete documents by the claimant. The actual damages suffered by the claimant are not known. The damages if any suffered by the claimant are very remote which are not viable as per Indian Contract Act. The arbitrator acted beyond the terms and conditions of the agreement and hence exceeded to the jurisdiction while made this award. Hence the award is proposed to be challenged in the court of law.

Add claim no. 5 for extra item of jungle cleaning at site.

Amount of claim Rs. 1,98,04,181/-

Amount awarded by the Arbitrator Rs. 23,77,589/-

The award is based on the item of work which was paid by the respondent for the area wherever this item was carried out by the claimant but the arbitrator has paid the whole area under this item for considering the item necessary for taking the level of the site and made the award in favour of the agency. Although the jungle cleaning work was required in the area where path

waterbody etc. were carried out and accordingly has been paid by the respondent. The arbitrator paid the item over the full site area which is not acceptable. Hence it is proposed to be challenge.

Additional claim no. 6 prefinished nosing

Amount of claim Rs. 14,10,253/- Amount awarded by the Arbitrator Rs. Nil

No comments are required.

Additional claim no. 7 for staking charges for Earth transported

Amount of claim Rs. 2,81,786/- Amount awarded by the Arbitrator Rs. 2,64,487/-

The award is based on the payment of bills made by the Hort. wing for the item of carriage as per stack measurement. The arbitrator on the basis of this measurement has considered full quantity of carriage of earth for stack measurement and hence awarded this claim in favour of the claimant. The qty is based merely on assumption and presumption without any site measurements. hence proposed for challenge.

Additional claim no. 8 for work executed below 3 mtr. from plinth level.

Amount of claim Rs. 27,59,433/-/- Amount awarded by the Arbitrator Rs. Nil

No comments are required.

Additional claim no. 9 for withheld amount on account of CTE visit.

Amount of claim Rs. 2,00,000/-

Amount awarded by the Arbitrator Rs. 2,00,000/- The award is based on the amount withheld in the R/A bills for rectification etc. on account of inspection of vigilance cell on behalf of CTE. The arbitrator has released the payment which is not objectionable and hence acceptable, hence it is proposed to be accepted .

Additional claim no. 10 for interest wrongly recovered in final bill.

Amount of claim Rs. 3,15,851/- Amount awarded by the Arbitrator Rs. 3,15,851/-

The award is based on the amount of interest recovered by the DDA in the final bill on account of payment made in the 2nd R/A bill and recovered in the next bill. There was no fault on the part of the agency. The arbitrator has released the payment which is not objectionable and hence acceptable, hence it is proposed to be accepted.

Additional claim no. 11 from non submission of progress chart/reports.

Amount of claim Rs. 1,65,000 /-

Amount awarded by the Arbitrator Rs. 1,65,000/-

The award is based on the amount recovered by the DDA in the final bill on account of the nonsubmission of progress chart/reports by the claimant which is required to be submitted as per terms and conditions of the agreement. The arbitrator has released the payment by taking the plea that no notice was ever served by the department for this reason. And awarded the amount in favour of the claimant. Although there was no condition in the agreement for issuing any

notice but it was expected that the agency may be remind during the execution of the work which was not done. hence it is proposed to be accepted.

Additional claim no. 12 for increase in rates of material not covered under 10C/10 CA .

Amount of claim Rs. 1,86,98,189/-

Amount awarded by the Arbitrator Rs. 35,00,000/-

The award is based on the amount of escalation considered payable by the arbitrator without any provision in the agreement. The award has been made against the terms and conditions of the agreement just on the reason of an extended period which is not acceptable. As already explained the period was extended due to covid pandemic which is considered as force majeure. The escalation clauses already available in the agreement and anything beyond these clauses is not acceptable. This award is not acceptable as the arbitrator has acted beyond his jurisdiction which is against the public policy and hence proposed to be challenge .

Additional claim no. 13 for account of balance payment of final bill of Hort. works.

Amount of claim Rs. 42,61,982/- Amount awarded by the Arbitrator Rs. 32,43,579/-

The award is based on the difference of the quantity/rates claimed by the agency and measured/paid by the field staff. The deduction of 23.95% of CE in extra item is payable to the agency but the difference in measurements as claimed by the claimant is not acceptable. So this claim is partly acceptable and partly not acceptable. The part of the award belongs to extra item i.e, Rs. 17,52,116/- is found payable, hence it is proposed to be accepted . The part of the award due to difference of measurement amounting to Rs. 14,91,463/- is not acceptable as the measurement was based on presumption and hence proposed to be challenged .

Additional claim no. 14 for clause 10 C.

Amount of claim Rs. 3,63,633/-

Amount awarded by the Arbitrator Rs. 3,63,633/-

The award is based on the amount of escalation for an increase in labour rate. The agreement clause 10 C is payable to the claimant but due to non-submission of requisite information, it was not paid earlier. The arbitrator has released the payment which is not objectionable and hence acceptable, hence it is proposed to be accepted .

Additional claim no. 15 for ideal labour and T & P.

Amount of claim Rs. 70,00,000/- Amount awarded by the Arbitrator Rs. Nil

No comments are required.

Additional claim no. 16 and claim No. 5 for cost of arbitration.

Amount of claim Rs. 35,20, 000/-

Amount awarded by the Arbitrator is Rs. 25,00,000/-

Agrees with the opinion of the panel lawyer that as per the section 34 of Arbitration & Reconciliation Act 1996, there is no scope of challenge and considering it as a factual point & cannot be a legal ground for challenge under the act. Hence it is proposed for acceptance.

Additional claim no. 17 for GST payment.

Agrees with the opinion of the panel lawyer that as per section 34 of Arbitration & Reconciliation Act 1996, there is no scope of challenge and considering it as a factual point & cannot be a legal ground for challenge under the act. The payment will be made on the actual amount deposited by the agency and the submission of the documentary evidence. Hence it is proposed for acceptance.

Additional claim no. 18 and claim no. 4 for 12% P.A interest.

Not agrees with the opinion of the panel lawyer that as per the section 34 of Arbitration & Reconciliation Act 1996, there is no scope of challenge and considering it as a factual point & cannot be a legal ground for challenge under the act. The rate of interest awarded by the Id. arbitrator is very much on higher side as per current market rates. Hence it is proposed for challenge.

The section 34 of 'The Arbitration and Conciliation Act, 1996' with up to date amendments provide very limited scope for challenge of the arbitration award. Hence to avoid the burden of interest payable on the awarded amount, it is recommended to partly challenge the Award Amounting to **Rs:3,77,38,038/-** + interest on each claim as per claim no 18+ GST (declaratory) as per claim no 17 against the awarded amount of Rs:6,59,61,981/- + Rs:1,21,96,741.93/- interest @ 10% per annum on each Claim as per claim no 18 + GST declaratory awarded by the Arbitrator. Further it is recommended that the Award amounting to **Rs: 2,82,23,943/-** + interest @ 10% per annum on each Claim as per claim no 18 + GST (declaratory) is accepted against the awarded amount of Rs:6,59,61,981/- + interest Rs:1,21,96,741.93/- interest @ 10% per annum on each Claim as per claim no 18 + GST declaratory awarded by the Arbitrator. GST will be reimbursed subject to submission of proof of having actually & genuinely paid and deposited the GST to Authorities along with its request of reimbursement by Claimant.

RECOMMENDATION OF ASB:

After due discussion and deliberation, all the members of ASB are of the view that the some claims are to be accepted and some claims are to be challenged. The details of the claims which are to be accepted or challenged are as under:-

Claims to be accepted – 1/1, 1/5, 1/9, 1/13, 1/15, 1/16, 1/17, 1/18, 1/20, 1/22, 1/24, 1/25, additional claim nos. – 1, 3, 6, 8, 9, 10, 11, 14, 15 & 17.

Claims to be challenged – 1/2, 1/3, 1/4 1/6, 1/7, 1/8, 1/10, 1/11, 1/12, 1/14, 1/19, 1/21, 1/23, 2, 3, additional claims nos. – 2, 4, 5, 7, 12, 13, 16 & 18.

As per revised delegation of power issued vide no. EM1(10)2018/Del. Of Power/DDA/260 dated 29.01.2019 issued by CE (HQ) DDA, Hon'ble LG is the Competent Authority in r/o award amount more than 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-
Ashwini Kumar
CE(Hort.)
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/HCD-9/DDA.

Issued 06/05/2023
Director (Works)/Consultant
Member Secretary