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DELHI DEVELOPMENT AUTHORITY
E.M.'s OFFICE

EO-I To EM
Dy. No. 4357
Date 13-9-19

No: EM 2(3)/2019/231/NZ/DDA /2629

Date: 11/09/2019

MINUTES OF THE 799th MEETING of ASB HELD ON 7th August, 2019 IN THE CHAMBER OF Finance Member, DDA

799th Meeting of Arbitration Scrutiny Board (here in after called ASB) under the Chairmanship of Finance Member, DDA was held on 07/08/2019 at 3:30 PM in his Chamber, to deliberate arbitration award in the matter of M/s Odeon Builders Pvt. Ltd. Vs DDA in respect of the following work:

- N.O.W** : C/o 5080/4740 EWS Houses at Siraspur, Narela, Ph-III.
SH. : C/o 1140 EWS Houses Group-II at Siraspur i/c internal development & electrification.
Agmt. No. : 25/EE/ND-5/DDA/2010-11

The meeting was attended by the following officers:-

- | | | | |
|----|---------------------|------------------|------------------|
| 1. | Sh. K. Vinayak Rao | FM, DDA | Chairman |
| 2. | Sh. S. N. Singh | CE, (HQ) | Member |
| 3. | Sh. Ajay Gupta | CE(NZ) | Executive Member |
| 4. | Sh. V. S. Kadyan | Dy. CLA-I | Member |
| 5. | Sh. R. K. Bhanwaria | Director (Works) | Member Secy. |

The Agenda note was submitted by the CE(NZ), vide No. Nil dated 24.07.2019 (received on 25.07.2019). The case was presented by Sh. Ajay Gupta, CE(NZ).

In this case, the work was awarded to the contractor on 11.06.2010 with stipulated dates of start and completion 21.06.2010 and 20.12.2012 respectively. There was delay in providing clear site due to stay order by Court on certain part of the land and encroachments on the remaining part which delayed the start of work. Milestones were rescheduled by DDA and effective dates of start and completion were rescheduled as 08.08.2011 and 08.02.2014 respectively. Further, full site was not made available. As a result of which the scope of work was subsequently reduced to 520 flats. Due to various reasons, even the work as per its reduced scope was not completed in the extended time. The contract was

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eventually rescinded by the DDA under clause 3 of the agreement on 27.11.2014 after serving show cause notice under clause 3 of the agreement to the contractor on 10.09.2014. Compensation amounting to Rs. 2,26,58,080/- under clause 2 for delay was levied on the claimant by DDA on 24.04.2015. Contractor vide letter dated 03.04.2015 addressed to EM/DDA requested for appointment of Arbitral Tribunal under clause 50 of the agreement to adjudicate his disputes/claims. Arbitral Tribunal consisting of 3 arbitrators Sh. Krishan Kant, as presiding arbitrator. Sh. K. K. Verma, and Sh. S. R. Pandey as member arbitrators, was constituted. The AT entered into reference on 30.06.2015 and it pronounced the award on 15.05.2019.

Claim wise amount of claim/counter claim viz-a-viz AT's award statement is given in following table:

Claim No.	Particular of claim in brief	Amount of claim raised	Amount of claim awarded
1	Release of EMD, SD,PBG and encashed BG.	Rs. 4,90,37,447/-	Rs. 4,78,37,650/-
2	Release of final Bill, mobilization advance.	Rs. 57,00,000/-	Rs. 12,74,208/-
3	Release of withheld amount on a/c of CTE/QC/Audit para's.	Rs. 1,45,000/-	Rs. 1,45,000/-
4	Amount withheld under 10CC.	Rs. 1,34,00,347/-	Rs. 92,24,582/-
5	Compensation of idle Plant & Machinery.	Rs. 1,56,14,800/-	Nil
6	Loss suffered due to increase in prices.	Rs. 54,05,037/-	Nil
7	Interest on mobilization advance recovered from claimant.	Rs. 3,90,347/-	Nil
8	Undue loses due to enhanced PG and SD.	Rs. 50,12,319/- Rs. 12,82,549/-	Nil
9	Over head expenses due to prolongation of contract.	Rs. 66,16,200/-	Nil
10	Loss of profit due to reduction of scope.	Rs. 3,37,75,000/-	Nil
11	Pre-suit, pendente-lite and future interest.	Interest @18% p.a.	Rs.2,36,46,165/- @10%
12	Cost of arbitration.	Rs. 20,00,000/-	Rs. 20,00,000/-
13	Award under section 38(2) of the Act	Nil	Rs. 7,38,349/-
	Total	Rs.13,83,80,046/- plus interest	Rs. 8,48,65,284/-
Counter-claims by the respondent			
1	Penalty under clause 2.	Rs. 2,26,58,080/-	Nil
2	Deficiencies left in flats.	Rs. 26,11,960/-	Rs. 26,11,960/-
3	Salary not paid to labour by claimant.	Rs. 51,00,000/-	Nil
4	Electricity consume by the claimant.	Rs. 2,07,000/-	Nil
5	Difference of price in execution of balance work left by claimant.	Rs. 2,10,12,170/-	Nil

6	Difference in price of balance dev. works	Rs. 54,12,576/-	Nil
7	Mobilization advance with interest	Rs. 18,88,767/-	Rs. 18,88,767/-
8	Cost of arbitration.	Rs. 20,00,000/-	Nil
	Total of C/claims	Rs. 6,08,90,553/- plus interest	Rs. 59,33,103/- (B)
Net awarded amount in favour of claimant: Rs. 8,48,65,284-59,33,181/-			Rs. 7,89,32,181/-

As per arbitral award, DDA shall pay to claimant a sum of Rs. 7,89,32,181/-. If the payment is not made within three months, the DDA shall pay interest @12% p.a. simple on Rs. 7,89,32,181/- from 15.05.2019 till date of payment.

Opinion of Panel Lawyer Mr. Anupam Sharma dated 24.05.2019:-

The opinion of Panel Lawyer is as under:-

"The award published by Ld. Tribunal is a reasoned award. The Tribunal was constituted of independent and highly experienced persons. Delay in handing over the site because of encroachments on site and stay orders is an admitted fact. Stipulation in agreement that a ready site was available cannot be denied. WAB agenda note prepared by the Chief Engineer (NZ) has been approved in principle to be placed before the Authority. Non-availability of drawing and approvals fails within justifiable grounds for recording hindrance. In view of above admitted facts, objections to award may not sustain unless we are in position to show that despite all these, contractor could complete the work and it would not have suffered any losses even after delay of 14 months.

.....However keeping in view the high stakes involved in the matter, department may consider whether to challenge the award or not after duly consulting the legal department."

Opinion of Ld. CLA dated 05.07.2019:-

The opinion of Dy. CLA-I has been endorsed by Ld. CLA, which is as under:-

"undersigned agreed with the opinion of SLO/Engineering. There is no valid ground to challenge the award"

Opinion of CE(NZ):-

"After careful consideration of the opinion/recommendation of the Panel Lawyer, CLA and EE, ND-10 & SE/CC-12 on the award dated 15.05.2019, it is recommended that the award may not be challenged."

After due discussions and deliberations, the comments/recommendations of ASB are as under:-

1. There was contradiction in the agreement regarding availability of site. Condition no. 9A at page 168 of the agreement states that "the site of work will be handed over to the contractor in a piece meal manner as and when the same is made available to the department after its reclamation by removal of encroachment". However, condition no. 1 under special condition at page 228 of the agreement, it is mentioned that "the site for the work is available". It is established principle that special condition over rides general conditions. Accordingly, the claimant raised disputes/claims. It was clearly the fault on part of the department at the stage of and framing of NIT. NIT conditions were ambiguous and were not inserted with proper due diligence. Show cause notice under clause 3(a) issued by the department was also found faulty by the AT and not sustainable on many counts viz wrongful delay, suspension of work and slow progress. Determinations/recession of the contract was also held wrongful and illegal by the AT. ASB agrees with the finding of Arbitral Tribunal.
2. The proposal of CE(NZ) to extend the stipulated date of completion from 20.12.2012 to 20.03.2014 i.e. the expected date of completion, was approved by 3rd WAB (2014) in the meeting held on 20.03.2014 which was required to be approved by the "Authority" as per direction of WAB Agenda as approved by WAB was sent to Hon'ble L. G. for his approval for placing before 'Authority'. Addl. Secretary to Lt. Governor returned the case with some observations and, thereafter, case was not pursued by field staff. As such case of approval of proposed extension of date of completion was never placed before 'Authority' for its consideration. Based on documents in r/o this proposal of the department, Arbitral Tribunal established that there was delay on part of Department and while granting extension of time by competent authority and levy of compensation was wrong and unlawful. Delegation of powers in r/o grant of extension of time/rescheduling of milestones are well defined and, SE concerned enjoys full powers for this purpose. Case of rescheduling of stipulated dates of start and completion should have been dealt by the concerned SE and should not have been placed before WAB or Authority. ASB finds the decision of AT acceptable.
3. In view of para 1&2 above, while pronouncing award against claim no. 1, 2, 3 & 4, AT has given sufficient cogent reasons. In these circumstances, ASB has no option but to recommend to accept the award. Filing an appeal shall give no fruitful result and the interest on payable amount shall pile up.
4. Award of simple interest @10% p.a. on the sum awarded for the period from date of invocation of arbitration i.e. 03.04.2015 to till the date of award i.e. 15.05.2019, against claim no. 11 is reasoned award. ASB recommends to accept this rate of interest for the said period on amount of award against claim nos. 1 to 4. In view of prevailing interest rates, further award of simple interest @12.00% p.a. on the

awarded amount, if not paid within 3 months is also reasonable and ASB recommended for acceptance on the amount recommended for acceptance against claim nos. 1 to 4 & 11.

5. ASB expressed its displeasure on non payment of DDA's share of arbitrator's fee which was paid by the claimant and consequently led to award in favour of claimant under claim no. 13 along with simple interest @12%.
6. As mentioned in para nos. 1 and 2 above, lapses at the stage of approval in Screening Committee, framing of NIT, award of work, rescinding the work and grant of extension of time with levy of compensation have been observed. Work was awarded even though the site was under encroachment/litigation which led to award in favour of claimant. Vigilance Branch may be asked to further examine and take appropriate action in the matter.
7. The payable amount duly authenticated by the Zonal Dy. CAO, be recalculated as per recommendation of ASB and accordingly the recommendations of ASB may be put up to the Competent Authority (Chairman DDA / Hon'ble LG) as per revised delegation of powers issued vide no. EM1(10)2018/Del. Of Power/DDA/260 dated 29.01.2019 for acceptance/challenge the award.

-sd-
R. K. Bhanwaria
Director (Works)
Member, Secy.

-sd-
V. S. Kadyan
DY. CLA-I
Member

-sd-
Ajay Gupta
CE(NZ) (now CE(Projects)-II
Executive Member

-sd-
S. N. Singh
CE(HQ)(now CE(Projects))
Member

-sd-
K. Vinayak Rao
FM, DDA
Chairman

Copy to:-

1. EM/DDA for information please.
2. CVO, DDA for necessary action.
3. All Concerned.
4. EE/ND-10.

R. K. Bhanwaria
(R. K. Bhanwaria) 11/08/2019
Director (Works)