

DELHI DEVELOPMENT AUTHORITY
E.M.'s OFFICE

निदेशक (प्रणाली) दि.वि.जा.
डायरी नं. 5475
दिनांक 22/11/19

No: EM2(3)2018/Chief Arch./HUPW/01/DDA/3461

Date: 21/11/2019

MINUTES OF THE 806th MEETING of ASB HELD ON 13th November,
2019 IN THE CHAMBER OF FINANCE MEMBER, DDA

806th Meeting of Arbitration Scrutiny Board (here in after called ASB) under the Chairmanship of Finance Member, DDA was held on 13/11/2019 at 11.00 AM in his Chamber, to examine Hon'ble High Court Judgement dated 09.07.2019 in the matter of DDA Vs M/s S. Ghosh & Associates (O.M.P. (COMM)98/2019) and Hon'ble High Court order dated 25.09.2019 in the matter of M/s S. Ghosh & Associates Vs DDA (OMP (ENF.)(COMM.)169/2019) in respect of following work:-

- N.O.W.** : Development of Housing Complex including houses & other community facilities at Vasant Kunj, New Delhi (DDA) Mega Housing Project behind D-6 at Vasant Kunj.
- Consultant Agreement No.** : M/s S. Ghosh & Associates
: Nil dated 10th November, 2000

Agenda-note was submitted by the Chief Architect on dated 06.11.2019 through file no. SA/SZ/HUPW/F-51/2000/Pt.1.

The meeting was attended by the following officers:-

- | | | |
|------------------------|------------------|------------------|
| 1. Sh. K. Vinayak Rao | FM, DDA | Chairman |
| 2. Sh. Ashwani Kumar | CE (HQ) | Member |
| 3. Sh. Vinod Dhar | Chief Arch. | Executive Member |
| 4. Sh. V.S. Kadyan | Dy. CLA -I | Member |
| 5. Sh. R. K. Bhanwaria | Director (Works) | Member, Secy. |

The case was presented by Sh. Vinod Dhar, Chief Architect, DDA.

In this case, the agreement with the claimant/consultant architect for designing the above cited work was signed on 10.11.2000 which was valid for a period of 6 years. The construction activities were suspended from September, 2002 to 2007 due to PIL and Court stay. The agreement was extended up to August 2014 with two intermediate extensions in between i.e. first extension up to 2010 and second extension up to 2012. During this period the 85% payment up to 9th R/A bill was made to claimant, which included the fee and the enhancement based on cost index. During execution of the contract, some disputes arose and the claimant requested EM/DDA to resolve the disputes vide letter dated 23.07.2014. As per clause 16 of the agreement, the disputes were, to be resolved by EM/DDA or in his

absence, by VC/DDA. EM/DDA appointed Sh. S. R. Pandey the Sole Arbitrator and referred 7 nos. claims for adjudication by him. The appointment of arbitrator was also allowed by Hon'ble High Court of Delhi vide order dated 28.03.2017 {ARB. A.(COMM.)7/2017}.

Ld. arbitrator pronounced his award on 01.10.2018. Statements showing claims vis-a-vis award and counter claims vis-a-vis award of arbitrator are tabulated below:-

Claim No.	Brief description of claims	Amount of by claimant (Rs.)	Award (Rs.)
1	12 th & Final bill dt. 23.07.14	76,94,639/-	41,92,530/-
2	Bill no. 13 dt. 23.07.14	1,65,94,455/-	1,06,26,347/-
Addl. Claim no. 3/1	Redesigning the project	95,97,295/-	61,69,690/-
Addl. Claim no. 3/2	Misc. works	39,29,110/-	NIL
Addl. Claim no. 3/3	Misc. Works	28,51,583/-	NIL
4	Addl Expenditure	1,55,06,400/-	NIL
5	Loss of profit due to prolongation	55,17,694/-	NIL
6	Interest	18%	9% (23.07.14 to 01.10.2018) = Rs. 79,18,153/-
7	Service tax	As applicable	NIL (Already included in award under claim nos. 1&2)
	Award under Section 38 (2) of the Act (Arbitration fee)	-	3,20,000/-
	Total		2,92,26,720/-
	Future interest w.e.f. 02.10.2018 till date of payment of award amount if not paid within three months of the date of award.		12% p.a (simple) on Rs. 2,92,26,720/-

9 nos. counter claims of the respondent DDA amounting to Rs. 1,34,85,115/-, proffered by DDA during process of arbitration, were not allowed by Ld. Arbitrator and Nil award was pronounced against the counter claims.

The award of Ld. Arbitrator was deliberated in 782nd meeting of ASB held on 02.01.2019 & 09.01.2019 under the Chairmanship of FM/DDA. The ASB recommended to challenge the award against claim nos. 1 and 2 in Hon'ble High Court. Rest of the award against additional claim no. 3/1 and interest was recommended for acceptance. VC/DDA accepted the recommendation of ASB and an amount of Rs. 1,49,85,736/- was paid to the claimant against the award on claim no. 3/1 and interest thereupon from 23.07.2014 to 31.01.2019. The award against claim nos. 1 and 2 was challenged in High Court vide O.M.P. (COMM)98/2019. High Court vide Judgement dated 09.07.2019 dismissed the petition of DDA and upheld the award of Ld. Arbitrator with no order as to cost.

Aggrieved by the inaction by DDA, the contractor approached Delhi High Court vide OMP (ENF.)(COMM.)169/2019. High Court vide order dated 25.09.2019 directed DDA, the judgement debtor, to deposit the awarded amount with the Registrar General of that Court within 10 days. The matter is listed on 5th December, 2019.

Opinion of Ms. Kanika Singh, Panel Lawyer:-

In case no. O.M.P. (COMM)98/2019, the opinion of P/L dated 17.07.2019 on claims nos. 1 & 2, is as under:-

"So far as the first component is concerned, the Ld. Single Judge has rightly held that there is intermediate stage of 90% as total fee in the contract and thus there is very little ground to challenge the same. That so far the 2nd component is concerned the same pertains to service tax. That there can be some case for filing appeal on the ground that there was no overt acceptance by DDA to the Respondent's letter dated 20.02.2008 but it is to be borne in mind the scope of interference of under Section 37 of the Act is even more limited than under Sec. 34 especially in view of the finding of Ld. Single Judge there is acceptance by conduct by Petitioner."

In case no. OMP (ENF.)(COMM.)169/2019, the opinion of P/L dated 25.09.2019 is as under:-

Panel Lawyer is of the opinion that,

"That above captioned matter was listed before the Hon'ble High Court on 25.09.2019 and the undersigned appeared on behalf of DDA on advance copy being supplied. Notice was issued and the Hon'ble Court has directed the Department to deposit the decretal amount in Court within 10 weeks.

It is submitted that if no appeal is being preferred by the Department, the payment may in fact directly be made to the Decree Holder to stop running of interest and accordingly necessary application will be filed by the undersigned before Hon'ble Court. That thus, necessary instructions be given to the undersigned at the earliest."

Opinion of Ld. CLA , DDA dated 09.09.2019:-

In case no. O.M.P. (COMM)98/2019, the opinion of SLO (Engg.) dated 05.09.2019 is as under:-

".... the settled legal position i.e. the scope of interference of the court u/s 37 of the Act is more limited than u/s 34 of the Arbitration Act and the court in appeal does not easily entertain factual pleas, no fruitful purpose would be served by challenging the impugned order dated 09.07.2019."

The above opinion SLO (Engg.) has been endorsed by Dy. CLA-I and Ld. CLA.

Recommendation of Chief Architect/HUPA/DDA:-

Opinion of Chief architect is as under:-

"In view of the recommendation of Panel Lawyer, Dy. Dir.-Arch-I/SZ, ACA-I/SZ and Ld. CLA/DDA, this office is also of the view that the Award of Arbitrator may be challenged."

Recommendation of ASB:-

After due discussion and deliberation, the ASB observed following:-

1. 782nd meeting of ASB was held under the Chairmanship of FM/DDA on 02.01.2019 and 09.01.2019 to deliberate Arbitral Award of this case. As per minutes of meeting issued vide even no. 122 dated 15.01.2019, ASB, inter-alia, was of the view that Chief Architect should examine the matter of delay in submission of the case and take administrative action against erring officers/officials under intimation to ASB. While accepting the recommendations of ASB, VC/DDA remarked, "May take action as proposed. Such cases should be dealt in time to avoid extra interest payment." Despite directions of VC/DDA, the action taken report has not been submitted by Chief Architect.
2. In the present case, Hon'ble High Court dismissed the petition filed by DDA vide order dated 09.07.2019. The Court order was to be put up before ASB for its recommendation after seeking the opinion of Panel Lawyer and Ld. CLA. The case was put up to Director (Works) for consideration of ASB only on 06.11.2019 i.e. after 4 months from the date of judgment. The concerned officers/official came into action only after the order of Hon'ble High Court dated 25.09.2019 vide which the court directed the judgment debtor to deposit the award amount with the Registrar General of that court within 10 days. The chronological movement of the court file submitted by Chief Architect, DDA reveals that the file was moved mainly among Panel Lawyer, Legal Cell and the office of Chief Architect from 17.07.2019 to 06.11.2019. It shows that no urgency of disposal of the case was felt by the department. ASB was of the view that administrative action should be taken against the erring officers/officials under intimation of ASB.
3. Hon'ble High Court directed to deposit decretal amount within '10 days' where as Panel Lawyer in her recommendation dated 25.09.2019 mentioned this period as '10 weeks'. Ld. CLA may issue an advisory to the panel lawyer to be more careful in future in this regard.
4. ASB agrees with the recommendations of Panel Lawyer, Ld. CLA and Chief Architect. Since, there is very little scope of interference of the Court U/S-37 of the Act is more limited than U/S-34 of the Arbitration Act and the Court in appeal does not easily entertain factual pleas, no fruitful purpose would be served by challenging the impugned order date 09.07.2019. Panel Lawyer also recommended that payment may be directly made to the decree holder if no appeal is being preferred by the department, to stop running of interest. Therefore ASB is of the opinion that the awarded amount may be paid to the claimant.

5. A payment of Rs. 1,49,85,736/- has already been made to the claimant and as per Court Order, balance payment of Rs. 2,08,65,673/- (if paid by 25.11.2019) is to be made to the claimant. Accordingly, the recommendations of ASB may be put up to VC/DDA, the Competent Authority 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.

For Director
Uploading on DDA Website

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

-sd-
(V. S. Kadyan)
Dy. CLA-I
Member

-sd-
(Vinod Dhar)
Chief Architect
Executive Member

-sd-
(Ashwani Kumar)
CE (HQ)
Executive Member

-sd-
(K. Vinayak Rao)
FM/DDA
Chairman

Copy to:-

1. EM/DDA for kind information.
2. C.L.A., DDA.
3. All Concerned.
4. Dy. Dir. (Arch.)/SZ, Vikas Minar.
5. Director(System) for uploading on DDA Website.

by
21/11/2019
Sh. Ashwani Kumar

Dev.

Filed
(R. K. Bhanwaria) 21/11/2019
Director Works