



DELHI DEVELOPMENT AUTHORITY
E.M.'s OFFICE

EO-I To EM
Dy. No. 1947
Date 10-5-19

No: EM 2(3)2019/Dwk/194/DDA/ 1175

Date: 09/05/2019

MINUTES OF THE MEETING HELD ON 01.05.2019 IN THE CHAMBER OF CHIEF ENGINEER (HQ), DDA

791st Meeting of Arbitration Scrutiny Board (here in after called ASB) under the Chairmanship of Chief Engineer (HQ), DDA was held on 01/05/2019 to examine the Judgement of Hon'ble ADJ-05/Patiala House Court, New Delhi dated 22.10.2018, M/s B. ESS Kay Construction V/s Delhi Development Authority in respect of the following work:-

Name of work : C/o 1200 MIG houses at Pocket GH-14, Zone G-17 area at Paschim Vihar including services and development.
S.H. : C/o 160 MIG Houses Group-V.
Agreement No. : 7/EE/HD-XXIX/DDA/85-86.

The Agenda-note was submitted by the CE (Dwk), vide no. F.21(22)WD-7/DDA/228 dated 24.04.2019 (received on 25.04.2019). The case was presented by Sh. R. K. Singh, CE (Dwk).

The meeting was attended by the following officers:-

- | | | |
|------------------------|---------------------------|------------------|
| 1. Sh. S. N. Singh | CE (HQ) | Chairman |
| 2. Sh. R. K. Singh | CE (Dwk) | Executive Member |
| 3. Sh. Raj Pal Singh | Dir. (Finance)/Consultant | Member |
| 4. Sh. V.S. Kadyan | Dy. CLA -I | Member |
| 5. Sh. R. K. Bhanwaria | Director (Works) | Member Secy. |

In this case, the claimant invoked the arbitration on 09.02.1992 under clause 25 of the agreement. Engineer Member, DDA made appointment of arbitrator but with the passage of time arbitrators so appointed kept on changing, and, the proceedings could not be completed. Ultimately the agency filed petition no. CS(OS)1573/2006 in Hon'ble High Court. Hon'ble High Court vide order dated 26.02.2007, appointed Sh. Rajinder Aggarwal, Advocate as Sole arbitrator to adjudicate the dispute who, after conduction various hearings, published his award on 30.09.2008. The arbitrator awarded a sum of Rs. 6,46,911.35/- and simple interest @12% p.a. on the awarded amount in favour of claimant.

E.O.I
1947
09/05/2019

D.E.O. Please e-mail
to Dis (System)
10-5

The award was put up before 530th ASB on 12.12.2008 under chairmanship of CE(HQ) who recommended to challenge award against claim nos. 8(D), 8(VII), 9 & 11 and to challenge rest of the award of the arbitrator. Accordingly, an amount of Rs.3,60,112/- was paid by DDA to the claimant on 02.02.2009 after obtaining approval of EM/DDA. The remaining award was challenged in Hon'ble High Court vide CS(OS) 2411/08. Hon'ble High Court directed DDA to review the decision to challenge the award of Ld. Arbitrator. In compliance, ASB during its meeting held on 04.11.2009 under the chairmanship of FM/DDA, inter-alia, decided to accept the award against claim nos 8(D), 8(VII). Accordingly, second payment of Rs. 57,599/- was made to the claimant on 30.12.2009 after obtaining approval of EM/DDA. The petition filed before the High Court of Delhi was transferred to Hon'ble ADJ-05, New Delhi District Patiala House Court vide Arbt. No. 1121/2017. Hon'ble District Court pronounced the decision on 20.09.2018. Hon'ble Court sustained the award of Rs. 2,29,606/- against claims no. 9 and simple interest @12% p.a. (against claim no. 11) on the amounts withheld by DDA from the date of invocation of arbitration i.e. 09.02.1999 till its realisation.

The Court judgment dated 20.09.2018 was put up before ASB under chairmanship of CE(HQ). The ASB recommended to accept the award. Accordingly, third payment of Rs. 12,82,601/- was made to the claimant on 18.12.2018 after obtaining the approval of EM/DDA.

The claimant again filed an application before District Court, Patiala House Court seeking correction of typographical mistake in the judgement dated 20.09.2018. Hon'ble ADJ-5/PHC New Delhi vide order dated 22.10.2018 pronounced that the date of invocation of arbitration be read as 09.02.1992 instead of 09.02.1999. Accordingly, the case has now been put up before ASB under chairmanship of CE(HQ) to give its recommendations.

Recommendation of Panel Lawyer:-

The recommendation of Panel Lawyer has not been obtained by Chief Engineer (Dwk).

Recommendation of Ld. CLA, DDA:-

The Recommendation of Dy. CLA – I that “department is advise to take action as per direction of the Hon'ble Court”, has been endorsed by Ld. CLA

Recommendation of Chief Engineer (Dwk):-

The recommendation of CE(Dwk) is as under:-

“....Now as per the directions of Court, the interest is to be reckoned w.e.f. 09.02.1992 instead of 09.02.1999, hence balance amount for the period w.e.f. 09.02.1992 to 08.02.1999 i.e. Rs. 5,43,746/- remains to be paid....”

Recommendation of ASB:-

After due discussion and deliberation the ASB is of the following view:-

- 1) As per judgement dated 22.10.2018 given by Hon'ble Court, there was typographical mistake in the judgement dated 20.09.2018 passed by the same Court. The Date of invocation of arbitration is to be read as 09.02.1992 instead of 09.02.1999. As recommended by Ld. CLA and CE(Dwk), ASB is also of the view to accept the Court order dated 22.10.2018 and to make payment of simple interest @12% p.a. on the amount already paid to the claimant for balance period.
- 2) The calculation of interest for the period from 09.02.1992 to 08.02.1999 amounting to Rs. 5,43,746/- has not been authenticated by the Zonal FO/Dy. (CAO). CE (Dwk) is directed to get it checked from FO/ DY. (CAO) of his zone before making payment to the claimant. Since this irregularity has also been noticed in some other cases also, ASB directed to issue a circular in this regard.

Recommendation of ASB is to be forwarded to the competent Authority for accepting/challenging the Court Order, as per delegation of powers issued vide no. EM1(10)2018/Del. Of Power/DDA/260 dated 29.01.2019 by CE(HQ) DDA.

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

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

-sd-
(Raj Pal Singh)
Dir.(Finance)/Consultant
Member

-sd-
(R. K. Singh)
CE (Dwk)
Executive Member

-sd-
(S. N. Singh)
CE (HQ)
Chairman

Copy to:-

1. EM/DDA for information please.
2. All Concerned.
3. Director (System) for uploading on DDA website please.
4. EE/WD-7.

R. K. Bhanwaria
(R. K. Bhanwaria)
Director (Works)
Member Secretary