

**PROCEEDINGS OF THE 21ST MEETING
OF THE
BUILDING AND WORKS COMMITTEE**

**HELD ON
THURSDAY, 20TH JULY 2017**



**INDIAN INSTITUTE OF INFORMATION TECHNOLOGY,
DESIGN & MANUFACTURING (IIITDM)
KANCHEEPURAM**



INDIAN INSTITUTE OF INFORMATION TECHNOLOGY
DESIGN AND MANUFACTURING (IIITDM) KANCHEEPURAM

Chennai - 127

Proceedings of the 21th meeting of the Building and Works Committee (BWC)
held at 10.00 AM on Thursday, 20th July 2017, in the Board Room, IIITDM campus

Chennai- 127.

Members Present

Prof. R. Gnanamoorthy	Chairman
Prof. P. Alagusundaramoorthy	Member
Dr. S R Pandian	Member
Shri.A. Manickavasagam	Member & Secretary

The Chairman welcomed the members to meeting.

The leave of absence was granted to Prof. S Narayanan who could not attend the meeting due to his other commitments.

Item No.1	Confirmation of Proceeding of the 20th Meeting of BWC
Resolution 9/2017	The Committee has been informed that the Proceeding of the 20 th meeting has been circulated to all the members vide letter No. IIITDM/7/2011/BWC/429 dated 27.06.2017 and for the same no comments have been received till date from the members. The BWC resolved to confirm the minutes of the 20th meeting.
Item No.2	Payment of CPWD against Arbitration Award
Resolution 10/2017	The committee has been explained that the construction of Lecture Hall Complex has been accorded AA&ES by BOG under the recommendation of FC & BWC (resolution No. 5/2011 in the 8 th meeting dated 16.3.2011) for an amount of Rs. 34,05,04,000/- and also resolved to recommend to entrust the work to CPWD as per the terms and conditions of the deposit work approved by GOI similar to other works in the campus. Accordingly the work has been entrusted to CPWD as per the MOU signed between IIITDM and CPWD. The CPWD on receipt of AA&ES and initial deposit taken up the work by selecting the vendors as per the GOI approved procedure for various sub-component of Project like building portion

including internal water supply, sanitary installation and drainage, internal electrification, external bulk services, lifts, fire fighting, horticulture etc. For the components of building portion including internal water supply, sanitary installation, drainage portion CPWD entrusted the work to M/s URC Constructions Pvt Ltd and entered into an agreement with them as per the set procedures of GOI and CPWD.

The work has been completed and handed over to IIITDM and the IIITDM occupied the premises with effect from August 2014. It appears that on finalization of the agreement on completion of the building, the contractor made some claims for additional payments over and above the payment proposed by the CPWD. Since the amount of payment has not been mutually agreed upon, it has become a dispute. The contractor and CPWD observed step by step procedure to resolve the dispute like review of the disputes by SE, CE and also Dispute Redressal Committee etc. it appears that the resolution of the dispute could not be made with the above procedure and hence the disputes have been referred for arbitration by following the procedures laid down by GOI / CPWD.

The agreement of CPWD with the vendors has an inbuilt procedure for the Dispute Redressal including for the procedure for appointment of arbitrator.

As per the procedure in vogue CPWD has well defined instructions in the through works manual for the conduct and to defend the Govt. interest in the arbitration proceedings by CPWD Engineers.

It is learnt that in this particular case also the procedure laid down has been scrupulously followed. The defence statement of CPWD is normally prepared by Executive Engineer and scrutinized and vetted by Superintending Engineer, Techno Legal Cell of CPWD and Govt. Counsel appointed by Ministry of Law, GOI. Thereafter only the defence statement by CPWD is filed with the arbitrator. During the arbitration procedure also, a Govt. counsel appointed by Ministry of Law presents the arbitration proceeding to defend the Govt. interest along with Executive Engineer.

It is learned from CPWD in this particular case also the care has been taken to defend the case properly following above procedures.

The following procedure has been set out by GOI in the form of MOU for desposit works for the payment of arbitration awards. The expenditure is chargeable to the concerned work's sanction. As per para 23 & 24 of MOU reads as follows:

"Para 23 – Any dispute arising out of the operation of the contractor(s) for the subject work will be subject to Arbitration clause as provided for in the Contract Agreement CPWD will defend the arbitration proceedings as best as it can and get the Arbitrator's Award examined by the Appropriate

Authority”.

“Para 24” – The decision of the competent authority in CPWD to accept the award or to challenge the same in a Court of Law will be binding on the IITD&M Kancheepuram. Funds for making of all such amounts which may be decreed by a Court of Law, Tribunal or by award of an Arbitrator in relation to this work will be made available by IITDM Kancheepuram promptly irrespective of it not being a party before the Court. Tribunal or Arbitrator. Such payments will be addition to the payments made to the contractor for execution of work”.

So it is evident from the above that the CPWD will make payment to honour the arbitration award by charging the expenditure against the sanctioned amount of this work. This work has been accorded AA&ES for an amount of Rs. 34,05,04,000 and on the date of handing over as per the completion certificate the total expenditure incurred by CPWD is Rs. 32,09,56,891. The IITDM has made deposit only to the extent of actual expenditure. Even though as per the Administrative Approval Rs. 1,95,47,109 could further be charged to this work, CPWD has no deposit left out against this sanction so they have requested for additional deposit against this sanction for making payment of the award. As per the MoU the arbitration award liability has to be borne by the IITDM.

After an Arbitration award is published a well defined procedure either to accept the award or challenge the award in the courts has been laid down by CPWD. According to the same the award reviewed for the defence made by the CPWD and a recommendation with justification is prepared by E.E. The S.E & C.E add their comments and recommend and submit to the competent authority, for deciding the acceptance or challenge of the award. As per the delegation of power depending upon the award amount the C.E, ADG, Spl DG & DG has been vested with powers for acceptance / challenge of the arbitration award. Further in addition to the CPWD officer's recommendation the Ministry of Law opinion is also obtained for challenge or acceptance of the award. In this particular case the E.E has recommended for acceptance of the award and the S.E has certified the award given is reasonable and recommended for acceptance. Since no ground is available for challenge the Ministry of Law, GOI also has recommended for acceptance. Hence no ground is availed for challenge. Accordingly the competent authority has ordered for the acceptance of Arbitration Award (Annexure-I) and make payments to the contractors and settle the dispute. Since the CPWD has no deposit against this work, requested IITDM to make additional deposit against this work to incur expenditure against this liability.

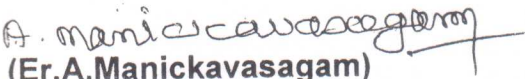
As per the information given by CPWD the following four claims has been preferred by the contractor for an amount mentioned against each. Against which the arbitrator has given an award for the amount shown below. Further for this awarded amount the arbitrator has awarded an interest @ 9% per annum from 4.2.2015 till the date of payment.

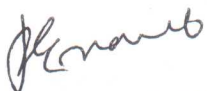
Claim No.	Claim	Claim Amount by Contractor	Amount Awarded by Arbitrator
1.	Awards reduction in rates for extra, deviated and substituted items	Rs.45,36,000	Rs. 92,000
2.	Interest amount for delay in sanction and approval of rates	Rs.22,41,000	Rs.4,81,600
3.	Additional expense incurred for gallery type mapped beam and slab shuttering made for 6 Nos. capacity class rooms.	Rs.5,38,000	Nil
4.	Cost overrun and fixed cost expenses for delay in giving decision for finishing works	Rs.3,52,00,000	Rs.1,50,78,700
5.	Awards cost of Arbitration proceedings	Rs.9,30,377	Rs.5,45,000
6.	Interest @ 18% per annum for the above firms till date of award and @ 18% after award to till date of payment	As per actual	Rs. 32,69,00/- + As per actuals

Normally the courts while hearing the challenge of arbitration cases normally does not go into the reasonableness of the award given by the arbitrators claim wise by its merits. They only look into any procedural lapses and legal provisions and also there is always a risk of accruing interest till the case is finally decided by the court. Further CPWD as per its works manual scrutinizes this award based on the defence statements made by the department and also the accepting authorities of the arbitration case also look into for any lapses and then only accept the award.

At present the IIITDM has no funds on the capital head of account since MHRD, GOI has stopped releasing the grant-in-aid from the allotted budget of GOI since October 2015 for want of Revised sanction. The process of according revised sanction is being done in the MHRD and the definite date at which revised sanction will be accorded and funds will be released is not known. This particular award carries an interest @ 9% which roughly works out to Rs.4,800/- per day.

The BWC deliberated the whole issue and resolved to recommend to FC & BoG for acceptance of the demand of CPWD for payment of deposits against the sanction for making payment of Arbitration Award. Further the committee recommended to BoG to take up the matter with MHRD to obtain the funds for this purpose since the liability is of interest bearing.


(Er.A.Manickavasagam)
Member & Secretary, BWC


(Prof.R.Gnanamoorthy)
Chairman, BWC, IITDM