



INDIA NON JUDICIAL



IN-UP24675828654158W

Government of Uttar Pradesh

e-Stamp

Taru Stamp Paper Vendor

Govt. Licence No. 466,

Acc Code - up 14075804

Ms. 97185226307

₹100 ₹100 ₹100 ₹100

Certificate No. : IN-UP24675828654158W
 Certificate Issued Date : 15-Apr-2024 05:48 PM
 Account Reference : NEWIMPACC (SV)/ up14075804/ GHAZIABAD SADAR/ UP-GZB
 Unique Doc. Reference : SUBIN-UPUP1407580445557616770851W
 Purchased by : EMS LIMITED
 Description of Document : Article 12 Award
 Property Description : Not Applicable
 Consideration Price (Rs.) :
 First Party : EMS LIMITED
 Second Party : U P JAL NIGAM
 Stamp Duty Paid By : EMS LIMITED
 Stamp Duty Amount(Rs.) : 100
 (One Hundred only)

सत्यमेव जयते



₹100

Please write or type below this line

IN-UP24675828654158W

Before The Arbitral Tribunal Of
Mrs. Justice Raj Rahul Garg (Former Judge)
Sole Arbitrator

In The Matter Between

M/s EMS Limited
(Formerly Known as M/s EMS Infracon Pvt. Ltd.)

...Claimant

AND

U.P. Jal Nigam

...Respondent

Raj Rahul Garg

Statutory Alert:

- The authenticity of this Stamp certificate should be verified at www.sholectamp.com or using e-Stamp Mobile App of Stock Holding
- Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
- The onus of checking the discrepancy is on the users of the certificate.
- In case of any discrepancy, please inform the Competent Authority.

Before The Arbitral Tribunal Of
Mrs. Justice Raj Rahul Garg (Former Judge)
Sole Arbitrator

In The Matter Between

M/s EMS Limited
(Formerly Known as M/s EMS Infracon Pvt. Ltd.)

...Claimant

AND

U.P. Jal Nigam

...Respondent

Ranbir Singh

1. INTRODUCTION: -

1.1 Description of Parties

1.1.1 Claimant company provides complete, single-source services from Engineering and Design to construction and installation of Water, Waste Water and Domestic Waste Treatment facilities. Claimant company i.e. M/s EMS Limited was formerly known as M/s EMS Infracon Pvt. Ltd. It is a duly incorporated company registered as a Private Limited Entity (Limited by shares) under the provisions of the companies Act, 2013 (as amended) having its registered office at C-88, RDC, Raj Nagar, Ghaziabad, U.P. 201002 India. The name of the claimant company was changed from "EMS INFRACON PRIVATE LIMITED" to "EMS PRIVATE LIMITED" on 26th of October 2022. Thereafter, the company has been converted from a private limited company to a public limited company under section 18 of the companies Act, 2013. Consequently, the name of the company was further changed from "EMS PRIVATE LIMITED" to "EMS LIMITED". Certificate of incorporation consequent upon conversion to public limited company issued by the Ministry of Corporate Affairs dated 25.11.2022 is Annexure C-1.



1.1.2 Claimant company filed the SoC through Mr. Ashish Tomar who has been duly authorized vide Board Resolution dated 16.12.2022. Copy of Board Resolution is Annexure C-2.

1.1.3 The respondent Uttar Pradesh Jal Nigam is a Statutory Body, established under the Uttar Pradesh Water Supply and Sewerage Act, 1975. It was created with the object of development and regulation of water supply and sewerage services and for matter connected therewith.

2. Project Name

2.1.1 Project was "to survey, review the designs, redesign where necessary and build new sewerage network of about 215 km length including survey, design, construction of 2 nos. pumping stations and all appurtenant structures, and operation and maintenance of sewerage network and pumping station for a period of 10 years in Sewerage District-B of Allahabad, State of Uttar Pradesh, India." This project was under the NAMAMI GANGE program.

2.1.2 This project has been funded by the World Bank and all the costs related to the project were approved by the World Bank before awarding of the contract.

Rajesh

	02. 2022			Kalindpuram SPS 02.11.2021 to 01.02.2022				in lucknow
16.	07. 03. 2022			Elec. Bill No. 9 (July 2021 to Feb 2022)	593194.00		593194.00	Pending in deptt.
17.	02. 04. 2022			Bill No. 10 (Sewerage Network 01.01.2022 to 31.03.2022)	1445000.00		1445000.00	Pending in deptt.
18.	02. 04. 2022			Bill No. 11 Kalindpuram SPS 02.01.2022 to 01.04.2022	295333.00		295333.00	Pending in deptt.
Sub Total (B)					11528568.00	4757859.88	16286427.88	
Grand Total					174348647.48	27153458.52	201502106.00	

6.2.2 On perusal of the aforesaid table, it becomes clear that the claimant made a mention of due date after deducting the period of 60 days from the date of submission of bills. Claimant made a mention of due dates respecting bills mentioned at Sr. No. 1 to 6 of RA bills and at Sr. No. 1 to 4 respecting pending O&M bills. About few other bills, no due date finds mention. As such in view of above discussed provisions of Contract Agreement & SCC, this Tribunal holds that claimant is entitled to 10% per annum interest on the amounts mention at Sr. No. 1 to 6 regarding pending payments against project work including additional work and Sr. No. 1 to 4 i.e. pending payments against O&M bills from their due dates as shown in aforementioned table till the date of filing of claim petition. As per above stated table, the amount of interest as calculated comes to INR 27153458.52. Thus, INR 27153458.52 are awarded towards interest to the claimant under claim no. 2. This

Devendra Singh

point in dispute is thus decided accordingly, in favour of claimant.

6.3 & 4 Points in Dispute i.e. Claim No. 3 & 4.

3. *Claim towards legal costs incurred by the claimant for initiating legal proceedings due to breach of the contractual obligations by the respondent.*

4. *Claim towards arbitration costs incurred by the claimant including the expenses incurred on account of the fee/expenses of the Arbitral Tribunal.*

6.3 & 4.1 It was argued by Ld. Counsel for the claimant that the respondent even did not deny the payment which are due to the claimant company. On the very first date of the present proceedings i.e. on 03.12.2022, the Authorized representative of the respondent appeared and admitted that the payments as claimed by the claimant company are legitimate and the same are due to the claimant company without any doubts. Since the payments have never been disputed by the respondent but when not paid, respondent is liable to pay all the legal costs as well as costs of arbitration, incurred by the claimant. Respondent has not even paid the fee of Arbitrator. The entire fee has been paid by the claimant. Only due to lack of internal approvals, due payments were not made to the claimant company. As such, claimant is entitled to legal costs and costs of



Arbitration under these claims.

6.3 & 4.2 Keeping in view the entire scenario as discussed above and particularly the legal proposition as contained in Section 31A(2) of 'the Act', claimant becomes entitled to costs under claims No. 3 & 4, Section 31 A (2) of the Arbitration and Conciliation Act, 1996 provides that the General rules is that the unsuccessful party will be ordered to pay the costs of successful party and if the Arbitral Tribunal makes a different order, it must record its reasons in writing. In the present case, respondent has failed to make the payments of due amounts only on account of the factum of lack of inter departmental approvals. It is a case of gross negligence on the part of respondent. As such, there is no reason to excuse the respondent from paying costs of litigation. In this case, claimant has filed certificate of costs of litigation and costs of Arbitration proceedings. In the certificate, litigation cost (as paid to the Advocates) incurred by the claimant has been shown as INR 30,65,500 and fee paid to the Arbitrator as 31,17,457. Details of the same finds mention in the certificate. Thus, total expenditure incurred towards costs of Arbitration comes to INR 61,82,957. Accordingly, this tribunal awards INR 61,82,957 under these claims to claimant as provided in Section 31A(4)(g) of the Arbitration and Conciliation Act,



1996. Both these issues are thus decided accordingly in favour of claimant.

7. Operative portion of the Award

In the result, the Arbitral Tribunal grants the following relief:-

1. Claim No. 1: *Claim on account of outstanding payments towards pending RA Bills and O&M Bills towards Project Work and additional – Rs. 17,43,48,647,48/-* Respondent will pay INR 17,43,48,647.48 (Seventeen Crores Forty Three Lacs Forty Eight Thousand Six Hundred Forty Seven and Forty Eight Paise, to the claimant.

2. Claim No. 2: Claim on account of interest at the rate of 10% per annum towards delayed payment as per clause 5.2.3 of the contract agreement dated 10.06.2016 and future interest Respondent will pay INR 27153458.52 (INR Two Crore Seventy One Lacs Fifty Three Thousand Four Hundred Fifty Eight and Fifty Two Paise, to the claimant.

3. Claim No. 3 & 4: *3. Claim towards legal costs incurred by the claimant for initiating legal proceedings due to breach of the contractual obligations by the respondent.*

4. Claim towards arbitration costs incurred by the claimant including the expenses incurred on account of the fee/expenses of the Arbitral

Neel Kumar


Tribunal..... Respondent will pay INR 6182957 (INR Sixty One Lacs Eighty Two Thousand Nine Hundred and Fifty Seven), to the claimant.

Respondent will pay pendent-lite interest @10% per annum on payable amount under claim No. 1 to the claimant from the date of filing of claim petition till the date of award.

Respondent will pay the entire payable award amount to the claimant within 60 days from the date of award, failing which claimant will be entitled to interest @ 10% per annum on the amounts of claim No. 1, 3 & 4 from the date of award till the date of realization.

The award is made on a Stamp Paper of INR 100/- Deficit Stamp to be paid by the claimant at the time of enforcement of the Award.

Date of Award: 02.05.2024
Place of Arbitration: through VC


(Justice Raj Rahul Garg)
Former Judge
Sole Arbitrator