

SUBJECT NO. 53

Sub: Engg. – Panchavati Township project at Akkireddipalem – Taken up by VUDA – Arbitration cases pending between VUDA and M/s. Vision Ventures in the Hon'ble District Court - Request of M/s. Vision Ventures for settlement – Legal opinions obtained from Sri D.V. Subba Rao, Advocate defending the case in local court for VUDA and Sri P. Rajasekhar, Standing Counsel for VUDA at Hyderabad - Further action to be taken - Draft subject placed before VUDA Board for perusal and orders - Reg.

- Ref: 1. Arbitration Award given by Sri T.R. Seshadri Dt.30-11-2009.
2. WP No.268/2010 case filed by VUDA against Vision Ventures Ltd., on 22-3-2010 challenging the Arbitration Award passed.
3. OP No.272/2010 case filed by Vision Ventures Ltd., against VUDA on 26-7-2010 for Arbitration Award claim.
4. Representation of M/s. Vision Ventures Ltd., Dt.5-12-2013 & 1-2-2014
5. Letter Rc.No.99/2010/EE-II/VUDA, Dt.25-2-2014 addressed to Sri D.V. Subba Rao.
6. Legal opinion given by Sri D.V. Subba Rao, Advocate, Dt.19-03-14 defending the arbitration case.
7. Letter Rc.No.99/2010/EE-II/VUDA, Dt.12-3-2014 addressed to Sri P. Raja Sekhar, SC, VUDA at Hyderabad.
8. Sri P. Rajasekhar, Standing Counsel, VUDA, Hyderabad Dt.24-3-2014

AGENDA NOTE :

It is to submit that VUDA has taken up "Panchavati Township project" at Akkireddipalem, in an extent of 17.58 Acs by way of Tenders. The work was entrusted to M/s. Vision Ventures Ltd., on turnkey basis. The following are the salient features of the Project:

Extent of Layout	-	Acs.17.58 Cts.
Date of Administrative Sanction	-	15-10-2004
Date of Technical Sanction	-	15-10-2004
Date of receipt of Tenders	-	28-10-2004
Date of finalisation Tenders (By 3 men Committee of Engineers)	-	05-11-2004
Date of approval of Tenders	-	11-11-2004
Date of issue of work order	-	11-11-2004
Date of Agreement	-	29-12-2004
Scope of work	-	Construction of 185 Nos. of Individual duplex units each of 1450 Sft. Plinth area (Including common facilities).
Total Built-up area	-	261000 Sft
Estimate Project Cost	-	Rs. 21.89 Crores

Cost per Sft. of Built-up area	-	Rs. 822.22
Estimate Contract Value	-	Rs. 21.46 Crores
Agreement Value	-	Rs. 21.45 Crores
Tender premium	-	0.03 % Less
Cost per Sft. of Built-up area	-	Rs. 822/- (As per Agreement)
Agreement period	-	24 months
Revised scope of work during execution	-	176 Nos. of individual Duplex Units in two categories. Executive type -155 Nos. Classic type - 21 Nos.
Plot Size for Executive Type	-	200 Sq.Yds
Plot Size for Classic Type	-	300 – 330 Sq.Yds
Executive type Built-up area (each Unit)	-	2002 Sft.
Classic type Built-up area (each Unit)	-	2930 Sft.
Total Built-up area (Revised)	-	371798 Sft.
Value of work done as per execution	-	Rs.30.81 Crores
Date Work commenced	-	29-12-2004
Completion of project in full shape	-	May 2007
Allotment and handing over of Units	-	From June 2007 onwards
Cost of Executive type Unit	-	Rs. 21.00 Lakhs
Cost of Classic type Unit	-	Rs. 32.25 Lakhs
Amount realised as per the above	-	Rs. 32.55 +6.77 = 39.02Cr.

Details of Invoking of Arbitration by Contractual agency

After completion of work and houses were allotted to the respective Allottees, the contractual agency, M/s. Vision Ventures have invoked Arbitration clause as per agreement condition on the plea that amounts in respect of certain components and additional works were not released fully by VUDA and delay during execution of work resulted losses and claimed an amount of Rs.22.78 Crores.

- Thereon Sri T.R. Seshadri, Chartered Engineer and Arbitrator, Hyderabad, was appointed as sole arbitrator on 17-12-2007 on consent of both the parties M/s Vision Venture Ltd. Hyderabad and VUDA.
- In addition, VUDA appointed Sri D.V. Subba Rao, leading advocate in Visakhapatnam as department lawyer specially to defend the case, though he is not Standing Counsel of VUDA.
- As a counterpart M/s. Vision Ventures appointed Sri Amarnath, leading advocate in Hyderabad on their behalf. After series of hearings from both the parties, the sole arbitrator has passed Arbitration Award on 30-11-2009.

Summary of Award:

Sl. No.	Description	Amount Claimed Rs.	Amount Awarded Rs.
1	Claim towards idle machinery & equipment	38,37,500	3,10,000
2	Turnover losses	1,60,00,000	NIL
3	Hike in process of material	63,00,000	NIL
4	Crash programme	1,39,10,000,	44,00,000
5	Additional works	2,32,33,605,	1,34,17,715
6	Bonus	3,08,51,130,	NIL
7	Price variation	2,75,67,517,	NIL
8	Interest on claims	5,61,58,370	@12% from due dates – See para 120
9	Loss due to forfeiture of allotment of Bungalows	3,41,00,000	NIL
10	Losses due to delay in release of final bill and return of BGs	1,58,10,000	@ Rs.4,00,000/ per month till BG's are released – See paras 116 & 117
	Grand Total	22,77,68,122	As above

- On receipt of Arbitration Award on the above work, legal opinion was obtained from Sri D.V. Subba Rao, Advocate defended the case from the beginning whether an appeal can be filed in the Hon'ble High Court.
- In response, Sri D.V.Subba Rao, Advocate has given opinion that it is desirable to challenge the case in the court of law as the award was not in the interest of justice and fair chances of winning the case.
- Accordingly, a AOP was filed for setting aside the award in the District Court, Visakhapatnam on 22-3-2010 and the number allocated was OP No.268/2010.
- At present, the case is under trail.

Since the contractual agency has not satisfied with the award of the arbitrator has filed a suit in the District Court, Visakhapatnam challenging the

Arbitration Award and the number allocated was WP No.272/2010 and at present, the case is under trail.

- Meanwhile, M/s. Shriram City Union Finance Ltd., has filed a petition against M/s. Vision Ventures Ltd., regarding failure of repayment of loan taken by M/s. Vision Ventures Ltd., to a tune of Rs.10.00 Crores from the said finance company and VUDA made second respondent stating that Arbitration Award passed by the sole arbitrator on the subject work is pending in the court.
- In this connection, the above court case was entrusted to Sri L. Satyanarayana, Advocate and Standing Counsel, VUDA to defend the interests of VUDA.
- Later the counter was filed under IA 683/2013 in OP 643/ 2013 in the Hon'ble Court of IVth Additional District Judge, Visakhapatnam.
- As of now the matter is pending in the Hon'ble Court.

Further the arbitration cases pending in Principal District & Sessions Judge Court, Visakhapatnam filed by VUDA and M/s. Vision Ventures Ltd, are posted to 10-7-2014 & 18-07-2014 in the recent adjournment.

Recent request of the contractual agency for settlement

Now the contractual agency M/s. Vision Ventures Ltd., had requested vide their letter to resolve the dispute mutually not to incur further legal expenses and save the time, penalty and interest charges stating that the company handed over the units before the due date, but VUDA had not recognized our efforts and additional expenditure on the project. Further, the agency informed that the due amount as on 30-11-2013, as noted below:

Awarded amount on 30-11-2009

Rs.3,80,49,801

Penalty up to 30-11-2013 (48 months)

Rs.1,92,00,000

Retention Money

Rs. 79,33,587

Total Amount receivable from VUDA (Till to date)

Rs.6,51,83,388

The said agency has requested Vice Chairman, VUDA to resolve the dispute mutually not to incur further legal expenses and save the time, penalty and interest charges. Finally, Vice-Chairman, VUDA was requested

to settle the due amount mutually both of us in between Rs.8,34,46,147/- to Rs.6,51,83,388/-.

Action Taken by VUDA

- i. In this connection, it is to submit that since the Arbitration Award passed was not reasonable and justified, the arbitration proceedings were challenged in the court of law (Hon'ble Principal District & Sessions Judge Court, Visakhapatnam) against the contractual agency based on the legal opinion furnished by Sri D.V.Subba Rao, Advocate defended the case earlier. As already four years lapsed and court matter is pending, it is decided to take the legal opinion in this regard on the request of the contractual agency recently given.
- ii. Hence, the amounts payable by VUDA to the contractual agency as per the Arbitration Award passed are worked out and it is also opined that it is desirable to vet and confirm the calculations for arrival of total amount to be payable by VUDA by leading Chartered Accountant / Internal Auditor of VUDA to avoid Litigations / Complications at later date.
- iii. Since contractual agency itself has come forward and requesting for settlement on mutually, it is felt that it is desirable to seek second opinion from Sri P. Raja Sekhar, Advocate & Standing counsel of VUDA at Hyderabad besides taking opinion from the Standing Counsel at local court Sri D.V. Subba Rao to take a decision on the above and to take further action in this regard.

Accordingly, Sri D.V. Subba Rao, Advocate, defending the Arbitration case was also requested to furnish his opinion on the representation made by M/s. Vision Ventures Ltd., regarding settlement of the case – whether to continue the case already challenged based on the winning chances or to negotiate with the said agency for reasonable settlement without detrimental to VUDA. Similarly, Standing Counsel of VUDA at Hyderabad was also requested to offer his opinion in this case.

In response, Sri D.V. Subba Rao, Advocate defending the case in local court has furnished his opinion vide his letter Dt.19-03-2014. The following are the conclusions given after consideration of the entire matter.

- Claim No.1 (Amount awarded for idle machinery and equipment Rs. 3.10 Lakhs) and Claim No.4 (Crash programme- Rs.44.00 Lakhs), Claim No.5(Additional works Rs.134.18 Lakhs) and release of retention money and in so far as the interest is concerned negotiate for reduction.
- Since interest is running and it is substantially accumulating and will become a substantial amount, a settlement as indicated i.e., in respect of Claim No.1 and Claim No.4 are matters in respect of which VUDA has little bargaining power and VUDA can plead for reduction of interest to 9% and if it is the question of settlement, it is suggested of 6% and go up to 9% is desirable and without prejudice to the legal rights of VUDA, the contract namely M/s. Vision Ventures can be called for discussion.
- Allowing opportunity costs and quantifying it at Rs.4.00 Lakhs per month is totally unjustified and it is a subject matter of our challenge and this should not have been given and therefore no concession can be given and it cannot be a subject matter of discussion.
- If a compromise is not reached, one course that can be adopted is that in the application filed to set aside the award may consider giving up our other claims which are negative and in respect of which our chances of getting the same is remote. VUDA can give up that part of the claim and deposit the other amounts so as to prevent the loss of further interest which is bound to accumulate and pursue the application filed by VUDA questioning the validity of the award in respect of opportunity costs, loss of opportunity. This will be prudent course to arrest the accumulate of interest. This option is only for guidance / consideration.

Sri P. Rajasekhar, Standing Counsel at Hyderabad for VUDA has furnished his opinion vide his letter Dt.24-03-2014, as noted below:

- VUDA can negotiate with the contractor for settlement.
- Depending on the profit and loss and more particularly, keeping the interest of VUDA in mind, it can take a suitable decision by consultation with its financial wing and technical wing.
- Further it is opined that VUDA ought to have filed two separate OPs under Section 34 of Arbitration and Conciliation Act 1996. Single and consolidated OP bearing No.268.2010 filed by VUDA aggrieved by the award of allowing five claims of contractual agency and rejection of counter claim by VUDA

is not maintainable according to law. If the said OP is considered and construed as against the allowing five claims of the contractual agency, the other part of award, namely, rejection of counter claims, would become final and vice versa. In my considered opinion VUDA ought to have challenged both allowing 5 claims of the contractual Agency and rejection of counter claims separately by paying separate court fee. Otherwise that portion of Award which is unchallenged would become final by operation of general principles of res judicate and estoppels.

As could be seen from the above, both the Advocates are of the opinion that VUDA can negotiate with the contractor for settlement keeping the interests of VUDA. With regard to financial involvement i.e., amount payable by VUDA as per the Arbitration Award passed by sole arbitrator considering the suggestions of internal auditor of VUDA and Sri D.V. Subba Rao, Advocate defending the case, the claim amount worked out is varying from Rs. 3.50 Crores to Rs.4.00 Crores against the amount worked out to Rs.6.17 Crores as per the award passed till January, 2014.

Hence, the subject is placed before VUDA Board for perusal and to take a decision on the request for mutual settlement of the issue pending.

Sl. No.	Subject No.	Subject	Resolutions
54	53	<p>Engg. - Panchavati Township project at Akkireddipalem - Taken up by VUDA - Arbitration cases pending between VUDA and M/s. Vision Ventures in the Hon'ble District Court - Request of M/s. Vision Ventures for settlement - Legal opinions obtained from Sri D.V. Subba Rao, Advocate defending the case in local court for VUDA and Sri P. Rajasekhar, Standing Counsel for VUDA at Hyderabad - Further action to be taken - Draft subject placed before VUDA Board for perusal and orders - Reg.</p>	<p>Since the appeal is filed by VUDA against both the principal claims and the interest thereon in the Arbitration Award, the Board advises the following;</p> <ol style="list-style-type: none"> 1. It is instructed to form a External Technical Committee consisting of CE, VPT, CE/SE, R&B and CE, GVMC with CE, VUDA as convener to arrive at the Admissibility of Principal Claims and the extent of admission of Principal Claims. 2. It is also instructed to form a Committee consisting of JC, Vizag, Commissioner, GVMC and CMD, APEPDCL along with VC, VUDA to negotiate with the developer on the interest rate and arrive at the interest rate under which, final settlement can be done. <p>With the above two findings, the matter can be brought to the Board for a decision.</p>