

## AGENDA ITEM FOR SPECIAL MEETING

### ITEM NO. B.38.1 TO CONSIDER AND ADVISE REGARDING ARBITRAL TRIBUNAL AWARD

The Govt. of India, Ministry of Human Resource Development had approved construction of two buildings namely New Administrative Block and Hostel Block in the Institute premises in 1995. The value of the work was Rs.211 lacs. As per guidelines, the work was executed through the NBCC Ltd., a Govt. of India Enterprises as consultant and contract was signed between NBCC Ltd and TTTI Chandigarh (Now NITTTR Chandigarh) on 28.02.1995. As per the terms and conditions of Agreement of consultancy, the NBCC invited the tenders for construction work on turnkey basis from reputed contractors and the work was allotted to M/S Vijay Kumar Garg on the basis of tender. A contract was signed between NBCC (on behalf of NITTTR Chandigarh) & the Contractor i.e. M/s Vijay Kumar Garg on 21.04.1995, to whom the work was allotted on the basis of tender to construct the said buildings within 12 months from the date of commencement of work.

During the execution of the work many problems such as slow rate of progress, defective quality of materials etc. were noticed. The contractor was informed in writing of these problems and advised to take corrective steps, but no improvement was shown by him. Consequently, a show cause notice was sent to the contractor by NBCC and finally the contract was terminated on 12.10.1995 for the reasons that during the **period of 5½ months, only 9% value of the work was done by the contractor**. The Institute withheld the payment of the contractor on various accounts (i) Performance gurantee (ii) Running Bill (iii) Valuation of materials and temporary works etc. The withheld amount was Rs.18.41 lacs.

M/s Vijay Kumar Garg Pvt. Ltd. initiate Arbitration Proceedings. Shri Prem Parkash, Project Manager of NBCC Ltd was appointed as Sole Arbitrator by the Chairman cum Managing Director NBCC Ltd. on 16.10.1996. Sole Arbitrator Shri Prem Parkash directed M/s Vijay Kumar Garg Contractor Pvt. Ltd (Claimants) and M/s NBCC Ltd (respondents) to submit their statement of facts and counter statement of facts. After completion of hearing (12 hearings). Shri Prem Prakash left NBCC and **award was pronounced on 23<sup>rd</sup> June, 2008** (after 08 years of completion of hearing in Arbitration case). The respondent i.e. M/S National Buildings Construction Corporation Ltd. shall pay to the Claimants i.e. M/S Vijay Kumar Garg Contractors (P) Ltd. an amount of Rs. 37,34,915/- (Rupees thirty seven lacs thirty four thousand nine hundred and fifteen only) within ninety days from the date of issue of this award failing which an interest @ PLR prescribed by State Bank of India less by 2% shall be payable to the claimants by the respondent till the payment is made". M/S Vijay Kumar Garg wrote a letter on 25.06.2008 to NBCC for payment, which was awarded in his favor. Copy of same was also sent to NITTTR for similar action. NITTTR Chandigarh filed an Appeal on 22.09.2008 under Arbitration and Conciliation Act in the Hon'ble District Court, Chandigarh against award. Respondents were M/s Vijay Kumar Garg Contractors (P) Ltd. and others.



M/s Vijay Kumar Garg Contractors (P) Ltd. had also filed an execution application against NBCC and others in the Hon'ble District Court Chandigarh on 24.09.2008 to execute the award. M/s Vijay Kumar Garg Contractors (P) Ltd. had filed an application on 22.03.2011 in the Hon'ble Court to strike off the name of respondent No.2 i.e. NITTTTR Chandigarh and name of the respondent No.2 had been deleted from the list of respondents. Hon'ble Add. Distt. & Session Judge, Chandigarh ordered on 29.04.2011: From the perusal of the award, it is clear that the award has been passed against the objector (NBCC), so it is to be executed against him (NBCC), the objection petition being without any merit is hereby dismissed. However in the case the JD-objector is of the view that it is National Institute of Teachers Training and Research who is liable to pay the amount, it can recover the same from the said institution. Hence warrants of attachment against property of JD (NBCC) be issued for 6.8.11 on filing of P6 list of property. NBCC vide letter No.SBG/JAT/CC-19/2011/1516 dated 18.06.2011 requested NITTTTR Chandigarh to release the award payment worth Rs.38,41,465/-.

Arbitration case was then reported to Finance Committee in its 20<sup>th</sup> meeting held on 25.06.2011 (copy enclosed as **Annexure - I** at page No. 1 to 2). The Committee suggested that a legal opinion from a lawyer may be obtained in this regard whether this is a fit case for appeal in the Higher Court or not otherwise, the payment be made within the prescribed time period. Legal opinion regarding Arbitration Case M/s Vijay Kumar Garg P Ltd Vs NBCC was obtained from Sh. Inderjit Singh Sidhu, Advocate standing counsel of the Institute. The observation was "NBCC and The contractor admitted the fact that NITTTTR was not a party to the Arbitration reference and thus not bound by the award rendered by the Arbitrator and thereby agreed to get the name of the NITTTTR deleted from the execution proceeding ....." "The NITTTTR not governed the Award, is not liable to make payment as per the said Award in terms of Appendix -G as suggested by NBCC". Legal Advise taken from Sh. Inderjit Singh Sidhu, Advocate standing counsel of the Institute was put before the Board of Governors in its 22<sup>nd</sup> meeting held on 24.11.2011. The Board agreed with the legal opinion of the Institute Counsel Shri IS Sidhu and approved the same (copy enclosed as **Annexure - II** at page No. 3 to 7). Decision of Board of Governors was communicated to NBCC vide letter No. 33330 dated 20.01.2012.

NBCC through their Advocate Shashi Mohan served a Legal Notice on 07.07.2012 to NITTTTR Chandigarh to release the payment Rs.37,34,915/- alongwith interest amounting to Rs.11,18,505/-, besides balance consultancy fee amounting to Rs.79,000/- and legal expenses amounting to Rs.27,550/- within 30 days failing which my client shall be entitled to initiate Arbitration proceedings (copy enclosed as **Annexure - III** at page No. 8 to 14). NBCC Ltd informed vide letter dated 05.09.2012 appointment of Shri MK Verma GM(CE) NBCC Ltd as Arbitrator and requested to NITTTTR Chandigarh to appoint Arbitrator from NITTTTR side (copy enclosed as **Annexure - IV** at page No. 15 to 17). NITTTTR Chandigarh appointed Shri Jag Mohan Lal Additional Director General (Retired) as Arbitrator from Institute side on 31.12.2012. Institute vide letter No.NITTTTR/Legal/33013-14 dated 14.01.2013 requested to MHRD to appoint an Umpire for Arbitration case between NBCC Ltd and NITTTTR Chandigarh (copy enclosed as **Annexure - V** at page No. 18 to 20). MHRD approved the appointment of Shri SC Vasudeva, Additional Director General (Retd) CPWD as



umpire and informed NITTTR Chandigarh vide letter dated 11.07.2013 (copy enclosed as **Annexure – VI** at page No. 21). NBCC vide letter dated 07.04.2014 informed the resignation of Sh MK Verma Arbitrator and appointment of New Arbitrator Shri SK Kharab from NBCC side. MHRD amended the appointment of Shri SC Vasudeva as Presiding Arbitrator in place of Umpire.

First meeting of the Arbitration matter between NBCC Ltd and NITTTR Chandigarh was held on 16.11.2015. Proceedings of Arbitration matter were completed in 10<sup>th</sup> meeting held on 05.05.2017. Arbitral Tribunal pronounced the Award in favor of NBCC and directed to NITTTR Chandigarh (Respondent) to pay the claimant NBCC a sum of Rs. 78,03,686/- within 45 days from the date of this Award i.e. before 15<sup>th</sup> August, 2017. The amount confiscated by the institute in the year 1995 was Rs.18.45 lacs which was kept under fixed deposit in the Bank. The present value of this amount alongwith interest is approximately Rs.67 lacs.

On receiving the Award pronounced by Arbitral Tribunal, Legal Opinion was obtained from Legal Counsel of the Institute (copy enclosed as **Annexure – VII** at page No. 22 to 23) and letter was written to MHRD for seeking the advice for further course of action taking by the Institute. MHRD vide letter F.No.7-4/2013-TS-IV dated 24<sup>th</sup> July, 2017 (copy enclosed as **Annexure – VIII** at page No. 24) informed the Institute as under:-

“NITTTR, Chandigarh is an autonomous organization and hence further course of action in the matter may be taken as per its professional wisdom”.

The Legal Committee of the Institute re-examined the case on 26.07.2017. The recommendations of the committee are enclosed as **Annexure – IX** at page No. 25).

THE BOARD OF GOVERNORS MAY DECIDE AND ADVISE  
FURTHER COURSE OF ACTION