



Rajendra Sudan &lt;registraroffice90@gmail.com&gt;

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**Arbitration Proceedings**

1 message

Ajay Gairola &lt;garryfce@gmail.com&gt;

Tue, May 2, 2017 at 11:26 AM

To: registrar &lt;registrar@iitr.ac.in&gt;

Cc: Bal Krishna Maheshwari &lt;bkmaheshwari.iitr@gmail.com&gt;

**Registrar IIT Roorkee**

Please be informed that the Hon'ble Chair of Arbitration tribunal for a case CoEDMM IIT Roorkee v/s SK Dynamics Pvt Ltd. Roorkee has informed that the awarded of the case will be announced on 5th May at 4.0pm in the office of Justice (retd) Ms.Usha Mehra in her Defence colony office. Since I am having High sugar levels(>450) causing numbness in my legs.I am finding difficult to travel.

I therefore request you to authorize our advocate in this case Mr.Sunil Prakash to receive the award and communicate it to the Institute.

Submitted for consideration and necessary action

Kind regards

Ajay Gairola

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**Dr.AJAY GAIROLA** ( Professor of Civil Engineering ) JSPS Fellow  
Professor in Charge Wind Simulation Laboratory  
Center of Excellence in Disaster Mitigation & Management  
Indian Institute of Technology Roorkee,  
ROORKEE - 247667 (Uttarakhand) INDIA  
e mail : garryfce@gmail.com

Former Member Secretary  
Uttarakhand Environment Protection and Pollution Control Board  
Uttarakhand

Administration

Tenders/EOI

Organization

IIT Council

Board of Governors

Finance Committee

Building And Works

Administration

Senate

Institute Central

Administration

Administrative Officers

Academic Heads

Estate &amp; Works

Openings

FAQ

Non Teaching Jobs

Project Jobs

Faculty

Tenders/EOI

Quotations

- Eoi Notice No.: E&W/209/Commercial (Click Here)  
Department/Centre Invited @ : Estate & Works, IIT Roorkee  
Contact Person: Member Secretary, Commercial Establishment Committee  
DATE OF ISSUE: April 11, 2016  
LAST DATE AND TIME OF SUBMISSION: May 05, 2016 (15:00 hrs)
- Tender Notice No.: E&W/Tender/710 (Click Here)  
Department/Centre Invited @ : Estate & Works, IIT Roorkee  
Contact Person: Institute Engineer, Estate & Works  
DATE OF ISSUE: April 12, 2016  
LAST DATE AND TIME OF SUBMISSION: May 12, 2016 (15:00 hrs)
- Notice regarding failure of firm M/s S.K. Dynamics Ltd., Roorkee in Design, Supply, Assembling, Installation and commissioning of an Experimental Setup at IIT Roorkee.
- Short Term Tender Notice No.: E&W/232/Tender (Click Here)  
Department/Centre Invited @ : Estate & Works, IIT Roorkee  
Contact Person: Act. Chairman, Estate & Works  
DATE OF ISSUE: April 07, 2016  
LAST DATE AND TIME OF SUBMISSION: April 27, 2016 (15:00 hrs)
- Tender Notice No.: E&W/IE/Tender(E-19)/709 (Click Here)  
Department/Centre Invited @ : Estate & Works, IIT Roorkee  
Contact Person: Institute Engineer, Estate & Works  
DATE OF ISSUE: April 11, 2016  
LAST DATE AND TIME OF SUBMISSION: April 27, 2016 (15:00 hrs)
- Tender Notice No.: 04/MM/IITR/2016/Tender Notice/17 (Click Here)  
Tender Document1 (Item no. 1 of Tender Notice No. 04/MM/IITR/2016/Tender Notice/17)  
Tender Document2 (Item no. 2 of Tender Notice No. 04/MM/IITR/2016/Tender Notice/17)  
Department/Centre Invited @ : Material Management, IIT Roorkee  
Contact Person: AR(MM)  
DATE OF ISSUE: April 11, 2016  
LAST DATE AND TIME OF SUBMISSION: May 04, 2016 (15:00 hrs)
- निविदा संख्या: ताजी सब्जियों व ताजे फलों की आपूर्ति हेतु निविदा (यहाँ क्लिक करें)  
विभाग/केन्द्र: भवन समन्वय समिति, भारतीय प्रौद्योगिकी संस्थान रुड़की  
सम्पर्क किये जाने वाले व्यक्ति का नाम: केन्द्रीय क्रय अधिकारी, भवन समन्वय समिति  
जारी किये जाने की दिनांक: मार्च 08, 2016  
जमा करने की अन्तिम दिनांक/समय: मार्च 21, 2016 (5.00 बजे तक)
- निविदा संख्या: मिठाई व नमकीन खाद्य सामग्री की आपूर्ति हेतु निविदा (यहाँ क्लिक करें)  
विभाग/केन्द्र: भवन समन्वय समिति, भारतीय प्रौद्योगिकी संस्थान रुड़की  
सम्पर्क किये जाने वाले व्यक्ति का नाम: केन्द्रीय क्रय अधिकारी, भवन समन्वय समिति  
जारी किये जाने की दिनांक: मार्च 08, 2016  
जमा करने की अन्तिम दिनांक/समय: मार्च 21, 2016 (5.00 बजे तक)
- निविदा संख्या: चायल सेला सर्बती की आपूर्ति हेतु निविदा (यहाँ क्लिक करें)  
विभाग/केन्द्र: भवन समन्वय समिति, भारतीय प्रौद्योगिकी संस्थान रुड़की  
सम्पर्क किये जाने वाले व्यक्ति का नाम: केन्द्रीय क्रय अधिकारी, भवन समन्वय समिति  
जारी किये जाने की दिनांक: मार्च 08, 2016  
जमा करने की अन्तिम दिनांक/समय: मार्च 21, 2016 (5.00 बजे तक)
- निविदा संख्या: प्रोविजन की आपूर्ति हेतु निविदा (यहाँ क्लिक करें)  
विभाग/केन्द्र: भवन समन्वय समिति, भारतीय प्रौद्योगिकी संस्थान रुड़की  
सम्पर्क किये जाने वाले व्यक्ति का नाम: केन्द्रीय क्रय अधिकारी, भवन समन्वय समिति  
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- निविदा संख्या: प्रोविजन की आपूर्ति हेतु निविदा (यहाँ क्लिक करें)  
विभाग/केन्द्र: भवन समन्वय समिति, भारतीय प्रौद्योगिकी संस्थान रुड़की  
सम्पर्क किये जाने वाले व्यक्ति का नाम: केन्द्रीय क्रय अधिकारी, भवन समन्वय समिति  
जारी किये जाने की दिनांक: मार्च 08, 2016  
जमा करने की अन्तिम दिनांक/समय: मार्च 21, 2016 (5.00 बजे तक)

**INFORMATION**

IN COMPLIANCE OF THE CENTRAL INFORMATION COMMISSIONER ORDER DATED 22.01.2016 ON HEARING THE (04) - RTI APPLICATIONS/COMPLAINTS OF SRI ANKUR GOYAL, M/S S.K. DYNAMICS PVT. LTD., ROORKEE, THE FOLLOWING IS UPLOADED:-

" xxxxxxxxxx  
xxxxxxx

The Commission, therefore, directs the responded authority to prepare a comprehensive note on all the contracts wherein complainant was engaged, their status including breaches, consequences suffered by the institution along-with this order and uploaded on their official website."

**Current Status:**

M/s S.K. Dynamics Pvt. Ltd., Roorkee had filled case in the District Court and the complainant has taken the matter into Arbitration. All the details of the award at contract, failure of the firm and breaches of the Agreed terms of the contract of award will be uploaded on closure of the on-going legal cases.

Legal Cell  
IIT Roorkee





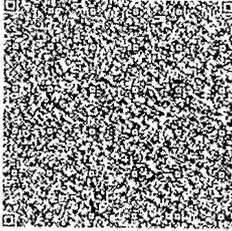
सत्यमेव जयते

## INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

### e-Stamp

Certificate No.	: IN-DL73481728207148P
Certificate Issued Date	: 21-Apr-2017 02:17 PM
Account Reference	: IMPACC (IV)/ dl721003/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL72100347577002530799P
Purchased by	: S K DYNAMICS PVT LTD ROORKEE
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: S K DYNAMICS PVT LTD ROORKEE
Second Party	: IIT ROORKEE
Stamp Duty Paid By	: S K DYNAMICS PVT LTD ROORKEE
Stamp Duty Amount(Rs.)	: 500 (Five Hundred only)



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#### IN THE MATTER OF ARBITRATION BETWEEN:

M/s S.K. Dynamics Pvt. Ltd. ....

Claimant

Versus

Centre of Excellence in Disaster Mitigation and  
Management, Indian Institute of Technology,  
Roorkee and others .....

Respondents

#### Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shoilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.

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If the interpretation of the Claimant is accepted and logically extended, we would reach the absurd conclusion that if the Setup is able to produce just a single speed in the range, say 5m/s or 10 m/s without any variability, it also should be acceptable.

Thus there is no doubt that the PO was clear what the wind speed requirement was, the Claimant knew it from the time when he submitted his bid and during implementation informed that the range of the desired wind speed cannot be reached and attributed this failure to rigid specifications.

**Thus we find that the System was required to provide a wind speed at the test section that could vary from 2m/sec to 35 m/sec and the interpretation that any speed in the range should be acceptable is not correct. This claim is decided against the claimant.**

**iii. Whether the Demand of the Claimant to Supply Source Code is Void**

The Claimants have argued that the supplying the Source Code was not a part of the PO as it is the intellectual property of the Claimant. The Respondents have failed to show that the Claimant was required under the PO to supply the Source Code. Hence this

*km* *ll.*  
*J. Amf*

Claimant in his rejoinder to the written submission has stated that the products were largely manufactured by the claimant's own research and development unit and were meant for experimental unit only and accordingly the excise exemption certificate was issued by the Respondents, we have no further comments. Hence the answer is Yes.

**ISSUE NO.7&8**

**6.6 Whether the claimant committed breach of the terms and conditions of the contract by failing to commission the Experimental setup as per requirement of the Indian Institute of Technology, Roorkee as desired in the Technical Bid/Purchase Order? and,**

**6.7 Whether the claimant committed breach of the terms and conditions of the contact with regard to Design, Supply, Assembly, Installation and Commissioning of the Experimental Set up?**

The two issues are almost similar except that in 6.8 the term commissioning has been added. Both are being treated. These are taken up together for disposal.

The Experimental Setup has many products (components), as mentioned in Annexure 1 of the PO. These have to be designed, produced, assembled and installed into one Setup that will enable experiments to be conducted and it is a **Turnkey Project**. Since full



facts are not required to be provided by the Claimant to the Respondent for each function, it is difficult to pinpoint failure or success of each function such as design, supply, assemble, installation and commissioning. We take up each function of the task assigned to the Claimant from Designing to Commissioning, but the final verdict will have to be given on successful demonstration of the commissioning of the Setup.

#### **6.7.1 Design:**

The Contract or the Purchase Order (PO) requires a turnkey Experimental Setup involving design, supply, assembling, installation and commissioning. The design which respondent originally gave to the claimant for this project was from Prof. Nishi of Miasaki University in Japan who is the Original designer of wind tunnel. The Project design was shared with the Claimant as stated by the Respondent in answer to question no.4. Strict technical specifications/dimensions of each item have been prescribed. The required/desired performance of each item has also been provided. The Setup and the components have to be so designed and integrated that each component and the system as a whole gives the required performance.

Designing a product requires that the outcome should be defined. In this case some specifications and dimensions have been mentioned in the

*Law H. Jant*

PO and the required outcome also has been prescribed. In this case there is no provision requiring the Claimant to give copies of calculations and drawings of designs to the Respondents. The Respondents say that they asked for designs but the Claimant did not give them. In the absence of any provision, it is up to the Claimant to supply design documents or not to supply them to the Respondents. Where, however, the performance is below that required, the likelihood of lack of design or improper design is there and it will not be unreasonable inference that the designing was not properly done.

In the case of Motors the Respondents expected that all the motors would be able to run simultaneously also at 6000 rpm. But this was not a condition incorporated in the contract. Therefore, we have held that the Respondents cannot ask for this speed of rotation if all fans are run simultaneously. But if the Claimant did the designing, he would know what would the speed of rotation be if all the motors ran simultaneously.

Although he says that he had designed the Experimental Setup before the contract was signed (March 2014), it was only in the month of November 2015, that the Claimant raised the issue of wind speed, by which time he had supplied most of the components of the Setup. He discussed with the academic expert in IIT Roorkee and he gave the calculations showing that the speed should be reached with the power available. The Claimant did not agree with the calculations and said

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they were wrong. In a letter dated 25 Feb 2015, the Claimant said that the specifications of system were rigid and that it was not possible to achieve the required speed of 35m/sec. and with a rotational speed of 3000 rpm of the motors it would be only 10 m/sec, which is in the desired range and so should be acceptable. He drew attention to the minutes of the meeting of PMC held on 18th Jan 2015 in which it was noted that the progress of the execution of the Setup was satisfactory. He has argued that despite the PMC knowing that the issue of Wind Speed had been raised, the observation regarding satisfactory progress of the project meant that his contention that any speed in the range was acceptable and that the speed of 35 m/s was not to be insisted on. Giving queer interpretation to the term range of desired wind speed, he claims that this low speed of 10 m/s when all the fans are running at 3000rpm in the range of 2 to 35m/s should be acceptable in terms of the language in the PO.

We have already discussed the question of desired wind speed at the Test Section and have come to the conclusion that the maximum value of 35m/s was a necessary requirement. The Experimental Setup at least in the requirement of wind speed has failed.

No evidence has been led by the Claimant that designing was indeed done and attempt was made to obtain the desired results of performance. If indeed he had done the designing and the

Jan 11. 2015

specifications prescribed by the Respondents were rigid and inconsistent with the achievement of the desired results, he would have known before submitting the bid and either got the specifications changed or not submitted his bid. In response to Q.No 60 he mentions that the designing of the entire setup had been done before entering the Contract.

**6.7.2 Supply,**

**6.7.3 Assembling and**

**6.7.4 Installation:**

It is clear that the components have been supplied, assembled and installed and have come to the stage of being commissioned for which satisfactory certificate was issued. The Claimant has issued a Certificate of Commissioning of the Setup and enclosed it with the letter dated 19 February, 2015. This certificate simply certifies that the Purchase order has been successfully commissioned on 19<sup>th</sup> February 2015 and that the system is warranted for a period of 18months as per the terms and conditions laid down in the operation manual. It also contains a list of items supplied along with the dates of supply. There is no information about the performance of the components and of the Setup against the contracted performance. Although there is no mention in the PO of which tests, if any, will be performed at the time of acceptance of the commissioning and their

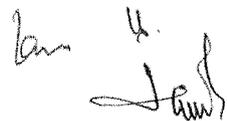
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details, the Claimant, is expected to satisfy the respondent that he has supplied the system that has been fabricated to specifications and will give the required performance and for that he should carry out tests. In this case the Claimant has not done so.

#### 6.7.5 Commissioning

There is no doubt about the term commissioning. When commissioned or commissioning is accepted the setup and its components must conform to specifications, function and give the required performance. The Respondents had sent a letter dated 6<sup>th</sup>, Feb 2015 enclosing a Performa titled Pre-Acceptance Inspection Report, which is a copy of the components and the specifications mentioned in the PO and tender submitted by the Claimant. This performa requires that the various components be tested for their contracted performance and Project Monitoring Committee would issue their approval to the Demonstration of the Setup. The Claimant was asked to submit the Pre-Acceptance Inspection Report by 23<sup>rd</sup> Feb, 2015.

The Claimant objected to the pre-acceptance Inspection Report of the setup by the Project Monitoring Committee (PMC) saying that there was no such provision in the Contract. In terms of the Purchase Order, the Project Managing Committee and the Technical Committee saw the commissioning. It would have been



all right if the Setup had functioned and given the required performance. The PMC would have done inspection seen performance and if every thing was in order, they would have given their clearance.

The present position is that the after the joint inspection of the Setup by the Project Monitoring Committee and the Technical Committee the PMC had wanted that after the deficiencies pointed out were rectified, they should get a demonstration of the system including a functional as well as endurance test. The Claimant had pointed out some flaws on the part of the Respondents and had agreed to take some actions including correcting some deficiencies.

There appears to be contributory negligence in the part of claimant as well as respondent. To arrive at this conclusion, we may mention that the minutes of the meeting held on 18/1/2015 mentioned "progress is satisfactory" and all supplies were delivered before this date. There was no dispute related to supplies. Claimant was directed by respondent's letter dated 19/2/2015 to submit the compliance/commissioning report by 23/2/2015 and facilitate the trial run on 24/2/2015 to the Project Monitoring Committee. Admittedly it was done on 24/2/2015 wherein some observations with regard to operational/functional parts were made. In the said minutes, it is nowhere recorded that

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the claimant committed breach of the terms of the contract. Claimant had pointed out flaws on the part of the respondents to which the respondent did not respond. Hence the Tribunal is of the view that the negligence is contributory. These issue are decided accordingly.

#### 6.7.6 Training:

According to the PO, the Claimant was to provide necessary onsite training after successful installation for operation, maintenance and calibration of the system including usage and system application software at IIT Roorkee.

The Claimant claims that he wrote to the CoEDMM vide letter dated 13<sup>th</sup> Feb 2015 that three days training will start from Feb 18<sup>th</sup> 2015 and that the persons who would undergo training should be made available. The Claimant did not consult the Respondents about convenient dates and unilaterally fixed dates of training. This was the period when the activities of installation and commissioning had begun. Therefore, unilaterally fixing dates of training and then complaining that no one came for training cannot be considered that the Claimant discharged his obligation. Except the assertion of the Claimant, there is no proof that the training had been imparted. Thus this part of the PO remains unimplemented.

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**ISSUE NO.6 & 9**

6.8 Whether the claimant is entitled to cost. If so, how much?

Let both the parties to bear their own costs.

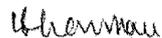
The issues raised by Claimant and the Respondent have been decided as discussed above. In terms of the same award is made.

Note: The Award has been typed on a Non-Judicial Stamp Paper of value of Rs.1000/- supplied by the Claimant. Since the Award is for a larger amount, the Arbitral Tribunal (AT) directs the claimant to have the award adjudicated by the Collector of Stamps so that the requisite stamp duty is paid and the deficiency made good. This shall be done within one month from the date of award as required by law.

This Award is made and published on this 05<sup>th</sup> day of May, 2017.

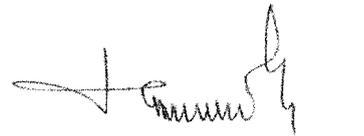
  
(USHA MEHRA)

PRESIDING ARBITRATOR



(VINAY SHANKAR)

ARBITRATOR



(VINOD KHURANA)

ARBITRATOR

NEW DELHI  
DATED: 05.05.2017