

Construction Arbitration Newsletter

RAUTRAY & CO.

Construction Arbitration Law Firm

- **Contractual clause prohibiting the arbitrator from awarding of interest - Clause of the contract providing that “Contractor will not however be entitled to any compensation or claims or damages by way of interest etc. in case of delay in payment” - when there is an express statutory permission for the parties to contract out of receiving interest and they have done so without any vitiation of free consent, it is not open for the arbitrator to grant interest.**

[Rites Ltd. v. Alhuwalia Contract (India) Ltd. - Delhi High Court - Decided on 7.3.2024]

- **Price Variation (adjustment on account of increase or decrease in the rates and price of labour, material, fuels, lubricants and others) - the formula for computing price adjustment under Sub-clause 70.3 of the Conditions of Particular Application (COPA) was variable to the work done - as per Sub-clause 70.1 of the COPA the works are to be valued at base rates and the Contractor had not offered any rebate on the basis of the rates as quoted in its tender - it is the base rates that is subject to escalation and not the rate derived after deducting the rebate amount offered by the Contractor - lump sum rebate cannot be considered for price adjustment.**



- Rebate whether applicable to separate items of the BOQ - lump sum rebate offered only on the total contract price - Contractor had offered a lumpsum rebate on the total price and not on separate items for the BOQ - column for rebate expressly indicated that the rebate offered was 'Nil' - BOQ clearly indicated that the Contractor had not offered any rebate on the various items of work.

*[Chennai Ennore Port Road Company Ltd. v. Coastal SPL (JV) - Delhi High Court -
Decided on 4.3.2024]*



**Rites Ltd. v. Alhuwalia Contract (India) Ltd. - Delhi High Court -
Decided on 7.3.2024**

The arbitral proceedings arose out of a contract agreement between the parties for construction of hostels and flats in the North Campus of the University. The arbitral tribunal allowed some of the claims of the Contractor and awarded post-award interest and costs. The Employer challenged the arbitral award stating that the arbitral tribunal transgressed the prohibition in the contract and could not have awarded interest to the Contractor in view of the prohibition in the contract. The Court concluded that compensation awarded by way of payment of interest was expressly prohibited by the contract and the arbitral tribunal could not have breached the said contractual prescription. Interest is nothing but compensation for the use of money during the period that payment was delayed.

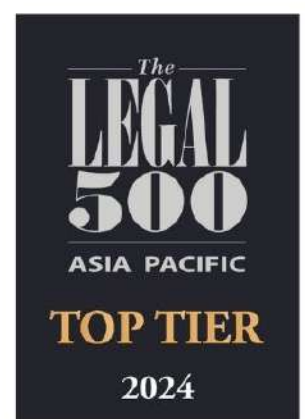
Disputes arose between the parties in connection with the contract for widening, strengthening and improvement of three roads. The project was to be completed within a period of twenty-four months from the commencement date. However, the commencement of the work was delayed. The Contractor contended that it mobilized the necessary resources to complete the project but the Employer failed to handover a hindrance / encumbrance free site. Further, the Employer failed to approve the construction drawings and thus, delayed the completion of the project. Additionally, the site was handed over in a piecemeal manner. The parties entered into Supplementary Agreement. The parties agreed that substantial completion would be given in respect of the completed lengths of 27.933 kms. The first Supplementary Agreement recorded the details of the main carriageway / service road / drain work, which could not be taken up as on the said date due to land acquisition problem, court case etc. The Contractor also agreed that no claims would be made on account of non-execution of the said works. The parties thereafter, entered into a second Supplementary Agreement. The disputes arose between the parties, including with respect to the price adjustment formula used for calculation of the price variation. The disputes between the parties were referred to the Dispute Resolution Board (DRB). Thereafter, the disputes were referred to arbitration. The arbitral tribunal allowed Contractor's claim in respect of revision of rates for the extended period and claim raised on account of price adjustment in the extended period. The Employer contended that the contract price was a product of the base rates for various items and the quantum of work and taking the base rates as quoted in the BoQ would amount to excluding the rebate as offered by the Contractor. The Contractor contended that it would be erroneous to read the rebate of 2% as applicable to separate items of the BoQ. The arbitral tribunal accepted that the works are to be valued at base rates and that the Contractor had not offered any rebate on the basis of the rates as quoted in its tender. The base rates was subject to escalation and not the rate derived after deducting the rebate amount offered by the Contractor. The Court concluded that the extract of the BoQ indicated that the Contractor had not offered any rebate on the various items of work. The column for rebate expressly indicated that the rebate offered was 'Nil'. The question as to construction of the contract falls within the jurisdiction of the arbitral tribunal and therefore, the arbitral award cannot be interfered with.



Dharmendra Rautray
Barrister (Lincoln's Inn, London)
Rautray & Co.

B3/18 Vasant Vihar,
Paschimi Marg,
New Delhi – 110057
Tel: +91.11.46552244 / 46113964

M: 9899988878
E: dharmendra@rautray.com



- “Recommended for Construction arbitration work.” Asia Pacific Legal 500.
- “Leading Individual” in Dispute Resolution - Asia Pacific Legal 500 – 2023.

Author of the book “Principles of Law of Arbitration in India”

Successfully handled construction arbitrations relating to DBFOT projects, EPC Contracts and FIDIC based contracts in infrastructure projects.