

Construction Arbitration Newsletter

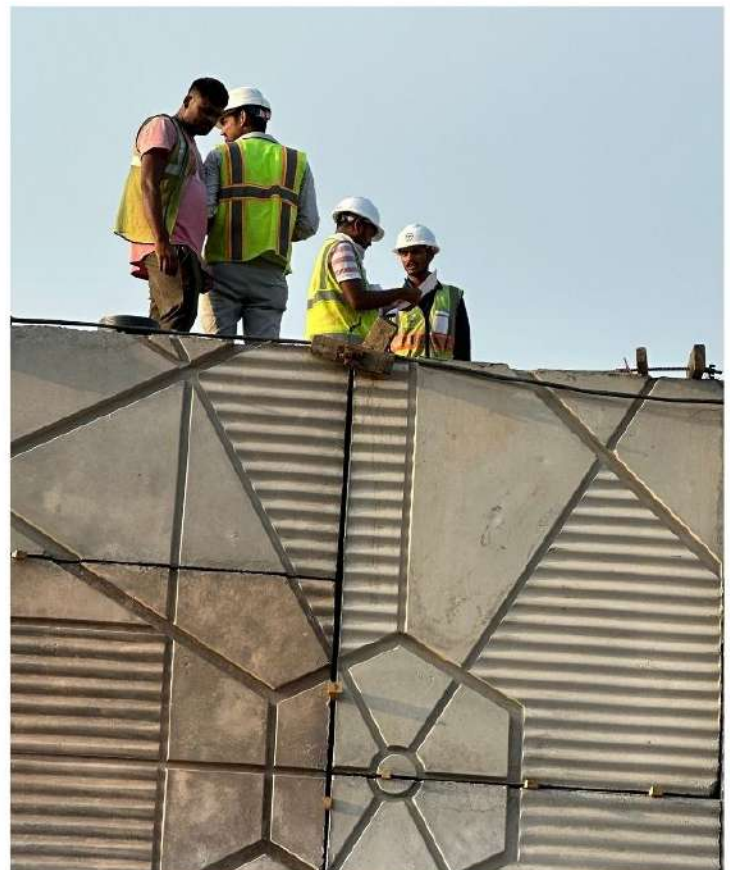
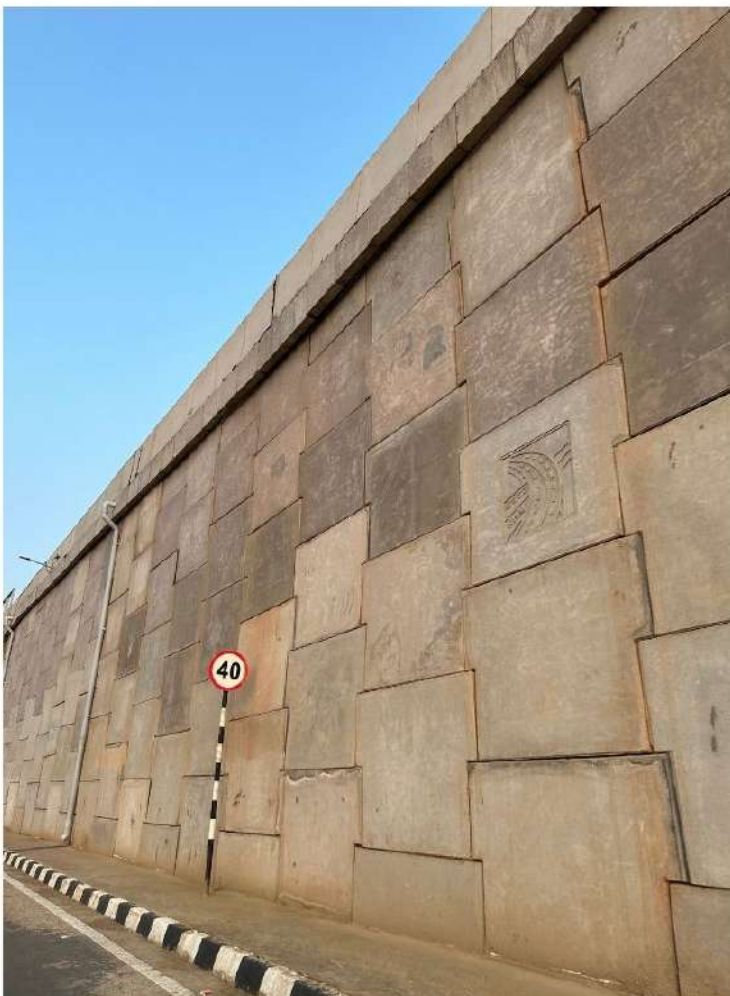
RAUTRAY & CO.

Construction Arbitration Law Firm

- **Grant of Provisional Extension of Time (EOT) - permissibility under the contract - Engineer-in-Charge empowered to determine a fair and reasonable extension even if the Contractor does not apply for EOT within a period of 14 days and to declare that the Contractor is not eligible for consideration for EOT, after ensuring that such declaration would be fair and reasonable - EOT on provisional basis could not have been granted under the terms of the agreement.**
- **Foreclosure of contract - claim for compensation for expenditure incurred towards 'mobilization etc.' - whether the inclusion of financial costs i.e. maintenance of bank guarantees, maintenance of insurance policies and interest liability on advances and portion of the corporate expenses, could be included as expenditure towards 'mobilization etc.' - expenditure towards mobilization would include all expenditure incurred for raising resources for execution of work at the site - it is not confined to expenditure incurred on manpower and equipment, and for the preparation of the site.**

[Municipal Corporation of Delhi v. IJM Corporation Berhad - Delhi High Court - Decided on 8.5.2024]

[Jaiprakash Associates Limited v. Ircan International Limited - Delhi High Court - Decided on 1.5.2024]





**Municipal Corporation of Delhi v. IJM Corporation Berhad - Delhi High Court -
Decided on 8.5.2024**

The Contractor was awarded the work for construction of a Civic Centre at New Delhi. The execution of the project was delayed and the Employer granted several extensions of time to complete the project terming the same as “provisional” while reserving the right to impose liquidated damages. The Employer, upon completion, claimed liquidated damages on account of delay in the execution of the work. The disputes between the parties were referred to arbitration. One of the disputes between the parties involved the question whether the grant of provisional extension of time for completion of the contract was in conformity with the terms of the agreement between the parties. The arbitral tribunal held that in terms of the agreement, the Employer did not have an option to issue “provisional” extension of time to complete the work. It could either give a fair and reasonable extension of time to complete the works or declare that the Contractor would not be eligible for consideration for EOT in terms of Clause 5.3 of the Agreement. The Court upheld the partial award of the arbitral tribunal and concluded that the arbitral tribunal’s interpretation of terms of the agreement cannot be made a subject matter of judicial review.



The Employer awarded to the Contractor, the work for “construction of civil works including tunnels, bridges, earthwork etc. in Zone III (KM 134 to KM 142) of Laole Qazigund Section of Udhampur-Srinagar-Baramulla New B.G. Railway Line Project”. The contract was an Item Rate Contract entailing execution of different items of work required for completing the project at the agreed rates. The contract value as on the base date was Rs. 168.46 crores. The Employer granted mobilization advance to the Contractor in terms of the General Conditions of Contract (‘GCC’). There was considerable delay in the progress of the works. The Contractor could only execute work worth Rs. 26.44 crores till the stipulated date of completion. The Employer issued a seven days prior notice under Clause 89 of the GCC, which entitled the Employer to terminate the agreement owing to the default of the Contractor. The Contractor set out detailed reasons for the slow progress and claimed that the execution of the project was planned on the basis of round-the-clock operation but neither the site nor the construction drawings were made available to match the Construction Programme. Further, the escalation formula provided in the agreement did not neutralize the increase in costs due to increase in price of various inputs such as cement, steel, High Speed Diesel oil and labour. The Employer proposed extension of time of twenty months on the existing terms and without levy of liquidated damages. The Contractor rejected the proposal of the Employer. The Employer terminated the contract on account of defaults on the part of the Contractor. Disputes between the parties were referred to arbitration. The arbitral tribunal concluded that the foreclosure of the contract was by mutual consent of the parties. The arbitral tribunal constituted a Joint Committee comprising of two members of the Contractor and two representatives of the Employer. The Joint Committee was required to verify the details of expenditure submitted by the Contractor and scrutinize the vouchers in support of the expenditure incurred by the Contractor. The report of Joint Committee was signed by all four members including the two representatives of the Employer. The arbitral tribunal determined the unrealized amount of expenditure by reducing the verified expenditure by a figure of amount realized, which also factored in the amount that the Contractor could have realized. The realized amount of expenditure was determined by increasing expenditure chargeable to the project by a factor of the work already done, over work which ought to have been done. The arbitral tribunal accepted the Contractor’s claim for an additional 2.5% on account of corporate expenses. The arbitral tribunal included expenditure on account of maintenance of bank guarantees, maintenance of insurance policies and interest liability on advances as payable under the foreclosure / supplementary agreement. The Court concluded that expenditure towards mobilization would include all expenditure incurred for raising resources for execution of work at the site. It is not confined to expenditure incurred on manpower and equipment, and for preparation of the site alone. Further, the amount included on account of 10% profit was rightly rejected by the arbitral tribunal.



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