

Construction Arbitration Newsletter

RAUTRAY & CO.

Construction Arbitration Law Firm

- **Claim for compensation for idling of resources - onus of proof on the Contractor to prove by some evidence about there being losses or extra charges suffered by the Contractor on account of prolongation of the contract - if there is no evidence of the loss suffered by the Contractor, then the Contractor is not entitled to compensation in terms of sections 73 and 74 of the Indian Contract Act - compensation cannot be awarded by the arbitral tribunal based on the element of overheads and Contractor's profit widely accepted under contracts.**
- **Setting aside of the arbitral award in part - Court can segregate the arbitral award on issues that do not suffer from any infirmity and uphold the award to that extent.**
- **Claim for idling of resources - calculation of the loss - exclusion of the days during which the workforce was not available - delay in providing the structural drawings having a cascading effect, leading to a further delay in commencement of work on account of rains - delay during the monsoon period also attributable to the Employer because of the initial delay in providing structural drawings - within the knowledge of both the parties that the latter part of the contract fell during the monsoon period - structural drawings ought to have been supplied by the Employer in time for structural work to be completed before the onset of the rains.**

[Union of India v. ANS Construction Ltd. - Delhi High Court - Decided on 28.6.2024]



- Termination of contract without issuing a notice fixing reasonable time for completion - Employer and the Contractor continued with the contract, without the Employer fixing any new or fresh stipulated date of completion - time for completion of the work set at large - time not the essence of the contract.
- Delay by the Employer to provide drawings - structure drawings were not completed and shop drawings were not provided - the approval with regard to the shop drawings was pending - unless and until the structure work is completed, no finishing work could have been executed.
- Claim for prolonged retention of plants, machineries, shuttering, staging materials etc. - Contractor not allowed to remove the materials from the site even after termination of the contract - Contractor entitled to depreciated cost of the materials unjustly taken over by the Employer.
- Maintainability of counter claim of the Employer - Employer having the right to terminate under the contract for delay - counter claim of the Employer not maintainable if the termination of the contract by the Employer is unlawful.

*[J.G. Engineers Private Limited v. National Building Construction Corporation Ltd. -
Delhi High Court - Decided on 1.7.2024]*



**Union of India v. ANS Construction Ltd. - Delhi High Court -
Decided on 28.6.2024**

The Employer was awarded the work for construction of women Barrack, including internal electrical installation to be constructed for army personnel accommodation deployed along Indo-Nepal Border. Disputes arose inter se the parties after completion of work. The Employer contended that there was 660 days of delay in completion of the work. The arbitral tribunal attributed 106 days of delay on the Contractor and upheld the levy of penalty. However, for the balance 554 days the arbitral tribunal held the Employer responsible for 396 days of delay while the remaining balance days of 158 was attributed to the rain and the work site being inundated with water.

The arbitral tribunal calculated overhead expenses on account of idling of resources by reducing them to the extent of 50% on the ground that the workforce must have been deployed by the Contractor to do other work that he had in the work site. Further, the arbitral tribunal arrived at the finding that the Employer delayed the issuance of good for construction structural drawings for a period of 4.5 months out of the total contract period of 9 months. The delay in supply of structural drawings had a cascading effect as the work could not be started on account of rains. The Court upheld the finding of the arbitral tribunal that the delay in providing the structural drawings had a cascading effect, which led to a further delay in commencement of work on account of rains leading to a delay of total period of 554 days, attributable solely to the Employer. The Court observed that it was well within the knowledge of the parties that the latter part of the contract fell within the rainy season and the structural drawings ought to have been supplied in time for structural work to be completed before the onset of rains and the work ought to be completed before the rains while the other completion work would not have been hampered by rains. However, the Court set aside the award in part since there was no evidence furnished by the Contractor to prove the losses on account of idling of resources.

**J.G. Engineers Private Limited v. National Building Construction Corporation Ltd. -
Delhi High Court - Decided on 1.7.2024**

The Project Management Consultant ('PMC') engaged the Contractor to execute the work relating to the airport at Bhubaneswar, Odisha. The work was not completed within the stipulated date of time, and the Employer granted extension of time without levy liquidated damages from time to time. Subsequently, the PMC terminated the contract. The Contractor referred the disputes to arbitration. The arbitral tribunal held that the termination of the contract by the Employer was unlawful while allowing some of the counterclaims of the PMC. The arbitral tribunal arrived at the finding that both the parties were responsible for the delay. Before the Court, the Contractor contended that the arbitral tribunal had erred in holding that the Contractor was responsible for the delay overlooking the fact that the essential correct drawings good for construction were not given by the PMC. The PMC also challenged the award on the ground, amongst others, that the arbitral tribunal erred in holding that the PMC could not terminate the contract without issuing a notice fixing reasonable time for completion of the balance work, making such time the essence of contract. The Court set aside the finding of the arbitral tribunal that beyond a certain date the Contractor was responsible for the delay. The Court concluded that without the Employer providing the structure drawings and shop drawings the said works could not have been completed by the Contractor. The finding of the arbitral tribunal that the Contractor was responsible for the delay beyond a certain date, was set aside. Further, the Court concluded that the PMC was not justified in taking over the materials of the Contractor to execute the balance works after the termination of the contract and the Contractor was entitled to claim the depreciated cost of the materials.



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