

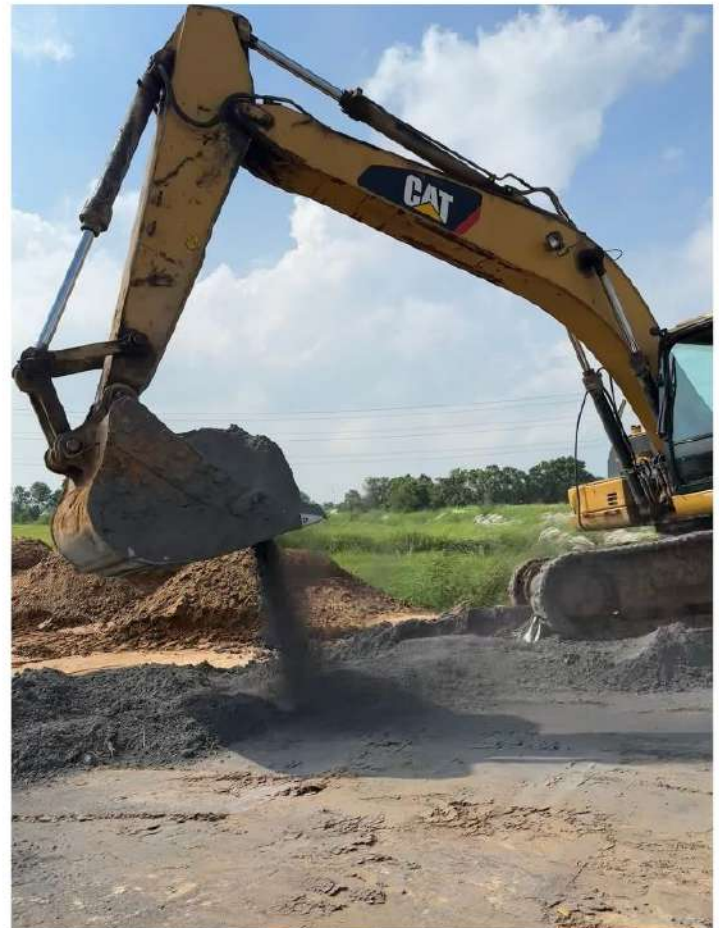
Construction Arbitration Newsletter

RAUTRAY & CO.

Construction Arbitration Law Firm

- **Final Bill showing handwritten / manual adjustment - proof of correctness of entries - a party relying on the said document should examine its officer who had carried out the handwritten / manual adjustments in the final bill or prove the correctness of the alterations / corrections made.**
- **Claim towards idling of establishment and equipment - basis for the figures, or even the methodology and the assumptions, adopted by the arbitral tribunal should be reflected in the award - “generally acceptable norms” of inputs towards employment of labour, machinery, overheads should be either reproduced, or referred to by the arbitral tribunal in the award - arbitral tribunal is entitled to apply well recognised standards in the making of an award - however, the arbitral tribunal cannot surprise the parties by referring, for the first time in the award, to standards which find no place in the arbitral proceedings.**

*[Union of India v. RCCIVL-LITL JV - Delhi High Court -
Decided on 8.7.2024]*



- Use of personal / expert knowledge of the arbitrator - an award which is predicated on personal knowledge of the arbitrator, the basis of which is not disclosed in the award or in the arbitral proceedings which led up to the award, is contrary to fundamental policy of Indian law.
- Failure to produce the measurement book to show quantity of work done - drawing of adverse inference against the Employer - original measurement book not produced by the Employer despite an opportunity - letters addressed by the Contractor setting out the work done never rebutted or replied to by the Employer - arbitral tribunal's reliance on the Contractor's letters and drawing an adverse inference is justifiable.

*[North Delhi Municipal Corporation v. R&T Enterprises - Delhi High Court -
Decided on 5.8.2024]*



Union of India v. RCCIVL-LITL JV - Delhi High Court - Decided on 8.7.2024

The Contractor was awarded the work for “Completion of Balance Work for Construction of Residential Accommodation for Army at Amritsar and Tibri”. The Project was to be completed in four Phases within a period of 27 months from the date of handing over of site. There was delay in the completion of the project and extensions of time were granted to the Contractor without imposition of liquidated damages. The arbitral tribunal rejected bulk of the claims but allowed some of the claims. The Court upheld the award and observed that the Employer should have proved the correctness of the handwritten / manual adjustments in the final bill by examining the officer who had carried out the alterations / corrections.

**North Delhi Municipal Corporation v. R&T Enterprises - Delhi High Court -
Decided on 5.8.2024**

The Employer awarded to the Contractor the contract for widening and improvement of the carriageway of roads passing between Blocks 8, 9 and 10, Phase-II, Kirti Nagar Industrial Area. A sole arbitrator was appointed to adjudicate upon the claims of the Contractor and the counter claims of the Employer. The arbitral tribunal allowed the claim towards idling of establishment and equipment since the equipment was incapable of being employed elsewhere during the idling period. The Court concluded that the arbitral tribunal was justified in drawing an adverse inference against the Employer for not producing the measurement book despite being given an opportunity. The finding of the arbitral tribunal for refund or release of earnest money deposit by the Employer on the basis that the clearance certificate from the Labour Officer should be deemed to have been received by the Employer for eligibility seeking release of the security deposit, was erroneous. There was no evidence of the Employer even having applied to the Labour Officer for the clearance certificate, which was under Clause 45, the Employer's primary obligation. The arbitral tribunal could not have awarded any amount in contravention of the contractual clause, which was a mandatory requirement of the contract. With respect to the claim towards idling of establishment and equipment, the Court observed that the "generally acceptable norms of inputs towards employment of labour/machinery/overheads" have neither been reproduced, nor referred at any stage of the proceedings. The respondent, too, did not place reliance on any such "generally acceptable norms". The basis for adopting the store/material element of work at 60% labour, machinery and site overheads as 25% and profit-cum-overheads as 15% was not corroborated. An award which is predicated on personal knowledge of the arbitrator, the basis of which is not disclosed in the award or in the arbitral proceedings which led up to the award, is contrary to fundamental policy of Indian law. The Court set aside the award of the said claim by the arbitral tribunal in favour of the Contractor.



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