

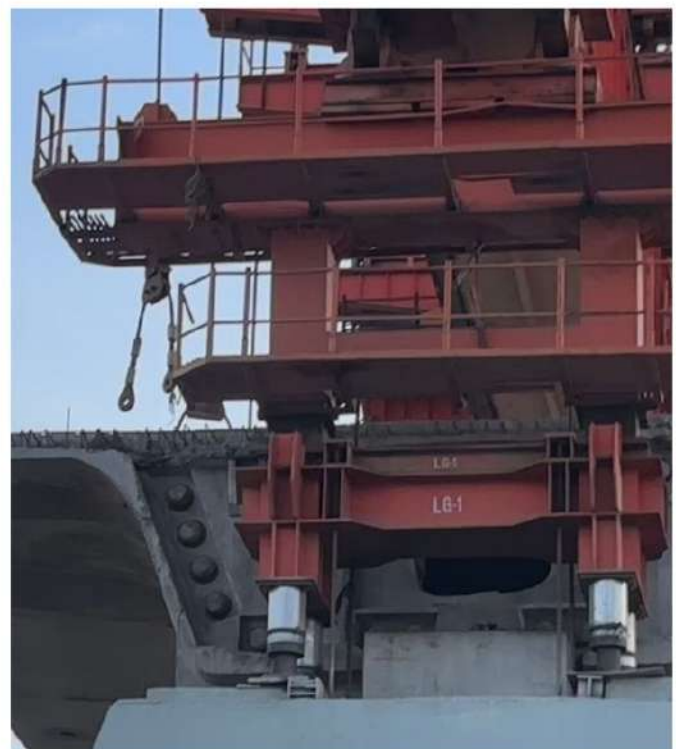
# Construction Arbitration Newsletter

RAUTRAY & CO.

Construction Arbitration Law Firm

- **Claim for loss of profit due to reduced turnover of work - contract clause providing that Contractor shall have no claim to any payment of compensation or otherwise, on account of any profit or advantage which he might have derived from the execution of the work in full, but which he did not derive in consequence of determination of the contract - claim under the head loss of profit due to reduced turnover of work cannot be allowed for partial completion of work.**
- **Delay in finalizing of drawings - consequence - delay in finalizing of drawings and the time to time revisions would have a major impact on the planning for the execution of the work - Contractor not able to properly plan and execute with the required pace - non-issuance of structural drawings in time and their revisions from time to time would affect the planning for the execution of the work, rotation of the shuttering and procurement of reinforcing steel of the required diameters in advance.**

*[Nilakantan & Sons Private Limited v. Union of India  
- Madras High Court - Decided on 30.10.2024]*



- Claim for increase in price of steel - evidence - words 'statutory rule or order' in the contract clause can be interpreted to mean both, statutory order or any other order, which is not statutory in nature - word 'order' is to be taken to mean any order issued by the agencies mentioned in the contract for the supply or purchase of steel etc. - Contractor produced orders related to the price of steel issued by the Steel Authority of India Limited and Rashtriya Ispat Nigam Limited in the period the steel was purchased by them - vouchers relating to the steel purchased by the Contractor along with the decision of the government, is sufficient.

*[Netaji Subhash Institute of Technology v. Surya Engineers - Delhi High Court -  
Decided on 19.11.2024]*

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**Nilakantan & Sons Private Limited v. Union of India - Madras High Court -  
Decided on 30.10.2024**

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The Employer awarded to the Contractor the work for construction of the work of Construction of Road Over Bridge Clear Span of 2 X 35.00 m Clear Span PSC Box Girder, at Km 354/32-33, in lieu of existing level Crossing No. 116, in Magudanchavadi Yard, Jolarpettai section. The Contractor was aggrieved by the fact that nearly eight months had been lost in carrying out the sub-structure work and the design and drawings for the superstructure box girder, had not been approved by the Employer. Further, the Contractor pointed out to the Employer that for want of approval for extension of time, the work of foundation for pier 1, ready for concreting with reinforcement and progress in column in pier 2, got held up. The Contractor also informed the Employer that the delay was on account of change of officers, holdup of execution work for want of extension of currency, losses on account of idling of establishment infrastructure and labour, very high rates of the market price of reinforcement steel and not getting the first payment for the work done etc. The disputes between the parties were referred to arbitration. The arbitral tribunal partially allowed the Contractor's claims and made a finding that the contract was illegally terminated by the Employer. The Court concluded that the claim under the head 'loss of profit' due to reduced turnover of work cannot be allowed for partial completion of work. The Court upheld the award of the arbitral tribunal.

The work for "Construction of NSIT Complex (Phase-III) Part II at Sector 3, Dwarka, New Delhi-110045, SH: Extension of Library Building & Computer Centre at NSIT, Sector-3, Dwarka" was awarded by the Employer to the Contractor. The Contractor was not able to complete the work in time. The Employer rescinded the contract and awarded the balance work to be done at the risk and cost of the Contractor. The disputes between the parties were referred to arbitration. The Contractor raised various claims including for work done but not paid, escalation, refund of security deposit, loss of material, tools and plants, shuttering material etc. and for the advances made to the suppliers, idling of manpower, staff and machinery, loss of expected profit on the balance work, and interest. The arbitral tribunal held that the non-issue of structural drawings in time and their revisions from time to time, affected the planning for the execution of the work, rotation of the shuttering and procurement of reinforcing steel of the required diameters in advance. Further, the arbitral tribunal concluded that site order book entries relied upon by the Employer had been made more by way of reminding the Contractor to get the mix design done timely, rather than by way of pointing out delays in the execution of the work. The Court upheld the findings of the arbitral tribunal and the award.



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