

Construction Arbitration Newsletter

RAUTRAY & CO.

Construction Arbitration Law Firm

- **Claim for delay damages - unsubstantiated claim - primarily based on mere calculation of assumed losses based on indirect application of 'Hudson Formula' - method of computation - a percentage formula can be applied for award of damages on account of expenditure on overheads, loss of profit but same has to be computed taking into account the payments due for the unexecuted work and should exclude the payments received for the work executed.**
- **Claim for idling of plant and machinery - reduction of the claim by 15% for major repairs and depreciation - mitigation of loss - 25% of total work as per the contract was left out to be done - imperative from the doctrine of mitigation of losses to keep maximum one third of the plant and machineries, if at all they were kept at site, to complete the balance work - Contractor should produce evidence whether it had any other available work where the plants and machineries could have been utilised or whether the Contractor was prevented from participating in any other tender where the plants and machineries were required to be utilised.**
- **Claim for overheads - evidence in support of the claim - trade usage or industrial practice whether a valid form of evidence - government reports relied upon for determining the component of overhead in an irrigation project - reliance on report of the Rates and Cost Committee, to evolve comprehensive standard schedule of rates including detailed analysis of such rates which can be used for basic schedule for all projects - reports suggested that in similar kind of work it is expected that the overhead cost would be 10% of the value of work forming part of trade usage or industrial practices - award was made on percentage basis, i.e. 8% for underutilised period and 2% for unutilised period by taking monthly value of allocation of work calculated by dividing agreement value of contract by period of 15 months - Contractor did not produce the books of accounts, bills, vouchers, etc. to substantiate its claim for overhead expenses - award is not sustainable.**

*[State of Jharkhand v. Himachal Construction Ltd. -
Jharkhand High Court - Decided on 10.12.2024]*



- Delay by both the parties - whether the other party committed breach, cannot be decided by the party alleging breach - the Employer pointed out to the Contractor to increase the man power to expedite the work as the pace of work was very slow - letters exchanged between the parties at the relevant time, sufficient to show that the Contractor failed to respond to the Employer's assertion of slow progress - said letters sufficient to establish slow progress.
- Claim for bonus - Contractor is entitled to claim bonus for early completion, if it is not responsible for the delay - Contractor can claim bonus for early completion even if the works have been delayed, provided it can prove that it would have completed the works early, but for the delays caused by the Employer - delay was attributable to the Contractor since it failed to increase its manpower - both parties were liable for the delay, therefore the Contractor cannot claim bonus.
- Claim for increase in wages - payment of escalation on substituted items - labour escalation is not applicable on substituted items - contract providing that any substituted work shall form part of the contract as if originally provided for and the same shall be carried out by the Contractor on the same conditions in all respects including price.

[Satish Builders v. Union of India - Delhi High Court - Decided on 10.1.2025]



State of Jharkhand v. Himachal Construction Com. Pvt. Ltd. - Jharkhand High Court - Decided on 10.12.2024

The Contractor was awarded the contract for excavation of residual work of Chandil left bank main canal. The work could not be completed within the extended time. The disputes between the parties were referred to arbitration. The Contractor raised claims primarily on three grounds namely, claim relating to the work done, claim on account of delay and damages. The arbitral tribunal allowed the claims of the Contractor. Before the arbitral tribunal no evidence was led by the Contractor with regard to actual amount spent on overheads as claimed under different sub-heads, but the Contractor relied upon trade practice based on the government reports. The award was made on percentage basis, i.e. 8% for underutilised period and 2% for unutilised period by taking monthly value of allocation of work calculated by dividing agreement value of contract by period of 15 months. Even the loss of profit was calculated and awarded on 10% basis without any evidence of actual loss. The Contractor did not produce the books of accounts, bills, vouchers, etc. to substantiate its claim for overhead expenses. The Court set aside that the award of delay damages on account of loss of overheads. Further, the Court set aside the award on account of underutilised and unutilised overheads, loss of profits and expenditure on account of underutilised and unutilised plants.

The Contractor was awarded the contract for construction of “C/O Regional Office Building for Bureau of Indian Standard at Plot No. 4A, Sector 27B, Chandigarh, including Electrical Installation” by the Employer. The Contractor invoked the arbitration clause on the ground that the Employer failed to release justified payments against the work done as well as made unjustified recoveries. The work got delayed by 611 days. The Contractor submitted an undertaking in the application for seeking Extension of Time (EOT) that they would not claim for the damages if EOT was granted by the Employer without levy of compensation. The Contractor later contended that the undertaking had been given by them under duress. The arbitral tribunal held both parties responsible for the delay. The arbitral tribunal concluded that since the Employer justified the entire delay of 611 days and had not levied compensation on the Contractor for delay in execution, the undertaking given by the Contractor was not under duress. According to the arbitral tribunal, the Employer had decided to justify the entire period of 611 days as justified period, irrespective of the fact that the delay was contributed by both the parties. The Court upheld the finding of the arbitral tribunal that the delay was attributable to both the parties and therefore, the Contractor was not entitled to claim bonus for early completion. Further, the labour escalation was not applicable on substituted items. The findings of the arbitral tribunal was upheld by the Court.



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