

Construction Arbitration Newsletter

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Construction Arbitration Law Firm

- **No damage clause - wrongful termination - no claim for compensation on account of delays or hindrances to the work from any cause would lie - where the contract provides that extension of time would be granted to the Contractor to complete the work, the Contractor's claim for compensation cannot be sustained.**
- **Principle of business efficacy - normally invoked to read a term in an agreement or contract so as to achieve the result or the consequence intended by the parties acting as prudent businessmen - test requires that a term can only be implied if it is necessary to give business efficacy to the contract to avoid such a failure of consideration that the parties cannot as reasonable businessmen have intended - but only the most limited term should then be implied - the bare minimum to achieve this goal - if the contract makes business sense without the term, the courts will not imply the same.**
- **Pre-estimated genuine amount of damages - party who has suffered on account of the breach is entitled for compensation for any loss or damage caused to it - in order to claim the compensation under section 73, the Contractor has to prove the actual loss or damages in accordance with the contract.**

[NTPC Limited India v. Jindal ITF Ltd. - Delhi High Court - Decided on 30.1.2025]



- **Limitation of liability clauses - clauses are not in conflict with either section 23 or section 28 of the Contract Act - clause in the contract providing Contractor shall not be entitled to damages or compensation if extensions of time to complete the work has been granted by the Employer due to delays attributable to the Employer - Employer had granted an extension of time to the Contractor by waiving liquidated damages for delays caused by the Contractor - Contractor made claims on account of delay on the part of the Employer, for which an extension was granted - since the claims were prohibited under the contract, the Contractor was rightly prevented by the arbitral tribunal from leading evidence.**

*[C & C Constructions Ltd. v. IRCON International Ltd. - Delhi High Court -
Decided on 31.1.2025]*



NTPC Limited India v. Jindal ITF Ltd. - Delhi High Court - Decided on 30.1.2025

The Employer awarded to the Contractor the work for construction of the unloading infrastructure and the material handling system on a design, build, finance, operate and transfer (DFBOT) basis. The completion of the activities in Phase I and II (completion of construction of the material handling and unloading infrastructure system at Farakka) marked the Commercial Operation Date (COD). Disputes between the parties were referred to arbitration. The arbitral tribunal awarded damages despite the existence of a “no damages clause” in the contract. The Court set aside the arbitral award and concluded that non-adjudication of the claim, amounts to the award being totally non-speaking. The contract provided for compensation for delays committed by the Employer by extending suitably the period of COD and the Contractor would be entitled to compensation by suitably extending the period of COD, however, on account of illegal termination, the said option was not available. The Court concluded that in order to claim the compensation under section 73, the Contractor has to prove the actual loss or damages in accordance with the contract. The award of damages by the arbitral tribunal for the five years of contract in which, no activity had taken place, was totally perverse.

The parties entered into a contract for constructing five Road Over Bridges (ROB). The work at the site was delayed for reasons attributable to the Employer. The Employer withdrew the work relating to the construction of two ROB from the scope of work and certified the completion of the remaining work. The Contractor wrote to the Employer stating that the construction delay of ROB was due to various hindrances at the site. The Contractor contended that the delay in construction work resulted in an additional financial burden on account of the establishment and overheads, etc., for a longer period than planned, for which the Contractor had raised a claim separately. The Employer informed the Contractor that the proposed claim for increase in financial burden was not acceptable. The Employer stated that the claim would have to be considered along with the prayer for extension. The Employer granted an extension of time (EOT) to the Contractor for completion of the works. The Contractor had also submitted an undertaking that it will not claim anything extra other than escalation for the work executed. Thereafter, the Contractor invoked the arbitration. The arbitral tribunal passed the order in the respondent's application under section 16 of the Arbitration Act in nature of an award, rejecting all the claims of the Contractor based on the provisions of the contract which prohibited the Contractor from raising claims for damages on account of delays by the Employer where extension of time had been granted by the Employer. The Court upheld that findings of the arbitral tribunal. Clause in the contract providing that in case of delay or fault on the part of the Employer, a reasonable extension of time can be granted and payment of price variation as per the formula agreed between the parties, is valid and enforceable. Importantly, the Employer had granted an extension of time to the Contractor by waiving liquidated damages for delays caused by the Contractor. Furthermore, the Contractor had raised the claim for damages two years after the date of the last extension was granted by the Employer.



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