

Construction Arbitration Newsletter

RAUTRAY & CO.
Construction Arbitration Law Firm

- **Bias of arbitral tribunal - the General Manager / Business Unit Head of the Employer appointed as arbitrator - the arbitrator was directly and intrinsically involved in the execution of the awarded work - the Contractor had repeated meetings with the General Manager of the Employer regarding the progress of the work and thereafter, the Employer took the decision of termination of the contract - award of the arbitral tribunal liable to be set aside.**
- **Forfeiture of performance guarantee - termination of contract - Contractor had not started the work - arbitral tribunal rejected the claim of the Employer for the amount under the performance guarantee since the Employer had not suffered any loss - Employer within its contractual right to encash the performance bank guarantee without the need for it to prove loss.**

[Isar Engineers Private Ltd. v. NTPC-SAIL Power Company Ltd. - Delhi High Court - Decided on 3.2.2025]

[Airports Authority of India v. East India Construction Company Ltd. - Delhi High Court - Decided on 3.2.2025]





**Isar Engineers Private Ltd. v. NTPC-SAIL Power Company Ltd. -
Delhi High Court - Decided on 3.2.2025**

The Contractor was awarded the work of civil works for raising of ash dyke by the Employer. The duration for completion of the work was twelve months. There was delay attributable to the Employer since amongst others delays, the work site was not handed over in time, drawings were provided late and the rate of additional quantities of work were not finalized. The Employer granted extension of time but recovered liquidated damages from the Contractor. Thereafter, the Employer terminated the contract. The Contractor invoked the arbitration clause. The Contractor repeatedly displayed its apprehension with the appointment of the arbitrator, both pre and post commencement of arbitral proceeding. The General Manager / Business Unit Head of the Employer was supervising the work in question and was directly involved in the execution of the work. It was the General Manager / Business Unit Head of the Employer with whom the Contractor had repeated meetings regarding the progress of the work and was also the authority that took the decision to terminate the contract. The apprehension that the arbitrator would be biased and partial towards the Employer, was held to be justified. The Court set aside the arbitral award.

**Airports Authority of India v. East India Construction Company Ltd. -
Delhi High Court - Decided on 3.2.2025**

The Contractor was awarded the work for 'resurfacing of existing runway at Biju Patnaik International Airport, Bhubaneswar'. The Employer issued notice to the Contractor stating that there was delay on the part of the Contractor in commencing the work. Even after time had been extended for completion, the work had not commenced. The Employer was facing difficulties because the runway was not being made available. The Engineer-in-Charge determined the contract and directed forfeiture of the earnest money deposit and the performance guarantee. Disputes between the parties were referred to arbitration. The arbitral tribunal concluded that the performance bank guarantee can be invoked only if there was a loss caused to the Employer. The Court held that the arbitral tribunal overlooked the terms of the contract and had given its conclusion based on considerations which were not part of the contract. The arbitral award was set aside.



**Dharmendra Rautray &
Ginny Jetley Rautray**

RAUTRAY & CO.
Law Firm

B3/18 Vasant Vihar,
Paschimi Marg,
New Delhi – 110057
Tel: +91.11.46552244 / 46113964
E: mail@rautray.com



TOP TIER FIRM

Legal500

**ASIA PACIFIC
2025**