

Construction Arbitration Newsletter

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Construction Arbitration Law Firm

- **Claim for increase in scope of work - Technical Conditions of Contract (TCC) stipulated that the quantities indicated is only tentative and liable for variation at the discretion of the Employer - TCC also stipulated that the Contractor is not entitled for any additional payment even if there was any increase in quantum of welding and the Contractor shall weld the joints of site routing piping as per site requirement and no extra payment shall be made for such additional joints - Contractor's raised a claim for payment for distinct ratios of Equated Inch-Dia/Metric Ton and not for the increase in the quantum of welding - Employer was liable to pay to the Contractor for the additional work executed.**
- **Delay in handing over of site for construction - ground conditions did not permit commencement - encroachments at site - claim for idling of establishment and equipment - Contractor had not placed reliance on the "generally acceptable norms of inputs towards employment of labour, machinery, and overheads" during the arbitration proceeding for computation of its claim - methodology adopted by the arbitral tribunal not tenable - incumbent on the arbitrator to put the "generally acceptable norms" to the parties so that they would be aware of the norms and could advance submissions.**

[Bharat Heavy Electricals Limited v. Offshore Infrastructures Limited - Madras High Court - Decided on 14.12.2024]



- **Reliance on photocopies of measurements books (MBs) - sufficient opportunity had been granted to the Employer to trace the originals - adverse inference drawn against the Employer.**
- **Release of earnest money or security deposit to the Contractor - clause proscribing refund of security deposit till the Contractor produces a clearance certificate from the labour officer - only upon grant of clearance by the labour officer the Contractor was entitled to seek release of the security deposit - presumption of clearance having been given by the labour officer on the expiry of six months from completion of work would have arisen only if the Contractor had written to the labour officer for obtaining a clearance certificate - if the Contractor has not applied to the labour officer for a clearance certificate, there is no question of any presumption arising at all of such a certificate having been issued, on the expiry of six months from the completion of work.**

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



**Bharat Heavy Electricals Limited v. Offshore Infrastructures Limited - Madras
High Court - Decided on 14.12.2024**

The Employer awarded to the Contractor the work for piping, which encompassed erection, testing, and commissioning of piping systems. The work was divided the piping works into three distinct packages. The Employer amended the Contractor's scope of work to include additional tasks involving medium pressure steam, low pressure steam and carbon steel seamless IBR piping. The Contractor sought revision in rates. Meanwhile the Contractor proceeded with the work, operating under the assumption that the Employer would agree to the revised rates for the additional tasks, but was ultimately denied additional compensation after significant work was completed. The Employer refused payments until the Contractor issued a "No Claim Certificate". The Contractor initiated arbitration proceedings. The arbitral tribunal arrived at the finding that the Equated Inch-Dia (EID) had drastically increased for Carbon Steel Piping (IBR) from what was contemplated in the tender document and what was actually executed by the Contractor. The Employer contended that the work is expressed in terms of erected weight to be in MT and the notes in the Technical Conditions of Contract (TCC) made it clear that the quantities indicated is only tentative and liable for variation at the discretion of the Employer. The Employer contended that the TCC provided that the Contractor is not entitled for any additional payment even if there is any increase in quantum of welding and the Contractor shall weld the joints of site routing piping as per site requirement and no extra payment shall be made for such additional joints. The arbitral tribunal observed that the clause for non-payment of extra amounts for additional joints was not relevant since it was not the case of the Contractor that additional joints are required as per site routing piping. The Contractor had raised a claim for payment due to the Contractor for distinct ratios of EID/MT and not the increase in the quantum of welding. The addition of MP and LP Steam Piping therefore grossly changed the quantities of ID & EID while having the effect of reducing of tonnage. The time was not the essence of the contract and the Employer was responsible for the delay in completion of the work. The Employer was liable to pay to the Contractor compensation under section 55 and 73 of the Indian Contract Act. The Court upheld the award made by the arbitral tribunal.



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

The Employer awarded to the Contractor the work of widening and improvement of the carriageway of roads in Kirti Nagar Industrial Area. The disputes between the parties were referred to arbitration. The Contractor contended that though it had mobilised and deployed the requisite resources at the site as per the date of scheduled commencement of work, the ground conditions did not permit commencement. The resources of the Contractor remained idle due to encroachments by the residents and public. The arbitral tribunal arrived at the finding on the claim for unpaid bill by taking the differential area, between the figure recorded in the final bill and the figure recorded in the MBs. The Court observed that it was a justifiable mode of calculation. Further, since the Employer did not produce the original MBs, the arbitral tribunal was justified in drawing an adverse inference against the Employer. However, the arbitral tribunal erred in holding that the clearance certificate is deemed to have been received by the Employer for the purpose of release of security deposit since the Contractor had never written to the labour officer for a clearance certificate. The assumption of the arbitral tribunal to award claim for idling of establishment and equipment based on “generally acceptable norms of inputs towards employment of labour/machinery/overheads” which was not referred at any stage of the arbitration proceeding was erroneous. It was incumbent on the arbitrator to put the generally acceptable norms to the parties so that they would be aware of the norms and could advance submissions thereon. Moreover, the award did not set out the basis of the generally acceptable norms, and the source from which the said norms could be derived. 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 proceeding which led up to the award, is contrary to fundamental policy of Indian law.



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