

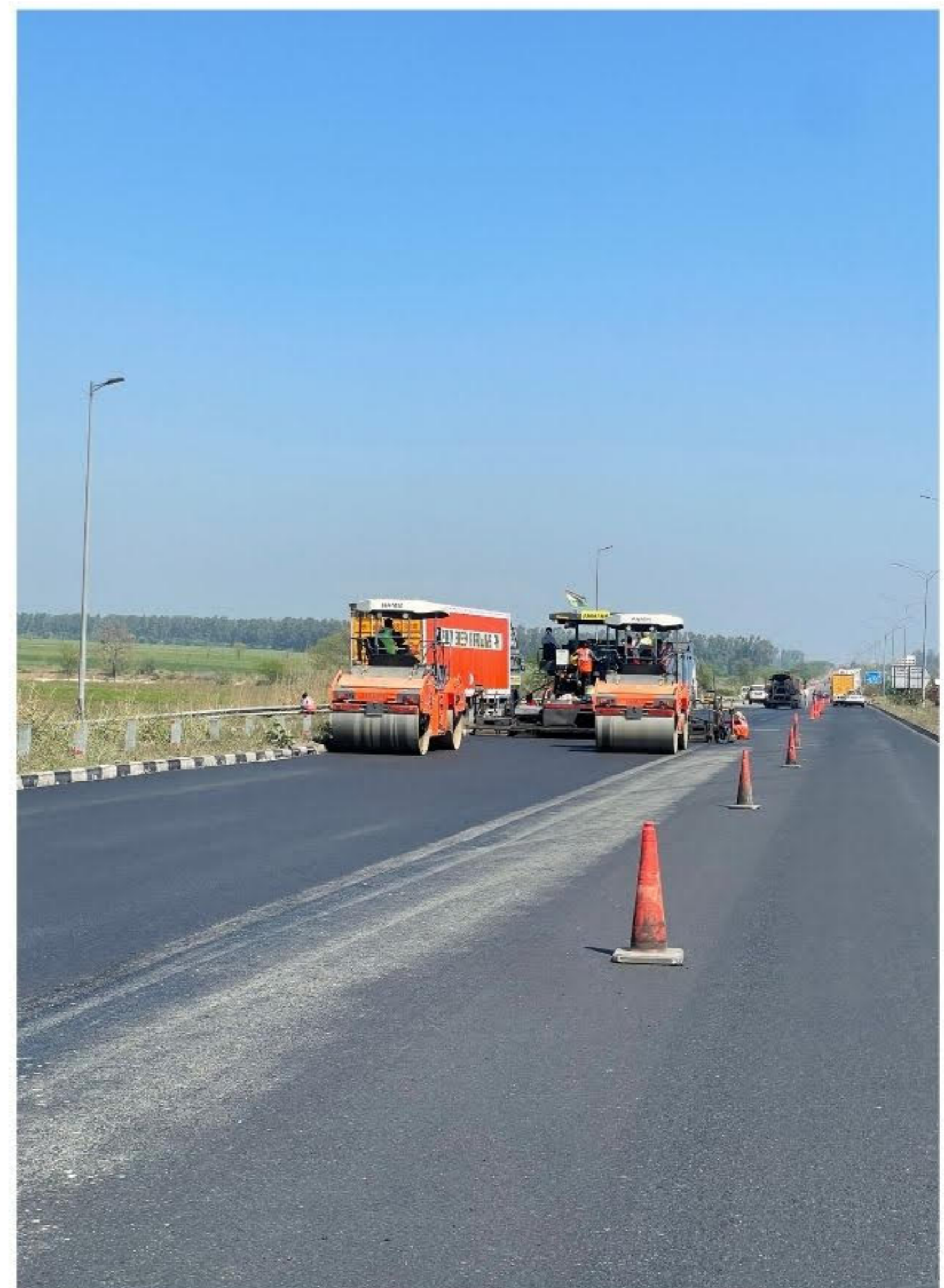
# Construction Arbitration Newsletter

RAUTRAY & CO.

Construction Arbitration Law Firm

- **Extension of time and levy of liquidated damages**
  - completion of work within the extended time
  - no prior notice issued indicating intention of the Employer to levy liquidated damages
  - in the review meeting the Contractor was forewarned that grant of extension of time for completion of the contract work would be without prejudice to the right of the Employer to recover liquidated damages
  - Contractor continued execution of the work beyond the extended completion date even though the last extended period had expired
  - Employer had put the Contractor to notice that notwithstanding extension of time it reserved the right to levy liquidated damages
  - Employer is entitled to levy liquidated damages for the delay in completion of the work within the scheduled completion date.
- **Failure to make a paragraph wise denial to the statement of claim in the statement of defence**
  - applicability of provisions of Code of Civil Procedure
  - exclusion of applicability of the Code by section 19 of the Arbitration Act
  - the decision to enforce the rules of pleadings by the arbitral tribunal should be taken at the right time, and the arbitral tribunal must put the parties on notice - it ought to have laid down the rules of procedure with clarity, and enforced them at the appropriate juncture, rather than permitting parties to proceed on the basis of pleadings, which it regarded as fundamentally flawed.

*[Consolidated Construction Consortium Limited v. Software Technology Parks of India - Supreme Court - Decided on 28.4.2025]*



- Power of the Court to adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings - recourse to section 34(4) of the Arbitration Act is not permissible where no finding has been recorded on a particular point - can be used to record reasons for findings already given in the award, or to fill gaps in the reasoning, but not to cure deficiencies which would amount to 'patent illegality', rendering the award itself liable to be set aside.
- Reliance on dissenting opinion of the arbitral tribunal - can be relied upon by a party challenging the award, and the court is not precluded from considering the findings and conclusions of the dissenting arbitrator - however, only the majority decision constitutes the 'arbitral award', and the dissenting opinion is just an opinion, which has no legal effect.

*[HPCL-Mittal Pipeline Limited v. Coastal Marine Construction and Engineering -  
Delhi High Court - Decided on 5.5.2025]*



**Consolidated Construction Consortium Limited v. Software Technology  
Parks of India - Supreme Court - Decided on 28.4.2025**

The Employer was awarded the Contractor the work for construction of office building, incubation centre etc. There was delay of 10 months in completion of the work. The Employer levied and deducted liquidated damages under the contract. The disputes between the parties were referred to arbitration. The arbitral tribunal upheld the deduction of liquidated damages by the Employer and rejected the counter claims of the Contractor. The arbitral tribunal held that the Employer had produced documents to show that the delay in moving to the new premises had caused them direct financial loss. The single judge set aside the arbitral award and concluded that the Contractor had completed the works during the extended period of time. The Court observed that in a contract whether time is of the essence or not, if the Contractor fails to execute the contract within the specified time, the contract becomes voidable at the option of the promisee and the promisee would be entitled to compensation from the promisor for any loss occasioned to him by such failure. However, in case of a contract where time is of the essence, the contract becomes voidable on account of the Contractor's failure to execute the contract within the agreed time. The promisee cannot claim compensation for any loss occasioned by such breach of the contract unless he gives notice to the promisor of his intention to claim compensation. The party complaining of the breach is entitled to compensation whether or not actual damage or loss is proved to have been caused but such compensation shall not exceed the quantum of penalty stipulated. The Court upheld the arbitral award and observed that the view taken by the arbitral tribunal was a possible and plausible view.

**HPCL-Mittal Pipeline Limited v. Coastal Marine Construction and Engineering -  
Delhi High Court - Decided on 5.5.2025**

The Employer invited tenders for operation and maintenance of its SPM (Single Point Mooring) terminal. The disputes between the parties were referred to arbitration. The Contractor contended that the majority award failed to consider its statement of defence. It was argued that the arbitral tribunal proceeded on the basis that, in the absence of a paragraph wise denial to the statement of claim in the statement of defence, the averments in the statement of claim could be taken to be admitted. The Court concluded that no particular form of pleadings was mandated by the arbitral tribunal at any stage. No requirement of a paragraph wise reply was even mentioned in the order passed by the arbitral tribunal, so as to correlate the opportunity granted. The Contractor was never informed that its statement of defence would be treated as defective. The arbitral tribunal ought to have laid down the rules of procedure with clarity, and enforced them at the appropriate juncture, rather than permitting parties to proceed on the basis of pleadings, which it regarded as fundamentally flawed. The Contractor was not given any or adequate notice of the intention of the arbitral tribunal to hold that the non-traversing of a pleading amounted to an admission. If the arbitral tribunal proposed to ignore the statement of defence altogether in the absence of a paragraph wise denial, it should have said so clearly. The general rule is that pleadings must be read holistically and meaningfully, rather than in a pedantic manner. The reasoning in the majority award, proceeds on non-consideration of the statement of defence. It did not meet the required standard of fairness. The arbitral tribunal accepted the quantum of the claims raised by the Employer without any substantial discussion. In contrast, the dissenting opinion contained detailed issue wise discussion on each of the assertions, with reference to the specific defences taken. The Contractor was not given an adequate opportunity to present its case in a manner the arbitral tribunal found acceptable. The Court set aside the arbitral award.



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