

Construction Arbitration Newsletter

RAUTRAY & CO.

Construction Arbitration Law Firm

- **Change in Law event - imposition of 1% cess under the Building and Other Construction Workers' Welfare Cess Act, 1996 (Cess Act) - clause in the contract made it obligatory upon the Contractor and sub-contractors to abide at all times with all existing labour enactments and the rules made thereunder, regulations, notifications and bye laws of the State or Central Government or local authority and any other labour law - the Cess Act came into effect prior to the date of submission of the price bids by the Contractor - the State of Sikkim formulated Rules in the year 2009 after the execution of the contract agreement - failure of the State Government to take effective steps under the BOCW Act, 1996, the Cess Act, 1996 and constitute the Sikkim Building and Other Construction Workers' Welfare Board cannot reverse the liability of the Contractor to pay the cess.**

[Sikkim Urja Limited v. Abir Infrastructure Pvt. Ltd. - Sikkim High Court - Decided on 30.5.2025]
- **Claim for additional deployment of plants and machineries - delay in handing over of site - site handed over in bits and pieces - project site not handed over in the manner stipulated in the contract - contract envisaged handing over of the project site to Contractor in five instalments, the site was handed over in thirty six bits - machinery and equipment listed in Annexure I to the contract did represent the minimum machinery required to complete the work in the stipulated period - it was necessary to supplement the said machinery with a number of other machines / equipment to make them productive - additional machinery and equipment were deployed by the Contractor - monthly progress reports constitutes contemporaneous record within the meaning of clause 53.4 of the contract - Contractor justified in raising claim towards mobilisation of plant and machinery for additional construction period of ten months based on the MORTH Standard Data Book.**



- Idling cost of plants and equipment - number of machinery, plant and equipment actually deployed by Contractor evidenced from the monthly progress reports - delay in completion of the project, beyond the scheduled contract period attributable to Employer - total value of the contract was to be executed within 32 months - average work to be executed by the Contractor per month calculated for 34 months taken into account for executing the balance work value for additional 10 months - amount claimed and awarded on the basis of the hire charges based on MORTH Standard Data Book was justified - claim had been awarded by the arbitral tribunal for the period during which the minimum plant and machinery, as envisaged by Annexure I to the contract could not be operated to optimum capacity owing to the erratic manner in which the project land was made available to the Contractor, and yet had to remain mobilised at Contractor's expense.
- Claim for bonus - Contractor was deprived of its right to claim bonus under the contract because of the delays on the part of the Employer - Employer had approved grant of extension of time (EOT) - arbitral tribunal could not have made a finding that the Contractor had completed the project work early, or before time - amount awarded by the arbitral tribunal cannot be regarded as award of bonus as envisaged by clause 47.3 of the contract - Contractor entitled to be recompensed for the loss on account of delay in providing land in bits and pieces.

*[National Highway Authority of India v. Unitech-NCC (JV) - Delhi High Court -
Decided on 30.5.2025]*



**Sikkim Urja Limited v. Abir Infrastructure Pvt. Ltd. - Sikkim High Court -
Decided on 30.5.2025**

The Contractor was awarded the work for Turnkey execution of 1200 MW Teesta Stage-III of Hydroelectric Project in the State of Sikkim. Dispute arose with respect to the liability for the payment of cess under the Cess Act. The Contractor sought a declaration from the arbitral tribunal that 1% cess was not recoverable from it because of the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 (BOCW Act) and in the alternative the 1% cess be added in the contract price. It contended that the Cess Act was not in operation in State of Sikkim at the time of submission of the bid and, therefore, is a subsequent legislation. It relied on the clause in the contract which stated that any change in the cost to the Contractor (deduction or addition) because of any subsequent change in law after execution of the contract between the parties, shall be determined by the engineer in-charge and shall be added or deducted from the contract price. The arbitral tribunal held that the State of Sikkim formulated Rules in the year 2009 and resorted to implementation of the BOCW Act, 1996, the Cess Act, 1996 and the Rules made thereunder from 6.9.2010. The levying of cess would amount to change in law as envisaged in clause 49 of the General Conditions of Contract ('GCC').

The Court set aside the arbitral award and concluded that the BOCW Act, 1996, the Cess Act, 1996 and the rate of cess @ 1% of the cost of construction had already been notified by the Central Government when the contract agreement was signed by the parties. Further, the Contractor was fully aware that under clause 17.4 of the GCC it was liable to pay the cess. The rate of cess had been fixed in the year 1996 and therefore, the Contractor was aware of that too. The coming into force of the Sikkim Rules, 2010, with effect from 27.02.2009, did not change the liability of the Contractor to pay the cess. The failure of the State Government to take effective steps under the BOCW Act, 1996, the Cess Act, 1996 and constitute the Sikkim Building and Other Construction Workers' Welfare Board could not reverse the liability of the Contractor to pay the cess and impose it upon the Employer.

**National Highway Authority of India v. Unitech-NCC (JV) - Delhi High Court -
Decided on 30.5.2025**

The Contractor was awarded the work for widening and upgradation of the existing 2-lane road in the State of Andhra Pradesh between the towns of Visakhapatnam and Ichapuram, a section of NH-5. The Contractor raised certain claims against the Employer which were referred to arbitration. The arbitral tribunal noted that, by granting extension of time (EOT) without levying any liquidated damages as permissible under clause 47.1 of the GCC, the Employer had effectively acknowledged the fact that no delay was attributable to the Contractor. The arbitral tribunal rejected the contention of the Employer that the contract only provided an indicative list of the plant and equipment, and not the requirement that the Contractor was required to mobilise. Annexure I of the contract clearly stated that it was the “minimum plant and equipment to be deployed by the contractor”. Further, it was the “Employers estimate of the minimum essential basic holding of plant and mechanical equipment which the Contractor will require in order to meet all of his performance obligations under the Contract”. The Court concluded that the arbitral tribunal was correct in its view that the Annexure I to the contract represented the plant and equipment which was contractually required to be mobilised by the Contractor in order to be able to complete all its obligations. The award of amount claimed towards mobilisation of plant, machinery and equipment for additional 10 months based on hire charges provided in the MORTH Standard Data Book, was justified. The claim had been awarded by the arbitral tribunal for the period during which the minimum plant and machinery, as envisaged by Annexure I to the contract could not be operated to optimum capacity owing to the erratic manner in which the project land was made available to the Contractor, and yet had to remain mobilised at Contractor's expense. This was an additional expenditure incurred by the Contractor. The amount awarded for prolonged deployment of additional plants and equipment and bonus were two elements of one awarded amount and related to accumulated effect on the Contractor of the Employer's default on handing over the site in the manner envisaged by the contract. The Court upheld the award of the arbitral tribunal.



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