

# Construction Arbitration Newsletter

RAUTRAY & CO.

Construction Arbitration Law Firm

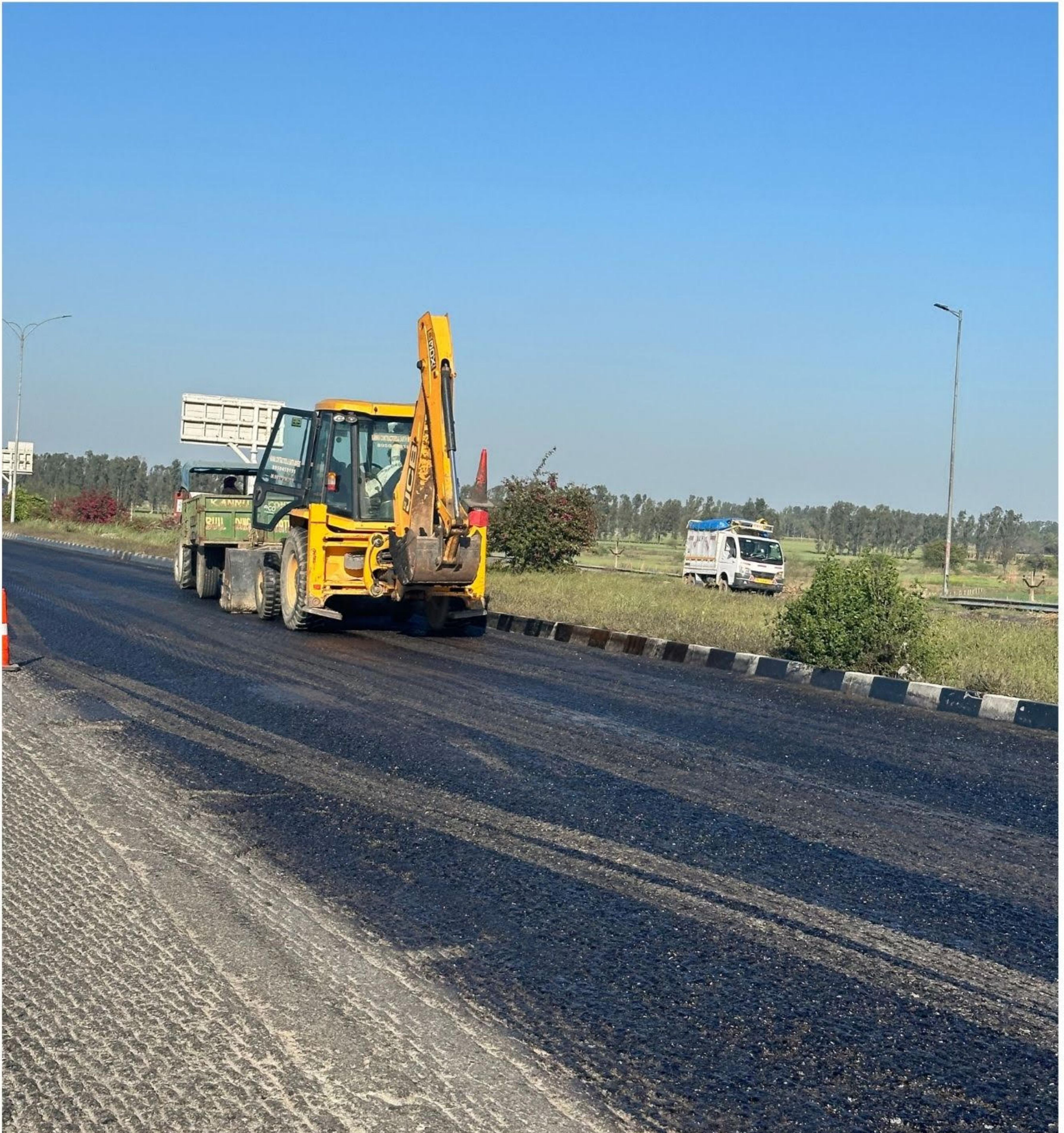
- **Additional work executed - principle of quantum meruit - section 70 of the Indian Contract Act - Notice Inviting Tender (NIT) provided for work to be “as per actual site”- lump sum contract - whether the term in the BOQ “quantity as per the actual site” and the bidder to visit the site and inspect and “lump sum basis” precluded the Contractor from raising the dispute of excess area of walls - Contractor not entitled to make additional claims since the contract was a lump sum contract and the Contractor had the opportunity to inspect the site to ascertain the exact scope of work.**
- **Additional work executed by Contractor resulting in delay - non-payment by the Employer of the Running Account (RA) Bills for additional works executed by the Contractor would amount to unjust enrichment - claim for the excess work must be honoured since such work had actually been carried out, measured and approved, and not protested contemporaneously.**
- **Finding of the arbitral tribunal on party responsible for the delay - a question of fact - arbitral tribunal’s finding of fact that the Contractor was not at fault for refusing to continue the work in the circumstances, cannot be interfered with by the Court.**

*[Quazar Infrastructure Pvt. Ltd. v. National Agricultural Coop. Marketing Federation of India Ltd. - Delhi High Court - Decided on 30.5.2025]*

*[Union of India, General Manager of Railways v. PLR HC RBR JV - Delhi High Court - Decided on 24.6.2025]*



The Contractor was awarded the work for repairing and cleaning of exterior walls and waterproofing the terrace of its head office building. The Contractor contended that the delay was due to various site-related hindrances, including the Employer's failure to provide an empty water tank required for waterproofing, the increase in wall area, and execution of additional work. The Notice Inviting Tender (NIT) provided for work to be "as per actual site". The arbitral tribunal rejected the claims of the Contractor towards payment for additional work. The arbitral tribunal concluded that since the contract was lump sum contract it was a bar to additional claims. The Court upheld the award and concluded that the contract having been awarded on a lump sum basis and the Contractor having had the opportunity to inspect the site, no concealment or fraud could be imputed to the Employer.



The contract related to work connected with the railway line between Wardha and Nanded and related to embankment, cutting including bridge approaches, trolley refuges, construction of side drains, minor bridges etc. The Contractor sought extension of time (EOT). The delay was attributed to the failure of the Employer to acquire forest land, revenue land and farmer land, and restrictions arising out of the lockdown imposed on account of the Covid-19 pandemic. The Employer did not object to the reasoning, and granted EOT, without imposing any penalty and accepting price variation arising due to the delay. The Contractor continued to work under the extended time. A joint measurement of further work was effected and the seventh RA Bill was prepared, based on such measurement. However, despite joint measurement, the Employer did not pay this bill on the premise that the excess work carried out by the Contractor fell within the ambit of restricted quantities. Fresh EOT was sought by the Contractor. The reasons cited were continued delay in land acquisition, the strict lockdown restrictions due to the Covid-19 pandemic, approval for pending railway bridges not having been granted by the Employer, and the refusal of the Employer to prepare the eighth RA Bill despite joint measurement having been made. The Employer refused to grant EOT, imposed a token penalty and also refused to accept a price variation. The disputes between the parties were referred to arbitration. According to the Employer, the Contractor had abandoned work. The eighth RA Bill was not prepared by the Employer because of deficiencies found in the joint measurement. The arbitral tribunal concluded that the Contractor was entitled to the value of the restricted quantities. The Contractor had proved that he was entitled to the value of the eighth RA Bill that was never issued although covered by the joint measurement. The Contractor was entitled to the price variation claim. The Contractor was entitled to receipt of the work completion certificate in respect of the work carried out and measured jointly. The Court observed that the actual work carried out had to be more than what was envisaged, and the excess work was not being paid for. The Employer had not questioned why additional work was being done beyond the original stipulation. Non-payment of the RA Bill by the Employer would amount to unjust enrichment. The reasons for delay had been accepted by the Employer while granting EOT. The Court upheld that finding of the arbitral tribunal that the imposition of penalty and denial of price variation was completely wrong.



**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](mailto:mail@rautray.com)

