

Construction Arbitration Newsletter

Construction Arbitration Law Firm

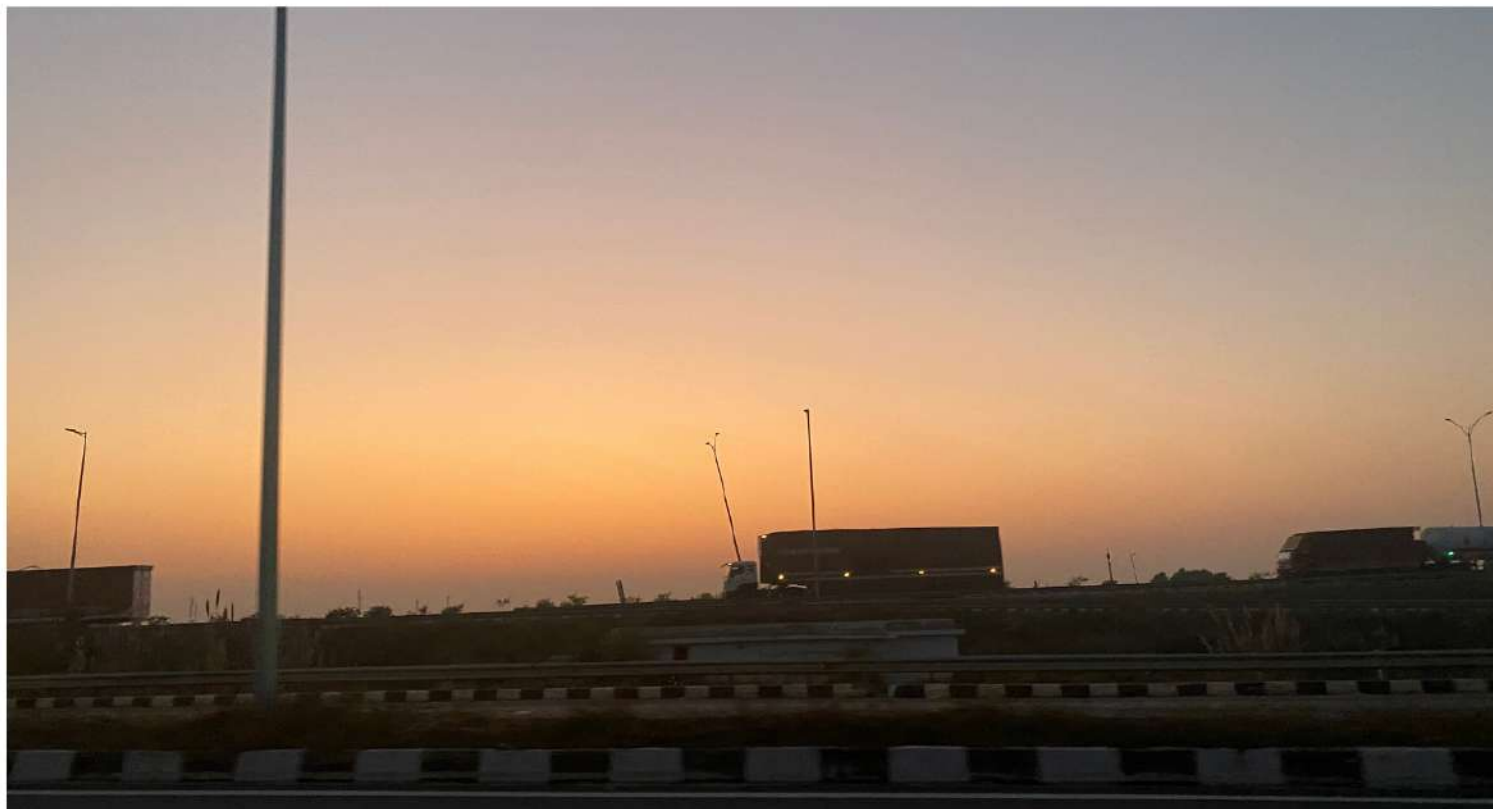
- **Possession of site - Employer has to hand over requisite site to the Contractor as per the contract provisions, without examining the readiness / preparedness of the Contractor for starting actual execution and the Contractor is entitled for extension of time on account of delayed handing over of site by the Employer.**
- **Notice to commence work - Employer must give the Contractor possession of the site at the same time as the Engineer gives notice to commence the work in terms of the provisions of the contract.**
- **Obligation of the Contractor to commence activities required for starting the actual execution of work prior to handing over of the site, does not arise if the Employer has failed to handover the site to the Contractor in terms of the contractual provisions.**
- **Contractor's preparedness for physical start of the work was not a pre-requisite to the handing over of site to the contractor under the contract.**
- **Notice of intention to claim within 28 days, whether a mandatory condition precedent? - failure to comply with the requirement of giving notice of intention to claim within 28 days of the event, does not debar the Contractor from raising a claim.**

[National Highways Authority of India v. Ssangyong-OSE (JV) - Delhi High Court - Decided on 25.4.2012]



- Additional cost incurred by the Contractor while staying on site for the extended period of the contract - EOT granted without imposition of liquidated damages - Contractor's claim is maintainable - claims for damages on account of prolongation of the contract are admissible under Sections 73 and 74 of the Indian Contract Act, 1872.
- Computation of overhead claim - calculation by the Contractor based on the monthly progress reports verified by the Engineer and by applying the MORTH formula to determine the cost, is reasonable.

[National Highways Authority of India v. BEL-TBL (JV) - Delhi High Court - Decided on 8.7.2016]



National Highways Authority of India v. Ssangyong-OSE (JV) - Delhi High Court - Decided on 25.4.2012

The Employer issued a Letter of Acceptance to the Contractor for execution of four laning and strengthening of existing 2-lane sections between 140 km-180 on NH 2 (Contract Package IV-D) in Bihar. One of the questions before the arbitral tribunal and the court was whether the Contractor is justified in claiming extension of time (EOT) without fully mobilizing his resources to execute the work as per programme? The Employer contended that the Contractor had failed to undertake the independent activities required for commencement of work and therefore, the Contractor's prayer for EOT and cost on account of delay in handing over the site free from encumbrances is misconceived. The arbitral tribunal, on a reading of the contract provisions, held that the handing over of the site was not dependent on the preparedness of the Contractor to start the work. The arbitral tribunal relied upon the FIDIC Condition of Contract for Works of Civil Engineering Construction which, in Clause 14.1.1, made it clear that the Employer had to be in possession of the site and should have clear access to it even before the notice to commence the work is sent to the Contractor. Further, the contract mandated that Employer must give the Contractor possession of the site at the same time as the Engineer gives notice to commence the work.

The Employer has to hand over requisite site to the Contractor as per contract provisions, without examining the readiness / preparedness of the Contractor for starting actual execution and the Contractor is entitled to extension of time on account of delayed handing over of the site by the Employer. The arbitral tribunal also concluded that the failure to comply with the requirement of giving notice of intention to claim within 28 days of the event, did not debar the Contractor from raising a claim. The Court held that there was no error in the finding of the arbitral tribunal.

**National Highways Authority of India v. BEL-TBL (JV) - Delhi High Court -
Decided on 8.7.2016**

The Employer awarded the Contractor the work for construction of the Karur Bypass. The Employer granted extensions of time up to the date of completion of the work without imposition of liquidated damages on the Contractor. The Contractor raised certain claims against the Employer arising out of the delay in completion of the works. The arbitral tribunal held that the delays were caused by the Employer on account of non-availability of land, delay in fixing alignment, existence of utilities to be removed and additional items of work to be executed and that the Contractor is entitled to recover the additional cost incurred for executing the work in the extended period. The Court held that arbitral tribunal did not err in allowing the claim for loss of overheads in the extended period based on the MORTH Data Book.



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Successfully handled construction arbitrations relating to DBFOT projects, EPC Contracts and FIDIC based contracts in infrastructure projects.