

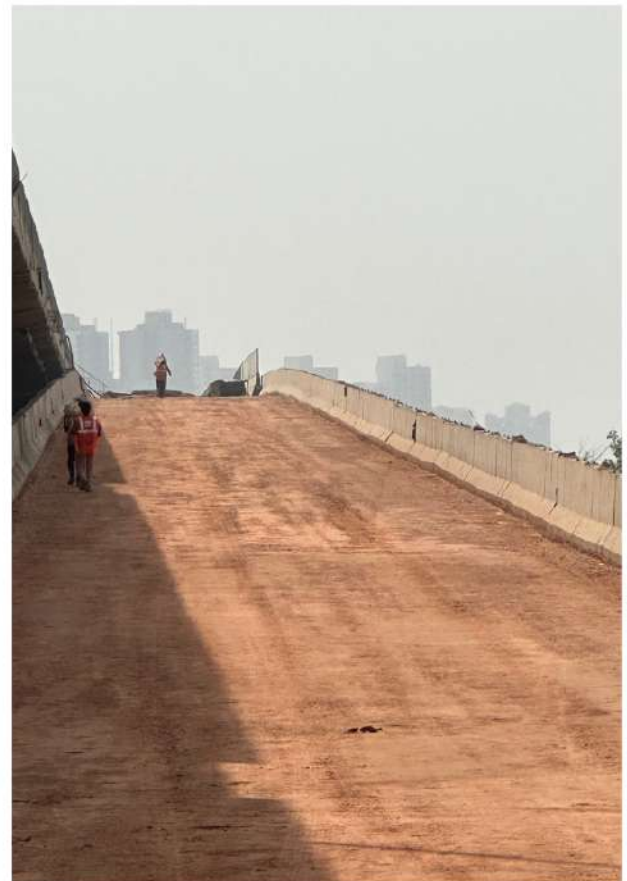
Construction Arbitration Newsletter

Construction Arbitration Law Firm

- **Termination of contract by applying wrong clause - once the termination is justifiable with reference to the terms of the contract, even if a wrong clause is mentioned in the letter terminating the contract, the power to terminate the contract cannot be said to be illegal, more particularly, when the power is traceable to the specific terms of the contract.**
- **Award of pendente lite interest - unless there is a specific bar under the contract, it is always open for the arbitral tribunal to award pendente lite interest - interest awarded on the advance paid for hypothecation of equipment was justified.**
- **Claim barred by limitation - cause of action would arise when dispute arises between the parties - period during which the parties were bona fide negotiating towards an amicable settlement may be excluded for the purpose of computing the period of limitation for reference to arbitration under the Act - once the Contractor has asserted its claim and the Employer fails to respond to such claim, such failure will be treated as a denial of Contractor's claim giving rise to a dispute and, therefore, the cause of action would arise for reference to arbitration.**

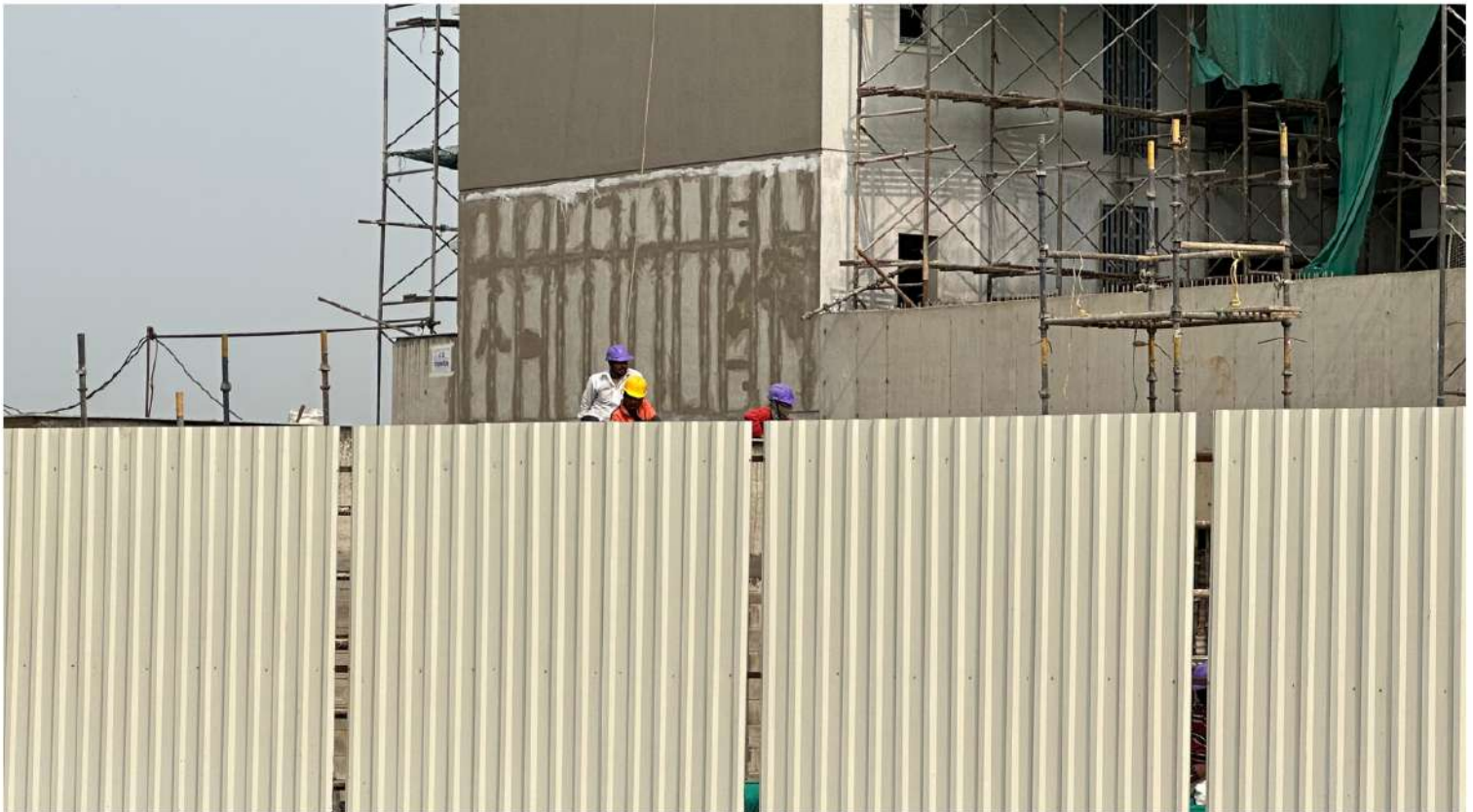
[Indian Railway Construction Company Limited v. National Buildings Construction Corporation Limited - Supreme Court of India - Decided on 17.3.2023]

- **Change in Law event - ban on mining in the State of Haryana - claim for additional lead for transportation of aggregates from neighbouring State - maintainability of the claim under the terms of the Concession Agreement - mining operations in the State of Haryana was stopped after the contract had been signed as the Concessionaire was not entitled to seek any deviation in the Concession Agreement after acknowledgement of the Letter of Award.**
- **Quantification of claim under Change in Law event - carriage charges by mechanical means and loading and unloading of materials taken from Haryana Schedule of Rate, Public Works Department, Haryana 1988 with premium applicable, is reasonable - lead distance for transportation of raw material can be taken from the Final Feasibility Report got prepared by the Employer / Authority.**



- **Reliance on Feasibility Report** - even though the Request for Proposal (RFP) considers Feasibility Report as only a preliminary document and that nothing contained therein would be binding upon the Employer / Authority nor would it confer any right on the bidders, it can be relied upon for facts relevant to the quantification of claims.
- **Loss of toll revenue collection** - delay in granting permission for collection of toll and the Provisional Completion Certificate (PCC) - PCC cannot be withheld for outstanding works which do not affect the reliability and safety of the road.

*[National Highways Authority of India v. Rohtak Panipat Tollway Pvt. Ltd.
- Delhi High Court - Decided on 16.2.2023]*

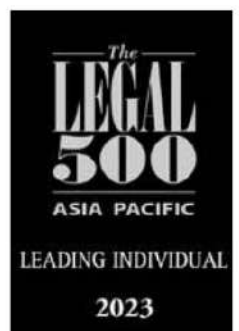


**Indian Railway Construction Company Limited v. National Buildings
Construction Corporation Limited - Supreme Court of India - Decided on
17.3.2023**

The Contractor was awarded the work of construction of Railway Station cum Commercial Complex at Vashi, Navi Mumbai. The Contractor approached the Employer / IRCON with modified programme for completion of works and sought for additional financial aid on certain terms and conditions. Since the work was delayed by the Contractor and the work was practically abandoned and came to a standstill, the Employer served a notice terminating the contract. The disputes between the parties were referred to arbitration. The arbitral tribunal rejected the Contractor's claim for refund of two security deposits. It also held that the Employer's termination under Clause 60.1 of the contract was bad in law but justified the termination under Clause 17.4 of the contract. The single judge of the High Court set aside the arbitral award and held that since the termination with regard to Clause 60.1 was not justified, it was not open for the arbitral tribunal thereafter to consider the termination under Clause 17.4 justifying forfeiture of the security deposits. The Supreme Court held that setting aside of the arbitral award by the High Court was not correct.

National Highways Authority of India v. Rohtak Panipat Tollway Pvt. Ltd. - Delhi High Court - Decided on 16.2.2023

Disputes between the parties arose out of the Agreement for the work of "Four Laning of Rohtak-Panipat Section of NH-71A from KM 0.00 (KM 63.00 OF NH 10) to KM 80.858 (KM 83.39 of NH-1) in the State of Haryana under the NDPH Phase III on Design, Build, Finance, Operate and Transfer ('DBFOT') Basis" awarded by the Employer / NHAI to the Concessionaire. The arbitral tribunal allowed the claim for change in law event and quantified the claim with respect to additional transportation charges for Granular Sub-Base Material (GSB) taking the lead distance of 134 Km on the basis of average distance of the mine mentioned in the Feasibility Report. Further, the arbitral tribunal found that the outstanding works did not affect the reliability or safety of the road and therefore the Concessionaire was entitled to issuance of PCC. The Court allowed the award of claim for change in law event but set aside the award for loss of toll revenue due to delay in issuance of PCC since the Concessionaire had given undertaking to complete the outstanding works before the issuance of PCC to make the Project Highway safe and reliable for commercial operation.



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- "Recommended for Construction arbitration work." Asia Pacific Legal 500.
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Author of the book "Principles of Law of Arbitration in India"

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