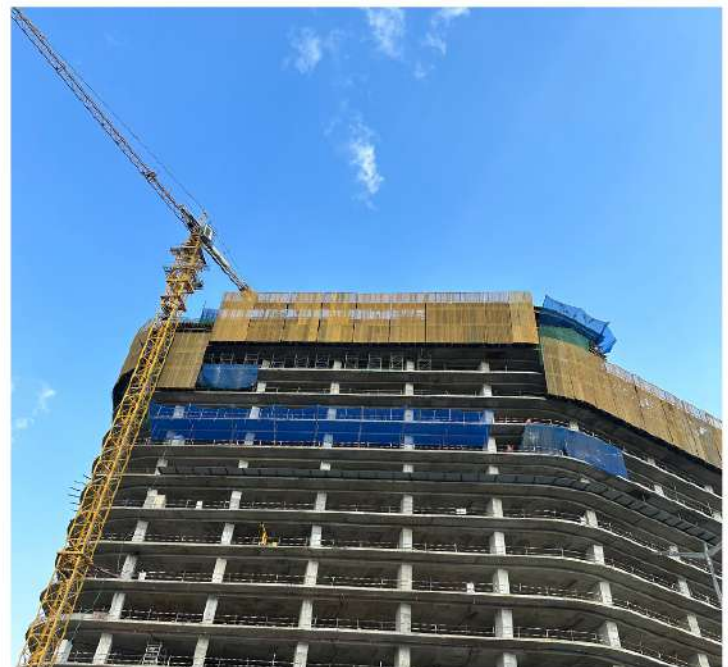


# Construction Arbitration Newsletter

## Construction Arbitration Law Firm

- **Delay caused due to execution of extra works - Contractor entitled to extension of time and prolongation costs.**
- **Contract providing that on account of delay by the Employer, the Contractor will be entitled only to extension of time and no compensation will be payable for the work carried out during the extended period - said provision does not preclude the arbitral tribunal from awarding compensation for delays not attributable to the Contractor.**
- **Contract providing rates shall hold good till the completion and no additional claim will be admissible - no claim whatsoever will be entertained by the Employer on account of any delay or hold up of works arising out of drawings changes, modifications, alterations, additions, omission and the site layout plans or detailed drawings or due to any other factor on Employer's account - further, extension of contract period due to delays not attributable to the Employer or the Contractor as the only remedy and no compensation shall be payable - held, prohibition not applicable to situation where the Contractor had to execute the work beyond the time stipulated in the contract for reasons not attributable to him.**
- **Unconscionable contract - section 23 of the Contract Act - if a Contractor is prevented from fulfilling the obligations which has a direct bearing on the work to be executed by him, the arbitral tribunal can compensate the Contractor for the act of prevention caused by the Employer.**
- **Claim for cost escalation – Contractor's claim at a particular rate for labour, material and fuel components of the work at 30%, 25% and 15% respectively, having regard to the various part payments effected from time to time, is reasonable - claim by the Contractor for expenditure incurred for supervision of the work and maintenance of establishment during the extended period is not covered under the claim for cost escalation.**
- **Rate of interest awarded by the arbitral tribunal - courts may reduce the interest rate awarded where such interest rate does not reflect the prevailing economic conditions or where it is not found reasonable or where it does not promote the interests of justice.**

*[Southern Railway v. Santosh Babu - Kerala High Court - Decided on 17.1.2022]*



- Delay in execution of work due to non-handing over of site - site was a low laying area and had black cotton soil and sub-soil water was high and therefore, the site required de-watering to commence any work - drawings submitted did not match with the site and the site conditions - Engineer-in-Charge (EIC) granted extension of time on six occasions on the grounds of delays submitted by the Contractor - there is no need for the Contractor to further provide justification of the delays.
- Minutes of internal meeting of the Employer - acceptable and relevant as the Employer had expressed satisfaction over the progress of the work.
- Delay in processing of interim bills - has a serious and adverse effect on the progress of the work at site.
- Failure of the Employer to produce the measurement books - arbitral tribunal can draw adverse inference against the Employer.

*[GAIL (India) Ltd. v. Gupta Bros (India) - Delhi High Court - Decided on 11.1.2022]*

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**Southern Railway v. Santosh Babu - Kerala High Court - Decided on 17.1.2022**

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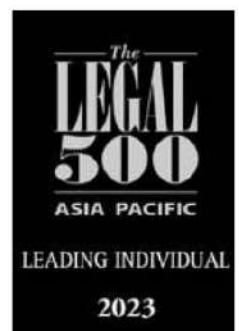
The Contractor was awarded the contract for execution of work consisting of different components, in connection with the gauge conversion between two railway stations. The work had to be completed within six months. However, there was delay in completion and the time was extended for a total 923 days subject to the condition that the Contractor would complete the work on the agreed terms and conditions. The Contractor completed the works within the extended time period. The Contractor raised various claims on account of delays attributable to the Employer. The arbitral tribunal allowed some of the claims raised by the Contractor.

The Employer also contended that since the arbitral tribunal had awarded compensation to the Contractor for cost escalation for the work executed during the extended period, the Contractor was not entitled to the award of additional expenditure incurred for supervision charges and maintenance of establishment during the extended period of the contract. The Court held that construction of the terms of a contract is primarily a matter for the arbitral tribunal to decide and the arbitral award is not liable to be interfered with unless the arbitral tribunal construes the contract in such a way that it could be said to be something that no fair minded or reasonable person would do. The Court concluded that there was no duplication of claim for expenditure incurred or supervision of the work and maintenance of the establishment during the extended period with that of cost escalation claim.

**GAIL (India) Ltd. v. Gupta Bros (India) - Delhi High Court -  
Decided on 11.1.2022**

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The Employer engaged the Contractor for construction of a residential colony for the employees of GAIL who were employed at LPG Recovery Plant at Ghandhar, District Bharuch, in Gujarat. The Employer terminated the contract on the ground that the Contractor had failed to perform its obligations and complete the work within the stipulated period. The Employer engaged another contractor for completion of the balance work at risk and costs. The Employer claimed additional amount paid for completion of the works. The Employer recovered part of the claim amount by encashing the Contract Performance Bank Guarantee (PBG) and selling certain construction equipment belonging to the Contractor. The Contractor disputed the Employer's claim and contended that the Employer was responsible for the delay and that the termination was illegal. The arbitral tribunal held the termination as unlawful and allowed Contractor's claim for payment of work done but not paid, refund of the amount recovered by encashment of PBG, and refund of bank charges along with interest.



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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.