

Construction Arbitration Newsletter

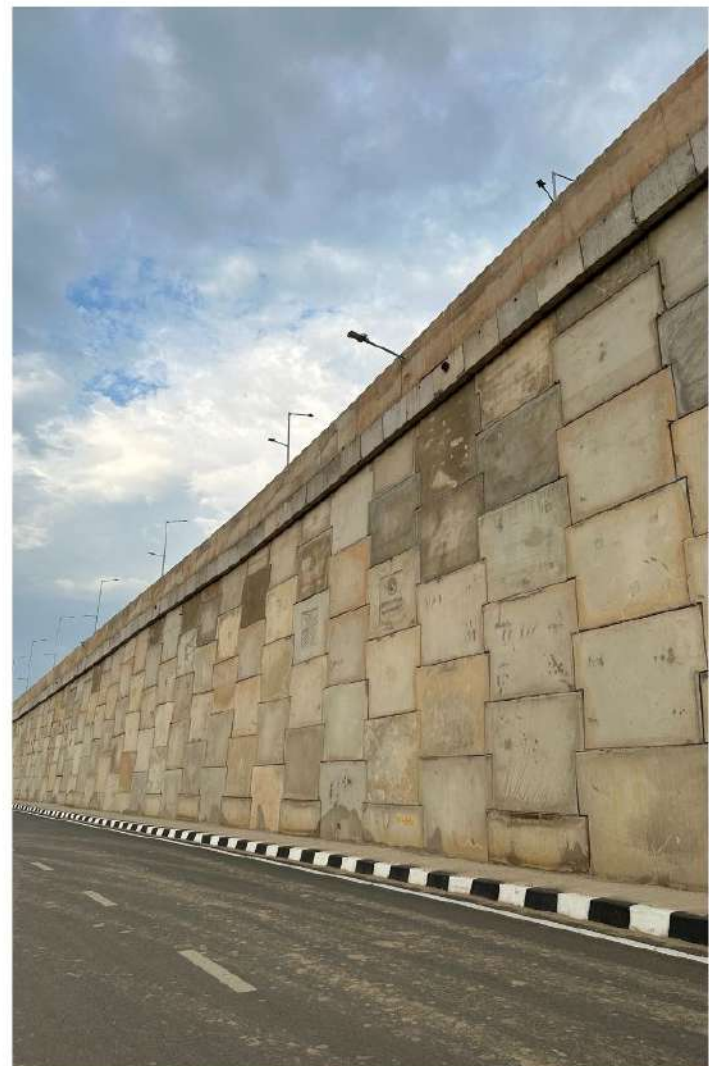
Construction Arbitration Law Firm

- **Slow progress of work - forfeiture of performance security on termination of contract by Employer - Contractor failed to deploy adequate additional resources to execute the fast track project - forfeiture of the performance security justified.**
- **Recoveries made by the Employer from the stage payment - material procured by the Contractor, against which stage payment was made had not been used in the work - Employer justified in making the recoveries from the stage payment.**
- **Risk and cost work - failure of the Contractor to maintain work site - maintenance of work site in clean condition essential responsibility of the Contractor - Employer is entitled to recover expenses incurred by it to maintain the work site by engaging a third party agency.**
- **Lawful termination of contract - claim for loss of profit by the Contractor - not maintainable.**
- **Award of interest - if there is no provisions in the arbitration agreement on the rate of interest, then the arbitral tribunal has the discretion to determine the rate of interest - award of moderate rate of interest by the arbitral tribunal cannot be termed unreasonable.**

[Babaji Nayak v. RITES Limited - Orissa High Court - Decided on 5.5.2023]

[C.P Associates Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd. - Delhi High Court - Decided on 4.5.2023]

- **Acceptance by the Contractor of 'Full and Final Payment' - maintainability of further claim / dispute raised by the Contractor - the acceptance by the Contractor was merely a money receipt and not towards full and final settlement of claims - acceptance of payment in the form of 'full and final payment' itself is not a bar on the arbitral tribunal to adjudicate the dispute arising out of quantum of such payment.**





**C.P Associates Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd. - Delhi High Court -
Decided on 4.5.2023**

The Contractor was awarded the work for architectural finishing work at seven elevated station. The Employer being unsatisfied with the progress of the works issued a termination notice and subsequently terminated the contract. There were disputes between the parties with respect to the joint measurement. The arbitral tribunal held that the slow progress of work was due to deployment of inadequate additional resources by the Contractor and the Employer terminated the contract after following the contractual terms. The forfeiture of the performance security by the Employer was justified. The arbitral tribunal concluded that the non-completion of the work at site disentitled the Contractor to the payment received towards supply of materials at site. The arbitral tribunal rejected the Contractor's claim for loss of profit since the termination of the contract by the Employer was found to be lawful. The Court upheld the findings of the arbitral tribunal.



The Employer awarded the contract for execution of the balance work of Railway siding to the Contractor. The Contractor approached the Employer for handing over of the site. Subsequently, a portion of the site was handed over to the Contractor marking the commencement date. The Contractor faced land acquisition problems at site and the tenants obstructed the work. The Employer insisted on completion of the work despite hindrances at site. The Contractor requested the Employer to close the contract and refund the security deposit and settle his claims towards deployment of machines and manpower at the site. The Employer granted unilateral extension of time (EOT) for completion of work without the Contractor making a request for EOT. The Employer, in response to the request for closure of the contract, gave a warning to the Contractor to complete the work as per the EOT granted. Subsequently, the Employer rescinded the contract. The Contractor claimed financial loss suffered on account of rescission of the contract. The arbitral tribunal allowed some of the claims of the Contractor. The Court concluded that the acceptance by the Contractor of amounts under a money receipt did not constitute a full and final settlement of all its claims.



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