

Construction Arbitration Newsletter

RAUTRAY & CO.

Construction Arbitration Law Firm

- **Contract prohibiting monetary claims for delays caused by the Employer and stating Contractor only entitled to extension of time (EOT) for the delays - Contractor claimed damages on account of idling of plants and machineries and overheads for delays caused by the Employer - clauses which prohibit the right of the party to claim damages are restrictive - such clauses are opposed to public policy and are not enforceable under Section 23 of the Indian Contract Act, 1872 - contractual clauses which disentitle the aggrieved party to the benefits of Sections 55 and 73 of the Indian Contract Act would be void being violative of Section 23 of the Contract Act and therefore cannot be enforced.**
- **Claim for loss of profit - prohibition in the contract to claim compensation on account of delays caused by the Employer cannot deprive the Contractor to claim loss of profits due to illegal termination of the contract by the Employer - claim for loss of profit cannot be rejected even though there is a prohibition in the contract to raise a claim for compensation for delays caused by the Employer - Contractor must lead evidence for the loss of profit.**
- **Claim for loss of commercial reputation - wrongful termination by the Employer resulting in liquidity crisis leading to corporate insolvency - causal link between the Contractor's liquidity crisis and wrongful termination must be proved - arbitral tribunal cannot draw its conclusion merely on an inference - in the absence of a contractual provision, the Contractor cannot claim loss of financial reputation - Contractor is required to prove actual loss.**
- **Prohibition in contract towards payment of interest - arbitral tribunal cannot award interest till the date of the award.**

[MBL Infrastructures Limited v. Delhi Metro Rail Corporation - Delhi High Court - Decided on 12.12.2023]



- ‘No Claim Certificate’ issued by Contractor - plea of duress raised by Contractor - merely because the Contractor has issued a ‘no due certificate’ to the Employer, it shall not be a ground for rejection of the claim.
- Possession of site for construction works - a pre-requisite for commencement of work and is a fundamental obligation of the Employer.
- Section 46 of the Indian Contract Act - performance of work where the contract does not specify the time period for performance - Employer should hand over hindrance free site and drawing immediately after the start date of the construction period to enable the Contractor to complete the works within the prescribed completion date.

*[Government of NCT of Delhi v. R.S. Sharma Contractors Pvt. Ltd. - Delhi High Court -
Decided on 16.8.2023]*



MBL Infrastructures Limited v. Delhi Metro Rail Corporation - Delhi High Court - Decided on 12.12.2023

The Contractor was awarded the contract for “Construction of Sarai Station including architectural finishing, water supply, sanitary installation, external development works etc. and structure works of PD area on Badarpur - Faridabad Corridor of Delhi, MRTS Phase IIP”. The Contractor was handed over construction site after a delay of more than 6 months by the Employer. The delay in the project resulted in disputes between the parties, which were referred to arbitration. The arbitral tribunal held that the Employer was in breach of the contract and therefore the termination of the contract by the Employer was unlawful. The Contractor, amongst others, raised claims for idling of plants and machineries and overheads for delays caused by the Employer. Clause 2.2 of General Conditions of Contract (GCC) and Clause 8.3 of GCC provided that no monetary claim could be raised by the Contractor in cases there is a delay on the part of the Employer and the Contractor was only entitled to a reasonable extension of time. The arbitral tribunal concluded that there was delay caused by the Employer. The Court concluded that the arbitral tribunal can award damages to the Contractor for delays caused by the Employer even though the clause in the contract provided that only extension of time can be given as a remedy. The act of awarding the damages to the aggrieved party does not amount to transgression of the terms of the contract. Further, the clause prohibiting the Contractor from claiming compensation for delays caused by the Employer cannot deprive the Contractor to claim loss of profits for wrongful termination of the contract by the Employer. The Court therefore, partially set aside the award.

**Government of NCT of Delhi v. R.S. Sharma Contractors Pvt. Ltd. - Delhi
High Court - Decided on 16.8.2023**

Disputes arose between the Contractor and the Employer with respect to work for widening of bridge at RD-900m of Shahadra out fall drain near Noida. The works could not be completed on time and the Contractor requested for extension of time. Disputes arose between the parties which were referred to arbitration. The work was delayed due to non-availability of pile design, change of methodology of boring piles, change of level of deck slab etc. The arbitral tribunal allowed Contractor's claims for escalation and for prolongation costs. Further, the arbitral tribunal concluded that the delay in execution of the works was attributable to the Employer and the 'No Objection Certificate' issued by the Contractor was not voluntary. The Court upheld the award and concluded that the findings of fact by the arbitral tribunal cannot be set aside.



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