

Construction Arbitration Newsletter

Construction Arbitration Law Firm

- **Change in construction procedure due to variation in soil strata – Bore hole data as per the contract was not to be assumed by the Contractor as a warranty with regard to nature of subsoil but was to be considered only as a guide.**
- **Variation in foundation level - due to change in soil parameters will be treated as deviation.**
- **Award by Arbitral Tribunal ignoring the contract provision – liable to be set aside.**
- **Evidence of High Flood Level (HFL) – certificates issued by government authorities sufficient.**
- **Contractor entitled to refund of security deposit and retention money – if the termination of the contract is unlawful.**
- **Claim for hiring charges – if the termination of the contract is unlawful the Contractor is entitled to compensation on account of hiring charges for shuttering material, machinery and T&P, office stores, quarters and camps but award granting hiring charges for shuttering material, machinery, T&P etc, which far exceeded the cost such material and machinery, cannot be sustained.**

[Union of India v. D. Khosla and Company - Jammu and Kashmir High Court - Decided on 9.5.2022]



- **Extension of Time (EOT) once granted cannot be reduced - Once a request is received and extension of time is granted, the Engineer-in-Charge or the competent authority cannot after the extended period is over turn around and reassess the extension to the detriment of the Contractor.**
- **Authority may grant EOT for a shorter period than requested for by the Contractor – and extend it further.**
- **EOT cannot be curtailed retrospectively once granted.**
- **Grant of EOT should not be provisional in nature.**

*[North Delhi Municipal Corporation v. IJM Corporation, Berhad - Delhi High Court -
Decided on 26.4.2022]*



**Union of India v. D. Khosla and Company - Jammu and
Kashmir High Court - Decided on 9.5.2022**

The Contractor was awarded contract for Design and Construction of Permanent Bridge Over River Niara Tawi in the State of J&K. The lumpsum contract was to be completed within 24 months. On account of certain delays and technical problems, the work could not be completed within the stipulated period. The Employer terminated the contract. At the final hearing stage, no one appeared for the Employer and the Arbitrator heard the matter in absence of the Employer's counsel and an award was made subsequently in favour of the Contractor. The Court held that the with a view to balance the award and to make it look fair, the arbitrator has even gone to the extent of awarding one of the counter claims to the Union of India.

The Court noted that the Contractor had executed only 45% of the work for which, apart from the payments that had been released to the Contractor from time to time, the Arbitrator had awarded claims that were more than eight times the value of the contract, along with pre-reference, pendente lite and future interest at 18% per annum. The Court held that the arbitrator had clearly exceeded his jurisdiction and had awarded most of the items of claims by either ignoring the terms and conditions of the contract or acting in derogation therefrom.

North Delhi Municipal Corporation v. IJM Corporation, Berhad - Delhi High Court - Decided on 26.4.2022

The Authority challenged the award on the ground that the Arbitral Tribunal rejected the contention that the extension of the time granted was only provisional and the Authority had reserved its rights to impose liquidated damages at the end of the work. The Authority had granted EOT on several occasions upon request being made by the Contractor for various events of delays affecting the execution of the contract. The Contractor completed the work within the extended period as granted by the Authority. The Authority contended that it was entitled to re-assess the extensions granted and determine as to whether the extensions granted were correct or not and also that the number of days could be reduced. The court after referring to the relevant clause of the contract held that once a request is received and extension of time is granted, the engineer in charge or the competent authority cannot after the extended period is over, turn around and reassess the extension to the detriment of the Contractor. If extension is granted, say for a period of three months, the engineer in charge after expiry of three months cannot turn around and say that the extension should have, in fact, been for a period of two months. Though it may be open to the competent authority or the Engineer-in-Charge to, in the first instance, grant an extension for a shorter period than requested for and thereafter extend it further, but he cannot having once granted it, curtail it retrospectively.



Dharmendra Rautray
Barrister (Lincoln's Inn, London)
Rautray & Co.

B3/18 Vasant Vihar,
Paschimi Marg,
New Delhi - 110057
Tel: +91.11.46552244 / 46113964

M: 9899988878
E: dharmendra@rautray.com

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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.