

Construction Arbitration Newsletter

Construction Arbitration Law Firm

- **Claim raised by the Main Contractor, on behalf of the EPC Contractor, against the Employer not maintainable - if the EPC contract is not filed on record of the Arbitral Tribunal.**
- **Indemnity Clause in favour of the Main Contractor for third party claims not applicable - if EPC Contractor has not raised a claim against the Main Contractor.**
- **Change in law claims raised by the EPC Contractor against the Employer not maintainable - if claims have not been raised by the EPC Contractor against the Main Contractor.**
- **Claim against Employer maintainable - only if the provisions of the EPC Contract between the Main Contractor and the EPC Contractor holds the Main Contractor liable to pay the claims raised against it.**
- **Claim for prolongation costs cannot be awarded - in the absence of document or evidence in support of the quantification of the claim.**
- **Non-filing of supporting document or the certificate of a Chartered Accountant nor producing any Chartered Accountant in support of quantification of claim - cannot deprive the Contractor of its claims as the Independent Engineer had quantified the damages by scrutinizing the Contractor's books of account. Arbitral Tribunal is not bound by the law of evidence.**



- Claim by sub-contractor not permissible against the Employer under the Principal Contract – if the Sub-Contract did not provide for a claim of revised rate. Though the sub-contract was on a back-to-back basis, it did not have a similar term as in the Principal Contract.
- Main Contractor raising a claim on behalf of its EPC Contractor can succeed only if – it can show whether under the terms of the sub-contract / EPC contract, the EPC Contractor was entitled to raise a claim of prolongation cost and if at all any such claim had been paid by Main Contractor to such EPC Contractor.

[Mapex Infrastructure Pvt. Ltd. v. National Highways Authority of India - Delhi High Court - Decided on 8.1.2018]

- Both parties responsible for the delay - liquidated damages ought not to be levied where the delay period is overlapping.
- Employer entitled to levy liquidated damages for the entirety of the period of delay caused by the Contractor.
- Non-participation in joint measurement for work done - onus to establish that it had executed the works as claimed rested on the Contractor.



[Armtech (India) Limited v. Gail (India) Limited - Delhi High Court - Decided on 4.7.2022]

Armtech (India) Limited v. Gail (India) Limited - Delhi High Court - Decided on 4.7.2022

Disputes arose between the parties with respect to a contract for construction of houses. The execution of the works was delayed. The works could not be completed by the Contractor within the extended period granted by the Employer. The Employer terminated the contract. The Arbitral Tribunal held both the parties responsible for the delay in execution of the contract to some extent but after a certain stage, the delay in execution of the works was entirely for reasons attributable to the Contractor. The Arbitral Tribunal also held that the Employer had no option but to terminate the contract in question. Notwithstanding the said findings, the Arbitral Tribunal partly allowed some of the claims made by Contractor and rejected all counter-claims raised by Employer. The Tribunal held that the Contractor was responsible for the delay which took place in the execution of the contract work and ultimately resulted in the contract being terminated. The Tribunal went on to hold that the termination of the contract by the Employer was valid. Both the Employer and the Contractor challenged the award. The Employer contended that the Contractor had delayed the contract by forty months and therefore it was entitled to withhold the amount towards Price Reduction Schedule (PRS). The Court held that since the Employer was not able to establish the legal loss or injury suffered, it was not entitled to the liquidated damages claim.

**Mapex Infrastructure Pvt. Ltd. v. National Highways Authority
of India - Delhi High Court - Decided on 8.1.2018**

The disputes between the parties are in relation to the contract for Four Laning including Strengthening of Existing Two Lane Pavement of National Highway No. 2 from Panagarh (Km 517) to Palsit (Km 581.457) Section in the State of West Bengal which was awarded by the NHAI / Employer. The project was awarded on Build, Operate and Transfer (BOT) basis on annuity approach. The Concessionaire / Main Contractor was incorporated as a Special Purpose Vehicle to implement the project and accordingly, a Concession Agreement was entered into between the Employer and the Main Contractor. The Concession Agreement envisaged and authorized the Main Contractor to undertake construction work by itself or through an EPC Contractor. The EPC Contractor appointed by the Main Contractor to carry out the works was also a promoter of the Main Contractor / Concessionaire. No document was placed on record of the Arbitral Tribunal to show that the EPC Contractor raised any claim against the Main Contractor. Since the EPC Contractor was not a party to the arbitration between the Main Contractor and the Employer the Arbitral Tribunal rejected the claim of the EPC Contractor raised through the Main Contractor towards prolongation claims. The Court held that in the absence of the agreement between the Main Contractor and the EPC Contractor, it could not have been said whether EPC Contractor at all is entitled to claim the prolongation cost from the Main Contractor. The Court held that the Main Contractor should at least have shown to the Arbitral Tribunal that there was a claim made by EPC Contractor against it towards the prolongation cost. In the absence of such claim being shown to the Arbitral Tribunal, no fault could be found in the denial of the claim.



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