

Construction Arbitration Newsletter

Construction Arbitration Law Firm

- **Clause providing for Extension of Time (EOT) for completion of contract but without payment of damages for Employer's delay - to be interpreted in a restrictive manner.**
- **No damages clause - not applicable if loss resulting from unreasonable delay by the Employer.**
- **Evidence in support of claims raised due to prolongation of contract - Certificate of an independent Chartered Accountant stating that he had examined the same from various books and accounts maintained by the Contractor including vouchers, bank statements, bills, invoices, as well as other relevant supporting records and documents maintained by the Contractor, is sufficient.**
- **Author of the Certificate not examined - sufficient, if the concerned officer of the Contractor produced the Certificate and he duly affirms the quantification.**
- **Strict rules of evidence do not apply to arbitral proceedings.**
- **Delay by both the parties - Principle of Apportionment can be applied and Contractor shall be entitled to only half of the claim towards idling costs.**



[Ircan International Limited v. GPT-Rahee JV - Delhi High Court - Decided on 25.3.2022]

- Claim for reimbursement of Service Tax payable – Contract provided that the works executed by Contractor were specifically exempted from the levy of Service Tax – Service Tax paid on services availed by the Contractor was not covered by the exemption clause in the Contract.
- Reimbursement of Service Tax – Contractor’s claim for reimbursement of Service Tax for services availed by it and not the services rendered by it - execution of the item rate contract was exempt from levy of any Service Tax and no stipulation was in the contract for the Contractor to avail services on behalf of the Employer – award of reimbursement of Service Tax was contrary to the express terms of the Contract.

[Union of India v. Continental Engineering Corporation - Delhi High Court - Decided on 22.3.2022]



**Ircon International Limited v. GPT-Rahee JV - Delhi High Court -
Decided on 25.3.2022**

The Contractor was awarded the contract for Construction of Steel Superstructure and other ancillary works of Rail-cum-road Bridge Across River Ganga by the Employer. The works were to be completed within a period of 45 months. However, the works of the erection contract was completed by the Contractor after a period of 86 months. The Arbitral Tribunal partly allowed the Contractor’s claim. The Employer challenged the award. The Employer contended that the Arbitral Tribunal erred in awarding the claims for prolongation of the contract on the basis of the Certificate issued by an independent Chartered Accountant. The Chartered Accountant being the author of the certificate was not produced as witness to prove the contents of the certificate issued by him and therefore, the quantification of the claims awarded to the Contractor on the basis of the said Certificate was without evidence. Further, it was contended by the Employer that the Arbitral Tribunal had concluded that both the parties were responsible for the delay and therefore it erred in awarding claims raised by the Contractor, which were on the basis of delay in completion. The Court held that the interpretation of a clause of a contract falls within the jurisdiction of the Arbitral Tribunal. The award of the Arbitral Tribunal on claims raised by the Contractor was upheld, even though the author of the Certificate was not examined.

The Court upheld the finding of the Arbitral Tribunal that if the concerned officer of the Contractor had produced the Certificate and has duly affirmed the quantification, it is sufficient evidence. The Court upheld the application of principle of apportionment by the Arbitral Tribunal and concluded that since both the Employer and Contractor were responsible for the delay in completion of works, the Contractor was entitled to only half of the claim towards idling costs.

Union of India v. Continental Engineering Corporation - Delhi High Court - Decided on 22.3.2022

The Contractor was awarded the work for development of corridor (Outer Ring Road) Flyovers, Loops, Bridges across supplementary drain, FOBs, Footpath, Cycle track, Widening of Road on embankment, Rain Water Harvesting scheme, Electrical works and other allied works. The dispute between the parties was with respect to Contractor's claim for reimbursement of Service Tax and Environmental Compensation Cess. The Arbitral Tribunal partly accepted the claim for reimbursement of Service Tax in respect of certain services availed by the Contractor. The Contractor had submitted all-inclusive rates for various BOQ items. The Contractor claimed that during the course of execution of the works in question, it had paid Service Tax in respect of various input services and was thus, entitled to reimbursement. The Arbitral Tribunal held that on a conjoint reading of the clauses in the GCC and the Instructions to Bidders, the Contractor was entitled to reimbursement of Service Tax. The Court held that the Contractor's claim for reimbursement of Service Tax levied in respect of the services availed by it from third party service providers, was outside the scope of the provision of the GCC. The Court observed that even though the Courts would not normally interfere with the interpretation of the Arbitral Tribunal, the interpretation of the provisions of the contract by the Arbitral Tribunal was fundamentally flawed and therefore the award was patently illegal.



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