

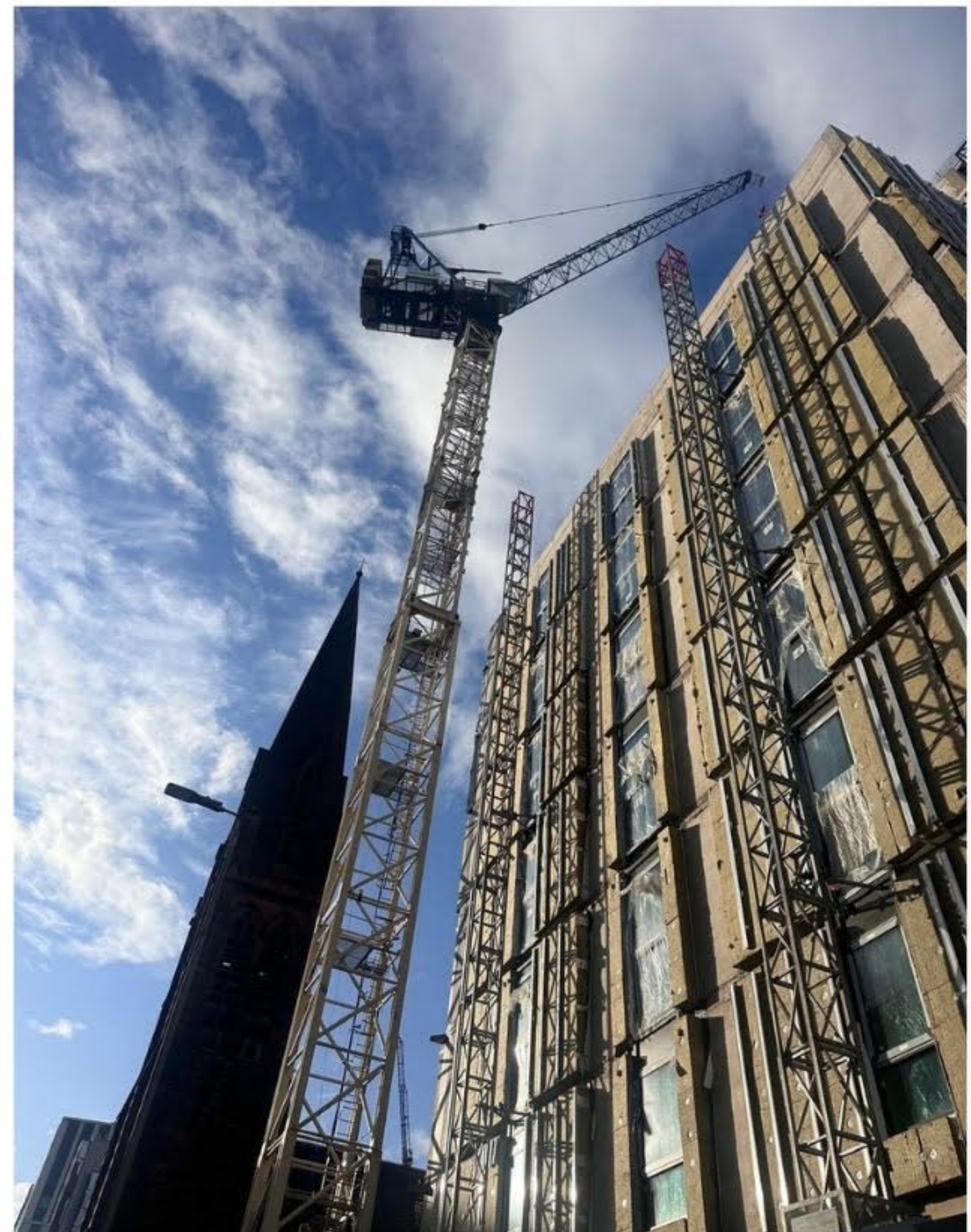
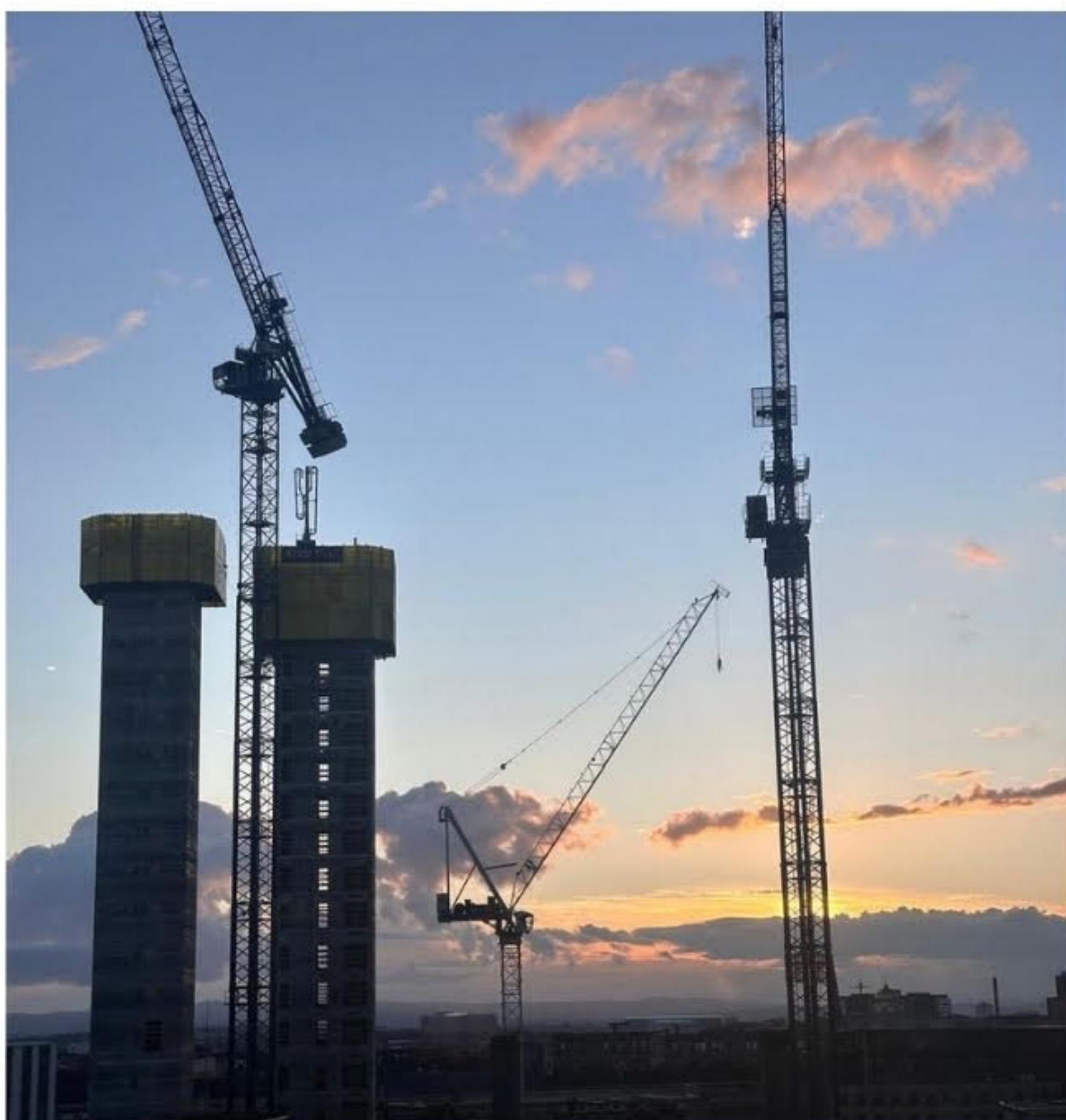
# Construction Arbitration Newsletter

RAUTRAY & CO.

Construction Arbitration Law Firm

- **Claim towards escalation of price of materials and labour costs during the extended period of execution of work - firm and fixed price contract - delay in handing over of work fronts by the Employer - a fixed-price contract merely stipulates that the consideration for the work to be performed remains predetermined and unaltered under normal circumstances; it does not operate as a blanket protection against repercussions arising from breaches or defaults committed by either party - if the delay in completion of the contract is attributable, either wholly or substantially, to the Employer's own lapses, such as failure to provide timely work fronts, inadequate coordination, or delays in releasing payments, then the Employer cannot claim immunity merely on the ground of the fixed-price nature of the contract.**
- **Dominant cause for delay - clause disallowing price escalation and considering both parties' contributions to the delay - even if there are some delays on the part of the Contractor arising out of the failure to promptly pay sub-contractors and insufficient resource deployment, the predominant cause of delay by the Employer to provide necessary work fronts would justify the Contractor's claim for idle labour and equipment.**

*[National Aluminium Company Limited v. Indo Power Projects Limited - Orissa High Court - Decided on 24.7.2025]*





- **Liability to pay Labour Cess - scope of arbitral tribunal reference - arbitral tribunal held that both the parties would equally share the responsibility of payment of cess to the Gujarat Government, under the Building and Other Construction Workers (Regulation of Employment & Condition of Service) Act, 1996 (BOCW Act) - Central Act was made on 19.8.1996 and promulgated by Gujarat Government on 18.8.2003 through Gazette notification both dates being prior to 11.11.2003 (i.e. 28 days prior to the bid date) - Rules under the Act issued by the Government of Gujarat for BOCW Act passed by a resolution dated 30.1.2006 - the arbitral tribunal could not have gone outside the scope of its reference to allocate the liability between the two parties based on the conduct of the Employer.**

*[National Highways Authority of India v. Limak Soma (JV) - Delhi High Court -  
Decided on 1.2.2023]*



**National Aluminium Company Limited v. Indo Power Projects Limited -  
Orissa High Court - Decided on 24.7.2025**

The Contractor was awarded the work for execution and completion of the work of electrical works for Phase-2 expansion Project of Alumina Refinery at Damonjodi (Orissa). However, the work could not be completed by the Contractor within the stipulated time. The Employer granted twelve extensions of time for completion of the works. The Engineer-in-Charge recommended payment of the 24<sup>th</sup> Running Account (RA) bill subject to statutory deductions and other legal recoveries to be decided by the Employer. Soon thereafter, the Employer replied stating that the said recommended amount was tentative and several deductions towards liquidated damages, cost of unreturned free issue materials and scraps, rebate items, cost of the items lost, etc. would be deducted from the Contractor. The disputes between the parties were referred to arbitration. The arbitral tribunal allowed the claim of the Contractor towards escalation of price of materials and labour costs during the extended period of execution of work. The Court observed that the arbitral tribunal had held that only 77.03% of work fronts had been made available to the Contractor, and it was only by 2012 that full access was granted. Further, the Employer agreed to pay compensation to the Contractor for idle labour and equipment, which indicated acknowledgment of its own responsibility in causing the delay.



The Court upheld the arbitral tribunal's finding that the predominant cause of delay was due to the Employer. Consequently, the Employer was liable to the increased cost incurred during the extended period despite the clause disallowing price escalation and considering both parties' contributions to the delay. The Court observed that a fixed-price contract merely stipulates that the consideration for the work to be performed remains predetermined and unaltered under normal circumstances; it does not operate as a blanket protection against repercussions arising from breaches or defaults committed by either party. If the delay in completion of the contract is attributable, either wholly or substantially, to the Employer's own lapses, such as failure to provide timely work fronts, inadequate coordination, or delays in releasing payments, then the Employer cannot claim immunity merely on the ground of the fixed-price nature of the contract. Parties to a contract are expected to act in good faith and adhere to their respective obligations, and any deviation attracting loss to the other side invites proportionate legal and contractual liability. The Court upheld the arbitral tribunal award of 50% of the revised escalation amounts to the Contractor for labour cost escalation and for material cost escalation.

**National Highways Authority of India v. Limak Soma (JV) - Delhi High Court -  
Decided on 1.2.2023**

The Employer awarded to the Contractor a contract for rehabilitation and upgrading of Porbandar-Bhiladi Road, Section of NH-8B in the State of Gujarat. Disputes between the parties were referred to arbitration. The arbitral tribunal held that both the parties would equally share the responsibility of payment of cess to the Gujarat Government, under the Building and Other Construction Workers (Regulation of Employment & Condition of Service) Act, 1996 (BOCW Act). The Contractor contented that by virtue of Clause 70.7 of the Conditions of Particular Application (COPA) the liability for the cess which was imposed by Gujarat Government after the date of the contract, would not be that of the Contractor. The tender provided that the bidders are required to quote their unit rates and prices for undertaking the works, duly considering all applicable duties, taxes and other levies payable by the Contractor under the contract or for any other cause as on the date 28 days prior to the deadline for submission of the bids. The bid was submitted by the Contractor prior to the date of notification of the Constitution of the 'Building and other Construction Welfare Board' by the State of Gujarat and the resolution with respect to implementation of Cess Act by the Government of Gujarat and notification of constitution of the Board under the Act came into force much after the last date of submission of the bid. The Court observed that the claim of the Contractor before the arbitral tribunal was that, on an interpretation of Clause 70.7 of the COPA, it was not liable for payment of cess to Gujarat Government at all. However, the arbitral tribunal went on to analyse the conduct of the Employer in failing to deposit the amount withheld from the invoices of the Contractor, and thus, came to the conclusion that both the parties equally share the responsibility of payment of Cess to Gujarat Government. The Court observed that this was neither the case pleaded by the Contractor, nor the basis upon which the claim was raised. It was not open to the arbitral tribunal, within the scope of the reference, to allocate the liability between the two parties based on the conduct of the Employer. The Court set aside the award of the arbitral tribunal.



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