

Construction Arbitration Newsletter

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Construction Arbitration Law Firm

- **Jurisdiction of Arbitral Tribunal - plea of lack of jurisdiction not raised before arbitral tribunal - applicability of the Madhyastham Adhikaran Adhiniyam, 1983 (MP Act, 1983) to works contracts with arbitration clauses - arbitral tribunal was constituted under the Arbitration Act, 1996 pursuant to a contract containing an arbitration clause, and rendered an award - Employer did not raise an objection to jurisdiction before the arbitral tribunal - Employer did not initially raise the plea of lack of jurisdiction on the ground that the matter was governed by the special MP Act, 1983 in its petition under section 34 of the Act, 1996 - case falls squarely within the exception carved out by the Supreme Court - where award has already been made and if no objection to the jurisdiction of the arbitration was taken at relevant stage, the award may not be annulled only on that ground.**
- **Delay in completion - attribution of delay - Extension of time (EOT) - where the Engineer granted an extension without imposing liquidated damages and price adjustment was paid, the arbitral tribunal is correct in holding that delays were not attributable to the Contractor - finding of delay being factual and plausible cannot be re-opened by the court.**
- **Responsibility for site clearance and shifting of utilities - coordination responsibility on the Contractor does not transfer the Employer's primary obligation to provide an unencumbered site.**
- **Early warning requirement - absence of formal early warning notices did not disentitle Contractor to claim costs - arbitral tribunal can rely on the contemporaneous correspondence notifying delays and costs.**

[Gayatri Project Limited v. Madhya Pradesh Road Development Corporation Limited - Supreme Court - Decided on 15.5.2025]



- Evidentiary value of Chartered Accountant (CA) Certificates - audited project statements certified by statutory auditors are valid and reliable evidence of actual overhead costs - Contractor had not only submitted the Trial Balance sheets but also supported them by a person duly authorized to certify the accounts - expenses furnished year-wise for the total duration of the contract, including the extended period, necessary to meet the requirement of cost as defined in the contract - in the certificate issued along with the audited statement, the Chartered Accounting firm, which had audited the books of accounts in the usual course of business, stated that the overhead expenses incurred for the project were correctly extracted from the books of accounts/records of the Contractor - arbitral tribunal entitled to rely on such CA certificates over Engineer's Standard Data Book computations, which were not part of the contract.
- Reliance on Contractor's Monthly Progress Reports (MPRs) instead of Engineer's Reports - Engineer had considered in a restrictive manner the deployment of machinery notionally as per the list of minimum requirement for plant & equipment available in the contract - arbitral tribunal's reliance on Contractor's Monthly Progress Reports (MPRs) reflecting actual deployment rather than Engineer's minimal records - arbitral tribunal's approach in disregarding the Engineer's MPRs and relying solely on the Contractor's unilateral statements without there being any supporting material is perverse.
- Reliance on the MORTH Standard Data Book - computing of overheads - Standard Data Book does not form part of the Contract and does not accurately reflect the actual overheads incurred by the Contractor during the extended period.

[National Highways Authority of India v. Hindustan Construction Co. Ltd. - Delhi High Court - Decided on 16.10.2025]



**Gayatri Project Limited v. Madhya Pradesh Road Development Corporation Limited -
Supreme Court - Decided on 15.5.2025**

The parties executed a works contract for the "Rehabilitation and Strengthening" of roads in Madhya Pradesh. Disputes arose between the parties when the Contractor sought reimbursement for additional costs incurred due to a legislative increase in the entry tax on high-speed diesel. The Contractor referred the disputes to arbitration. The arbitral tribunal passed an award in favour of the Contractor. The Employer had not challenged the arbitral tribunal's jurisdiction in its initial petition. The Employer moved applications to amend its petition to introduce the ground of lack of jurisdiction. The High Court allowed the Employer's challenge, setting aside the award solely on the basis that the arbitral tribunal lacked jurisdiction because the matter was governed by the special MP Act, 1983. The Supreme Court observed that where award has already been made and if no objection to the jurisdiction of the arbitration was taken at relevant stage, the award should not be annulled only on that ground. The Supreme Court further observed that the L.G. Chaudhary case was not per incuriam for failing to cite Lion Engineering, as it consciously created an exception to ensure substantive justice and prevent the defeat of the arbitration process where parties had proceeded with the proceedings without objection.



**National Highways Authority of India v. Hindustan Construction Co. Ltd. -
Delhi High Court - Decided on 16.10.2025**

The Employer awarded to the Contractor the work for four-laning of National Highway No. 28 (Lucknow–Ayodhya section, Km 45.00 to Km 92.00). The contract was an item-rate contract, and the Contractor quoted rates for various items of work as per the technical specifications and Bill of Quantities. The work involved construction of roads, bridges, culverts, underpasses, and related works. The works could not be completed within the stipulated time due to various delays. Extensions of Time (EOT) were granted from time to time by the Engineer and approved by the Employer. Disputes arose during execution and were referred to arbitration. The arbitral tribunal held that the delay was not attributable to the Contractor, and therefore, the Contractor was entitled to compensation for additional costs. The arbitral tribunal allowed the Contractor's claims relating to overheads during extended period, cost of plant and equipment retention, unrecovered price variation on cement, steel, POL (petroleum, oil & lubricants), and labour and interest. The arbitral tribunal observed that the parties by their conduct had given a go-by to the concept of "priority stretch completion" and in any event, the contract did not stipulate any consequences for non-completion of the priority stretch. The arbitral tribunal after examining the material, found that the Contractor had been regularly notifying the Engineer / Employer regarding the occurrence of delay events and their consequent impact. It observed that the Contractor could only quantify and submit its interim claim for costs once all parameters affecting such costs were crystallized. The Employer challenged the award insofar it granted relief in respect of overhead expenses, costs on account of retention of plant and machinery during the extended period, and unrecovered portions of price adjustments towards steel, cement, POL ("Petroleum, Oil and Lubricants"), and labour. The Court upheld the arbitral award findings on delay, prolongation costs, and interpretation of clauses were reasoned and not perverse. Further, the reliance on CA-certified statements and rejection of Engineer's Standard Data Book rates were justified. The Court, however, concluded that the Engineer's MPRs revealed that each report contained a chart showing two separate columns one specifying the minimum number of machinery required under the contract and the other recording the actual number of machinery physically deployed at site. The arbitral tribunal's finding that the Engineer's Report reflected only the minimum contractual requirement is therefore, unsustainable. The arbitral award, insofar as it grants additional costs for extended stay of plant and equipment based solely on the Contractor's MPRs, cannot be sustained. The award of interest at the rate of 12% per annum by the arbitral tribunal was justified.



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