



IITArb Newsletter

INDIAN INSTITUTION OF TECHNICAL ARBITRATORS DELHI STATE CENTRE

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From Chairman's Desk

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Honourable Prime Minister has been emphasising the need of India taking positive steps towards making it an Arbitration hub. For achieving this goal it is necessary that Institutional Arbitration is encouraged. Indian Institution of Technical Arbitrators has been actively working towards this goal and had published its Arbitration Rules 2020 in December 2020. These Rules have since then been printed and circulated amongst various organisations. It has been decided by the headquarter of Indian Institution of Technical Arbitrators that the Indian Institution of Technical Arbitrators Arbitration Centre (IITAAC) be set up at Delhi.



As you are already aware Delhi State Centre has now set up a regular office in heart of the city which was inaugurated by the President IITArb on 27th of December 2021 and is now fully functional. It has a Spacious Conference Hall, a meeting room, office for Registrar General and staff besides reception and service areas. Facilities for video conferencing are also available in the Centre. Efforts put in by our members in setting up of the office are praiseworthy. I thank all those members of the Institution who willingly came forward and contributed generously towards the building development fund and helped their Institution. We are still in need of resources as the funds collected are falling short of the expenses incurred and request members to help their own Institution by contributing towards building fund. Number of meetings have already been held in last two months here and users are highly satisfied with the facilities being made available by the Centre. We are encouraged by the response received.

We would like that more and more of our esteemed members use the facilities available in their own Centre for their meetings and hearings. Any suggestions for improvement are most welcome. I would like to place on record my deep appreciation for the untiring efforts put in by Er. Kabi and his team members in bringing out this issue of Newsletter in time inspite of so many odds.

Er. Krishna Kant

Construction Law & Arbitration

The last interactive session hosted by the Delhi State Centre of IITArb was on the topic of arbitration in February 2020. Considering the large participation and huge appreciation for the program, it was proposed to have the next session in March 2020, on construction law. However, this had to be cancelled due to onset of Covid Pandemic. The program is being held now at the same venue on April 29, on the topic 'Legal aspects in engineering contracts & arbitration'- dealing essentially with construction law.



'Construction law' deals with legal aspects in engineering contracts and has been recognized as a specialized branch of law since the latter part of the 20th century in various common law jurisdictions. Construction law transcends the national boundaries in application subject to certain differences in civil and common law jurisdictions and the domestic statutory developments. The Indian Contract Act, 1872, does not purport to contain the whole law of contract; as it defines and amends certain parts of law only relating to the contracts and is not a consolidating Act. We are a common law jurisdiction. The construction law, as developed in other common law jurisdictions, do apply in India, subject to the same not inconsistent with the statutes in India. Also, caution is required in applying construction law developed in other jurisdictions, based on different standard forms of contracts and statutory developments in those jurisdictions. This makes the construction law in India complex.

The topics for the interactive session have been chosen carefully, considering the limitation of time. The issues related to extension of time and liquidated damages are debated eternally. The law of liquidated damages and penalty has seen some churning in UK recently, but the same is dealt distinctly in India being codified in the statute and interpreted by the Supreme Court.

Construction contracts are document heavy and facts intensive. The construction of such contracts is contextual and not purely textual. The issues related to limitation of liability and exclusion clauses, opposed to prevention principle, sometimes throw challenges of application. Implied obligations in different standard forms of contracts and the concept of contextual contracts have received judicial attention and recognition. There is amendment in section 28(3) of the A & C Act, 1996 to undo the rigidity of 'terms of contracts' argument as per earlier judicial precedents. Hence, constructing the construction contracts in the factual matrix makes every case different.

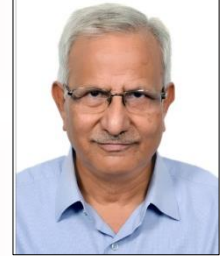
Contemporaneous documents are the best evidence in construction disputes. Yet, oral evidence may be useful and necessary, at times. Examination of the fact and expert evidence is generally done through written statement of the witness/ expert in affidavit. The topic of cross examination of such witness/ expert, in construction arbitration; and when and how the same is required, is an interesting subject for discussion. Hope, we shall have a fascinating discussion on April 29, 2022 and warmly welcome all the participants, in advance, to join the daylong session.

Wish You A Very Happy Hindu New Year

Er. G C Kabi, FCI Arb

Arbitration Centre (IITAAC)

Indian Institution of Technical Arbitrators had published its Arbitration Rules 2020 for institutional arbitration. These Rules are available on Institution's website at www.iitarb.org. These rules provide for setting up of an Arbitration Centre which will be called Indian Institution of Technical Arbitrators Arbitration Centre (IITAAC). The Governing Council, IITArb has approved setting up of the Arbitration Centre at New Delhi in the premises of Delhi State Centre at RK Puram, New Delhi



Er. Nand Lal Singh

This Arbitration Centre has since started functioning from its office in New Delhi. To ensure smooth working of the Centre, Governing Council of Indian Institution of Technical Arbitrators, has also appointed a Registrar General who is the head of arbitration Centre secretariat and also functions as an ex officio member of the Empowered Committee.

Any request for arbitration has to be addressed to the Registrar General at following address:

The Registrar General

Indian Institution of Technical Arbitrators
IBC Building, Sector-6, Kama Koti Marg,
R. K. Puram, New Delhi-110022
Email: registrar.genral.iitarb@gmail.com
Tel: 011-26100480

The IITArb has a list of empaneled arbitrators. The Registrar General is shortly calling for options for empanelment of fresh arbitrators and update the list of arbitrators.

Er. N. L. Singh, Former Special Director General CPWD and an eminent engineer, has taken over as first Registrar General of IITAAC on 25.02.2022. Indian Institution of Technical Arbitrators has a panel of more than 150 empanelled Arbitrators, who are well versed in arbitration and contractual matters with long experience in field of dispute resolution behind them. All those seeking to have independent, impartial and knowledgeable arbitrators in the field of engineering disputes are requested to avail the services of Indian Institution of Technical Arbitrators Arbitration Centre for economical and speedy settlement of their cases.

**INDIAN INSTITUTION OF TECHNICAL ARBITRATORS DELHI STATE
CENTRE IS ORGANISING ONE-DAY INTERACTIVE SESSION ON**

“LEGAL ASPECTS IN ENGINEERING CONTRACTS & ARBITRATION”

ON 29th APRIL 2022

**At India International Centre, Seminar Hall (2 & 3), 40 Max Mueller Marg,
Lodhi Gardens, Lodhi Estate, New Delhi-110003**

PROGRAM

Registration	:	09.15-09.45 Hrs
Welcome & Introduction	:	09.45-10.00Hrs
Technical Session 1		
Construction law, the Indian perspective	:	10.00-11.30 Hrs.
Panelists: a) Er. G.C. Kabi – Former Chief Engineer CPWD and Arbitrator GOI b) Mr. Ajay Nandalike, Advocate c) Er. M.C.T Pareva, Former ADG CPWD and Arbitrator		
Tea- break- 11.30- 11.45 Hrs		
Technical Session 2		
Extension of time & claim of liquidated damages	:	11.45-13.15 Hrs.
Panelists: a) Mr. A. K. Varma, Senior Advocate b) Er. Jag Mohan Lal, Former ADG CPWD and Arbitrator c) Er. Anil Kumar Varma, Former SDG CPWD and Arbitrator		
Lunch break 13.15 to 14.00 Hrs		
Technical Session 3		
Constructing construction contracts	:	14.00–15.15 Hrs.
Panelists: a) Er. S.P. Singh – Former ADG CPWD and Arbitrator b) Er. Rajesh Banga- Chief Engineer CPWD & Former Arbitrator GOI c) Er. A.K. Nagar- Former Senior DDG, DOT- BSNL		
Tea break 15.15 - 15.30 Hrs.		
Technical Session 4		
Cross examination in construction arbitration	:	15.30–16.45 Hrs.
Panelists: a) Mr. Ratan Singh – Senior Advocate b) Mr. Saurav Agrawal- Advocate c) Mr. Ajay Nandalike- Advocate		
Concluding Session	:	16.45–17.00 Hrs.

Persons to be contacted for the Session:

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Photographs of the IITArb, DSC Office Complex



Activities of Delhi State Centre, IITArb

By

Er. MCT Pareva, FIITArb, Hony. Secretary

1. **1st GB Meeting for the term 2021-23 was held on 06.12.2021:**
13 members attended.

a) **Following three GB members were Co-opted by the GB Namely:**

1. Er. Brij Mohan Khateek
2. Er. Ashok Khurana and
3. Er. M. M. Sangal



b) Action plan for the year was finalised and following task forces were constituted to ensure implementation:

c) **Newsletter:**

Er. GC Kabi is Editor-cum-Coordinator for the Newsletter with Er. S.P. Singh, Er. GS Dubey and Er. AK Gupta as members.

d) Recognition of IITArb by Ministry of Law and Arbitration Council of India (when notified):

This will be headed by Er. Rakesh Misra with members - Er. S.P. Singh, Er. Neeraj Rajvanshi and Er. (Dr.) S.B. Saraswat.

e) **Arranging Lectures/Training programs and Webinars:**

This is headed by Er. (Dr.) S.B. Saraswat with Er. Neeraj Rajvanshi and Er. A.K. Gupta as members will be responsible for this activity too.

f) **Website Updating:**

This is headed by Er. SK Sharma with the help of Er. S.P. Singh. and Er. Neeraj Rajvanshi.

g) **Steps to widen membership:**

This will be coordinated by Er. MCT Pareva with the help of Er. A.K. Nagar and Er. Neeraj Rajvanshi. Individual members of this centre have been requested for the same to use their individual sources to enlarge the membership.

- 2. Newsletter of IITArb Delhi Centre**, Er. GC Kabi is Editor-cum-Coordinator for the Newsletter with Er. S.P. Singh, Er. GS Dubey and Er. AK Gupta as members. First Quarterly Newsletter (Issue No.1) has been published in Jan. 2022 which contained information and articles on arbitration related legal aspects, Court Judgments and were well received.

- 3. New Office of Delhi State Centre: Delhi State Centre has its regular office premises now in** “IBC Building, First Floor, Kama Koti Marg, RK IITArb Puram, New Delhi-110022” which is centrally located and is housed in newly constructed building with ample parking. It was inaugurated by Hon`ble President Er. KN Agrawal on 27.12.2021. **The new premises has been fully furnished and is operational now.** Facilities of Conference Hall with video conferencing, Committee Room, Reception, Office areas, Library and service areas are available with WIFI, Telephone (011-26100480), computer, printer/photocopier etc. It is already being used for arbitration proceedings. On appeal of Chairman, DSC members have contributed generously for the development work of the building.

- 4. Website of IITArb Delhi State Centre** is being updated from time to time.

- 5.** As directed by the President, IITArb Arbitration Centre Arbitration Rules (for Arbitration other than International Commercial Arbitration), for short, IITAAC Arbitration Rules, have been got printed by DSC and have been sent to HQ and all Centres of IITArb.

- 6.** GC in its 41st meeting decided to have IITArb Arbitration Centre located at New Delhi. Accordingly the Centre has started functioning from premises of Delhi State Centre. Er. Nand Lal Singh, former Special Director General CPWD, has taken over charge of center’s first Registrar General.

- 7.** Office bearers of the Delhi State Centre are meeting regularly to review and implement the activities of the centre. Tuesday forenoon has been earmarked for such interactions which are held at DSC premises.

Some Important Recent Case Laws

By

VARTIKA SINGHANIA

(Associate at Kabi & Associates)



1. Enforceability of Unstamped Arbitration Agreement

Intercontinental Hotels Group (India) Pvt. Ltd. v. Waterline Hotels Pvt. Ltd., 2022 SCC OnLine SC 83

In a section 11(6) (for appointment of the Arbitrator) application, a three-judge bench of the Supreme Court recently dealt with the issue of arbitration agreements contained in unstamped instruments. The Court in this case allowed that application and opined that once that stamp duty has been paid, whether it is insufficient or appropriate is a question that may be answered at a later stage as this court cannot review or go into this aspect u/s 11(6) of the Arbitration & Conciliation Act, 1996 although the general issue on enforceability of such agreements has been referred to a Constitution Bench.

“until the larger Bench decides on the interplay between Sections 11(6) and 16– the Courts should ensure that arbitrations are carried on, unless the issue before the Court patently indicates existence of deadwood.”

“...Although we agree that there is a need to constitute a larger Bench to settle the jurisprudence, we are also cognizant of time sensitivity when dealing with arbitration issues. All these matters are still at a pre-appointment stage, and we cannot leave them hanging until the larger Bench settles the issue.”

2. Supreme court reiterates that an arbitral tribunal has the power to award interest on interest

UHL Power Co. Ltd. v. State of Himachal Pradesh, 2022 SCC OnLine SC 19,

The Hon'ble Supreme Court after considering the fact of the present case and distinguishing it from other, held that an arbitrator has the power to grant post-award interest on the interest amount awarded under the Arbitration and Conciliation Act, 1996 (“Act”).,

“As the judgment in the case of S.L. Arora, on which reliance has been placed by the Division Bench of the High Court of Himachal Pradesh, has since been overruled by a three-Judge Bench of this Court in the case of Hyder Consulting (UK) Ltd., the findings returned by the Appellate Court in the impugned judgment to the effect that the Arbitral Tribunal is not empowered to grant compound interest or interest upon interest and only simple interest can be awarded in favour of UHL on the principal amount claimed, is

quashed and set aside. As a result, the findings returned in para 54(a) of the impugned judgment insofar as it relates to grant of the interest component, are reversed while restoring the arbitral award on the above aspect in favour”.

3. Supreme Court clarifies the applicability of Section 12(5) of the Act to arbitrations where the tribunal is constituted before the 2015 Amendment

Ellora Paper Mills Ltd. v. State of Madhya Pradesh, 2022 SCC OnLine SC 8

The Supreme Court held that an arbitral tribunal constituted as per an arbitration clause before the 2015 amendment to the Arbitration and Conciliation Act 1996 will lose its mandate if it violates the neutrality clause under Section 12(5) read with the Seventh Schedule, which were incorporated through the 2015 amendment.

“when the arbitration clause is found to be foul with the amended provision, the appointment of the arbitrator would be beyond the pale of the arbitration agreement, empowering the Court to appoint such an arbitrator as may be permissible. That would be the effect of the non-obstante clause contained in sub-section (5) of Section 12 and the other party cannot insist upon the appointment of the arbitrator in terms of the arbitration agreement.”

The Court said that an arbitral tribunal appointed as per such an arbitration clause will lose its mandate with the coming into force of Section 12(5).

“...by operation of law and by amending Section 12 and bringing on statute sub-section (5) of Section 12 read with Seventh Schedule, the earlier Arbitral Tribunal....has lost its mandate and such an Arbitral Tribunal cannot be permitted to continue and therefore a fresh arbitrator has to be appointed as per Arbitration Act, 1996”

4. Refusal to perform obligations as per work order, can be breach of contract but not abandonment: Supreme Court

Shripati Lakhu Mane v. The Member Secretary, Maharashtra Water Supply And Sewerage Board And Ors

The Supreme Court, held that the refusal of a contractor to continue to execute the work, unless the reciprocal promises are performed by the other party, cannot be termed as abandonment of contract.

“...if any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal.”

As material alterations in the terms of the original contract were made by the respondents, the Court noted –

"It is fundamental to the Law of Contract that whenever a material alteration takes place in the terms of the original contract, on account of any act of omission or commission on the part of one of the parties to the contract, it is open to the other party not to perform the original contract. This will not amount to abandonment.

"The refusal of a contractor to continue to execute the work, unless the reciprocal promises are performed by the other party, cannot be termed as abandonment of contract. A refusal by one party to a contract, may entitle the other party either to sue for breach or to rescind the contract and sue on a quantum meruit for the work already done."

Indian Institution of Technical Arbitrators

For New Membership please contact Er. MCT Pareva, FIITArb at the address of Delhi State Centre given below:

Contact:

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Honorary Secretary,**

**IITArb, Delhi State Centre
Communication Address:**

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Feedback and Suggestions are Welcome; please write to us at iitarbdelhi12@gmail.com