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— 2ND VIDHI VAARTA —

Construction Arbitration Law Moot Court

Competition 2026



30TH OCT. - 1ST NOV.,
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1. The Republic of Aryan is a sovereign, socialistic, secular, democratic, and republic nation governed by a written Constitution substantially analogous to the Constitution of India. The statutory framework governing Contracts, Arbitration, Commercial Transactions, Public Procurement, Public Finance, Evidence and allied Commercial laws is pari-materia with the corresponding laws in force within Republic of India. The dispute giving rise to the present proceedings arose within the territorial jurisdiction of the State of North.
2. ABC Infrastructure Limited ("ABC") is a Government Company within the meaning of the Companies Act and a Public Sector Undertaking wholly owned by the Union Government of Aryan. It is engaged in the execution of large-scale Engineering, Procurement and Construction ("EPC") projects involving national highways, bridges, tunnels and other strategic public infrastructure.
3. XYZ Constructions Private Limited ("XYZ") is an infrastructure company incorporated under the Companies Act and has, over the preceding fifteen years, executed several highway and bridge projects for various Central and State Government agencies. It possesses specialised expertise in the construction of high-speed transportation corridors, drainage engineering and geotechnical infrastructure.
4. On 10th January 2018, ABC awarded to XYZ an Engineering, Procurement and Construction ("EPC") Contract for the erection of a Four-Lane National Highway Corridor connecting Parsar Nagar and Miragadh in the State of North. The total contract value was ANR 425 Crores, and the Project was scheduled to be completed within 72 months from the Commencement Date.

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5. The Contract, inter alia, provided that additional or varied work would ordinarily be payable only upon issuance of a written Variation Order by the Engineer-in-Charge. The Engineer-in-Charge was authorised to issue such site instructions as were instrumental for execution of the Project, subject to approval of the Competent Financial Authority, wherever so required. The Contract further stipulated that acceptance of the Final Bill would ordinarily constitute full and final settlement of contractual claims unless specific claims had been expressly reserved in writing prior to execution of the Final Settlement Documents. It also incorporated an arbitration clause providing for reference of disputes under the Arbitration and Conciliation Act, 1996.

6. Following the execution of the Contract, the Project commenced in accordance with the agreed timelines. Throughout the course of execution, periodic review meetings were conducted between officers of ABC, representatives of the Independent Engineer and senior officials of XYZ. Site inspection notes, progress reports, Measurement Books ("MBs"), daily work registers and other contractual records were maintained in the ordinary course of execution of the Project.

7. Approximately thirty months after commencement of the Project, unusually heavy monsoon rainfall resulted in extensive waterlogging across several stretches of the highway alignment. Subsequent joint inspections undertaken by officers of ABC, representatives of the Independent Engineer and the Project Management Consultant revealed concerns regarding the adequacy of the drainage system originally contemplated under the Project, particularly in light of the increased hydraulic flow experienced across the affected stretches.

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8. Following the aforesaid inspections, additional drainage and protection works came to be undertaken during the execution of the Project. These works included the redesign and expansion of cross-drainage structures, construction of additional reinforced culverts, widening of embankment protection works, modification of retaining walls, strengthening of vulnerable service roads and installation of additional storm-water drainage systems. The said works were undertaken after a series of site inspections and technical review meetings held during the course of execution of the Project.

9. During the execution of additional works, entries relating to the quantities executed formed part of the Measurement Books maintained at site. Portions of such work were also reflected in certain Running Bills, while joint inspection reports recorded completion of modified drainage infrastructure. Officers of ABC periodically inspected the progress of the works, and internal project records reflected those proposals relating to approval of the additional quantities were under consideration. No written Variation Order approving the additional works was, however, issued under the Contract.

10. Upon completion of the additional works, XYZ submitted invoices claiming reimbursement of approximately ANR 5 Crores, representing expenditure allegedly incurred towards execution of work beyond the quantities originally contemplated under the Contract. The invoices remained pending, as approval from the Competent Financial Authority of ABC had not been accorded. The additional amount was consequently not released during the subsistence of the Project.

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11. During the latter stages of execution, the Project experienced delays attributable to shortages of construction materials, disruptions in transportation logistics and reduced labour availability.

Upon consideration of a request submitted by XYZ, ABC granted a one-time extension of three months, thereby revising the contractual completion period from 72 months to 75 months, while expressly reserving its rights under the Contract. The Project was ultimately completed during the 74th month, i.e., within the extended contractual period.

12. Upon substantial completion of the Project, the Independent Engineer issued a Provisional Completion Report certifying that the highway was fit for commercial use, subject to rectification of certain minor defects identified during the final inspection. Thereafter, ABC proceeded to process the Final Bill and informed XYZ that the Final Payment, release of the Performance Security, and issuance of the Final Completion Certificate would be undertaken upon execution of the customary Final Settlement Documents, including the No Objection Certificate ("NOC") and the No Dues Certificate ("NDC"). The outstanding contractual dues payable under the Contract were approximately ANR 25 Crores, apart from the release of retention money and bank guarantees.

13. The Final Settlement Documents were executed on behalf of XYZ by Mr. R, who was serving as the General Manager (Projects) and had, throughout the execution of the Project, acted as the principal liaison between the parties. During the course of the Project, Mr. R had attended contractual meetings, signed Running Bills, progress reports, correspondence, extension requests and various documents connected with execution of the Contract.

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Under the internal governance framework of XYZ, however, settlement or waiver of monetary claims exceeding ANR 1 Crore was stated to require approval of the Board of Directors in accordance with the Company's Delegation of Authority Policy, and the applicable Board Resolution. No such approval had been obtained prior to execution of the No Dues Certificate.

14. By the No Dues Certificate so executed, the Parties acknowledged that all contractual obligations stood discharged, and that no surviving monetary or contractual claims remained in respect of the Project. Immediately thereafter, ABC released the balance contractual payment, issued the Final Completion Certificate & No Objection Certificate (“NOC”), and initiated the process for release of the remaining contractual securities.

15. Approximately three weeks after receipt of the Final Payment, XYZ addressed a legal notice to ABC asserting that its claim in respect of the additional works had not been abandoned by execution of the Final Settlement Documents. The notice stated that the No Dues Certificate had been executed during the course of contractual closure when the release of admitted contractual dues, Performance Bank Guarantees, and other securities remained pending. ABC rejected the assertions contained in the notice and maintained that it had been issued only after the contractual consideration had been paid in full.

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16. During the exchange of correspondence that followed, reliance came to be placed upon several documents generated during execution of the Project, including, internal e-mails exchanged between the project officials concerning post-completion regularisation of certain additional works, minutes of monthly review meetings which contains proposals relating to revised quantities were under process, communications exchanged between project officials regarding release of payment after administrative approval, jointly maintained Measurement Books, and the technical inspection reports acknowledging completion of the modified drainage infrastructure. The Parties disagree on the legal significance and evidentiary value of these records, particularly in the absence of a Formal Variation Order (“FVO”) issued under the Contract.

17. The Additional drainage systems, reinforced culverts, modified retaining structures, and strengthened embankment protection works constructed during execution of the Project continue to form part of the operational highway. Payment towards such additional works was, however, not released. During the course of the dispute, questions consequently arose regarding the legal effect of execution of the additional works in the absence of a FVO, the contractual consequences flowing from acceptance and utilisation of such works, and the extent to which rights and liabilities of the parties were governed by the terms of the Contract.

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18. Following the exchange of legal notices, the dispute between the parties assumed a broader commercial dimension. ABC maintained that, being a Government Company entrusted with expenditure of public funds, every payment involving variation of contractual quantities was required to conform to the applicable governmental procurement and financial framework, including, the General Financial Rules, 2017, the Central Vigilance Commission framework, the Delegation of Financial Powers Rules, the CPWD Works Manual, 2022, the applicable internal Procurement and Contract Management Manual, and the prescribed governmental audit protocols. Under the said framework, any expenditure involving additional quantities or financial implications beyond the sanctioned contractual scope requires prior administrative approval, and financial sanction from the Competent Authority. No such approval had been granted in respect of the additional works executed during the Project.

19. Subsequent to the completion of the Project, the office of the Comptroller and Auditor General (“CAG”) conducted a performance audit concerning the Project. The audit reportedly recorded that several additional quantities had been executed without approved Variation Orders, the Project had exceeded the originally stipulated completion period, financial approval in respect of the additional expenditure was absent from the official record, and any payment beyond the Final Settlement might expose the concerned officers to audit and vigilance proceedings. The audit observations thereafter assumed significance during the correspondence exchanged between the parties following closure of the Project.

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20. During the pendency of the dispute, XYZ initiated internal disciplinary proceedings against Mr. R in relation to the execution of the No Dues Certificate without obtaining approval of the Board of Directors. The proceedings questioned whether the execution of the Final Settlement Documents fell within the authority delegated to Mr. R under the internal governance framework of the Company. Mr. R, however, maintained that throughout the execution of the Project he had acted in accordance with the directions of the senior management of XYZ, and that execution of the Final Settlement Documents formed part of the routine contractual closure process consistently followed by the Company. The relevance and legal effect of the said disciplinary proceedings upon the validity and evidentiary value of the No Dues Certificate subsequently became a matter of dispute between the Parties.

21. The Contract contained an arbitration clause providing that all disputes arising out of or in connection with the Contract would be resolved in accordance with the provisions of the Arbitration and Conciliation Act, 1996. Upon failure of the Parties to amicably resolve their disputes, XYZ invoked the arbitration clause and issued a Notice invoking Arbitration and called upon ABC to concur in the appointment of an independent Sole Arbitrator. In response, ABC proposed the appointment of a retired Executive Director of another Public Sector Undertaking as the Sole Arbitrator in accordance with the contractual appointment procedure.

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22. XYZ objected to the proposed appointment on the ground that the nominated arbitrator was rendered ineligible by virtue of Section 12(5) read with the Seventh Schedule of the Arbitration and Conciliation Act, 1996. As the parties failed to arrive at a consensus regarding the constitution of the Arbitral Tribunal, proceedings under Section 11 of the Arbitration and Conciliation Act, 1996 were instituted before the Hon'ble High Court of North for constitution of the Arbitral Tribunal.

23. By its order dated 01.10.2026., the Hon'ble High Court, being satisfied as to the existence of a valid arbitration clause between the Parties, appointed Hon'ble Mr. Justice Z, one of the former Judge of the High Court of North as the Sole Arbitrator to adjudicate all disputes arising out of the Contract while expressly leaving all questions relating to the rights, liabilities and contractual claims of the Parties to be determined by the learned Arbitral Tribunal in accordance with law.

24. Pursuant to the aforesaid order, the learned Sole Arbitrator entered upon the reference and fixed a preliminary procedural hearing. Consequent thereto, XYZ filed its Statement of Claim, setting out the contractual and ancillary reliefs claimed by it, while ABC filed its Statement of Defence, opposing the claims and raising its respective contractual and legal objections. Upon completion of pleadings in accordance with the Section 23 of the Arbitration and Conciliation Act, 1996, the learned Sole Arbitrator, having considered the pleadings and documents placed on record by the Parties, framed the following issues for adjudication, or points of determination.

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POINTS OF DETERMINATION/ISSUES FOR CONSIDERATION:

I. Whether execution of the additional works in the absence of a formal Variation Order gives rise to any enforceable contractual or quasi-contractual rights in favour of XYZ under the Contract, equity, and applicable law?

II. Whether execution of the No Dues Certificate and acceptance of the Final Payment constitute a valid accord and satisfaction extinguishing the subsequent claims of XYZ, or whether the No Dues Certificate is liable to be avoided on the grounds of fraud, misrepresentation, coercion, economic duress, undue influence or lack of authority?

III. Whether the Governmental Procurement Framework, Internal Financial Regulations, Audit Observations, and Disciplinary proceedings relied upon by ABC affect the contractual and quasi-contractual rights and liabilities of XYZ?

Note: This Moot Proposition is drafted by Dr. Navaneet Kumar, Partner, Saxenas and Kumar Law Chambers LLP .

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