



INDIA SET TO LOSE OVER RS.4.11 LAC CRORE IN PROJECTS!



ISSUE 01

In a shocking revelation by the Ministry of Statistics and Program Implementation, around 412 infrastructure projects, each worth Rs.150 crore or more, have incurred staggering cost overruns of over Rs 4.11 lac crore owing to a range of delays caused due to various reasons. The ministry has recently shared an assessment of only 1683 projects that have project cost of over Rs.150 crore. The figure could further escalate if projects of less than Rs. 150 crore are also considered. Out of the 1683 projects that have been accessed, 412 projects have reported cost overruns while 471 projects reported losses due to time escalation.

These projects are a part of several big-ticket infrastructure schemes that have been launched by the government for overall economic development and to achieve the \$5 trillion economy mark.

As per the report tabled by the Ministry, “Total original cost of implementation of the 1683 projects was Rs 20,65,336.20 crore and their anticipated completion cost is likely to be Rs 24,77,167.67crore, which reflects overall cost overruns of Rs 4,11,831.47 crore (19.94 per cent of original cost)” The expenditure incurred on these projects till June 2020 is Rs 11,21,435.29 crore, which is 45.27 per cent of the anticipated cost.

Out the 1683 projects costing over Rs.150 crore, 421 projects reported cost overruns and 471 projects time escalation.

The cause of delay in construction projects need timely intervention and proper solution to move ahead from the declining curve.

Out of 471 delayed projects, 127 have been delayed for 1 to 12 months, 112 reflect a delay of 13 to 24 months, 127 projects have been lagging from 25 to 60 months, and 105 projects are behind the schedule for over 61 months; taking the average time overrun in these 471 projects to 43.34 months.

Major reasons for stated for delay:

- Land acquisition
- Environment & forest clearance
- Supply of equipment
- Geo-tech conditions, etc.

While the reasons seem common enough to a range of large construction projects, these delays have cost excessive cost overruns. However, establishing accountability for the delays, why and who to blame, is always an issue and often leads to major disputes. Well, going by the usual logic- ‘the client is always right’, it’s the contractor who ends up being at the loser end of the financial paradigm. He needs to find variances and file well-documented claims and present it before the right authority. It is a mammoth task and looks a steep uphill climb for these delayed projects.

THE ROAD TO SUCCESS IS ALWAYS UNDER CONSTRUCTION!

CONSTRUCTION NEWS

BHEL begins civil works at 660-MW Sagardighi Thermal Power Plant in West Bengal

Valued at approximately Rs 3,500 crore, the turnkey bid for Sagardighi Thermal Power Project Extension Unit-5 was won by BHEL against tough international competitive bidding. The civil works for the same has been initiated.

Govt announces creation of 3.65 crore jobs through Construction of houses under PMAY (U)

Union minister Mr. Hardeep Singh Puri stated that around 3.65 crore jobs would be generated in the construction of houses approved under the Pradhan Mantri Awas Yojana (Urban) in the country.

MNRE extends project deadlines, issues 5 months blanket extension.

The Ministry of New and Renewable Energy has extended the deadlines for projects under construction and will now issue a blanket extension of five months following disruption due to the COVID-induced lockdowns. No case to case examination or evidential documents/evidence would be required to claim such extension.

Govt considering permitting FDI for LLPs in construction development.

Currently, FDI is permitted under the automatic route in Limited Liability Partnerships that are operating in sectors where 100 per cent foreign direct investment is allowed through the automatic route and there are no FDI-linked performance restrictions.

MMRDA floats tender for Mumbai Metro Rail Project.

The Mumbai Metropolitan Region Development Authority (MMRDA) has floated tender for Mumbai Metro Rail Project in Maharashtra. The scope of work includes part design and construction of elevated viaduct and five elevated metro stations. The project is to be completed in 30 months at the cost of Rs 568.55 crore.

KEC International wins orders worth Rs 1,401 crore.

KEC International, an RPG Group company and a major EPC player in the international arena, has bagged orders worth 1,401 crore, across various business segments. These include a transmission & distribution project in Oman, overhead electrification in Indian railways, supply of cables in India & overseas, and a foray into the Indian defense sector.

Construction Humor



RELIEF IN CONTRACTUAL OBLIGATIONS DURING COVID-19

Covid-19 Pandemic and its shocking impact on the Indian and the world economy India is quite a hot topic. Employers and Contractors are staring at several months of project delays with idling resources and materials that have cascading effects on the cost of the project. The contractors are seeking relief under force majeure from the clients.

Economic Survey links infrastructure with social reforms to boost growth.

What is the way out? What relief they can get under force majeure for exceptional events? Are there any provisions under the contract which can grant more relief? Is there any remedy under law?

Here are some illustrative pointers that may address the current concern after careful review & analysis:

- ① The Force Majeure in general and COVID-19 cannot be the excuse of getting rid of all contractual obligations.
- ② The contractor must explore alternative means to mitigate the circumstances.
- ③ If the “Force Majeure” clause is absent in the contract, the affected party must refer to the EOT, Variation and other contract clauses that may provide relief on occurrence of such kind of event.
- ④ If the pandemic word is categorically mentioned in the Force Majeure clause then the COVID-19 would be treated as Force Majeure.
- ⑤ If the “Pandemic” word is missing in the Force Majeure Clause, then the governing law allows the claim of the Pandemic as Force Majeure and how the local authorities intend to deal with the Pandemic needs to be explored.
- ⑥ In the absence of any other relevant contract clause that entitles the affected party to claim for time and cost, the affected party must refer to the Governing Law of the contract.
- ⑦ Force Majeure clause only provides temporary reprieve and cannot be used for Frustration of Contract or termination, unless stated categorically in the contract agreement.
- ⑧ If the Force Majeure event continues to substantially prevent execution of works for a continuous period of 84 days from the date of Notice or for multiple periods which totals to more than 140 days due to the same Force Majeure, the FIDIC contract provides an option for either party to terminate the contract. However, it can be governed by the special condition of contract or by local laws.
- ⑨ Once the contract clause and the claims have been identified, it is imperative for the affected party to Notify the Engineer/Employer as per the timelines governing FIDIC contract terms.
- ⑩ In all circumstances, a failure to notify in a timely manner would result in loss of entitlement to relief for the Contractor. It is also important to note that email notifications are not considered as “Notices” in many cases.

Way Forward:

To manage Contract Claims effectively during COVID-19 & the lockdown period, the Contractors must undertake a phased approach to identify, evaluate, timely notify, and substantiate their claims to avoid any major penalties or losses. They must prove that they have attempted/taken all measures to mitigate the losses. Lockdown cannot be the reason to wriggle out of all obligations & disruption of work. The best way to resolve this dispute is through reconciliation & mediation or by the claim and arbitration.

Note: Aforementioned views/suggestions are based on our experience, however expert legal advice can be sought on case to case



CONTRACT SQUARE- LEADERS IN CONTRACTUAL CLAIM MANAGEMENT SERVICES

Contract Square is a team of highly qualified and specialized professionals dedicated to resolving all your contracts & claims related distress in the domain of Construction & Infrastructure development. Contract Square is currently handling Contract Claims worth about INR 2,400 crore for its valued clients.

OUR EXPERT SERVICES:

- **CLAIMS MANAGEMENT-** We ensure efficient identification, documentation, and timely filing of well-substantiated claims to ensure quick settlement & significant awards
- **CONTRACT MANAGEMENT-** We undertake detailed review and analysis of contracts and track sustainable claims to ensure complete compliance with the contractual obligations
- **DISPUTE RESOLUTION:** We encourage alternate Dispute Resolution measures like negotiations, mediations & arbitration for speedy & cost-effective resolution of claims
- **DOCUMENT MANAGEMENT:** We digitize, store, sequence, and easily record your documents in one place
- **PROJECT MANAGEMENT:** We ensure constant monitoring & evaluation of the project in all stages to avoid any missteps and to facilitate timely decisions for project execution
- **INSURANCE MANAGEMENT:** We assist in finalizing the claim value, coordinating surveyor visits, and creating documentation for processing of claims for the losses incurred

Continuing with a successful track record, the Company has recently received a mandate for Construction Claims Management from two leading infrastructure development companies for their legitimate claims' worth over Rs.100 crore.

Partner with Contract Square to leave all your Contracts and Claims management troubles behind while you focus on timely execution & delivery of the projects.

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