



**Navigate Construction Arbitration Landscape with The ADROIT's Newsletter designed for Legal and Construction Professionals**

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- 👉 The Legal Segment: Deep dive into pivotal legal topics
- 👉 Arbitration Updates: Key trends and case highlights from the last quarter
- 👉 Virtual Spotlight: Recap of impactful virtual events
- 👉 Firm's Recognition: Celebrating milestones and accolades
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## **From the Desk of the Managing Editor**

**Dear Colleagues and Readers,**

It gives me immense pleasure to present the **18th Edition of our ADR Newsletter**, as we continue our commitment to sharing practical insights, judicial developments, and industry-oriented perspectives from the evolving world of construction law and arbitration.

This edition features significant judicial guidance from Indian courts, including the Calcutta High Court's ruling on unlawful contract termination due to unjustified delay attribution, reaffirming that repeated extensions of time and continued acceptance of work can bar an employer from terminating a contract for delay. We also analyse the Supreme Court's position on whether a court can revisit and set aside its own arbitrator appointment, reinforcing certainty and sanctity in arbitral proceedings.

We further delve into critical contract administration themes such as Head Office Overheads and the "Fixed Cost" Trap, highlighting how claims must be framed around loss of opportunity rather than mere expenditure. The edition also draws valuable lessons from TCS v. Inspira, where conduct was held to override contractual deadlines, reaffirming that contractual behaviour can extend obligations and liabilities beyond stipulated timelines.

Alongside these legal discussions, we continue to emphasise capacity building through our learning initiatives, including the launch of the Introduction to Construction Arbitration course, designed to bridge the techno-legal gap for professionals entering the arbitration ecosystem.

As always, I extend my sincere gratitude to our readers, clients, and professional associates for your continued trust and engagement. We remain committed to advancing clarity, fairness, and professionalism in dispute resolution across jurisdictions.



A.Ramasubramanian B.E., LLB., FCIARB,  
Managing Director/ Lead Consultant - ADR

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# MONTHLY NEWSLETTER

## CONTRACT TERMINATION DUE TO UNJUSTIFIED DELAY ATTRIBUTION IS UNLAWFUL - CALCUTTA HIGH COURT.

**J.G. Engineers Private Limited vs. National Building Construction Corporation Ltd. (01.07.2024 - CALHC) MANU/WB/1241/2024:**

**Key Takeaway:** *Repeated extensions of time and continued acceptance of work bar an employer from terminating a contract for delay and from raising counterclaims based on such termination.*

The High Court of Calcutta addressed the dispute between J.G. Engineers Private Limited and National Building Construction Corporation Ltd. regarding an arbitration award.

The core issue was the responsibility for delays in a construction project and the legality of contract termination.

The award dated December 17, 2013 passed by Mr. S. C. Vasudeva, Learned Sole Arbitrator in the matter of arbitration between M/s. J.G. Engineers (Pvt.) Ltd. and M/s. National Buildings Construction Corporation Limited in so far as the same held that the petitioner was primarily responsible for the delay in completion of the contract beyond March 25, 1995 and rejected and/or reduced the claims of the petitioner and allowed various counterclaims of the respondent be set aside;

59. The NBCC has extended the period of contract from time to time. In one hand, the NBCC has extended the time by a letter dated 09.11.1995 but on the other hand, on the same day i.e. on 09.11.1995, the NBCC has issued show cause notice upon the contractor for termination of the contract. On 25.11.1995, the contractor has submitted reply and even after the completion of the extended period, the contractor was allowed to continue with the work and after the period more than five months, the NBCC has come

to the conclusion that the reply submitted by the contractor was not satisfactory and the contractor has not completed the work within the stipulated period of time and it was terminated.

Though the Authority is having right to terminate the contract in terms of Clause 72 of the Contract but in the present case, this Court finds that Clause 72 is not applicable as the NBCC have extended the time by one letter and by another letter, the NBCC has issued show cause notice. The contractor has submitted the reply and after the period of about five months, the NBCC has come to the conclusion that the reply is not satisfactory and thus this Court is of the view that the NBCC cannot take the benefit of the Clause 72 of the contract.

The court found the arbitrator's conclusion that delays beyond March 25, 1995, were primarily attributable to the contractor to be perverse and set it aside. It upheld the finding that the contract termination was unlawful, thus invalidating NBCC's counterclaims.

The court allowed J.G. Engineers' application, dismissed NBCC's application, and upheld the award in favor of J.G. Engineers.



**Author: A.Ramasubramanian  
Managing Director/ Lead Consultant - ADR**

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## WHETHER A COURT HAS THE POWER TO RECONSIDER AND SET ASIDE ITS OWN ARBITRATOR APPOINTMENT? (APEX COURT)

**Hindustan Construction Company LTD. Through its authorised signatory Yogesh Dalal vs. Bihar Rajya Pul Nirman Nigam Limited and others (2025)**

**Key Takeaway:** *Repeated extensions of time and continued acceptance of work bar an employer from terminating a contract for delay and from raising counterclaims based on such termination.*

✍ In the present case, the High Court had itself appointed the arbitrator in 2021 under Section 11(6) of the Act.

✍ Both parties participated fully, and more than seventy hearings took place. The High Court also extended the arbitrator's mandate twice under Section 29A.

✍ At that stage, the High Court could not, by invoking its jurisdiction under Articles 226 and 227, retrospectively invalidate its own appointment order on the strength of a subsequent interpretation of a similar clause in another matter.

✍ Such an approach undermines certainty, dilutes the sanctity of judicial orders, and erodes confidence in the arbitral process.

*If the arbitrator had become unable to act owing to recusal or disqualification, the proper course was to invoke Section 15(2) and appoint a substitute arbitrator to continue from the existing stage of the proceedings.*

**Author: Madhu Mithra  
Senior Partner - International ADR**

## HEAD OFFICE OVERHEADS: THE "FIXED COST" TRAP

When a project is delayed, your Head Office burns huge sums of money—primarily on Rent and Director/Staff Salaries. Recovering these costs is difficult because they are "fixed." The Client will argue they are not related to the project. To get paid, you must stop proving that you spent the money, and start proving that you were deprived of the revenue to cover it.

### The "Pain Point":

*You are compiling your Final Account. You calculate the daily cost of running your Head Office (Rent, Finance, HR, Senior Management) and apply it to the delay period and submit a significant total.*

The Client rejects it entirely.

**Their argument is frustratingly simple:** "You would have paid your Head Office rent anyway. Whether our project was delayed or not, your rent is a fixed cost. You haven't lost any 'extra' money." You know this is wrong—your resources were tied up—but you are stuck in the "Fixed Cost Trap."

### What the SCL Protocol Says (The Missing Link)

The SCL Delay Protocol (2nd Edition, Para 1.28) clarifies this confusion. It distinguishes between two types of overheads, and claims often fail because they are treated as the same thing.

- **Dedicated Overheads:** Costs incurred specifically for this project (e.g., a specific design software license bought just for this job). Proof required: The Invoice.
- **Unabsorbed Overheads:** General costs (Rent, Admin, HR) that are shared across all projects. Proof required: Evidence of Lost Opportunity.

### The Narrative You Must Build

To recover rent and salaries, your argument must shift from *"Reimburse my expenses"* to *"Compensate my lost contribution."*

You need to demonstrate that your company usually covers its Head Office costs through the profit from multiple concurrent projects. Because the Client's delay tied up your bonding capacity, key staff, and cash flow, you were physically unable to take on a new project.

Therefore, the Client must pay the share of overheads that the new project would have covered.

### **Actionable Step: The "Declined Opportunity Log"**

- In a dispute, an electricity bill proves nothing. A letter declining a new tender because of the current delay proves everything.
- Instead of just filing invoices, maintain a log of work you turned away during the delay period.

### **Conclusion**

Stop relying on the Formula to prove your case; use it only to calculate the check after you have proven the loss. Focus on the money you didn't make, not the bills you paid



**Author: V Durga  
Associate - Arbitration - ADR**

# TCS VS. INSPIRA: A LESSON IN CONTRACTUAL CONDUCT AND LIABILITY

**Tata Consultancy Services Ltd. v. Inspira IT Products Pvt. Ltd. (Commercial Arbitration Petition No. 415 of 2024 with Arbitration Petition No. 372 of 2024)**

**Key Takeaway:** *A contract does not expire solely because a deadline is missed; if the buyer continues negotiations or fails to issue a formal termination notice, their conduct legally extends the contract's validity, making them liable for subsequent damages.*

TCS placed a Purchase Order with Inspira for 207 servers and monitors but failed to provide delivery locations by the agreed July 2013 deadline.

While TCS argued the contract automatically expired when this deadline passed, they continued to exchange emails for months, asking Inspira to hold the stock and promising to confirm delivery dates.

Inspira eventually sold the equipment to a third party at a loss and sued for damages. The Arbitrator ruled in favor of Inspira, and the Bombay High Court has now upheld that decision.

## **Key Highlights**

- **Conduct Overrules Deadlines:** The Court rejected TCS's argument that the contract ended "by efflux of time." It held that TCS's continued correspondence and failure to terminate the agreement effectively extended the contract's validity.
- **Implied Acceptance of Liability:** By engaging with the manufacturer (HP) to reverse the stock and asking Inspira to wait for instructions, TCS admitted the contract was still alive. A party cannot claim a contract has ended while simultaneously acting as if it is valid.
- **Valid Mitigation of Loss:** Inspira's decision to sell the specific servers to a third party was accepted as a necessary step to mitigate losses. The Court dismissed TCS's objection regarding lack of notice for the sale, noting TCS had previously refused to take delivery.
- **Verdict:** The Court dismissed TCS's petition, affirming the arbitral award of Rs. 96.2 Lakhs (plus interest) payable to Inspira.

**Author: K Jainivas  
Associate Lawyer - ADR**

## LEARN CONSTRUCTION ARBITRATION AT YOUR EASE

**Adroit's innovative initiative has the following learning resources:**

👉 Free e-course on '**Introduction to Arbitration**

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- **Introduction to International Arbitration**
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The above e-courses help CIArb aspirants and young and aspiring Arbitration professionals sail through the certification courses seamlessly.

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## COURSE DIRECTOR



**RAMASUBRAMANIAN  
AMMAMUTHU**

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### PROFILE HIGHLIGHTS:

- 20+ years as Dual-Qualified Engineer & Lawyer
- Empaneled Arbitrator: DIAC (Dubai), ADGM (Abu Dhabi), WIPO (Geneva)

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