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Assessing Damages in Construction Contracts – Part II

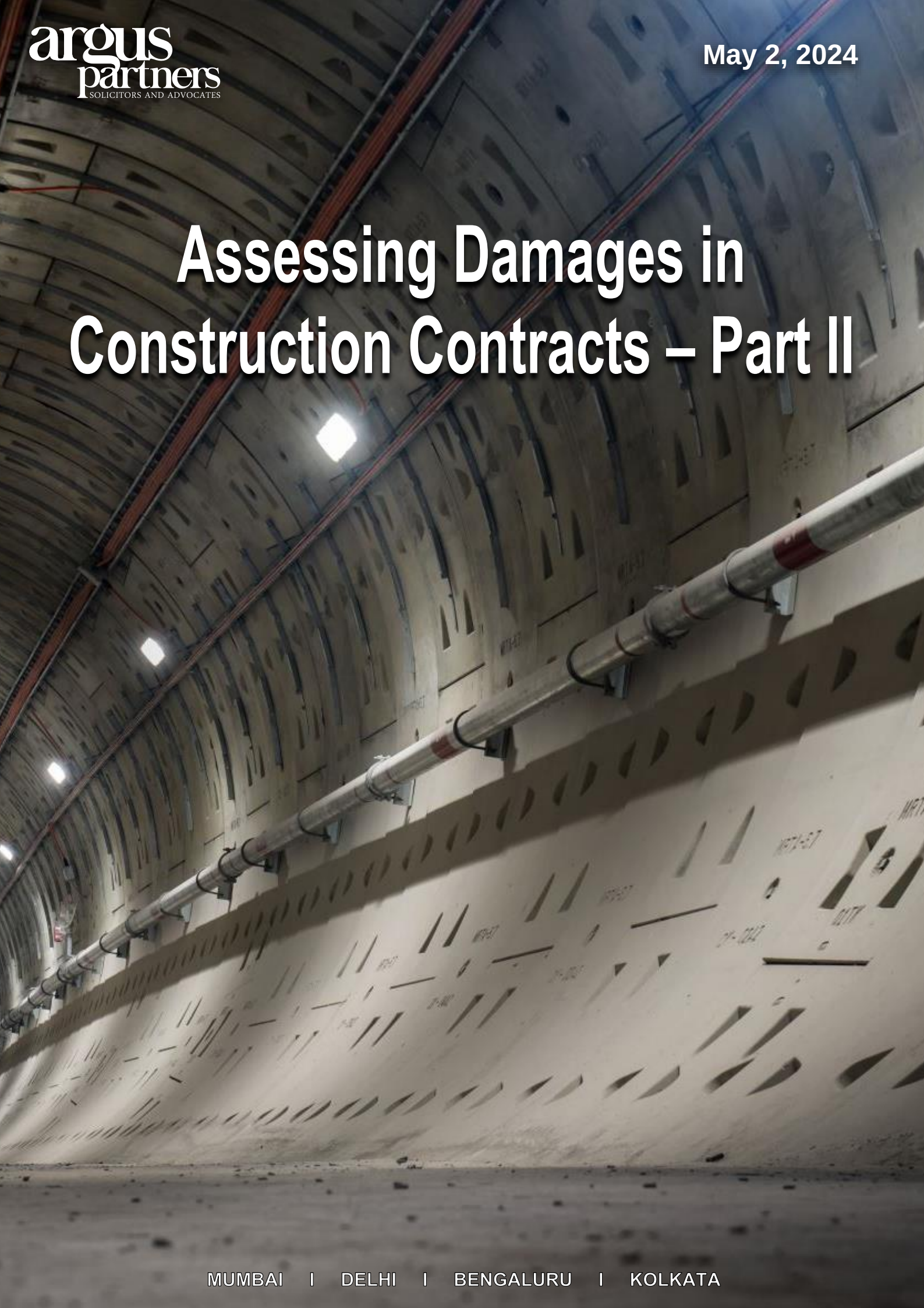

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Table of Contents

I. INTRODUCTION

This is the second part of our series on the subject of damages in construction and infrastructure disputes. The first part can be accessed, here.

In the first part, we noted that courts have upheld the use of the Hudson Formula, Emden Formula and Eichleay Formula to assess the merits of delay claims relating to Site Overheads, Head Office Overheads and loss of profits/ profitability. Since the publication of our first part, there have been significant developments in the nature of evidence which needs to be provided. More particularly, the Supreme Court of India has dealt with this issue recently in *Batliboi* v. *HPCL* [2023 INSC 850] and *Unibros* v. *AIR* [2023 INSC 931].

Evidently, the courts have established a much higher threshold to substantiate a claim for damages arising out of a breach of contract. As held in *Unibros*: "*… what is cut and dried is that in adjudging a claim …, the court may not make a guess in the dark; the credibility of the evidence, therefore, is the evidence of the credibility of such claim*" [Para 17, *Unibros*]. This criticality of evidence (while applying the test of patent illegality and perversity in connection with a domestic arbitration award) was further highlighted by the Supreme Court in *DMRC* v. *DAMEPL* [2024 INSC 292] where the court in a curative petition, decided in April 2024, observed that a finding based on no evidence at all would be perverse and liable to be set aside. [Para 40, DMRC]

This paper attempts to critique the recent developments along with discussing the new threshold, which a potential claimant must be mindful of when asserting claims for delay, prolongation, loss of profits or profitability etc. arising from a breach of contract.

II. BRIEFLY ON OVERHEADS AND PROFITS AND THE NEED FOR EVIDENCE

'Prolongation claims' or 'delay claims', howsoever they may be called, are a common feature of construction and infrastructure disputes.

These delay claims are of several kinds: price variation on account of the delay, additional expenditure, interest and financing charges, loss of productivity, site overheads and profits, etc.

For our discussion, we will briefly look at delay claims relating to Overheads and Profits.

Delay claims relating to Overheads

'Overheads' are the sum of indirect, infrastructure and running costs which are necessary for the proper operations of the company [*Linares, Rayo, et. al., (2022)*][1].

These overheads are commonly categorized based on their nexus with the location at which they arise: site overheads (related to the works of a particular project) and off-site/head office overheads (relating to the support offices/overall corporate operations of the company).

- **Site overheads** are costs incurred which are related to the works of a particular project for maintaining idle presence on-site during the period of delay or due to prolongation of work. These include components such as the cost of paying salaried or contracted site-staff and leased/owned equipment during the period of delay, the cost of

[1] Linares, Rayo, et. al., *Claiming Head Office Overhead and Profit: Are Formulas a Legally or a Commercially Acceptable Contraption? A Quantum Expert's View*, 88 Arbitration: The International Journal of Arbitration, Mediation and Dispute Management, Issue 2, (2022) 286-309.

maintaining utilities at the site etc. These are usually computed on the basis of rates and prices in the bills of quantities or schedule of rates.

- **Off-Site Overheads/ Head Office Overheads** are costs incurred in respect of support offices or overall corporate operations of the company which, but for the delay, could have been utilized elsewhere. Head Office Overheads include multiple components, such as executive and administrative salaries; rentals; insurance and bank guarantees; utilities; stationery, photocopying and similar expenses; legal and accounting expenses; Advertising and recruitment costs; and human resource costs [Jane Jenkins (3rd ed.)][2]. These can be categorized as 'dedicated overheads' which can be attributed to specific employer delay related costs and 'unabsorbed overheads' such as rent and salaries which are incurred regardless of the volume of the work [para 2.3, SCL Delay and Disruption Protocol][3].

The underlying principle behind claims arising out of head office overheads is that "*the delay meant that head office resources were used for longer on the delayed project, and this meant, in turn, that the resources could not be used to obtain additional work which could otherwise have been obtained*" [Derains, Kreindler][4]. Therefore, it is this loss of opportunity which is being claimed [*JF Finnegan* v. *Sheffield City Council* (1988) 43 BLR 124].

Delay Claims relating to Loss of Profits/Profitability

Loss of profit and loss of profitability are oftentimes and mistakenly used interchangeably [*Ajay Kalra* v. *DDA* 2023:DHC:9476]. However, there are stark differences between these two claims requiring different standards and evidence. Therefore, for proper consideration, they must be claimed separately and under independent heads.

- **Loss of Profits** are claims for loss of expected profits incurred due to non-completion/ prevention of work due to premature/ illegal termination or breach of the contract. The legal basis for loss of profits stems from section 73 of the Indian Contract Act ("**ICA**"), whereby an innocent party is entitled to reasonable damages on account of any loss or damage suffered for breach of contract.

- **Loss of Profitability** is the claim for loss of opportunity to take up other projects during the extended period where the contractor could have earned profits, or a claim for reduction in the estimated profit margin due to the prolongation of the contract and resources being tied up. A claim on account of loss of profitability stems from prolongation of the contractor's responsibilities which ties its resources and prevents it from earning profits elsewhere.

Thus, whereas loss of profits is a natural consequence of the breach of contract and should therefore, follow as a consequence of such breach, loss of profitability necessitates a higher threshold by virtue of the claim. [*Loss of Profit v. Loss of Profitability*, Hussaini, Anukaran]

[2] Jane Jenkins, *Ch. 9: Preparation and Collection of Evidence*, in International Construction Arbitration Law (3rd ed., 2021).
[3] Society of Construction Law, *Society of Construction Law Delay and Disruption Protocol* (2nd Ed., Feb. 2017).
[4] Vivian Arthur Ramsey, *Chapter 9. Problems of Delay and Disruption Damages in International Construction Arbitration*, in ICC Dossier No. 4: Evaluation of Damages in International Arbitration (Derains, Kreindler ed., 2006).

Is there a need to prove loss?

A question which has arisen frequently before courts is this - once certain delay has been attributed to the employer, is a standard formula based on either the contract value or any of the prominent formulae sufficient to award claims on account of overheads and profits to the innocent party/contractor? More specifically, is there a need to establish loss on account of overheads and loss of profits by adducing specific evidence to establish the expenditure/loss in addition to using such formulae? Or is mere declaration of delay attributable to the employer enough to successfully claim such losses? And if there is a requirement to establish such loss, what is the nature of evidence which is sufficient to do so?

The Statutory Framework

Under section 73 of the ICA, a party is entitled to receive from the defaulting party compensation as may fairly and reasonably be considered to arise naturally from such breach or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it.

Read with section 55 of the ICA, an innocent party is entitled to compensation arising out of a breach of a contract. However, these sections do not lay down the mode and manner of computation of damages or compensation [*McDermott* v. *Burn Standard* (2006) 11 SCC 181]. The discourse on this issue has been dealt with by the courts through multiple decisions, oftentimes varying.

The Debate: A standard formulae versus evidence-led estimated expenditure/loss

In *AT Brij Paul Singh* v. *State of Gujarat* [(1984) 4 SCC 59], a Constitutional Bench of the Supreme Court held that in assessing claims for loss of profits, it is not necessary to go into the minutest details of the work executed in relation to the value of the contract and a broad evaluation is sufficient. The court held that the reasonable expectation of profit is implied in a works contract and its loss has to be compensated by way of damages if the other party to the contract is guilty of breach of contract.

This decision paved the way for awarding loss of profits in a situation where the contract was illegally terminated by the employer without having to go into matters of substantiation through evidence.

In *AT Brij Paul*, the Court had held the rescission of the contract by the respondent to be unlawful. In measuring the loss of expected profits for the partly performed contract, the Court held that 15% of the value of the remaining part of the contract would be justified. This view was reiterated by the Supreme Court in *Dwarka Das* v. *State of Madhya Pradesh* [(1999) 3 SCC 500].

Relying upon *AT Brij Paul*, a Division Bench of the Delhi High Court in *Himachal Joint Venture* v. *Panilpina World Transport* [2008 (106) DRJ 424 (DB)] upheld the award of loss of profits at 10% of the contract value.

In *JG Engineers Pvt. Limited* v. *Union of India* [2011 (5) SCC 758], the Supreme Court upheld the award of loss of profits measured at 10% of the value of the remaining part of the contract which could not be performed due to illegal termination of the contract.

A trend was therefore seen to emerge which enabled awarding of loss of profits in case of an illegally terminated contract on the basis of a certain percentage of the unexecuted portion of

the contract (in the range of 10% - 15%), without the necessity of going into further evidentiary aspects.

At the same time, certain courts were minded holding that proof of loss is a condition precedent to the applicability of any formula which can be used to compute loss of off-site overheads and profits and in the absence of such evidence, the claim cannot sustain. [See *Bharat Coking Coal* v. *LK Ahuja* (2004) 5 SCC 109; *State of Rajasthan* v. *Ferro Concrete Construction* (2009) 12 SCC 1; *Essar Procurement Services* v. *Paramount Constructions* 2016 SCC OnLine Bom 9697; *NHAI* v. *HCC* 2016 SCC OnLine Del 6112 among many others].

Therefore, a conundrum lay as to the law on the subject. This is exemplified by the Delhi High Court's decision in *NTPC* v. *Sri Avantika Contractors* [2020 SCC OnLine Del 2409] wherein the court allowed the claim in respect of loss of overheads which was based on a standard formula of 6% of the contract amount but rejected the application of a similar standard formula for loss of profits holding that such loss has to be proved through documents and evidence.

However, *Batliboi* and *Unibros* have brought much-needed clarity and have settled the question holding that evidence needs to be necessarily led to succeed in delay claims of loss of overheads and profits. In doing so, they have also shed light on the nature of evidence which needs to be led on account of these claims.

III. RECENT DEVELOPMENTS

Batliboi v. HPCL

Background

The genesis of the dispute lies in the award of a turnkey contract for detailed engineering, supply and erection, testing and commissioning of a 23 MLD Sewage Water Reclamation Plant by HPCL to Batliboi Environmental Engineers Ltd. ("**BEEL**"). The contract, which was to last for 18 months, was delayed and ultimately BEEL abandoned the work after completion of 80% of the work. BEEL made delay claims and the arbitral tribunal passed an award in its favour. Pertinent to our discussion, the tribunal awarded a sum of Rs. 78,68,933/- against the claim of loss of overheads on the basis of 10% of the contract value and a sum of Rs. 78,68,933/- against the claim of loss of profits on the basis of 10% of the contract value. The award was challenged and the Single Judge dismissed the challenge [2000 SCC OnLine Bom 785]. HPCL challenged the Single Judge's judgment [2008 (2) Mh.L.J. 542]. In appeal, its key arguments were:

> "[T]he claim No. 1 on account of loss of profits and loss of overheads is ex-facie unreasonable, perverse and has resulted in a miscarriage of justice. … [T]hat an amount of Rs. 1,57,37,666/- awarded towards loss of profits and overheads is more than the value of 20% remaining work. As 80% work was already completed and only 20% work was remained, if that work would have been completed, the contractor would have received only an amount of Rs. 1,14,87,000/- and in spite of having abandoned and having not completed the work, the contractor is awarded compensation, which is much more than the said amount. As per the award, this 20% consists of 10% on account of loss of profits and another 10% on account of loss of overheads and the Arbitrator appears to have made this calculation on total amount of the contract and even more than that. If 20% of the balance work would have been awarded on these two heads, the contractor could not get more than Rs. 23 lakhs."

The Division Bench upheld the challenge holding that the compensation awarded by the arbitrator was arbitrary and perverse as had BEEL completed the remaining 20% of the work, it still would have received less amounts than it did through the award of loss of overheads and profits. Therefore, it is important to note that the question of sufficiency of evidence led on account of these claims was not before the Single Judge or the Division Bench.

What the Supreme Court held on computation of damages

In the appeal to the Supreme Court preferred by BEEL, the Court held that the computation and award of 10% of the contract value towards loss of overheads and profits/ profitability each was a patent error as the award was silent as to the method and the manner in which the figures had been computed. The Court held that computation of damages should not be absurd, disingenuous and "*result in a windfall and bounty for one party at the expense of the other*" but should be commensurate with the loss sustained. The Court noted that the Hudson, Emden and Eichleay formulae can be used to compute damages. However, material should be furnished to justify and assure the assumptions underlying in such formulae. The Court dismissed the appeal holding that the award was rightly set aside.

In holding thus, the Supreme Court catechised the Hudson formula, observing that the formula should be taken as the basis for computation with caution and as a last resort. It noted that the Hudson formula was premised on three assumptions for claiming loss of profits:

> "f*irst that the contractor is not habitually or otherwise underestimating the cost when pricing; secondly the profit element was realistic at the time; lastly that there was no fluctuation in the market conditions and the work of the same general level of profitability would be available to her/him at the end of the contract period.*"

To claim successfully on the basis of Hudson's formula, the Court held that it is necessary for the contractor to satisfy these assumptions and furnish material to justify the same.

The Court also noted the nature of evidence which needs to be led to justify these claims. For proving loss of profits, the Court held that the contractor "*has to prove that there was other work available that he would have secured if not for the delay*". Such may be proved through "*producing invitations to tender which were declined due to insufficient capacity to undertake other work*". The Court further held that "*[t]he same may also be proven from the books of accounts to demonstrate a drop in turnover and establish that this result is from the particular delay rather than from extraneous causes*" [emphasis supplied].

Unibros v. AIR

Background and previous proceedings

The First Award

All India Radio ("**AIR**") had contracted Unibros to construct the Delhi Doordarshan Bhawan. There was a delay of 42 months resulting in delay claims. The Arbitral Tribunal ("**AT**") rejected Claim No. 10 for price variation and Claim No. 11 for establishment, machinery, centering/ shuttering etc. on the ground that no evidence had been provided to support these claims. The arbitral tribunal awarded a sum of Rs. 1,44,83,830/- on account of Claim 12 for loss of profits computed using Hudson's formula on the basis that delay was caused by AIR and that Unibros was retained for execution of the contract beyond the contract period leading to loss of its profit earning capacity during the extended period.

The Challenge to the First Award

This award ("**First Award**") was challenged and a Single Bench of the Delhi High Court [2002 SCC OnLine Del 601] set aside the award on the basis that other than relying upon the Hudson's formula and a passage from Law on Building and Engineering Contracts, no other evidence was placed on record to support whether the profit percentage as claimed towards loss of profit was a realistic one at that time, that there was no change in the market and that work of the same general level of profitability would have been available to Unibros at the end of the stipulated contract period. The Court also noted that there was no justification for the AT to reject claims 10 and 11 on account of lack of evidence and yet accept the claim for loss of profits when similarly no evidence was tendered to prove the same. Holding thus, the Court set aside the award as against the claim for loss of profits and interest and remitted the First Award to the AT for reconsideration.

The Second Award

The AT passed a fresh award ("**Second Award**") reiterating its previous award of claims on account of loss of profit holding that the material available on record was sufficient to establish the loss of profit. The AT noted in detail and with evidence that the prolongation of work was on account of reasons attributable to AIR and therefore, Unibros was subjected to loss of profit earning capacity for the extended period of the contract. The AT noted:

> "*It is settled law that in case of breach of contract the party guilty of breach of contract is liable for reasonable foreseeable losses …*
>
> *In the case of breach of works contract, the breach of contract prevents the gains of party wronged i.e., contractor and thereby he sustains loss. … The wronged party, i.e. contractor is not obliged to prove with fatalistic sureness and mathematical exactitude the amount of gain or loss as a result of Respondents breach. Fairly persuasive evidence and best available under the particular circumstances of the case shall suffice.*"

The Challenge to the Second Award

The Second Award was challenged and a Single Bench of the Delhi High Court [2010:DHC:1154] set aside the award holding that the Second Award was perverse, shocked the judicial conscience and was in conflict with India's public policy. The Court reiterated that no evidence was tendered to support the claim for loss of profits.

Unibros moved the Division Bench of the Delhi High Court and through its judgment [2019:DHC:6766-DB], the Court upheld the Single Bench's judgment setting aside the Second Award.

What the Supreme Court held on computation of damages

AIR challenged the judgment of the Delhi High Court before the Supreme Court. The Court, noting *Bharat Coking Coal* (*supra*), observed that in making a claim for loss of profit, a contractor has to take the plea and establish that had the contract been executed promptly, the contractor could have secured supplementary profits utilizing its existing resources elsewhere. The Court held that the law required that to succeed in claims related to loss of profit, profitability or opportunities to succeed, one would have to establish the following:

a. That there was a delay in the completion of the contract,
b. That such delay was not attributable to the claimant,

c. The claimant's status as an established contractor,
d. Credible evidence to substantiate the claim for loss of profitability.

Observing thus, the Court held that the fourth condition was absent, *viz.* evidence to substantiate the claim for loss of profitability and for this reason upheld the interference with the awards.

On the applicability of the formulae for computation of damages, the Court held that although the same are helpful, they alone cannot prove the contractor's loss of profit. They have to be used in conjunction with evidence of loss of profits and opportunities.

The Court also noted the nature of evidence which will be required to justify claims for profits. It noted that such evidence will be contingent upon facts and circumstances of each case, but went on to generally state that this evidence could be:

- independent contemporaneous evidence such as other potential projects that the contractor had in the pipeline that could have been undertaken if not for the delays,
- the total number of tendering opportunities that the contractor received and declined owing to prolongation of the contract,
- financial statements.

IV. EVIDENCE IN SUPPORT OF DELAY CLAIMS – A CHECK-LIST

In an arbitration where delay claims are made, the following evidence needs to be tendered:

a. Evidence of breach of contract leading to the below mentioned delay claims, and
b. Evidence in support of the claim for loss (for site overheads, head-office/ off-site overheads, loss of profits or loss of profitability);
c. Evidence to justify the assumptions underlying the formula;

Evidence in support of claims for losses

For evidence in support of the claims for losses, in addition to evidence of breach of contract, the following may be considered:

Claim for	Suggested Evidence

Loss of Site Overheads	Evidence needed to establish the claim: Extra costs incurred due to prolongation of the project or due to being made to maintain idle presence at site. The following documents may be necessary evidence for the same: -
	
	• Running Account Bills.
	• Resource records documenting the labour, materials and the equipment utilized including
	  ○ time sheets,
	  ○ daily logs,
	  ○ progress reports,
	  ○ material purchase, receipt and dispatch records,
	  ○ bills/ invoices relating to leased/ owned equipment.
	• Costs records relating to site expenses including
	  ○ Payroll records of site workers and labour,
	  ○ Invoices relating to and payments made to subcontractors and suppliers.

	• Bills/ receipts evincing cost of maintaining water, electricity and other utilities during the period of delay. • Invoices/ bills relating to legal, travel and conveyance, communications, postage, stationery, printing and miscellaneous expenses. • Necessary correspondences relating to such costs incurred.
Loss of Off-Site/ Head-Office Overheads	Evidence needed to establish the claim: Costs incurred at off-site corporate offices/head office. This claim needs specific and distinct evidence which can attribute project expenses to off-site offices/head office. Understandably, it is a tough task as there may be various general expenses which are necessary and cannot be shown to be directly associated with the project. Some helpful documents which may be submitted as evidence are as follows: - • Financial statements and audited accounts documenting office general and administrative costs and revenue. • Minutes of meetings related to the project such as technical team meetings, meeting for review of project progress, project management, etc. which can be evidence of dedicated overheads. • Submission logs for design and engineering reviews. • Primary documents/agreements and documents in support of extended financial, insurance and guarantee costs such as statement of accounts etc. • Rental expenses which were prolonged on account of the project. • Payroll records of executive officers, employees, support staff. • Invoices/bills relating to legal, travel and conveyance, communications, postage, stationery, printing and miscellaneous expenses. • Relevant correspondences and contemporaneous records.
Loss of Profits	Evidence needed to establish the claim: The expected profit which could have been achieved from the project had there been no breach or prolongation. Such evidence may also necessitate disclosure of certain confidential business practices and therefore parties must be circumspect whilst at the same time balancing such caution with leading the required evidence. • Evidence which can substantiate the profit margin envisaged at the tendering stage or in-built in the contract. • Tender documents, business plans and presentations for generating profits, etc. • Any evidence of any agreement as to the profit variable of the project between the parties. • Relevant correspondences and contemporaneous records.
Loss of Profitability	Evidence needed to establish the claim: The opportunity cost of not participating in other projects which could have resulted in additional profits. Can be evinced through the following: -

	• The claimant's status as an established contractor, which can be evinced through awards and recognition received by the party in media/news, details of prestigious projects, etc.
	• Changes in total turnover or decrease in profit variable which can be attributed to the delay of the project can be evinced through audited financial documents, balance sheets etc. from previous years, the project period and the succeeding years.
	• Other work/projects which were available but could not be undertaken, evidenced through
	  ○ Tendering history of the party,
	  ○ Invitations to tender for potential projects which the contractor had in the pipeline that could have been undertaken if not for the delays,
	  ○ records of acceptance or rejection of tender opportunities depending on resource availability.
	• Minutes of meetings to review future tendering opportunities and staff availability.
	• Evidence relating to shortage of staff availability due to the present staff being involved with the project.
	• Documents/logs which can evince that staff, equipment and machinery were involved and occupied in the project and thus there was insufficient capacity to undertake other work.
	• Relevant correspondences and contemporaneous records.

The above tabulation is a non-exhaustive list of fundamental documents and evidence which ought to be tendered and which parties should provide in support of such claims. This evidence ought to be substantiated through additional and more particular evidence, if available, and through the relevant witness testimonies supporting the data provided. Quantum experts and external accountants too may be relied on as expert witnesses to support the claims.

All of the above also necessarily entails that parties have a rigid and well-defined accounting, document processing and categorization system in place. Parties may refer to the SCL Delay and Disruption Protocol and other resources which provide guidance on record categorization and processing specific to the construction and projects industry.

Evidence in support of the formula

The evidence to justify the inherent assumptions in the formula is specific to each formula. The same is an essential component and parties and tribunals must rely on the formula which can be justified in their case on the basis of facts of each arbitration. A one-size-fits-all approach is impractical and with the potential to affect the challenge to any award rendered on the basis of a formula whose assumptions are difficult to establish in light of the concerned facts [*Linares, Rayo, et. al., (2022)*].

Another concern commonly raised is about selecting the appropriate formulae. Commentators note that in descending "*… order of rank of reflecting reality…* ", the three better known formulae available as a means of assessing overhead cost or profit calculation are the Hudson Formula, the Emden Formula and the Eichleay Formula [Davis and Watson][5]. Courts in India have held that the arbitrator is the ultimate determiner of which formulae is appropriate [para

[5] Davis & Watson, *The utilization of formulae in overhead and profit claims*, 2 Proceedings 15th Annual ARCOM Conference, 15-17 September 1999, Liverpool, UK, Association of Researchers in Construction Management, p. 645 - 653 (Hughes ed.).

106, *McDermott*]. Nonetheless, at the time of submitting claims for overheads and profits, claimants must compute using the formula the computation and underlying assumptions of which can be best supported by the data and evidence available. Even though the court in *McDermott* refrained from prioritizing any one formulae, it observed the following criticism of the Hudson formula:

> *In the Hudson Formula, the head office overhead percentage is taken from the contract. Although the Hudson Formula has received judicial support in many cases, it has been criticised principally because it adopts the head office overhead percentage from the contract as the factor for calculating the costs, and this may bear little or no relation to the actual head office costs of the contractor.*

However, some authors have argued that whereas this was the problem with the Hudson formula as proposed initially, later editions of the *Hudson's Building and Engineering Contracts* and *Keating on Building Contract* note that the modern description of the Hudson formula uses the 'fair annual average' instead of relying on the percentage for such overheads and profits in the tender ("**Corrected Hudson Formula**")[6] [P. Fidler (2008)]. Further, the very same author noted that the Emden Formula, which many commentators, including in *McDermott*, regard as a better alternative on the belief that it remedies the deficiency of the Hudson Formula, also has the potential to have duplicate recovery [P. Fidler (2008), p. 61].

V. CONCLUSION

With these developments, the courts have gradually but surely marched towards a stringent requirement for pleading and proving delay claims. What also follows is that courts will ordinarily refrain from specifying the exact formula which must be used, leaving the same to the discretion of the arbitral tribunal. But parties and tribunals must have a considered view and adopt the formula which best suits their facts and the evidence which can be tendered in support thereof. It is therefore imperative that potential claimants prepare and collate the necessary documentation for proof in the initial stages of the arbitration process itself and draft the claims and evidence accordingly.

So, do all these observations point towards a paradigm shift in the principles established earlier? Or is it an evolution of the old principles keeping in mind the reality of how the world does business today? We believe that it may be the latter and await the further evolution of trends and practices, which will hopefully inspire us as students of the law to bring out part three of this series.

[6] P. Fidler, *The sad truth about overheads and profit claims*, 161 Proceedings of the Institution of Civil Engineers – Management, Procurement and Law, Issue 2, May, 2008, p. 61.

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