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DELHI HC ON IMPOSING LIQUIDATED DAMAGES IN CONTRACTS

A. Introduction

Delhi High Court (**HC**) in *North Delhi Municipal Corporation v. IJM Corporation Berhad*,¹ held that once a request for extension has been granted to a contractor, the grantor cannot retract its position and retroactively reduce the extension period.

B. Brief Facts

1. North Delhi Municipal Corporation (**NDMC**) and IJM Corporation Berhad (**IJMC**) entered into a contract for the construction of a Civic Centre in Delhi.
2. Certain events led to delays in the execution of the contract, and IJMC applied for several extensions, which were granted.
3. NDMC had granted the requests for extensions but reserved its rights to recover liquidated damages (**LD**).
4. An arbitration commenced between NDMC and IJMC regarding the recovery of LD for the days of delay.
5. The arbitrator held that NDMC's extensions were not provisional and the same cannot be curtailed after the extended period has lapsed.
6. NDMC challenged this award under Sections 34² and 35³ of the Arbitration and Conciliation Act, 1996 (**ACA**).

C. Parties' Contentions

By NDMC:

1. Arbitrator erred in rejecting NDMC's contentions that the extension of time granted was provisional, especially when it had reserved its rights to impose LD.
2. Since extensions were provisional, NDMC was entitled to assess the exact days of delay, and accordingly impose LD.

By IJMC:

1. The work was completed within the stipulated timeframe including the extended period as sanctioned by NDMC, and the work did not extend beyond the granted extensions.
2. The extensions were not provisional, and once granted cannot be retracted after the relevant period has passed.

¹ *North Delhi Municipal Corporation v. IJM Corporation Berhad* (MANU/DE/1441/2022).

² Application for setting aside arbitral award.

³ Finality of arbitral awards.

D. Order & Analysis

The HC:

1. Observed that the requests of extension were made, and granted, though NDMC reserved its right to recover LD.
2. Held that once a request is received and granted, the competent authority (CA) cannot, after the extended period, “*turn around and reassess*” the extension to the detriment of the contractor, *i.e.*, IJMC.
3. Further held: “*Though it may be open to the competent authority/ engineer in-charge to, in the first instance, grant an extension for a shorter period than requested and thereafter extend it further but he cannot having once granted it, curtail it retrospectively.*”
4. Noted that the CA is not empowered to treat the extension of time as ‘provisional’ and reduce the period once the extension period has lapsed.
5. Held that the imposition of LD would be legitimate had IJMC not completed the work within the contractual and extended periods.

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