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1 Making Construction Projects

1.1 What are the standard types of construction contract in your jurisdiction? Do you have: (i) any contracts which place both design and construction obligations upon contractors; (ii) any forms of design-only contract; and/or (iii) any arrangement known as management contracting, with one main managing contractor and with the construction work done by a series of package contractors? (*NB* For ease of reference throughout the chapter, we refer to "construction contracts" as an abbreviation for construction and engineering contracts.)

The construction industry in India does not entirely subscribe to any one standard form. Some commonly used forms are influenced by the International Federation of Consulting Engineers ("FIDIC"), the Institution of Civil Engineers ("ICE"), and the model published by the Indian Institute of Architects ("IIA").

The construction industry is driven by the Government as the employer/owner (directly or indirectly). Management contracts are prevalent, but the owner will usually look at a single point of responsibility under the lead consortium member.

1.2 How prevalent is collaborative contracting (e.g. alliance contracting and partnering) in your jurisdiction? To the extent applicable, what forms of collaborative contracts are commonly used?

Collaborative contracting is common in the real estate sector, where the landowner and real estate developer enter into a joint development agreement. The formats have evolved through industry usage and practice, keeping in mind the role of the statutory regulator. Normally, the landowner provides the land, with all other responsibilities falling on the developer.

1.3 What industry standard forms of construction contract are most commonly used in your jurisdiction?

Please see the answer to question 1.1 above.

1.4 Are there any standard forms of construction contract that are used on projects involving public works?

The authority responsible for public works is the Central Public Works Department at the national level, and the State Public Works Departments at the State level. The Central Public Works Department has released several General Conditions of Contract for engineering, procurement and construction ("EPC") contracts and construction works. The public-private partnership ("PPP") model is common in the development of large and complex infrastructure projects. The Government has issued guidelines and Model Concession Agreements for various projects, specifically for the airport, railway, and ports sectors. The modes of contracting generally employed by Government organisations include Build-Own-Operate, Build-Operate-Transfer, Hybrid Annuity Model, Design-Build-Finance-Operate-Transfer, etc. Standard contracts issued by FIDIC are often adopted for large infrastructure projects.

1.5 What (if any) legal requirements are there to create a legally binding contract (e.g. in common law jurisdictions, offer, acceptance, consideration and intention to create legal relations are usually required)? Are there any mandatory law requirements which need to be reflected in a construction contract (e.g. provision for adjudication or any need for the contract to be evidenced in writing)?

The Indian law of contracts is codified (Indian Contract Act, 1872). It is largely based on English common law. For any binding contract to come into existence, there should be an agreement between two or more parties who are competent to contract, and the parties must have entered into the agreement with their free consent, for a lawful consideration and a lawful object. These requirements are mandated by Section 10 of the Act. The other essentials for a contract include a valid offer, followed by its acceptance, with the intention of entering into a legally enforceable agreement. Indian law does not have an adjudication process (as known in the UK). A contract does not mandatorily need to be in writing; however, if it creates or extinguishes an interest in immovable property, it needs to be in writing and registered. It is not mandatory for a construction contract to be in writing (though it would be highly unusual for it not to be).

1.6 In your jurisdiction, please identify whether there is a concept of what is known as a "letter of intent", in which an employer can give either a legally binding or non-legally binding indication of willingness either to enter into a contract later or to commit itself to meet certain costs to be incurred by the contractor whether or not a full contract is ever concluded.

A letter of intent ("LOI") merely indicates a party's intention to enter into a contract with the other party in the future. Normally, it is a conditional offer or an agreement to "enter into

an agreement", which is neither enforceable nor does it confer any contractual rights upon the parties. However, depending on the wording, an LOI may result in binding obligations in relation to confidentiality, exclusivity of dealings and governing law/jurisdiction, amongst others. In certain circumstances, an LOI may be construed as a letter of acceptance of the offer, resulting in a concluded contract between the parties. The Supreme Court in *South Eastern Coalfields Ltd. v. S. Kumar's Associates AKM (JV)* (2021) stressed that for an LOI to be legally enforceable, there must be a clear and unambiguous intent to treat it as a contractual obligation. If the parties have acted on an LOI as if there is a binding obligation, it can be held as constituting a binding contract between them. In India, a binding contract can also result from conduct alone.

1.7 Are there any statutory or standard types of insurance which it would be commonplace or compulsory to have in place when carrying out construction work? For example, is there employer's liability insurance for contractors in respect of death and personal injury, or is there a requirement for the contractor to have contractors' all-risk insurance?

The standard type of insurance policy opted for by the employer, contractor or sub-contractor, separately or jointly, is the Contractor's All Risk Policy ("CAR Policy"). All major construction contract projects expressly provide that a CAR Policy must be put in place during the construction stage. Central legislation requires any business, including construction projects, employing more than 10 people, to procure registration under the Employees' State Insurance Act, 1948 ("ESI Act").

Presently, the ESI Act mandates every employer to provide for its workers' insurance. The Act covers both workers employed directly under an employer and through a contractor. The insurance procured by an employer/contractor under the mandate of the ESI Act covers contingencies such as maternity leave, sickness, temporary or permanent physical disablement, or death owing to the hazards of employment, which may lead to loss of wages and the earning capacity of an employee.

The Code on Social Security, 2020, *inter alia*, proposes to simplify, amalgamate and replace the existing central labour legislation, including the ESI Act. Chapter IV of the Code requires that the employer pay the employer's and the employee's contribution in respect of every employee, whether directly employed by him or by a contractor. However, the Code has not come into force yet.

1.8 Are there any statutory requirements in relation to construction contracts in terms of: (a) labour (i.e. the legal status of those working on site as employees or as self-employed sub-contractors); (b) tax (payment of income tax of employees); and/or (c) health and safety?

The following are some statutory requirements that must be complied with:

Labour

Considering that a vast segment of the construction industry is unorganised, seasonal and fragmented, Parliament has enacted the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996. This is to confer a legal status on temporary workers. In brief, the Act applies to any establishment that has employed 10 or more workers (including for repair or maintenance) in the past year. Such establishments need to register themselves with the appropriate Government. Registration confers benefits on employees who have been engaged in construction activity for 90 days or more during the past year, including access to State funds in case of: accidents; old age benefits on completion of 60 years; loans for specified purposes; medical expenses; and maternity benefits, etc. Several other pieces of welfare legislation, such as the Employee's Compensation Act, 1923 and the Minimum Wages Act, 1948, also treat temporary construction workers as employees for the purposes of these statutes.

The Code on Wages, 2019 ("Wages Code") seeks to consolidate and replace four Acts: the Payment of Wages Act, 1936; the Minimum Wages Act, 1948; the Payment of Bonus Act, 1965; and the Equal Remuneration Act, 1976. It extends to all establishments, employees and employers unless specifically exempt. The Wages Code, *inter alia*, provides for a national floor rate for wages, which is to be determined by the Central Government after taking into account the minimum living standards. It further provides for a review of the minimum wages at intervals not exceeding five years. The Wages Code, however, has not yet come into force due to delays by various State Governments in formulating and notifying requisite rules for their implementation.

Tax

Under the Income Tax Act, 1961, a person making a payment (including for the supply of labour for carrying out any work) is required, at the time of payment, to deduct a tax commonly known as Tax Deducted at Source ("TDS").

The Works Contract Tax is applicable to contracts for labour, work or service. However, after the roll-out of the Goods and Services Tax ("GST") in 2017, works contracts (in relation to immovable property) are treated as a supply of services and, at present, taxable at a rate of 18%. In the first instance, tax is payable by the person supplying the goods/services. The Building and Other Construction Workers' Welfare Cess Act, 1996, which applies to 10 or more construction workers, has been enacted for the welfare of construction workers. A cess of 1% is collected from the employer on the cost of construction incurred. The Code on Social Security, 2020 (once implemented) will mandate the collection of a cess for the purposes of social security and the welfare of building workers at a rate ranging from 1 to 2% of the cost of construction incurred by an employer (see question 1.7 above).

Health and safety

Social security legislation, such as the Employee's Compensation Act, 2009, the ESI Act, the Maternity Benefit Act, 1961, the Payment of Gratuity Act, 1972, the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, and the Sexual Harassment at Workplace (Prohibition, Prevention and Redressal) Act, 2013, mandatorily applies to all employers and contractors hiring workmen in the construction industry. The Code on Social Security, 2020 seeks to amalgamate and replace legislation, including: the Employee's Compensation Act, 2009; the ESI Act; the Maternity Benefit Act, 1961; the Payment of Gratuity Act, 1972; the Employees' Provident Fund and Miscellaneous Provisions Act, 1952; and the Sexual Harassment at Workplace (Prohibition, Prevention and Redressal) Act, 2013. As stated, the Code has not yet come into force.

Further, the Code on Occupational Safety, Health and Working Conditions, 2020 mandates compliance with the occupational safety and health standards declared under the Code or the rules, regulations, byelaws or orders made under the Code (see question 1.7 above).

1.9 Are there any codes, regulations and/or other statutory requirements in relation to building and fire safety which apply to construction contracts?

For every construction project, parties are required to obtain various permits (including environmental permits) from various Government departments in order to ensure that the construction is being carried out in a safe manner. In major infrastructure projects, it is common for a safety audit to be required at the design stage and also post-construction, to ensure conformity with the safety requirements specified.

The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 was enacted to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare. It applies to any establishment that employs 10 or more workers. The Act empowers the "Appropriate Government" to make rules regarding the precautions to be taken in case of a fire.

1.10 Is the employer legally permitted to retain part of the purchase price for the works as a retention to be released either in whole or in part when: (a) the works are substantially complete; and/or (b) any agreed defects liability period is complete?

Yes. In construction contracts, retention sums in given situations are fairly common.

1.11 Is it permissible/common for there to be performance bonds (provided by banks and others) to guarantee the contractor's performance? Are there any restrictions on the nature of such bonds? Are there any grounds on which a call on such bonds may be restrained (e.g. by interim injunction); and, if so, how often is such relief generally granted in your jurisdiction? Would such bonds typically provide for payment on demand (without pre-condition) or only upon default of the contractor?

Yes, performance bonds/performance guarantees are commonly stipulated. Bank guarantees are payable on demand.

A bank guarantee is independent of the contract between an employer and a contractor, and normally unconditional. Therefore, unless otherwise provided, a guarantor shall be obliged to unconditionally honour a guarantee as and when called upon by the employer. The employer normally requires the contractor to keep the performance bank guarantee valid until the defect liability period is over or the completion certificate issued.

The courts have held that, in order to restrain the encashment of a bank guarantee, there should be a strong *prima facie* case of fraud or special equities in the form of irretrievable injustice. Commitments of banks must otherwise be honoured, free from interference by the courts.

1.12 Is it permissible/common for there to be company guarantees provided to guarantee the performance of subsidiary companies? Are there any restrictions on the nature of such guarantees?

Yes. Please also see question 1.11 above.

1.13 Is it possible and/or usual for contractors to have retention of title rights in relation to goods and supplies used in the works? Is it permissible for contractors to claim that, until they have been paid, they retain title and the right to remove goods and materials supplied from the site?

While there is no legal impediment, construction contracts do not normally provide for the contractor's title rights to the goods and supplies made for the works. Contractors cannot, in the absence of contractual stipulation, retain title and right over the property.

2 Supervising Construction Contracts

2.1 Is it common for construction contracts to be supervised on behalf of the employer by a third party (e.g. an engineer)? Does any such third party have a duty to act impartially between the contractor and the employer? If so, what is the nature of such duty (e.g. is it absolute or qualified)? What (if any) recourse does a party to a construction contract have in the event that the third party breaches such duty?

Yes, large construction contracts are usually supervised by third parties appointed by the employer in the role of either architect or engineer. The scope of their functions, and of their duties, is contractually driven.

While the engineer or architect usually has a duty to act impartially between the contractor and employer, in practice, it acts as the employer's agent.

2.2 Are employers free to provide in the contract that they will pay the contractor when they, the employer, have themselves been paid; i.e. can the employer include in the contract what is known as a "pay when paid" clause?

Yes, such clauses are valid under the Indian Contract Act. The Delhi High Court, in *Kingston Enterprises v. NBCC (India) Ltd.* (2024), upheld the "pay when paid" principle in back-to-back contracts, given that they were unambiguous and clear, stating that parties are bound by the terms that they voluntarily agree to.

2.3 Are the parties free to agree in advance a fixed sum (known as liquidated damages) which will be paid by the contractor to the employer in the event of particular breaches, e.g. liquidated damages for late completion? If such arrangements are permitted, are there any restrictions on what can be agreed? E.g. does the sum to be paid have to be a genuine pre-estimate of loss, or can the contractor be bound to pay a sum which is wholly unrelated to the amount of financial loss likely to be suffered by the employer? Will the courts in your jurisdiction ever look to revise an agreed rate of liquidated damages; and, if so, in what circumstances?

Yes, stipulating a certain amount to be paid by a contractor to its employer as liquidated damages is permissible. Such damages are governed by Section 74 of the Indian Contract Act, which provides that if a sum is named in the contract as the amount to be paid in case of such breach of contract, the party

complaining of breach is entitled to receive the said amount, "whether or not actual loss is proved to have been caused". Section 74 has been judicially interpreted, and the following principles laid down:

- Only reasonable compensation can be awarded as liquidated damages.
- Notwithstanding a liquidated damages clause, the factum of damage or loss caused must be proved (the burden for which is on the claimant).
- The court must find the liquidated damages to be a genuine pre-estimate of the damages.
- The expression "whether or not actual loss is proved" in Section 74 means that if there is a possibility of proving actual damage or loss, such proof is required. However, where it is difficult or impossible to prove the actual damage or loss, the liquidated damages amount named in the contract, if it is found to be a genuine pre-estimate of the damage or loss, can be awarded.
- The proof of loss or damage may be circumstantial, and the court does not look for arithmetical exactitude.
- The amount named in a contract serves as a ceiling or a cap on the sum that can be awarded, and not the amount that will automatically be awarded.

If parties have agreed to a genuine pre-estimated sum of money as liquidated damages, then they are deemed to have excluded their right to claim an unascertained sum of money as damages.

3 Common Issues on Construction Contracts

3.1 Is the employer entitled to vary the works to be performed under the contract? Is there any limit on that right?

Variations in the works to be performed under a construction contract are typically ordered by an employer or an engineer under a "Change of Scope" clause. Variations must not be such as to alter the character of the contract and must be within the ability of the contractor to execute. The contract price will vary depending upon whether there has been an increase/decrease in the scope of works.

3.2 Can work be omitted from the contract? If it is omitted, can the employer carry out the omitted work himself or procure a third party to perform it?

Yes, works may be omitted from a construction contract by an employer if there is an express term in the contract permitting omission. The employer cannot do so simply to deprive the contractor of its legitimate dues.

3.3 Are there terms which will/can be implied into a construction contract (e.g. a fitness for purpose obligation, or duty to act in good faith)?

Yes, Indian law recognises implied terms in construction contracts. Implied terms are derived from the intent of the parties. While there is no prescribed set of terms that can be implied, certain obligations are recognised as impliedly binding on both the employer and the contractor. Fitness for purpose/duty to act in good faith will generally be held to be implied.

3.4 If the contractor is delayed by two concurrent events, one the fault of the contractor and one the fault or risk of the employer, is the contractor entitled to: (a) an extension of time; and/or (b) the costs arising from that concurrent delay?

Indian courts routinely refer to and rely on English cases. In situations where there are concurrent delays on the part of the employer and contractor, an employer may rely upon such delay to substitute an extension of time for payment of any monetary damages to a contractor, whereas a contractor may rely upon it to defend against the imposition of liquidated damages upon itself. Therefore, in cases of concurrent delays, a contractor would be entitled to an extension of time and not compensation for any loss it may have suffered due to the delays. A contractor would be entitled to an extension of time for the period of delay caused by the relevant event notwithstanding the concurrent effect of the other event (see: *Bhagheeratha Engineering Ltd. v. National Highways Authority of India* (2019) SCC OnLine Del 7885; *National Highways Authority of India v. Patel KNR (JV)*, FAO (OS) (COMM) 184/2018; and *Essar Projects (India) Ltd. & Ors. v. Gail (India) Ltd.* (2012) Arb P. No. 424).

3.5 Is there a statutory time limit beyond which the parties to a construction contract may no longer bring claims against each other? How long is that period and when does time start to run?

The Limitation Act governs the time period for filing a court action and a claim before the arbitral tribunal. The limitation period in relation to a breach of contract is three years from the date on which the breach occurs or the cause of action arises. The time period can be extended under certain circumstances, for instance, in the case of acknowledgment or part payment.

3.6 What is the general approach of the courts in your jurisdiction to contractual time limits to bringing claims under a construction contract and requirements as to the form and substance of notices? Are such provisions generally upheld?

Section 28 of the Indian Contract Act provides that an agreement curtailing the period of limitation prescribed by law is void.

Indian courts, however, recognise a distinction between clauses curtailing the time period within which the claim can be referred to arbitration and prescribing the period to notify the claim. Any time period stipulated to notify the party's intention to make claims is valid, though it indirectly curtails limitation. However, there are also judgments wherein a stipulation to this effect has been held to be in violation of Section 28 of the Indian Contract Act.

Usually, no particular form is prescribed for notification of claims.

3.7 Which party usually bears the risk of unforeseen ground conditions under construction contracts in your jurisdiction?

It is for the parties to agree in the contract who shall bear the risk of unforeseen ground conditions. EPC contracts generally put all such risks on the contractor.

3.8 Which party usually bears the risk of a change in law affecting the completion of the works under construction contracts in your jurisdiction?

Most large construction contracts contain change-in-law stipulations. Generally, an employer bears the risk arising out of a change in law, and any resultant delays can lead to extension of time.

3.9 Which party usually owns the intellectual property in relation to the design and operation of the property?

Generally, a contract for service provides that all intellectual property as may be created by an employee in the course of his employment shall vest in the employer. Indian law also provides for employment as an exception to an author's ownership over his intellectual property. Thus, ownership of intellectual property in the form of design of the works concerned would vest with the employer.

3.10 Is the contractor ever entitled to suspend works?

A contractor may suspend performance of its obligations under a construction contract on grounds provided for in the contract, or in accordance with its statutory right to do so under the Indian Contract Act. Situations where a contractor may suspend performance include: considerable delay by an employer; non-payment of dues for work performed; and *force majeure*.

3.11 Are there any grounds which automatically or usually entitle a party to terminate the contract? Are there any legal requirements as to how the terminating party's grounds for termination must be set out (e.g. in a termination notice)?

The Indian Contract Act allows a party to rescind/terminate a contract in the event of breach by the other party, including refusal to perform or disabling himself from performing. See also question 3.13 below (frustration). A statutory or common law ground of breach need not be expressly provided in a contract; however, other instances of breach should be specified in the contract. See also question 3.12 below.

3.12 Do construction contracts in your jurisdiction commonly provide that the employer can terminate at any time and for any reason? If so, would an employer exercising that right need to pay the contractor's profit on the part of the works that remains unperformed as at termination?

No. Construction contracts usually specify events on the occurrence of which an employer can terminate the contract. In large projects, the contract provides for a cure-period notice by the employer prior to termination. If termination is for the employer's convenience, the contractor is usually entitled to termination payment and compensation. If the contract has been wrongfully terminated, the contractor is entitled to compensation including claiming damages for loss of profit that was expected to be earned. See also question 3.11 above and question 3.19 below.

3.13 Is the concept of *force majeure* or frustration known in your jurisdiction? What remedy does this give the affected party? Is it usual/possible to argue successfully that a contract which has become uneconomic is grounds for a claim for *force majeure*?

The concept of a *force majeure* event is well recognised in Indian law. The doctrine is acknowledged in Section 56 of the Indian Contract Act. A contract is considered frustrated if the performance of an agreed set of obligations becomes impossible or unlawful, either before or after the conclusion of a contract (Section 56).

Section 56 goes on to state that if the event was within the reasonable contemplation of the promisor, or if the contract is frustrated due to acts attributable to the promisor, the promisee shall be entitled to compensation for any loss it suffers due to non-performance of the promisor's obligations under the contract.

Section 56 does not apply to instances of mere inconvenience or economic unfeasibility, or if performance has become more burdensome but without impossibility. (The parties can further refine/define *force majeure* events in their contract.)

The Supreme Court, in *Energy Watchdog v. CERC* (2017) 14 SCC 80, held that *force majeure* clauses are to be narrowly construed.

3.14 Are parties, who are not parties to the contract, entitled to claim the benefit of any contractual right which is made for their benefit? E.g. is the second or subsequent owner of a building able to claim against the contractor pursuant to the original construction contracts in relation to defects in the building?

Third parties cannot bring claims or enforce terms of a contract against a party to a contract. This principle emanates from the doctrine of "privity of contract", which confers rights and obligations arising out of a contract only upon parties to a contract. However, a remedy in tort would be available to downstream buyers.

3.15 On construction and engineering projects in your jurisdiction, how common is the use of direct agreements or collateral warranties (i.e. agreements between the contractor and parties other than the employer with an interest in the project, e.g. funders, other stakeholders, and forward purchasers)?

Collateral warranties or direct agreements are not usual in construction and engineering projects in India.

3.16 Can one party (P1) to a construction contract, who owes money to the other (P2), set off against the sums due to P2 the sums P2 owes to P1? Are there any limits on the rights of set-off?

Yes, parties in a construction contract can set off their claims and dues against each other. Should mutual negotiations fail, recourse can be taken to court and arbitration. In law, a set-off is different from a counterclaim. A counterclaim can exceed the sums claimed by the opposite party and be framed on a different cause of action, whereas a set-off is limited by the sum claimed and pertains to the same cause of action.

3.17 Do parties to construction contracts owe a duty of care to each other either in contract or under any other legal doctrine? If the duty of care is extra-contractual, can such duty exist concurrently with any contractual obligations and liabilities?

The doctrine of "duty of care" is part of the law of torts and extends to all persons who, upon reasonable contemplation, can be expected to be affected by the acts or omissions of a person. The doctrine of "duty of care" can also be invoked in construction works, and liability for negligence may arise from any harm caused to persons who could foreseeably be seen to be affected.

3.18 Where the terms of a construction contract are ambiguous, are there rules which will settle how that ambiguity is interpreted?

Where the meaning of an agreement is not certain or capable of being made certain, that agreement is considered void.

It is necessary to attempt to resolve any ambiguity by resorting to well-recognised rules of contractual interpretation, such as the rule of literal interpretation, harmonious construction, giving effect to the intention of the parties, and resorting to an interpretation that upholds the business efficacy of the contract (to be applied in that order). If the ambiguity is still not resolved, the parties may resort to the rule of *contra proferentem*.

3.19 Are there any terms which, if included in a construction contract, would be unenforceable?

Some terms that may be unenforceable in a construction contract are as follows:

a) clauses empowering an employer to unilaterally terminate a contract without any remedy;
b) unilateral and substantial alteration of the character of a contract by adding/omitting obligations of a contractor;
c) clauses for payment of an unreasonable sum in the form of liquidated damages;
d) clauses absolutely restricting a party from enforcing his rights under, or in respect of, any contract;
e) clauses that limit the time within which a party may enforce his rights; and
f) clauses that would defeat the provisions of any law, or that are opposed to public policy.

3.20 Where the construction contract involves an element of design and/or the contract is one for design only, are the designer's obligations absolute or are there limits on the extent of his liability? In particular, does the designer have to give an absolute guarantee in respect of his work?

The extent of a designer's liability in contract will depend on the terms of the contract. In tort, however, Indian law does not recognise an "absolute liability" on the designer or treat the designer as a guarantor. The Indian law of torts rests on negligence and is largely based on English common law.

3.21 Does the concept of decennial liability apply in your jurisdiction? If so, what is the nature of such liability and what is the scope of its application?

The concept of decennial liability is not recognised in India. Defect liability clauses in construction contracts broadly cover such liability of the contractor. Liability under the defect liability clause is generally for a period of six or 12 months after completion of the project.

4 Dispute Resolution

4.1 How are construction disputes generally resolved?

There are multifarious ways of resolving disputes recognised in India. These include resolution through litigation, arbitration, mediation, conciliation, dispute resolution boards and judicial settlement. Arbitration is the most commonly used mechanism to resolve construction contract disputes. Mediation and conciliation hardly ever succeed when the Government is involved in high-stakes disputes.

In May 2023, the Government of India introduced a dispute resolution scheme called *Vivad Se Vishwas II*, with the aim of settling contractual disputes involving Government undertakings. It proposes a voluntary settlement scheme by offering graded settlement terms depending on the stage of the dispute. For instance, if an award is passed against the Government undertaking but it has not yet been challenged, then the settlement amount can be 60% of the awarded sum, including interest, until the date of payment. In an official press release in 2024, the Union Minister of Road Transport and Highways informed that a total of 120 applications were received, out of which 113 were accepted. Offers of settlement were made in 56 applications, leading to 43 settlements.

4.2 Do you have adjudication processes in your jurisdiction (whether statutory or otherwise) or any other forms of interim dispute resolution (e.g. a dispute review board)? If so, please describe the general procedures.

In the absence of a statutory enactment, the adjudication process is subject to the parties' agreement. The clause is hardly ever used. Dispute review boards, on the other hand, are common. In practice, however, either the dispute review board is not constituted in a timely manner, or its decision is not voluntarily accepted. The Government's mindset is to only accept an arbitral award as upheld by courts as the proper dispute resolution mechanism, especially in high-stakes disputes.

4.3 Do the construction contracts in your jurisdiction commonly have arbitration clauses? If so, please explain how, in general terms, arbitration works in your jurisdiction.

Construction contracts invariably provide for arbitration. The Arbitration and Conciliation Act, 1996 ("Arbitration Act") is the governing law. The Arbitration Act is largely based on the United Nations Commission on International Trade Law ("UNCITRAL") Model Law, 1985 and UNCITRAL Model Arbitration Rules, 1976. The Arbitration Act has two significant parts. Part I is an elaborate code providing for the conduct of all arbitrations seated in India (domestic or international), while Part II essentially provides for enforcement of foreign awards (see question 4.4 below). India is an arbitration-friendly jurisdiction with pro-arbitration legislation and a good track record of enforcement of foreign awards.

4.4 Where the contract provides for international arbitration, do your jurisdiction's courts recognise and enforce international arbitration awards? Please advise of any obstacles (legal or practical) to enforcement.

Yes, India is a signatory to the New York Convention ("NYC"), and the grounds on which an enforcement can be resisted are as specified in the NYC. The limitation period for enforcement of a foreign award is 12 years. Legal obstacles include judicial delays and issues concerning remittance in foreign currency. The losing party is usually directed to deposit the awarded sums in court, pending resolution of the challenge grounds. This is to safeguard the interest of the successful party. The deposit is, however, in Indian Rupees. Several grey areas such as exchange rate issues and Indian tax issues on interest accrued have not been conclusively settled by the courts.

4.5 Where a contract provides for court proceedings in your jurisdiction, please outline the process adopted, any rights of appeal and a general assessment of how long proceedings are likely to take to arrive at: (a) a decision by the court of first jurisdiction; and (b) a decision by the final court of appeal.

Proceedings before a court are initiated upon the receipt of a plaint by the parties. The court then serves summons on the opposing parties to file their written statement (replies). Issues are thereafter framed by the court and the case is posted for trial. Evidence-in-chief is in the form of sworn affidavits, and cross-examination is conducted in front of court-appointed commissioners. The claimant's evidence is led first.

A claimant may request the court for a summary judgment in case of a certain debt or on lack of defence being available to the respondent wherein a judgment is sought without trial.

Parties may prefer an appeal to a High Court or to a two-judge bench of the High Court. If parties are not satisfied with the judgment of a High Court, a Special Leave Petition may be filed to the Supreme Court against any such judgment within a period of 90 days from the date of the impugned judgment.

Indian courts are burdened. The time taken can vary from jurisdiction to jurisdiction. Generally, a court case can take eight to 12 years to progress through the various stages of appeal.

4.6 Where the contract provides for court proceedings in a foreign country, will the judgment of that foreign court be upheld and enforced in your jurisdiction? If the answer depends on the foreign country in question, are there any foreign countries in respect of which enforcement is more straightforward (whether as a result of international treaties or otherwise)?

A foreign judgment may emanate from a "reciprocating" territory or a "non-reciprocating" territory. If it is from a reciprocating territory, the judgment is straightaway enforceable as a decree of the court upon filing of a certified copy of the decree. However, the enforcement is subject to six defences that are available to the defending party. In the case of a non-reciprocating territory, the foreign judgment is not straightaway executable. A fresh suit would need to be instituted in India on the basis of the foreign judgment. Here too, the defendant can only use six specified grounds to defend itself. The six grounds available to the defendant (in either situation) are that:

a) the judgment has not been pronounced by a court of competent jurisdiction;
b) it has not been given on merits, i.e., it is a default judgment;
c) it is founded on an incorrect view of international law or a refusal to recognise Indian law (if applicable);
d) the proceedings were opposed to natural justice;
e) it has been obtained by fraud; and
f) it sustains a claim founded on breach of law in force in India.

Some jurisdictions notified as "reciprocating territories" include the UK, UAE, Singapore and Hong Kong.

4.7 Do you have any special statutory remedies and/or dispute resolution processes in your jurisdiction for building safety-related claims?

India does not have a special statutory remedy or a dedicated dispute resolution process for building safety-related claims. The issue is governed by a combination of guidelines, general statutes and sector-specific mechanisms.

The National Building Code (last revised in 2016) covers numerous aspects including building safety, structural design, fire safety, electrical installations, plumbing, etc. The Code is, however, recommendatory and serves as a mere guideline, with no remedial mechanism.

Sumeet Kachwaha has over 46 years' experience in the legal profession, mainly in dispute resolution, corporate and commercial law. Mr. Kachwaha has been recognised in Band One of the Arbitration section of *Chambers Asia-Pacific* since 2009. He features in *Who's Who Legal* in the Construction, Arbitration, Procurement, Government Contracts and Asset Recovery sections, and as a "Leading Individual" in the Dispute Resolution section of *The Legal 500 Asia Pacific*. He is also listed in *GAR's Who's Who Legal* Arbitration section and ranks in the *India Business Law Journal*'s "A List". He has handled some of the leading and landmark commercial litigations before Indian courts. He has also been involved, on the non-contentious side, in several infrastructure, power, construction and telecom projects.
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