

### **Arbitration claims on *QUANTUM MERIUT* basis in construction and supply contracts**

We have seen lawyers arguing during arbitrations showing various technicalities and lapses in a contract to deny the payment to a party which provided a service or product to the other party. But Indian Contract Act heavily relies on the concept of unjust enrichment and hence cures most of the defects which comes in the way to receive a payment for a service or supply which is completed. Indian Contract Act, tries to compensate the injured party, who delivered a benefit to the other party or who incurred a loss not only due to the breach of another party to the contract but also due to other technical reasons in recovering payments. In some cases, the contract is discovered to be void or unenforceable at a later stage, in some other cases contract gets terminated or repudiated by a party and there is no provision in the contract for compensation. In the same way, the Act protects the right of a person who did something, without any intention to do it gratuitously, to claim payment. In such situations S.65 & S.70 of the Indian Contract Act or the concept of **quantum Meirut** will come to the rescue of the affected party.

**Termination of a contract, which does not provide for termination payment:** There are many types of infrastructure, supply and construction contracts in which some times the price for the contract work is not finalized by the parties prior to execution or contracts like build operate and transfer (BOT) contracts where price need not be finalized by the parties while entering a concession agreement. There are certain supply contracts where the execution starts prior to finalization of price. If such contracts get terminated for whatever reason, parties may find it difficult to find an acceptable method to claim damages so that they are reasonably compensated. In such situations one of the globally accepted method of calculation of damages is "**quantum meruit**"(as much as is deserved)<sup>1</sup>. This concept is for recovering damages based on the value of the benefits given to the other party during the currency of the contract. That means a party who executed certain work and the other party enjoyed the same hence a reasonable damage payment should be made to the party which executed the work. In some cases, where extra work is received by the Respondent and contract prohibits any extra work, payment must be made<sup>2</sup> based on this principle.

**There is no valid contract between parties:** Many a times, parties come to know in a later stage that the contract was signed by an unauthorized person but the goods or services were received by the Company, in such situations S.70 can be relied on to make a claim<sup>3</sup>. Even in contracts with Government which became enforceable since it is not complying with Article 299, section 70 can grant the relief. If a corporation receives money or products under a contract, which became illegal but still the corporation requires return the benefits.

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<sup>1</sup> (2016)12 SCC 592 NHAI Vs JSC

<sup>2</sup> Venkatesa Constructions Vs Karnataka Vidhyuth Ltd (2016) 4 SCC 119

<sup>3</sup> JK Enterprise Vs Prithviraj Ratanchand Metha (1990) 92 Bom LR 572

**Contract discovered to be Void later:** If a contract is discovered to be void, in a later stage S.65 of the Indian Contract Act, provides for remedy. In the cases where contract became void for some reason and the injured party has the right to claim compensation under S.65 of the Indian contract Act. The said section provides for a compensation or restoration by the person who received the benefits to the person from whom he received it. This concept originates from the philosophy of unjust enrichment. The intention of this section is to prevent a party from avoiding an agreement and retaining the benefits received under it<sup>4</sup>. But this provision is not applicable in cases where both the parties knew that the contract was a void contract. It also will not apply to cases where the contract is surviving, voidable but not void. That means S.65 can be applied only when contracts become fully unenforceable since it became void. The obligation to pay compensation under S.65 is quite different from a claim under the Contract itself and the both cannot co-exist. The limitation for claim starts from the date when the contract is discovered to be void<sup>5</sup>.

**Payment is towards price or Damages for the breach:** In cases of S.65 and S.70, there is no need for a breach to get the payment<sup>6</sup>. But the compensation under Quantum Meruit is only damages for the breach and not the actual payment for the completed work<sup>7</sup>. But the arbitrator can take cost of the materials as the basis for the determination of the damages.

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<sup>4</sup> N Purkayastha Vs Union of India AIR 1955 Assam 13

<sup>5</sup> Bavachi Vs VK Kunni Kannan AIR 1926 Jour 166 (3) Mad

<sup>6</sup> Indian Council of Arbitration Vs K S Sidhu 2014 SCC Online Del 89

<sup>7</sup> State of Madras Vs Gannon Dunkerley & Co (Madras) Ltd 1959 SCR 379