

5TH SURANA & SURANA & RGNUL INTERNATIONAL ARBITRAL AWARD WRITING COMPETITION, 2024



presented by

Centre for Alternative Dispute Resolution, RGNUL

in collaboration with

Surana & Surana International Attorneys, Chennai, India

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WRITING COMPETITION, 2024¹

1. In the present case, a dispute has arisen between Elizabeth Bennet Company (India) Limited and Darcy Construction Engineering Company (Private) Limited out of a construction contract for the construction of a Control Room of an LPG Handling Terminal dated **10.05.2019**.
2. The Claimant, Elizabeth Bennet Company (India) Limited (hereinafter referred to as “**The Contractor**”), is a Central Public Sector Enterprise under the Ministry of Heavy Industries, having its registered office in Okhla Industrial Estate, New Delhi.
3. The Respondent, Darcy Construction Engineering Company (Pvt) Ltd. (hereinafter, referred to as “**The Employer**”), is a company registered under the Companies Act, 1956, having its registered office in Bandra Kurla Complex, Mumbai.
4. The Employer had entered into a main Contract with the Project Owner i.e. Charles Bingley Private Limited for the development of an LPG Handling Terminal on 02.02.2019. Thereafter, the Employer decided to sub-contract the construction of the Control Room of the Plant to a sub-contractor. As a result, the Employer issued a bid requisition calling for bids to carry out the construction of the Control Room of the Plant.
5. The Contractor submitted its bid, which was finalized at INR 100,00,00,000 (One Hundred Crores Rupees only). The Control Room Contract bearing number CR052828 was awarded to the Contractor. Thus, the Parties entered into a **Unit Price Contract** on 10.05.2019. The date of completion under the Contract was 08.02.2020. The Contract has been appended as **Annexure-I**.
6. A kick-off meeting was scheduled between the parties on 10.05.2019, in which deadlines and obligations of each party were finalized. The minutes of the Kick-Off Meeting, containing signatures of representatives of both parties, have been appended as **Annexure-II**.

¹*This problem has been drafted by Ms. Ananya Singh, B.A. LL.B. (Hons.), RGNUL and Associate at the Office of (Retd.) Justice Indu Malhotra (Former Judge, Supreme Court of India). Any attempts to contact the drafter in consonance with the competition shall be grounds for disqualification from participation.

7. Despite the finalization of deadlines in the Kick-Off Meeting, there were severe delays in the execution of the Contract, which had a cascading effect on the completion of the Control Room project. The advent of COVID-19 further worsened the progress of the works under the Contract. The Contract was ultimately completed on 15.02.2021, i.e. after nearly a year of the stipulated date of completion.
8. The Contractor had applied for an Extension of Time on 22.08.2020 but the same was rejected by the Employer on the grounds that the Contractor was liable for the delay. It was alleged by the Employer that the Contractor failed to mobilize sufficient resources under the Contract. The Contractor continued to work on the project till 15.02.2021, after which it left the site as it was incurring huge losses on account of overhead costs.
9. As per the Contractor, it had completed the works and was entitled to the Provisional Acceptance Certificate **under Clause 6.1 of the Contract** and Retention Money **under Clause 5 of the Contract**. The Employer, on the other hand, argued that the Contractor had abandoned the Contract as certain punch list points such as painting and removal of debris were remaining, and hence, the Contractor was not entitled to the Provisional Acceptance Certificate and consequently, the Retention Money.
10. The Contractor submitted that the Employer failed to make the work fronts available in a timely manner, which hampered the overall progress of the Project. Under the Contract, the Employer was under an obligation to make the work fronts available for the Control Room. The Employer, despite various reminders, failed to provide encumbrance-free work fronts. Further, on the work fronts provided by the Contractor, there were encumbrances as the material of the other construction agency was lying around the project site. Even by 09.01.2020, i.e. a month before the completion date, the Employer had not made the entire work fronts available, which is evident from the letter of the Contractor dated 09.01.2020 and the Employer's response dated 10.01.2020 (**Annexure-III**). This prevented the Contractor from carrying out work as per the deadlines and therefore, led to delays.
11. The Contractor further contended that the Employer failed to release timely payments under the Contract, which led to a financial crunch and thereby, adversely impacted the ability to procure raw materials, especially during COVID-19. The pandemic had catastrophic effects on the labour market and the situation didn't normalize until September 2020.

12. The Employer, on the other hand, argued that the Contractor was solely responsible for the delay as it failed to deploy sufficient manpower and resources. The project had to be stalled on some occasions due to a lack of manpower and raw materials such as reinforcement bars and scaffolding. During COVID-19, the Contractor failed to re-mobilize the resources for a month after the lockdowns were lifted. The manpower deployed was substantially less as compared to the terms of the Contract. As per the Contract, at least 400 workers were to be engaged simultaneously during the currency of the contract. However, during the time of compliance checks held after COVID-19 lockdowns, it was observed that the Contractor was understaffed as only 300 workers were present. The Employer contended that given the breaches on the end of the Contractor in the deployment of resources, there was no possibility that the Contractor would have completed the work by the stipulated date of completion. The Contractor merely tried to use the non-availability of the work fronts as an excuse to cover up its shortcomings.
13. It is an admitted position by both parties that the Contractor remained on the project site until 15.02.2021 and thereafter, demobilized its resources (**Annexure-IV**). While the request for an extension of time was formally rejected by the Employer, the works were carried out during the extended period of stay.
14. The Employer didn't protest against the continuation of works in the extended period of the Contract and rather cleared the running bills of the Contractor during this extended period. Ultimately, however, the Employer refused to grant the Provisional Acceptance Certificate and consequently, the Retention Money, and the Final Bill.
15. The above dispute, which has arisen between the Parties, was referred to an ad-hoc arbitration on 01.04.2021 under Clause 48 of the Contract. Justice (Retd.) Emma Woodhouse, Former Judge of the Supreme Court of India was nominated by the Parties as the Sole Arbitrator. The Parties presented their arguments before the Tribunal. Please note the following assumptions:

ASSUMPTIONS

1. Respondent rejected the claims of the Contractor on 15.02.2021.
2. Overhead calculation based on the Hudson Formula.
3. Time is the essence of contract. The extension of time was sought by the Contractor.

ISSUES FRAMED

- 1. Who is responsible for the delay and to what extent?**
- 2. Whether the Claimant is entitled to the claims claimed in the Claim Statement. If so, to what extent?**
- 3. Whether the Claimant is entitled to a declaration that the Claimant is entitled for the Provisional Acceptance Certificate**
- 4. Whether the parties are entitled for interest as claimed, and if it is so, on what amount, on what rate, and in what period?**
- 5. For any other reliefs, including costs?**

ANNEXURE I: RELEVANT PROVISIONS OF THE CONTRACT

1.0 DOCUMENTATION

1.1 DEFINITION

- 1.1.1 The “Employer” refers to Darcy Construction Engineering Company (Pvt) Ltd.
- 1.1.2 The “Contractor” refers to the Elizabeth Bennet Company
- 1.1.3 “Completion of the Work”, Provisional Acceptance” and “Final Acceptance” of the Work shall have the meanings respectively assigned to them in Articles 5.0 and 6.0 of this Agreement.
- 1.1.4 “Particular Terms and Conditions” means the terms and conditions contained in this Agreement.

1.2 DOCUMENT PRECEDENCE

The Contract shall consist of the following documents which shall govern in the following order of precedence, the first named being paramount, unless otherwise stated herein.

- 1) Particular Terms and Conditions in this Agreement
- 2) Bid Clarification Documents
- 3) Requisition of Employer
- 4) Breakdown Price, Bill of Quantities and Unit Rates
- 5) Drawings
- 6) Kick-off Meeting
- 7) Declaration of Payment Received by Labourers
- 8) Designated Bank Account Details

1.3 CONTRACT INTERPRETATION

- 1.3.1 Where different standards relative to the same matter appear or are referred to in any of the documents hereto, the Employer’s sole opinion of such standards shall apply.
- 1.3.2 Should any work or materials or equipment be required which are not denoted in the specifications, the drawings and/or bill of quantities and rules but, in the reasonable opinion of the Employer, are nevertheless necessary for the proper carrying out of the Contract, the Contractor shall perform such work or furnish such materials of equipment at the Contractor’s own costs as if so denoted.

2.0 SCOPE OF WORK

- 2.1 The Contractor shall perform, provide and supply all Work, services and equipment set forth under the Contract hereto and perform all other obligations required by the terms and conditions of the Contract, and shall be responsible for performing and providing all matters of whatsoever nature or description which have not been specifically included in the Requisition hereto but could reasonably be inferred (From inter alia the application internationally accepted engineering and construction practice) as being necessary for the Completion of the Work, except for those matters which the Employer expressly undertakes this Contract to perform or provide.
- 2.2 The Owner or Consultant shall be allowed to contact Contractors under the presence of Employer to discuss the progress of the Contractor in performing the Work for the purpose of improving the Contractor's progress and delivery schedule for such Work, if Owner or Consultant deems such contact necessary.
- 2.3 If during the execution of the Work, the Contractor encounters abnormal subsurface conditions on the Site, which could not have been reasonably foreseen, the Contractor shall promptly give notice to the Employer for further action.
- 2.4 All Construction Equipment and materials provided by Contractor shall, when brought on to Site, be deemed to be exclusively intended for the construction and completion of the Work.

3.0 CONTRACT PRICE

3.1 CONTRACT VALUE

- 3.1.1 In consideration of the Work performed by the Contractor under the Contract, the Employer shall pay Contractor a Provisional Contract Price of INR 100,00,00,000 (One Hundred Crores Rupees only), which is temporary and the final amount will be adjusted in accordance with the actual quantities approved by Employer. This amount is based on the fixed unit rates of all work items. Except for the GST which shall be paid to Contractor additionally, the Contract Price is a total lump sum and inclusive of all compensation for accomplishing the Work and performing all obligations to be carried out by the Contractor under the Contract, any and all costs and expenses for labour, supervision, surveyors, material, tools, consumable supplies, equipment, taxes, fees, overhead and profit, and all other expenses whether of a like nature or not, required to perform the Work.

3.1.2 The Unit Rates shall not be subject to any adjustment due to any variation in exchange rates nor to any increase or decrease occurring by way of escalation, inflation or fall in market prices of materials, utilities and/or labor and the Contractor shall not be entitled to any compensation in addition to the Contract Price except to the extent otherwise provided in the Contract.

3.1.3 The Contractor shall be deemed to have made provisions in the Contract Price to cover the cost of such items of work as may be judged reasonable and necessary to complete the Work to the satisfaction of the Employer although the same may not be shown on or be described specifically in the Contract Documents.

4.0 TERMS OF PAYMENT

4.1 GENERAL

4.1.1 Payment of the Contract Price in Article 3.0 shall be made to the Contractor in accordance with the Payment Terms and the following terms.

4.1.2 Each of the payments provided for in this Article shall be made to the Contractor by means of bank cheque or telegraphic transfer to the account at the bank account designated by the Contractor. Any payment that falls due on a Saturday, Sunday or bank holiday in India and/or the country of the bank account designated by the Contractor shall be paid on the next succeeding Day that business of the type required for payment can be made. Contractor shall submit the relevant invoice in three (3) copies established in currency stated in Article 3. Each invoice shall identify the portion of the Contract Price claimed for payment, and in addition the applicable amount of India Taxes on such payment in accordance with the India regulations. The format of the Contractor's invoice and the calculation method of the Taxes shall be submitted to the Employer for concurrence prior to the submission of Contractor's first invoice.

4.1.3 Employer agrees to pay an undisputed portion of any invoice within two (2) Weeks after receipt of the invoice from the Contractor. For the disputed portion, the Contractor shall make the appropriate corrections or changes and re-submit such invoice to Employer for approval and payment. Payment will be made within twenty (20) calendar days after the approval of the correct invoice by the Employer. All costs associated with bank transfer and

costs thus incurred shall be borne by the Employer. The Contractor shall issue the official receipt for each currency of payment and deliver such receipts to the Employer on the respective due date on which payment is due to the Contractor. Also, the Contractor shall issue Tax Receipts to the Employer upon every payment received from the Employer.

4.2 RETENTION

An amount equivalent to Ten Percent (10%) of the value of each physical progress invoice referred to in Article 4.3 shall be retained by the Employer. The accumulated aggregated amount of such retention money shall be released to the Contractor with no interest thereon within **Forty (40) calendar days** after the date of the issuance of the Provisional Acceptance Certificate set forth in Article 6.1.

4.3 FINAL PAYMENT

Subsequently to the confirmation of the final account, Employer and the Contractor shall verify all amounts previously paid by Employer and the balance if any due from Employer to the Contractor or from the Contractor to Employer as the case may be. Except for the Retention, such balance shall be paid to or by the Contractor within thirty (30) calendar days of the date of the confirmation of the final account, such payment being a condition precedent to the issue of the Certificate of Provisional Acceptance of the Work.

5.0 TIME FOR COMPLETION

5.1 TIME SCHEDULE AND TIME FOR COMPLETION

The Contractor shall proceed with the Work strictly in accordance with the time schedule of the Work specified by Employer, and shall guarantee that parts of the Work shall be completed on or before the dates specified below except for minor items specifically approved by Employer in writing:

- (a) The Construction work has started on 10th May 2019.
- (b) All the Construction work shall be accomplished by 08th February 2020.

For the purposes of this Article 5.1, the Work (or any specified part thereof) shall not be considered as completed until the date so approved by Employer in a certificate of Completion of the Work as referred to in Article 5.3 hereof.

5.2 COMMENCEMENT OF THE WORK

Unless otherwise specified in writing, and subject to receipt of mobilization advance, handing over position of the site, the Contractor shall commence the Work on the date of commencement set forth in Article 5.1. The Employer may instruct the Contractor to defer the commencement of the Work by a period of seven (7) calendar days from the scheduled commencement date due to reasons of the Employer or Owner if such instruction of the Employer is given at a date not later than seven (7) calendar days prior to the scheduled commencement date.

In this event of deferred commencement instruction from the Employer, the guaranteed dates of completion specified in Article 5.1 hereof shall be extended by the actual period of deferment, accordingly.

In the event that the Contractor fails to meet the Time Schedule of Work set forth at in Article 5.1 any time during the execution of the work. The contractor shall at its own expense, take necessary action to recover, improve, and satisfy the Time Schedule of Work in accordance with the Employer's instructions. In the event that Contractor fails to meet Employer's instructions twice after issuance of a warning letter by Employer, Employer has the right to terminate the contract.

5.3 COMPLETION OF THE WORK

- 5.3.1 On the date reasonably well in advance of the prospective date of Completion of the Work, and subject to the Work being ready for inspection by the Employer, the Contractor shall so notify the Employer. The Contractor shall be responsible for giving such notice sufficiently in advance to enable the Employer to complete all inspections for Completion of the Work on or before such date of completion. The Contractor shall also notify the Employer of his proposed minor items of the Work. If any, to be completed after Completion of the Work and obtain specific approval by the Employer.
- 5.3.2 Upon receipt of such notice for inspection set forth in Article 5.3.1 above, Employer shall notify the Contractor of the programmer of inspection for the Work and his approval or disapproval of any such minor items of the Work proposed to be completed after Completion of the Work, and the inspection shall commence not later than seven (7) calendar days from

issue by Employer of such notice. Unless otherwise provided by the Contract, or Employer otherwise agrees in writing, the Contractor shall provide without charge all labour, materials, and equipment necessary for the proper carrying out of the inspection by Employer.

5.3.3 In the event that the inspection of Employer reveals defects or omissions in the Work, Employer shall immediately notify the Contractor thereof in writing and the Contractor shall in consultation with Employer, and at its own expenses, take such action as is necessary to make good such defects and execute such omitted work in respect of the Work, whereupon the Work or relevant thereof shall again be subject to inspection by Employer.

5.3.4 After the Contractor has, in the opinion of the Employer, satisfactorily made good defects and executed omitted work so that all the inspections for the Completion of the Work have been passed, the Employer shall issue to the Contractor a Certificate of Completion of the Work within a period of ninety (90) days from the date of notice by the Contractor, failing which upon expiry of the said ninety (90) days period the certificate of completion of work shall be deemed to have been issued by the Employer to the contractor.

5.4 LIQUIDATED DAMAGES FOR DELAY

5.4.1 Contractor shall not be entitled to any application of the extension of time except for conditions set forth in following conditions:

- (a) Any change order instructed by the Employer that has substantially affected the project schedule;
- (b) Any work suspension instructed by Employer under no fault of the Contractor,
- (c) Force Majeure; or
- (d) Any substantial breach of the Contract by the Employer.
- (e) Non-availability of “Goods For Construction Drawing”

5.4.2 If the guaranteed date of completion set forth Article 5.1 is not achieved by the Contractor for reasons other than those set forth in Article 5.4.1, the Contractor shall, without any demonstration of actual damages suffered by the Employer, be liable to pay to the Employer a penalty at an amount of **zero point five percent (0.5%)** of the Work for each day of delay including all agreed Change during the performance of the Work for each calendar week that

achievement of guaranteed completion date of work is delayed. The delay penalty shall be limited to **ten percent (10%)** of the Contractor or be deducted from any monies due or to become due to the Contractor under the Contract. Once the maximum of delay penalty is reached, Employer may, without prejudice to other remedies Employer may have under the Contract terminate the Contract under the Clause of Termination for Default in the General Terms and Conditions.

5.4.3 In addition to the liquidated damages for delay set forth in Article 5.4.2, the Contractor shall pay to the Employer compensation for supervisory expenses incurred for every day or part of a day which shall elapse between the guaranteed date of completion set forth in Article 5.1 and the time extended, and any damage incurred as a result of the delay caused by the default of the Contractor. The compensation for supervisory costs shall include, but not be limited to, costs of management and staff of Employer, Owner, and any other affected parties. The Compensation for supervisory expenses shall not exceed the sum of five percent (5%) of the Contract Price.

5.4.4 The Employer may, without prejudice to any other method of recovery, deduct the amount of such liquidated damages for delay from any money due or which may become due to the Contractor, and the payment or deduction of such damages shall not relieve the Contractor from his obligation to complete to complete the Work, or from any other of his obligations and liabilities under the Contract.

6.0 ACCEPTANCE

6.1 PROVISIONAL ACCEPTANCE

The Provisional Acceptance of the whole of the Work shall occur upon the Completion of all the Work subject to the fulfillment by the Contractor of the following conditions:

- (a) Completion of the minor remaining items which have been specifically approved by Employer and excluded from those to be completed before the Completion of the Work;
- (b) Submission of an affidavit releasing Employer from all liens and claims by the Contractors with regard to the Work. In this affidavit, the Contractor shall also declare that all payments to the Subcontractor, suppliers, employees, and agents have been made;

- (c) Completion of removal of the Temporary Work and cleaning up of the Site to the satisfaction of Employer;
- (d) Return to Employer of all drawings, data, and documents furnished by Employer which Employer requires the Contractor to return; and
- (e) Confirmation of the Final Account subjected to thereby no dispute by and between the contractor and the Employer attached hereto and settlement of all payments due from the Contractor or to be paid by the Contractor or to be paid by the Contractor for costs and expenses incurred, if any, by Employer under the Contract before the issuance of a certificate of Provisional Acceptance.

When the Contractor considers that all the conditions as provided for in this Article 6.1 have been accomplished, the Contractor shall notify the Employer to that effect in writing.

Within fourteen (14) calendar days after receipt of such notice, Employer shall check the Work and the above conditions. If the Employer finds any incomplete or incorrect work or condition, the Employer shall advise the same to the Contractor, and the Contractor shall immediately correct or complete such portion and shall again notify Employer that all the Work has been accomplished. The above process shall be repeated until all the Work has been accomplished to the satisfaction of the Employer.

In the event that the Employer accepts the whole of the Work, the Employer shall issue to the Contractor a certificate of Provisional Acceptance of the Work. However, issuance of such certificates by Employer shall not be deemed that Work is free from defects, imperfections, or malfunctions in every respect, nor shall it be deemed to be a waiver of any rights or claims by Employer against the Contractor.

Upon the issuance of the certificate of Provisional Acceptance of Work, care and custody of the Work other than Temporary Work shall be transferred from Contractor to Employer.

6.2 FINAL ACCEPTANCE

The Final Acceptance of the Work shall occur upon expiration of any Guarantee Period set forth in Article 7.2 hereof subject to fulfillment by the Contractor of the following conditions:

- (a) The making good by the Contractor of any defects and the execution of any omitted work discovered during the Guarantee Period, including any Guarantee Period extended under the Contract; and
- (b) Payment by the Contractor of all expenses incurred, if any, by the Employer in the making good of defects arising from the executed work or omissions by the Contractor under the Contract.

Not less than thirty (30) Calendar days prior to the prospective date of Final Acceptance of the Work, the Contractor shall submit to the Employer a request for issue of a certificate of Final Acceptance of the Work. On the date of the Final Acceptance of the Work, Employer shall issue to the Contractor a certificate of Final Acceptance of the Work certifying that the Contractor is released from all the obligations provided in the Contract, and within one (1) month thereof, Employer shall return to the Contractor the original of the Performance Guarantee referred to in Article 9.2 hereof unless any extension of the validity thereof is requested by Employer.

21.0 WORKMEN

- 21.1 The Contractor shall make his own arrangements for the engagement of all workmen, local or otherwise, and for their transport, accommodation, and feeding payment. At all times, there must be at least 400 workmen employed by the Contractor.
- 21.2 The Contractor shall, as far as is reasonably practicable having regard to local conditions, provide at the Site an adequate supply of potable water and amenities for use by the Contractor's staff and workmen.
- 21.3 The Contractor shall not give, barter or otherwise dispose of to any person or persons, any arms or ammunition of any kind or permit or suffer the same as aforesaid.
- 21.4 The Contractor shall not, otherwise than in accordance with the statutes, ordinances, and government regulations or orders for the time being in force, import, sell, give, barter, or otherwise dispose of any alcoholic liquor, drugs, or permit or suffer any such importation, sale, gift, barter, or disposal by Subcontractor, agents or employees.

21.5 In the event of any outbreak of illness of an epidemic nature, Contractor shall comply with and carry out such regulations, orders, and requirements as may be made by the government, or the local medical or sanitary authorities for the purpose of dealing with and overcoming the same. Any schedule extension required as a result of such an epidemic shall be handled in accordance with Force Majeure under the Contract.”

34.0 CLAIMS

34.1 In the event of the occurrence of any event which Contractor believes may give rise to a claim by Contractor for an increase in the Contract Price or the Extension of the Time for Completion, Contractor shall issue a written notice within five (5) Days to Employer. Within twenty-eight (28) days, or a mutually agreed period sufficient for the cost estimation and documents preparation, Contractor shall submit all detailed cost estimations and supporting documents for such event.

34.2 The Employer shall not be liable for, and Contractor hereby waives, any claim or potential claim of Contractor of which Contractor knew/should have known and which was not reported by Contractor within five (5) days from the occurrence of such event in accordance with provisions of the Contract. In addition, the Contractor agrees to continue the performance of the work during the time any claim of the Contractor hereunder is pending. Any adjustments in the Contract price or the time for completion in consequence of the Contractor’s claim shall not be binding on the Employer unless expressly agreed to in writing by the Employer. No claim hereunder by Contractor shall be allowed if asserted after the final payment under provisions of the Contract.

48.0 ARBITRATION

48.1 If any dispute or difference of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract, or the execution of the Contract Works, whether during the progress of the Contract Works or after their completion and whether before or after the termination, abandonment, or breach of the Contract, it shall be referred to arbitration as hereinafter provided.

48.2 This Agreement shall be governed and interpreted in accordance with the laws of India.

48.3 In the event of a dispute arising out of or in relation to any matters set forth under this Agreement, the dispute will be finally settled by arbitration conducted by a Sole Arbitrator in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 or any amendments made thereof. The seat of such arbitration shall be New Delhi. Subject to the foregoing, the courts at New Delhi only shall have exclusive jurisdiction in all matters arising out of this Agreement.

48.4 The execution of the Contract Work shall continue during arbitration proceedings unless the Employer shall order the suspension thereof or for any part thereof.

ANNEXURE II: MINUTES OF THE KICK-OFF MEETINGS

Description	Due Date
1. The Work fronts were to be made available by the Employer:	10.05.2019
2. The Method Statement for the Control Room was required to be submitted by the Contractor before start of the Work:	10.06.2019
3. Inspection record of each activity should be submitted before and after the work :	18.06.2019
4. The Method Statement for all types of work (Piling Work, Pile Load Test, Concrete Work, Brick Work) to be submitted :	18.06.2019
5. Item No. 3.8 stipulated that All Material Sourcing required before starting any Work :	18.06.2019
6. Submission of requisite documents such as indemnity, P.F. registration work order for obtaining labour licences :	16.07.2019
7. Submission of Inspection Records of each activity before and after the work :	28.09.2019
8. Method Statement for all types of work (piling work, pile load test, concrete work, brick work) :	28.09.2019

9. The Contractor was to provide the following documents before commencing any work: 29.07.2019
- (i) Carry out Job Safety Analysis
 - (ii) Organizational Chart giving the name and details of the key employees, and their resume
 - (iii) Equipment list to include Piling Rig, Concrete Batching Plant, Transit Mixer
 - (iv) Equipment Mobilization Plan
 - (v) Preparations for the Monsoon

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10. Level-III Schedule to be submitted by the Contractor 31.07.2019

Detail Schedule to be made from Level-III Schedule, which shall include the following information:

- (i) Daily Progress,
- (ii) Area Map (Weekly Map to show the Areas of Completion.).

ANNEXURE III: EMAILS EXCHANGED BETWEEN THE PARTIES
[DOCUMENTARY EVIDENCE PLACED ON RECORD]

EMAIL DATED 09.01.2020

Date	09.01.2020
From	Elizabeth Bennet Company (India) Limited
To	Darcy Construction Engineering Company (Pvt) Ltd.
<p>Dear Sir,</p> <p>This is to bring to your notice that our company has completed the piling work on almost all the work fronts made available. However, the south-side work front of the Control Room (external area) is not made available till date.</p> <p>During the entire currency of the award, we have sent repeated reminders for the work-fronts. Many areas such as the North side and west side of the Control Room were encumbered by the materials of other sub-agencies. The Contract completion date is approaching soon. We are unable to progress further. Kindly provide us with the remaining work fronts otherwise the works will not be completed by the completion date under the Contract.</p> <p>Regards, Jane Augustine Project Manager Elizabeth Bennet Company (India) Limited</p>	

EMAIL DATED 10.01.2020

Date	10.01.2020
From	Darcy Construction Engineering Company (Pvt) Ltd.
To	Elizabeth Bennet Company (India) Limited
<p>Dear Jane,</p> <p>This is to inform you that all the work fronts except for the 250 metres sq. of the Control Room are available. Kindly complete the work on the remaining sides to avoid the imposition of liquidated damages.</p> <p>The project is progressing at a slow rate and hence, you must expedite the process.</p> <p>Best, George Wickham Project Director Darcy Construction Engineering Company (Pvt) Ltd.</p>	

**ANNEXURE IV: TRANSCRIPT OF THE ORAL EVIDENCE PLACED ON
RECORD [RELEVANT EXTRACT FROM THE CROSS-EXAMINATION OF MS.
JANE AUGUSTINE, PROJECT MANAGER, ELIZABETH BENNET COMPANY
(INDIA) LIMITED]**

Q1. Till when was the Contractor present on the site?

Ans. Till 15.01.2021. Thereafter we informed the Employer that we could not stay on site for any longer as we had completed our scope of work and no further work fronts were available. The Employer also directed us to clear the site. Hence, we demobilized our resources from the site.

Q2. Did you apply for the Extension of Time?

Ans. Yes, we did. However, we were denied EOT arbitrarily.

Q3. Why was there a delay in the mobilization of the labour from your side?

Ans. As everyone is aware, there was a national labour crisis in the country during COVID-19 lockdown. The labourers had returned to their native villages and there were travel restrictions. It was therefore impossible for the Contractor to arrange the labour force due to the prevailing force majeure conditions.

Q4. Why did you stay on site after the date of completion of the Contract?

Ans. The Employer never directed us to leave. Further, our running bills were cleared by the Employer during the extended period of the Contract, indicating that there was a deemed extension of time.

Q5. Are you aware that the present contract is a Unit Rate Contract?

Ans. Yes, we are.

ANNEXURE V: RATE ESCALATION

Material	Quantity (In Metric Tonnes)	Additional Costs Incurred Due to the COVID-19 (Per Metric Tonne)	Total Cost Due to Escalation
TMT Steel	8880	₹ 1400	INR 1,24,32,000
Bricks	9880	₹ 240	INR 23,71,200
Total Escalation Cost			INR 1,48,03,200