DELHI DEVELOPMENT AUTHORITY
EM's OFFICE

No. EM 1(10)2005/ Cir. /1069 **dt:** 20 **/3/06**

CIRCULAR No. 578

As per Terms & Conditions of the agreement, in case a contractor fails to abide by the time schedule given in clause 5 of the Agreement, the contractor is liable for action under clause 2 of the agreement, the decision of SE on which is final and binding regarding levy of compensation and is not arbitrable.

In such cases, the penalty being excepted matter was not adjudicated upon by the Court as well as by the Arbitrators, wherein it was decided that the amount due to the Department should be recovered by filing a recovery suit in case the same can not be recovered from his available dues. Such action is required to be taken-up promptly by EEs concerned as soon as the compensation is decided by SE. But instances have come to notice where EEs have delayed such matters abnormally and recovery suit, not filed.

It is necessary on the part of the EEs to review the progress of work from time to time and recover the specified sum from the contractor if he fails to meet the milestones but such review is not done and EOTs are processed much later after the completion of the work. Further, while recommending the Extension of time cases to SE, EEs have to examine each and every hindrance claimed by the contractor very carefully and accept only those hindrances which are really beyond the control of the contractor. EEs have also to point out the hindrances on the part of the contractor such as deployment of inadequate labour, plant and machinery, materials and stoppage of work etc., so as to enable SE to take balanced view at the time of deciding the compensation. But it has been observed that the EOTs are granted by SEs without levy of compensation in disregard to the delays on the part of the contractor. As a result the Arbitrators have granted huge compensation to the contractors saying that the entire delays were on the part of the Department and the Department could not defend such cases in Court of Law.

The matter was examined in detail by the Legal Cell, who are of the opinion that action under clause 2 of the Agreement is to be taken as self imposing provision and the Superintending Engineer has to monitor the progress of the work continuously stage by stage and determine the compensation to keep the contractor under pressure to complete the work in stipulated time or to delay it

at his own cost and peril. This clause does not bar periodically assessment of delay during the execution of work. Once delay occurs, to be assessed in continual manner, recovery of compensation for damage/penalty would present no problem as payment of the contractor is available with the Department when the work is still under progress and DDA is secured by way of bank guarantee or other securities in its hand. Such recoveries can be adjusted against the final bills and security deposits of contractor.

Attention is also invited to EM's Circular No. 114, dt. 24/9/85, wherein it has been emphasized that while notifying the contractor regarding delay in execution of work and having rendered himself liable to pay compensation in accordance with clause 2 of the contract, it should be informed by EE that the quantum of compensation to be actually levied shall be decided in due course. Attention is also drawn to instructions contained in Section 28 and para 32.1 of Section 32 of CPWD Works Manual 2003, which are self explanatory. It is enjoined upon all Superintending Engineers/Ex. Engineers to comply with the instructions strictly. The Superintending Engineer shall be held responsible for any lapses on account of above.

This issues with the approval of EM as recorded in file no. F.2 (987)94/HC/Legal/Part file.

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(A.P. Singh)
Chief Engineer (HQ)

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