



TICKING CLOCKS AND LEGAL KNOTS IS TIME REALLY OF THE ESSENCE IN CONSTRUCTION CONTRACTS?

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Benjamin Franklin's famous quote - "*lost time is never found again*" – is apt in the arena of construction contracts. Most construction contracts boldly declare that "*time is of the essence*", and rightly so, as small delays in execution of construction contracts can lead to enormous cost overruns, and consequent disputes. Therefore, it would be interesting to understand the significance of the phrase "time is of the essence" in construction contracts. Does it mean that any delay would be construed as a serious breach. And how does this come to pass if the contract also has provisions allowing an extension of time for completion of the works?

Additionally, construction contracts typically involve reciprocal obligations that are required to be fulfilled by both parties to the contract. For instance, the employer will generally have the obligation to provide right of way, assist with having encumbrances removed by multiple public utility agencies, obtain environment and forest clearances, and also provide timely comments and/or approvals for drawings and designs to enable the contractor to execute works. Besides, the same project often has multiple contractors for different aspects of the project and the ability of one contractor to execute works is often dependent on completion of pre-requisite works or availability of front. In a nutshell, timely execution of construction contracts is never solely a matter in the hands of the contractor.

Whether the delays gives one party the right to terminate the contract or claim damages is one of the important issues for determination in case of disputes over missed timelines. In adjudication of such disputes, determination whether time was of the essence of the contract plays an important role.

What Does 'Time is of the Essence' Mean?

In India, the mere inclusion of deadlines in a contract does not automatically make time "of the essence". Courts in India view this based on the overall intention of the parties, the specific wordings of the contract, and how both sides conducted themselves during the course of performance of the contract. As explained in Pollock & Mulla's Indian Contract and Specific Relief Acts, time can be considered essential in three situations: first, when the contract expressly states that performance must be completed by a certain date and time; second, when the nature of the contract makes timely performance critical to its objective; and third, when time was not originally essential, but excessive delays by one party prompts the other to issue a notice requiring completion within a reasonable period of time. These principles guide the Courts in ascertaining as to whether a missed deadline constitutes a significant

breach or merely a lapse that can be remedied through compensation or even an extension of time.

What does the Indian Contract Act, 1872 Say?

Section 55 of the Indian Contract Act, 1872, addresses the consequences when a contractual obligation is not performed within the agreed time period. If the parties intended that time would be of the essence and the promisor fails to perform within the stipulated period, the contract becomes voidable. However, if the promisee does not terminate the contract and accepts the delayed performance, it cannot later demand damages for the delay unless it had expressly reserved the right to do so at the time of acceptance by giving notice to the promisor. This interpretation was reaffirmed by the Supreme Court in **Consolidated Construction Consortium Ltd. v. Software Technology Parks of India, 2025 SCC OnLine SC 956**, wherein it was emphasized that the important considerations are whether the parties intended time to be essential and whether the promisee notified its intention to claim compensation for delayed performance.

In the case of contract where time was not intended to be of essence, the contract does not become voidable due to the delay. Instead, the promisee is entitled only to claim compensation for any loss suffered as a result of the delay.

Supreme Court on Time Clauses

The Supreme Court of India has consistently held that the phrase “time is of the essence” must be understood in the context of the contract as a whole, rather than in isolation. In **Hind Construction Contractors v. State of Maharashtra, (1979) 2 SCC 70**, it was observed that even where a contract explicitly states that time is of the essence, other provisions, such as those permitting extensions or imposing penalties for delay, may indicate that strict adherence to deadlines was not fundamentally intended. However, it does not mean that a party has no recourse to termination of the contract on account of delays. To terminate the contract, the party not in breach should first set out a final deadline, which is reasonable for completion of balance works. If the party in breach fails to meet such deadline, the contract can be terminated. The principle was further clarified in **Arosan Enterprises Ltd. v. Union of India, (1999) 9 SCC 449**, where it was held that the presence of extension clauses typically suggests that time is not essential, however, if the delay becomes unreasonable and frustrates the purpose of the contract, the injured party may still be entitled to relief. Similarly, in **McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181**, the Supreme Court reaffirmed that, as a general rule, time is not of the essence in construction contracts unless specific and exceptional circumstances justify such an inference. Again, in **Bangalore Development Authority v. Syndicate Bank, (2007) 6 SCC 711**, the Supreme Court held that where time is not of the essence and the buyer accepts delayed performance without protest, there can be no claim for breach or damages unless a specific notice setting a final deadline was issued. These decisions of the Supreme Court underscore that the enforceability of time-related clauses depends not just on contractual language but also on the conduct of the parties and the overall structure of the contract.

How Time Clauses Play Out On-Site

In the context of construction contracts, while most contracts include deadlines as well as clauses for liquidated damages, the mere presence of such provisions does not automatically render time to be of the essence. The Supreme Court has consistently held that if the contract allows for extensions of time or if the parties continue to perform their obligations despite delays, it indicates that strict adherence to timelines was not fundamental to the contract. However, this does not mean that delays are without consequence. If a contractor fails to meet the agreed timelines and such delay results in actual harm or financial loss, the aggrieved party may still claim compensation or invoke the liquidated damages clause, provided such

terms were clearly outlined in the contract between the parties. On the other hand, if the delay does not undermine the core purpose of the contract, or if the non-breaching party accepts

late performance without objection, it becomes significantly more difficult to justify termination or claim substantial damages. Courts and arbitral tribunals will therefore evaluate the full context of the parties' conduct, including any extensions granted, the pattern of communication, and whether any formal notice was issued insisting on timely performance, to determine the legal effect of the delay.

Conclusion

In conclusion, simply stating that "time is of the essence" in a construction contract does not, by itself, make deadlines legally binding in the strictest sense. What truly determines the legal weight of such a clause is the overall structure of the contract, the surrounding circumstances, and most importantly, the conduct of the parties throughout the performance of their obligations. The Indian Contract Act, 1872, makes it very clear that in most construction contracts, time is not presumed to be essential unless expressly stated and consistently treated as such by both parties. However, when delays fundamentally undermine the contract's purpose or when one party has clearly set a reasonable and specific timeline after undue delay, the consequences can be serious, including termination or even liability for damages. Therefore, the important takeaway for parties in construction projects is that contracts must be drafted with precision, enforced consistently and supported by clear communication about timelines and the consequences of non-compliance. Only when deadlines are genuinely treated as critical by both sides, through both words and actions, can it truly be said that time is of the essence.