

## No claim certification does not relinquish claims

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Recently in *RL Kalathia and Co v State of Gujarat* the Supreme Court of India reiterated that merely because a contractor has given a “no dues certificate”, and has signed and accepted bills prepared by the state government, he cannot be estopped from filing suit.

This decision may come to lessen the coercive tactics of the government departments.

### Origin of dispute

The facts of the case show that the contractor had raised certain claims regarding some additional work done by him, but the state government refused to pay.

The contractor won a decree in his favour in a civil court that was challenged by the state government before the High Court of Gujarat at Ahmedabad. A division bench of the court allowed the appeal and dismissed the contractor’s claim. The contractor then appealed this judgment before the Supreme Court of India.

The state government’s core argument was that merely endorsing that the acceptance of the amount is “under protest” without disclosing any real grievance on merits is not sufficient and amounts to accepting the final bill without any objections on merits.

### Apex court sees it differently

The Supreme Court held that merely because the contractor has accepted the final bill, he cannot be deprived of his right to claim damages if he has incurred additional costs and is able to prove this.

The court noted that the contractor had specifically claimed to have performed the additional work on the

directions of the department, hence he was entitled to an additional amount or damages according to the terms of the agreement.

### Persuasive precedent

The Supreme Court relied on the decision in *Chairman and MD, NTPC Ltd v Reshmi Constructions, Builders & Contractors*, which considered: “Whether after the contract comes to an end by completion of contract work and acceptance of the final bill in full and final satisfaction and after issuance of no due certificate by the contractor, can any party to the contract raise any dispute for reference to arbitration?”

In that case the court held that even “when rights and obligations of the parties are worked out, the contract does not come to an end inter alia for the purpose of determination of the disputes arising thereunder, and, thus, the arbitration agreement can be invoked. Although it may not be strictly in place but we cannot shut our eyes to the ground reality that in a case where a contractor has made huge investment, he cannot afford not to take from the employer the amount under the bills, for various reasons which may include discharge of his liability towards the banks, financial institutions and other persons. In such a situation, the public sector undertakings would have an upper hand. They would not ordinarily release the money unless a No-Demand Certificate is signed. Each case, therefore, is required to be considered on its own facts.

“Further, *necessitas non habet legem* is an age-old maxim which means necessity knows no law. A person may sometimes have to succumb to the pressure of the other party to the bargain who is in a stronger position.”

The Supreme Court while deciding the present matter also relied on its earlier decision in the case of *Ambica Construction v Union of India*. In that case the court held there was no bar to the contractor raising claims that are genuine even after submission of a no claim certificate.

### In a nutshell

The apex court summarized the law in this matter as:

1. Merely because a contractor has issued a no due certificate, if there is an acceptable claim, the court cannot reject it on the ground that such a certificate was issued.

2. As it is common that payment of bills is generally delayed unless a contractor gives a discharge certificate in advance, such a clause in a contract would not be an absolute bar to a contractor raising claims that are genuine at a later date even after submission of a no-claim certificate.

3. Even after execution of a full and final discharge voucher or receipt by one of the parties, that party is not barred from claiming any amount he is entitled to for which he has adequate basis, merely because he accepted the final bill by mentioning “without prejudice” or issued a no dues certificate.

From the above, it can be concluded that the principle of estoppel cannot be used against a party for raising claims even after a final bill has been accepted or a no-claim certificate has been issued.

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