



Review on Dispute Resolution Management

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Abstract : *Construction Industries are prone to conflicts due to the complex nature. Every construction project is bound to have dispute. There are many types of methods / techniques to resolve disputes. Disputes usually arise out of delays in obtaining the work down, disappointing work, or a customer's failure to form payments. Construction-related disputes will consume plenty of your time and cash on a part of everybody concerned. In several cases, the Expense concerned in following a dispute is way out of proportion to the cash really at stake. This paper contains the explanation and comparative study of different dispute resolution methods*

Keywords – *Dispute, Conflict, Arbitration, Dispute management*

I. INTRODUCTION

Construction projects are prone to conflicts this is happened due to the multiplicity of different people handling different phases of projects, any type of construction work conflicts or disputes are affects projects. Research of determining the causes of disputes is identified and continue to manifest in projects. Because most of the studies undertaken have been based upon Research of determining the causes of disputes which are identified and continue to manifest in projects. Because most of the studies depend upon questionnaires or derived from case law, the factors identified for example, poor communication has been identified as a cause of disputes. Fundamentally, work processes, policies, and procedures as well behaviors' need to change in concert if disputes are to be reduced in construction.

II. DISPUTE

Nowadays, disputes in construction industry are a common thing and sometimes could not be avoided. Every construction project is bound to have conflict. There are many types of methods / techniques to resolve disputes. Disputes usually arise out of delays in obtaining the work down, disappointing work, or a customer's failure to form payments. Construction-related disputes will consume plenty of your time and cash on a part of everybody concerned. In several cases, the Expense concerned in following a dispute is way out of proportion to the cash really at stake. Associate lawyer with expertise in construction disputes will assist you pursue your Claim in associate economical, cost-efficient manner.

2.1 Type of disputes

Type 1: Disputes that resolve and settle

This type of dispute is that the best of all of them. It is often resolved by confrontation without anything serious happen like court and cash. typically, it's done verbally.

Type 2: Disputes that may end in financial claims

This type of dispute can involve plenty of cash because the outcome of this dispute can ensure that the losing aspect can lose cash as they pay the value of compensation or Settlement of the cash left in addressing the business.

Type 3: Disputes that will not lead to financial claims

This type of dispute can have associate degree consequence of no call are often created between the parties concerned or there's a winner however no cash can involve to the losing facet. Therefore, each party can have to be compelled to deal that nobody can commence as a winner. Some cases can also be that, the losing facet can end wherever it started and no settlement can have to be compelled to pay to the winning party.

Type 4: Disputes that can't be resolved and have to be compelled to refer for arbitration some disputes square measure onerous to resolve and so the sole thanks to agitate it's by arbitration methodology as a result of there aren't any alternative approach higher to agitate the dispute than arbitration.

2.2 Reasons for dispute arise in construction

Construction contracts give rise to disputes of bizarre issue and complexness even by analysis with alternative styles of legal proceeding. The performance of the many construction contracts run over for much longer periods than most alternative sorts of industrial contract, with potential scope for disagreement and money disagreement arising perpetually throughout the development amount, and with giant sums of cash and income pressures involved on each side. There is lots probabilities of disputes or distinction of opinion from the terribly beginning of getting into the contract and commencing the work as a result of systematically each the parties have to be compelled to meet with reciprocal obligations on either facet one when the opposite and one case of default is satisfactory to upset the leveling setup and also the whole development, programming enhance targeted schedule of completion of labor. The leader needs to scale back the expenses so as to stay up the economic viability of the project at intervals its restrictions, tries to bring down the expenses whereas the contractors universally referred to as „builders“ United Nations agency invests giant amounts by method of multinational price within the kind of machinery, materials, tools and plants as conjointly onsite and offsite employees and now and then own testing laboratories and analysis wings, coming up with and drawing wings, once confronted with surprising things wherever variations from the scope of the contract or undue delays by the owner that weren't at intervals the thought of the parties at the tendering stage, unless remedied now, would upset the look and programming and money viability, enter into prolonged correspondence resulting difference of opinion and disputes that guarantee in settlement.

II.3. Causes of Disputes

The generation of may disputes often lie in the contract document itself it is often observed that tenders are quickly made and sufficient attention is not work.

- Changes in not paid.
- Differing in unusual site condition.
- Suspension of work.
- Variation of quantities.
- Damage due to natural disasters and force-majeure.
- Re-inspection and acceptance.
- Termination for the convenience of the client.
- Possession prior to completion.
- Escalation of price due to inflation.
- Acceleration of work progress.
- Ripple effect.
- Currency fluctuations effect.
- Ambiguity in specification and drawings.

2.4 Impact of disputes on projects

Changes and delays in any project can cause disputes that have a disastrous impact on major construction projects, often involving cost overruns, late delivery and a compromise on the quality and scope of work being done. Joseph Bond, managing director of Kenzie Group commented: “Disputes continue to be a major issue for everyone in the construction industry, and we are seeing a rise in demand for our services as firms recognize the drastic savings that can be made by seeking proper representation during disputes, or by putting dispute avoidance measures in place. In handling claims by construction and engineering contractors and owners, and by general builders, we have assisted a broad spectrum of clients and we are anticipating another busy year ahead.”

2.5 Avoid going through construction disputes

The construction dispute starts with the construction contract. To reduce the chance of arguments arising, you have to ensure that the project team spends time negotiating the contract and fully understanding it. The failure to understand the contract is the main source of arguments and litigation in the construction field. You don't want to clear contract related questions with your clients sitting next to lawyers or attorneys. Next, we will show you some simple steps to avoid construction litigation and arguments. Plan Radar Software for Construction offers a real new practice for your firm to avoid construction litigation. Upfront planning before work can guarantee you to that you will finish on time Document daily reports for any defects that may arise during execution. Make sure schedules are realistic and flexible enough to include any defects or anticipated disruptions. Carefully understand and negotiate all the contract terms and conditions with your clients Follow the contract and insist that the other party do so to avoid litigation on the two parties“ legal rights. Do not postpone any new problems; deal with them as they arise Keep your communication mails formal and reasonable, always Be aware of the danger zone in construction e.g. delays, quality, and design issues Follow risk management strategy and consult specialist in each technical field Ensure critical problems are discussed in meetings, not by email Perform any contractual obligations as scheduled Remember your duty to mitigate if the other party breaches the contract Adopt

technology systems that increase the effective communication and information transparency between the project parties. A counsel with experience and practice might help your firm making the right decisions.

1. Litigation
2. Arbitration
3. Mediation
4. Conciliation
5. Adjudication
6. Disputes resolution board
7. Disputes resolution adviser

Litigation

Litigation is a legal continuing in a court or a judicial context to confirm and enforce legal rights. This is the least most popular methodology in the construction trade as the courts act on the human system and harm business relationships. Besides the slow, expensive, time intense, risky and nerve-wracking procedure that proceeding brings, there is no real certainty of results alternative than a certainty of at least one loser.

Arbitration

During the arbitration process, parties make submission to an arbitrator and are bound by the arbitrator's decision. a mini-trial for a law-suits ready to go to trial, held in an attempt to avoid a trial and is conducted by an independent person, usually with some relevant skill or knowledge, to determine the dispute.

Mediation

Mediation is a prominent ADR method used in the construction industry and is now a firmly established preferred dispute resolution tool for construction claims. Mediation is an attempt to settle a legal dispute through an active participation of a third party, a mediator, who works to find points of agreements and make those in conflict agree on a fair result.

Conciliation

Conciliation is just like mediation however the primary purpose is to conciliate through searching for concession.

Adjudication

Adjudication is the process where an independent person, the adjudicator, makes a determination as to the amount, if any, which the respondent owes to the claimant, specific date it was to be paid and on what interest applicable (IAMA, 2006). The objective is to impose a settlement on parties.

III. DISPUTES RESOLUTION BOARD

A disputes resolution board or dispute review board (DRB) is a dispute adjudication process, typically comprising three independent and impartial persons selected by the contracting parties. The significant difference between Dispute Review Boards and most other Alternate Dispute Review techniques (and possibly the reason why or Dispute Review Boards have had such success in recent years) is that the Dispute Review Board is appointed at the commencement of a project before any disputes arise and, by undertaking regular visits to the site, is actively involved throughout the project.

A Dispute Board becomes a part of the project administration and thereby can influence, during the contract period, the performance of the contracting parties. It has 'real-time' value. The idea behind a standing Dispute Resolution Board is that it may be called upon early in the evolution of any dispute which cannot be resolved by the parties and be asked to publish decisions or recommendations on how the matters in issue should be settled.

Disputes resolution adviser

Construction is a complex process involving multi-parties to achieve different goals and needs. Disputes are inevitable in construction projects which predominantly arise from unbalance power and lack of team spirit of the parties, ambiguous contract provisions, unexpected conditions and poor communication between project participants. Dispute Resolution Advisor system is introduced and firstly adopted by Architectural Service Department in 1991. People trust the Dispute Resolution Advisor system that takes the proactive way to minimize claims and resolve differences in a speedy and cost-effective manner before blowing up to contractual disputes.

IV. COMPARISON BETWEEN DIFFERENT ADR METHODS

Based on the study of different methods of construction disputes, some conclusions are drawn. This chapter contains the summary of different comparison between different ADR methods explained in table below,

Table No.1 Comparison between different ADR methods

	Mediation	Adjudication	Arbitration	Litigation
Definition	Negotiation with mediation of a third party.	Disputes submitted to an adjudicator for binding decision unless substituted by arbitration litigation.	Disputes submitted to an arbitrator for a binding decision	Process of making a civil making claim in court of law.
Time	Generally, 1 to 2 days for simple cases.	Much shorter than arbitration and litigation, normally 30 days to decide	May take months/years. Procedure to be agreed by parties.	Longest period because of backlog of cases in court.
Cost	Lower than arbitration	Lower than Arbitration cost because of faster hearing.	Higher than mediation, can be higher than litigation cases.	Expensive because of it take a long period.

V. ARBITRATION AND CONCILIATION ACT

The arbitration and conciliation act 1996 is an Act that regulates domestic arbitration in India. It was amended in 2015 and further amendment passed in Lok Sabha on 1 August 2019. The Government of India decided to amend the Arbitration and Conciliation Act, 1996 by introducing the Arbitration and Conciliation (Amendment) Bill, 2015 in the Parliament. In an attempt to make arbitration a preferred mode of settlement of commercial disputes and making India a hub of international commercial arbitration, the President of India on 23 October 2015 promulgated an Ordinance (Arbitration and Conciliation (Amendment) Ordinance, 2015) amending the Arbitration and Conciliation Act, 1996. The Union Cabinet chaired by the Prime Minister, had given its approval for amendments to the Arbitration and Conciliation Bill, 2015.

The descriptions of that Acts involve in Arbitration and Conciliation Act is as follows,

1. Arbitration-

Arbitration is powerful means of resolving disputes between the organization and its employees. Arbitration is proved successful in resolving disputes between labor and management. The parties themselves establish arbitration and decision is acceptable to them. The decision taken by the arbitrator is accompanied by a written opinion providing reasons supporting the decision. However, the process is a bit expensive.

The Act renders definition of Arbitration Agreement (Section 7). The essential ingredients of an arbitration agreement are as under:

- Agreement by the parties to submit to arbitration all or certain disputes.
- Dispute must have arisen in respect of a defined legal relationship (may or may not be contractual).
- Agreement can be in form of arbitration clause or in a separate agreement.
- Agreement must be in writing form.
- It should be signed by both the parties.

2. Conciliation-

The process wherein the representative of both employer and employees are brought together in front of a third party so as to conciliate them to arrive at a decision by agreement between them. Any party can request the other, for appointing the conciliation officer. The conciliation officer or conciliator can be an individual or a group of people.

The primary duty of the conciliator is to mediate in and advocate settlement of industrial disputes. Further, he/she is also responsible for holding conciliatory proceedings, investigating disputes, sending the report of settlement to AG (Appropriate Government).

So, here is a comparison between Arbitration Act and Conciliation Act as below,

Table No.2 Comparison between Arbitration and Conciliation

Basis for comparison	Arbitration	Conciliation
Meaning	Arbitration is a dispute settlement process in which an impartial third party is appointed to	Conciliation is a method of resolving dispute, wherein an

	study the dispute and hear both the parties to arrive at a decision binding on both the parties.	independent person helps the parties to arrive at negotiated settlement.
Enforcement	An arbitrator has power to enforce his decision.	A conciliator does not have the power to enforce his decision,
Prior agreement	Required	Not required
Available for	Existing and future disputes.	Existing disputes.
Legal proceedings	Yes	No

VI. CONCLUSION

A high monetary value of the construction projects is one of the reasons of the frequent dispute between different parties in the project. A construction site is unique, on time and single product factory with many parties involved and depended on each other. The discussion on disputes, reasons of disputes and comparative study of different method of disputes are carried out. In this ADR techniques arbitration was preferred mostly to resolve the construction dispute, but negotiation and mediation were also used to minimize dispute effect. However, negotiation and mediation were not an effective and efficient method to resolve construction dispute.

In order to solve this major causes of dispute we suggested some mitigation measure which will help to reduce the effect of dispute. The below table shows mitigation remedies for some of the factors which leads to disputes.

Table No. 3. Mitigation measures for the causes of disputes

Sr. No.	Causes of Dispute	Mitigation Measures
1.	Delay in payment	It is recommended that the invested amount should divided into more numerous payments. This can make payment easier and on time.
2.	Finance difficulties	It should be compensated by making advance payment to vendors/contractors
3.	Delay in commencement	The most effective method of minimizing delay was adequate funding throughout the project, awarding bids to the right designer/contractor, availability of resources, avoid acceleration, prioritize planning.
4.	Poor site management	Qualified and experienced staff should be hired for site management and supervision.
5.	Ineffective planning and scheduling of project	Planning/Scheduling should be practical, accurate and achievable. Planning and schedule should be reviewed by experienced staff and owner
6.	Labour dispute and strikes	Proper wages and safety measure need to be done for labours safety purpose. Their necessities shall be fulfilled.
7.	Delay in delivery of materials and equipment's	Delivery schedule should be adhered with proper planning like having material in place before execution and making advance payments for booking material in case of scarcity.
8.	Rework because of errors during constructions	Engineer/Architect should monitor ongoing work so as to avoid any errors during execution of work. If timely monitoring will be done then it will reduce the need or rework.
9.	Incomplete tender information	Tender information needs to be accurate with each and every specification to complete the work properly.
10.	Bad weather considerations	Activities should be planned and prioritized by considering the impact of weather conditions due to seasonal change.

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