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Principles of Disputes Resolution & Causes of Claims

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Abstract – Construction projects are increasingly complex, resulting in complex contract documents. Complex construction can likewise often result in complex disputes, which predominantly arise from the intricacy and magnitude of the work, multiple prime contracting parties, poorly prepared and/or executed contract documents, inadequate planning, financial issues, and communication problems. Any one of these factors can derail a project and lead to complicated litigation or arbitration, increased costs, and a breakdown in the parties' communication and relationship. The current methodology for preventing and/or resolving construction conflicts; it is not meant to be an exhaustive review of each and every process, but rather to give the reader an overview of the advantages and disadvantages of each process when determining which one is right for a particular situation. India has an ambitious plan to revamp and create railways, inland waterways, ports, highways and smart cities. This paper examines the existing mechanisms of claim settlement and dispute resolution in construction contracts in India and its adequacy including proposed legislative reforms and suggestions. The thesis is divided into two parts, theoretical and practical parts. The theoretical part covers basic alternative methods of dispute resolution at the early and late stages of construction processes and attempts to understand, which method is better to use in each situation.

Keywords — Design and Build, Risk Allocation, Dispute Resolution, Dispute Prevention

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1. INTRODUCTION

The construction industry has been dealing with resolution of disputes and claims arising in projects for a long time using variety of methods. Construction records from the early part of the twentieth century have some information about the frequency and importance of disputes. Those records show that up until 1940s, most of the issues were settled by quick and informal negotiations between the parties or a ruling by the engineer or architect. These resolution methods were efficient and successful to settle a conflict at the job level. However, the situation has changed later and competition for the construction contracts became stronger and it resulted in lower profit margins for construction companies, which they were forced to accept. Along with that, the requirements for construction projects have changed, as they became more complicated. Excluding the technical part, it needed to comply with economic, social, environmental and governmental requirements and interests. Many contractors with small margins wanted to protect their profits and a growing number of lawyers and consultants showed their willingness to help them. As this worsening problem became more obvious, and the relationships became more controversial, the construction industry started to look for reasonable solutions. For example, arbitration became more popular, because it was less expensive and time-consuming, than litigation. So, these traditional ways were used until the late 1980s (however, arbitration still offers some advantages and is considered by many organizations and authorities as one of the modern methods of dispute resolutions).

BACKGROUND

The Environmental Impact Assessment (EIA) of Projects is a key instrument of European Union environmental policy. It is currently governed by the terms of European Union Directive 2011/92/EU, as amended by Directive 2014/52/EU on the assessment of the effects of certain public and private Projects on the environment (EIA Directive).

Since the adoption of the first EIA Directive in 1985 (Directive 85/337/EEC), both the law and EIA practices have evolved. The EIA Directive was amended by Directives 97/11/EC, 2003/35/EC, and 2009/31/EC. The Directive and its three amendments were codified in 2011 by Directive 2011/92/EU. The codified Directive was subsequently amended by Directive 2014/52/EU.

This guidance document focuses on the modifications made to the EIA Directive since 2001, with a particular emphasis on the changes brought about by the most recent 2014 amendment to the Directive, which Member States have to transpose into their national legal systems by 16 May 2017.

√ The Developer, or the expert(s) on his behalf, carries out the assessment. The outputs of the assessment are presented in the EIA Report which contains: information regarding the project, the Baseline scenario, the likely significant effect of the project, the proposed Alternatives, the features and Measures to mitigate adverse significant effects as well as a Non-Technical Summary and any additional information specified in Annex IV of the EIA Directive.

√ The Competent Authority makes a decision about whether EIA is required. At the end of this stage, a Screening Decision must be issued and made public.

√ The Directive provides that Developers may request a Scoping Opinion from the Competent Authority which identifies the content and the extent of the assessment and specifies the information to be included in the EIA Report.

√ The Competent Authority makes the EIA Report available to authorities with environmental responsibilities, local and regional authorities and to other interested organizations and the public for review. They are given the opportunity to comment on the project and its environmental effects

√ The Competent Authority examines the EIA report including the comments received during consultation and issues a Reasoned Conclusion on whether the project entails significant effects on the environment. This must be incorporated into the final Development Consent decision.

√ During construction and operation phase of the project the Developer must monitor the significant adverse effects on the environment identified as well as measures taken to mitigate them.

AIM

► Disputes cost money and Delays to the project

► Adverse performance of the project

► Reduced morale

► Erosion of confidence and trust in working relationships.

► Adverse reputational impact

► Emotional impact on people involved and the loss of people to the industry because of wasted effort, disillusionment and frustration

► Lost opportunities for future work due to the destruction of business relationships.

MOTIVATION

√ The construction process is a set of activities, each of which is controlled and improved. Conventional managerial methods, like the sequential method of the project realization, deteriorate flows by violating the principles of flow design and improvement.

√ They concentrate on conversion activities. The resultant problems in construction to compound and self- perpetuate.

√ In project control, fire-fighting current or looming crises consumes management resources and attention so totally that there is a little room for planning, let alone improvement activities. As a consequence it leads to non-optimal flows and an expansion of Non-Value Adding activities.

OBJECTIVES

► To establish a knowledge base of the reasons for contractual disputes in construction projects.

► To establish a knowledge base of the strategies for dispute mitigation and avoidance.

► To investigate the practical causes of contractual disputes and the avoidance measures taken in construction

► Project to discuss and recommend techniques that could be implemented early in projects to avoid or mitigate disputes.

PROBLEM STATEMENT

“Now a day, in construction industry has been dealing with resolution of disputes and claims arising in projects. So, disputes directly impact on company as well as construction industry. Because of dispute many project are delays, Erosion of confidence and trust in working relationships, Emotional impact on people involved and the loss of people to the industry because of wasted effort, disillusionment and frustration, damaged of company’s reputation ,

that's why dispute in contracts is important in projects."

2. LITERATURE REVIEW

An expert system to manage dispute resolutions in construction projects in Egypt, A.A. Elziny a, M.A. Mohamadien b, H.M. Ibrahim c , M.K. Abdel Fattah, 4 May 2015

"An expert system to manage dispute resolutions in construction projects in Egypt" 2016, this study attempts to shed a great deal of light on the problem of construction disputes in the Egyptian projects. This paper presents a comprehensive review of the available literature on analysis of disputes. The objective of this paper was to provide an expert system can evaluate the overall dispute settlement procedures at company's projects. A questionnaire has been used to study dispute sources and resolution methods. Four case study applications have been provided to check the validity of the proposed system.

Alternative Dispute Resolution in the International Context: The North American Free Trade Agreement, EmreCakmaka, Pinar IrlayiciCakmak b, April 2020

"An analysis of causes of disputes in the construction industry using analytical network process"2nd World Conference On Business, Economics And Management - WCBEM 2013 This paper aims to analyze the main causes of disputes which occur in the construction industry. In order to reach this aim, a literature review was undertaken to identify the common construction disputes. The disputes derived from a cross-section of the literature, were classified into main categories and the main causes of construction disputes were determined. Finally, an analysis was carried out using the analytical network process (ANP) approach to determine their relative importance.

Investigation of Construction Stakeholders' Perception on the Effects & Cost of Construction Dispute in Swaziland, Mashwama, X.N, Aigbavboa,C and Thwala, D, Science Direct, Conference 2016, CCC 2016, 25-28 June 2016

"Investigation of construction stakeholders' perception on the effects & cost of construction dispute in Swaziland" Construction Projects are often delivered under a complex and uncertain environment, with claims and conflict being an inevitable part. It is vital to manage claims and conflict as soon as possible before they turn into disputes. The intent of this paper is to investigate the effects and cost of construction dispute in construction projects in Swaziland. The data used in this study were derived from both primary and secondary sources. The secondary data for the study was derived from the review of literature.

A Review on Dispute Resolution Methods in UK Construction Industry, Sina Safinia, International Journal of Construction Engineering and Management, ISSN: 2326-1080, e-ISSN: 2326-1102, 2014;

"A Review on Dispute Resolution Methods in UK Construction Industry" Disputes and Confusion is common in all aspects of construction industry. Diversity of specialists involved, inconsistencies between design and construction and high risk environment that surrounds this industry often lead to disagreements on the legal obligations and rights of parties involved. Improving communication has been identified as the most effective method of preventing disputes. However in case of disputes happening, methods such as negotiation, arbitration, litigation, etc. are practiced in order to resolve the disagreements. It must be noted that negotiating and making attempt to prevent disputes at an early stage can always alter the path to a less adversarial settlement. Disputes and Confusion is common in all aspects of construction industry. Diversity of specialists involved, inconsistencies between design and construction and high risk environment that surrounds this industry often lead to disagreements on the legal obligations and rights of parties involved. Improving communication has been identified as the most effective method of preventing disputes. However in case of disputes happening, methods such as negotiation, arbitration, litigation, etc. are practiced in order to resolve the disagreements. It must be noted that negotiating and making attempt to prevent disputes at an early stage can always alter the path to a less adversarial settlement.

International Commercial Dispute Resolution System Framework (Comparative Study between India and Australia, G.C. Kabi, July 2015

"Claim and Dispute Resolution in Construction Contracts" India has an ambitious plan to revamp and create railways, inland waterways, ports, highways and smart cities. This paper examines the existing mechanisms of claim settlement and dispute resolution in construction contracts in India and its adequacy including proposed legislative reforms and suggestions.

Resolution of Construction Disputes: A Review of Current Methodologies, M.J. Harmon, October 2014

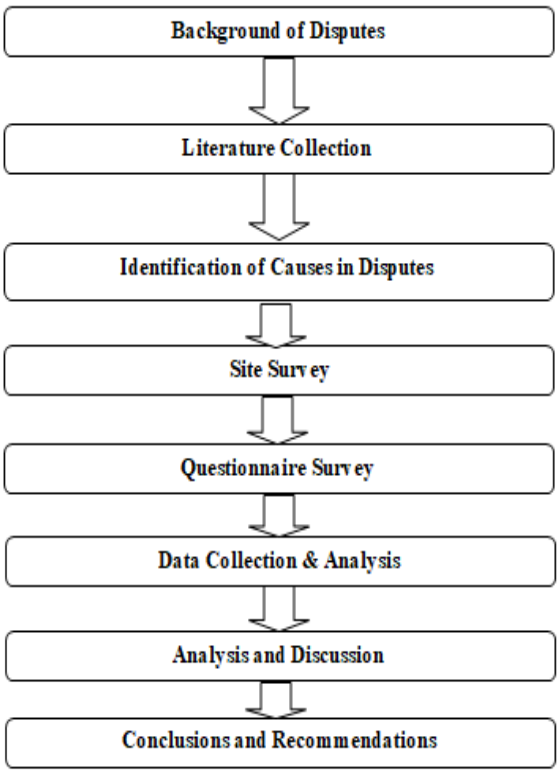
"Resolution of Construction Disputes: A Review of Current Methodologies by Kathleen" Construction projects are increasingly complex, resulting in complex contract documents. Complex construction can likewise often result in complex disputes, which predominantly arise from the intricacy and magnitude of the work, multiple prime contracting parties, poorly prepared and/or executed contract documents, inadequate planning, financial issues, and communication problems. Any one of these factors can derail a project and lead to complicated litigation or arbitration, increased costs, and a

breakdown in the parties' communication and relationship. This paper reviews the current methodologies for preventing and/or resolving construction conflicts. It is not meant to be an exhaustive review of each and every process, but rather to give the reader an overview of the advantages and disadvantages of each process when determining which one is right for a particular situation.

Dispute prevention and resolution for design and build contracts in HONG KONG, Colin J Wall, IJCER, 2018

"Dispute Prevention And Resolution For Design And Build Contracts. In Hong Kong" The paper suggests practical ways in which the Standard Form of Design and Build Contract may be modified to overcome the highlighted deficiencies, and improve the potential for dispute prevention and early resolution of those conflicts which arise. Particular emphasis is given to the dispute resolution procedures and the preventative aspects of those provisions. The successful implementation of these procedures in actual design and build contracts, especially in the prevention and resolution of disputes, is discussed in the conclusion of the paper.

3. METHODOLOGY



4. DATA COLLECTION

The current study proposes exploring and investigating the root causes of the construction disputes and their impact on the industry, followed by developing an avoidance and research framework. Additionally, the purpose of interview is to be able to extract the causes of dispute in the construction industry from those who are involved within the construction industry and have experienced dispute cases, which would not be conveyed through the use of quantitative methods. Moreover, the interviews allowed the researcher to be able to investigate the current measures that are in place for dispute resolution and to propose a future view for dispute avoidance and resolution

CAUSES OF DISPUTES

- √ Change in design and drawing during execution
- √ Change in specifications during execution
- √ Change in quantity of items during execution
- √ Change necessitated due to change in scope of work
- √ Contractor's perception and Unforeseen circumstances
- √ Additional difficulties in executing the work
- √ Un contemplated items at the time of tendering
- √ Contract based on approximate estimate and Failure of existing works
- √ Rework due to noncompliance with the original work
- √ Poor workmanship of the contractor
- √ Delays to the project and adverse performance of the project
- √ Reduced morale
- √ Erosion of confidence and trust in working relationships
- √ Adverse reputational impact

DISPUTE PREVENTION TECHNIQUES

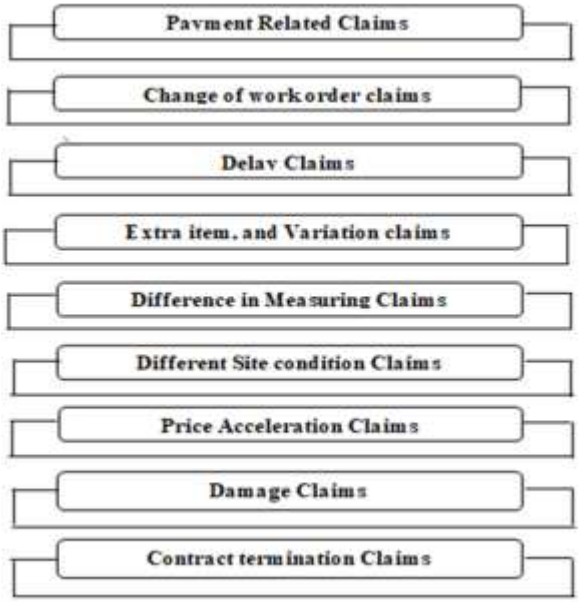
- → Clear specifications
- → Clear communication protocols
- → Proactive issue management
- → Problem solving and discussions
- → Negotiation
- → Mediation

→ Conciliation

→ Arbitration, Adjudication and Expert Determination

Causes of claims

Claims mostly settled down between the parties by their mutual understanding as well as by Negotiation but some of the claims which are frequently occur and which may not settle create the disputes between the parties are listed and explained below. These type of claims which do not settle and converts into the dispute can be solved by the Advanced Dispute Resolution Methods.



5. CONCLUSION

► Total complaint received and around of disputes was solved under Maharera authority.

► Main causes of dispute causes in the construction industry were analyzed. First of all, the main causes of construction disputes were determined with a comprehensive literature review.

► ADR facilitate the process of dispute settlement and to avoid traditional expensive and time consuming litigation process.

► Each technique is different, but generally has a lot of common advantages, such as time saving, costs saving, a possibility to choose the third neutral party (parties),flexibility, less procedures formalization, and confidentiality.

► Dispute resolution helps in gaining the confidence of companies, recovering the damaged causes by disputes.

6. ACKNOWLEDGMENT

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