

DISPUTE RESOLUTION MECHANISM IN CONSTRUCTION PROJECT

Tapsi Milind¹, Patil Dipali², Mohite Rohit³, Merwade Sunil⁴, Khadasare Shreedhar⁵, Satkar Shubham⁶

^{1,2}Dept of Civil Engineering, DRIEMS Neral, Maharashtra, India.

^{3,4,5,6}Under Graduate, Dept. of Civil Engineering, DRIEMS Neral, Maharashtra, India.

Abstract - It is necessary and useful to differentiate destructive from constructive conflict and avoidable from necessary claims; and also to minimize disputes arising from unresolved conflict and claims in construction projects. This projects analysis such needs and proposes means of meeting them through an appropriate classification of construction claim; an estimation of their relative significant in terms of magnitude and frequency; and an identification of the proximate and root causes of the significant claims. A hierarchy of such claims, proximate and root causes is presented, based mainly on data collected from 7 projects and on 7 responses to questionnaires in Mumbai.

Strategies are suggested to avoid the avoidable and follow the unavoidable claims, through controlling the controllable causes. Management focus is also recommended on controlling the causes of those categories of claims and disputes that are seen to be significant in terms of higher impact and probability of occurrence.

Key Words: Claims, Conflicts, Construction management, Disputes, communication

1. INTRODUCTION

Disputes are one of the main factors which prevent the successfully completion of the construction project. The number and complexity of contract disputes have increased vigorously in recent year. At the same time, the delay and costs associated with litigation have become more significant. Thus, it is important to be aware of the causes of disputes in order to complete the construction project in the desired time, budget and quality. Disputes are reality in every construction project. Without the means to address them, minor issues can fester and grow, with crippling consequences for project participants. During the execution of a project, several issues arise like change in scope of work, extra work that cannot be resolved amongst project participants. Such issues typically involve contractor requesting for either time extension or for additional cost for the extra work, or sometimes both

To solve these disputes, certain disputes resolution techniques may be adopted viz. Conciliation, Mediation, Arbitration and Dispute Resolution Board.

1.1 Problem Statement

Construction project involves mainly Owner, Contractor, Sub-contractors, Architects, Structural Designer, Project Management Consultancy, Supplier etc. working together. Many of times conflict is happen between any two parties upon delay of work, delay in clearing bills, delay in supply of drawings and useful information, Delay in clearing site, Improper work methodology, Execution errors, Design errors, Cost overrun. Such conflict convert into dispute if not handle properly.

However,

- Reasons invoke a construction dispute should be find out.
- Frequency and Impacts of causes of construction dispute need to be finding out.

Dispute resolution techniques available in construction industry and its efficiency need to check by for effective dispute management.

1.2 OBJECTIVES

The main objective of study is,

- To study real case for dispute in construction industry.
- To study past scenario of conflicts and prepare a questionnaires to find out root cause of dispute.
- To study dispute management and suggest measures for minimization or avoidance of dispute.
- To investigate effect of dispute on both economy and schedule of project in construction
- To Study different methods can be used to solve dispute and to apply suitable Framework.

2. PROJECT DATA

Disputes are one of main factors which prevent the successfully completion of the construction projects. Thus it is important to be aware of the causes of the disputes in order to complete the construction project in the desired time, budget and quality.

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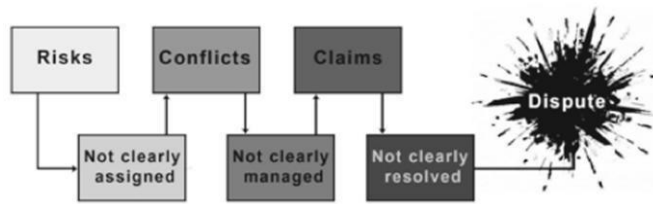


Fig -1: General flow diagram of disputes

2.1 Conflict, Claim and Dispute

A plethora of definitions as to what constitutes a dispute can be found in the normative literature. The terms conflict, claim and dispute are often used interchangeably, but their meanings are very different. Examples of how each of these terms has been defined include:

- Conflict – serious disagreement and agreement about something important on the other hand, provide a detailed definition of conflict as an expressed struggle between at least two independent parties who perceive incompatible goals, scarce resources, and interference from other achieving those goals.
- Claim – for the assertion of a right to money, property or remedy defines a claim as a request for compensation for damages incurred by any party to a contract.
- Dispute – any contract question or controversy that must be settled beyond the job site management

2.2 Types of dispute

- Variations to scope.
- Contract interpretation.
- Site conditions.
- Late, incomplete or substandard information.
- NA/ or didn't know.
- Obtaining approvals.
- Site access.
- Quality of design.
- Availability of resources.
- Payment and budget.
- Performance.
- Delay and time.
- Quality.
- Misunderstandings.
- Unpredictability.
- Unrealistic expectations by parties.
- Ambiguous contract documents.
- Poor communications between project participants.
- Lack of team spirit.
- Extension of time.

- Variations in quantities.
- Variations in specifications.
- Drawing changes.
- Contract terms.
- Payments.
- Variations.
- Extensions of time.
- Nomination.
- Recombination.
- Availability of information.
- Poor management.
- Poor communications.
- Inadequate design.
- Economic environment.
- Unrealistic tendering.
- Influence of lawyers.
- Unrealistic client expectations.
- Inadequate contract drafting.
- Poor workmanship.

3. METHODOLOGY AND RESULTS

Methodology for the project work has been described in detail. Study of claims is made through literature survey, Questionnaire survey and case study. After collecting the data, it is analyzed to give the possible remedial solution for the dispute.

Following are approaches for collection of data in the project study. At initial stage causes of dispute is going to find out through the research papers and the questionnaire survey is prepared on the basis of findings. A real case study is going to select at the later stage for studying the reasons of claims.

1. Study of disputes.
2. Preparation of questionnaire on the above said topic & get it filled with field experts.
3. Proposing possible remedial measures to control disputes.

3.1 VARIOUS METHODS OF DISPUTE RESOLUTION

- 1 NEGOTIATION
- 2 MEDIATION
- 3 CONCILATION
- 4 ARBITRATION
- 5 LITIGATION

NEGOTIATION

Negotiation has been defined as any form of direct or indirect communication where by parties who have opposing interests discuss the form of any joint action which they might take to manage and ultimately resolve the dispute between them. Negotiation maybe used to resolve

and already-existing problem or to lay the groundwork for a future relationship between two or more parties

MEDIATION

Mediation is an informal process where the parties are assisted by one or more neutral third parties in their efforts towards settlements. Mediators do not judge or arbitrate the dispute, mediators advised the parties to assist in bringing about a mutually acceptable solution. The mediators have no power to impose an outcome on disputing parties.

Mediation is the involvement of an external professional, or mediator, to establish an environment conducive to communication and problem solving between conflicting parties. Including a trained professional to conduct and lead negotiations creates not only a forum for better communication, but also fosters a greater understanding on both sides.

CONCILIATIONS

The parties seek to reach an amicable dispute settlement with the assistance of the conciliator, who acts as a neutral third party.

The main difference between conciliation and mediation proceedings is that, at some point during the conciliation, the conciliator will be asked by the parties to provide them with a non-binding settlement proposal

Conciliation is a voluntary proceeding, where the parties involved are free to agree and attempt to resolve their dispute by conciliation. The process is flexible, allowing parties to define the time, structure and content of the conciliation proceedings. These proceedings are rarely public. They are interest-based, as the conciliator will when proposing a settlement, not only take into account the parties' legal positions, but also their; commercial, financial and personal interests.

ARBITRATION

Arbitration as a means of resolving construction industry dispute will be the subject of the next paper. It may be important however to observe that arbitration, like litigation, focuses on the parties' legal rights and an arbitral proceeding is sometime not much different from a court proceeding except that in the case of arbitration, the principle of privacy is upheld and outsiders are not allowed, unless with the tacit approval of the parties and the arbitrator, to be present during the hearing. Arbitration can be either voluntary or mandatory (although mandatory arbitration can only come from a statute or from a contract that one party imposes on the other, in which the parties agree to hold all existing or future disputes to arbitration, without necessarily knowing, specifically, what disputes will ever occur) and can be either binding or non-binding. Non-

binding arbitration is similar to mediation in that a decision cannot be imposed on the parties. However, the principal distinction is that whereas a mediator will try to help the parties find a middle ground on which to compromise, the (non-binding) arbiter remains totally removed from the settlement process and will only give a determination of liability and, if appropriate, an indication of the quantum of damages payable. By one definition arbitration is binding and non-binding arbitration is therefore technically not arbitration.

LITIGATION

Litigation as a means of resolving dispute focuses on the rights of the parties and tends to be very confrontational. Litigation is often the final resolution step should previous procedures have failed in achieving a desirable outcome. Although, where either party believe that the law will provide the best form of defense, they may choose to expedite informal/non-binding mechanisms and elect to proceed directly to formal court proceedings should the contract allow. Litigation involves the determination of the dispute in a court before judge and involves a complex process requiring the use of significant resources generally including the use of legal representation

3.2 RESULT DISCUSSION

After considering and studying all the data collected the following analysis and results are found. In this chapter, all the results of parametric study obtained by data analysis are presented.

CASE : 1

COMPANY NAME: **TEJUKAYA PROPERTIES**

OWNER: **Mr PRANAV TEJUKAYA**

SITE ENGINEER: **Er. SHRIDHAN AMBEKAR**

TYPE OF CONSTRUCTION: Building construction.

Days of payment released of company: 20days.

Process of awarding the contract: Fix Contract.

CASE : 2

COMPANY NAME: **MEERA CONSTRUCTION**

OWNER: **Mr .SUSHIL PURABE**

SITE ENGINEER: **Er. SANTOSH BHAVEKAR**

TYPE OF CONSTRUCTION: Building construction.

Days of payment released of company: 15days.

Process of awarding the contract : Bid tender.

CASE : 3

COMPANY NAME: **HAWARE PROPERTIES**

OWNER: **Mr. AMIT HAWARE**

SITE ENGINEER: **Er. AMRUT MESTRY**
 TYPE OF CONSTRUCTION: Building construction.
 Days of payment released of company: 30days.
 Process of awarding the contract : Bid tender

CASE : 4

COMPANY NAME: **S.S.CONSTRUCTION**
 OWNER: **Mr .SUMIT SATKAR.**
 SITE ENGINEER: **Er. RINKESH OSWAL.**
 TYPE OF CONSTRUCTION: Maintenance work.
 Days of payment released of company: 8days.
 Process of awarding the contract : Fix Tender

CASE : 5

COMPANY NAME: **YASHRAJ CONSTRUCTION**
 OWNER: **Mr .PRASHANT PISAL**
 SITE ENGINEER: **Er PRASHANT PISAL.**
 TYPE OF CONSTRUCTION: Building construction.
 Days of payment released of company: 15days.
 Process of awarding the contract : Online tender

CASE:6

COMPANY NAME: **H.V.CONSTRUCTION**
 OWNER: **Mr. ANITA OJHA**
 SITE ENGINEER: **Er. ROSHAN TRIPATHI.**
 TYPE OF CONSTRUCTION: Road construction.
 Days of payment released of company: 15days.
 Process of awarding the contract : E-tender

CASE:7

COMPANY NAME: **NEW INDIA CONSTRUCTION COMPANY PVT LTD.**
 OWNER: **Mr. SAMIT SHAH**
 SITE ENGINEER: **Er. RAJENDRA JADHAV.**
 TYPE OF CONSTRUCTION: Road construction.
 Days of payment released of company: 20days.
 Process of awarding the contract: E-tender

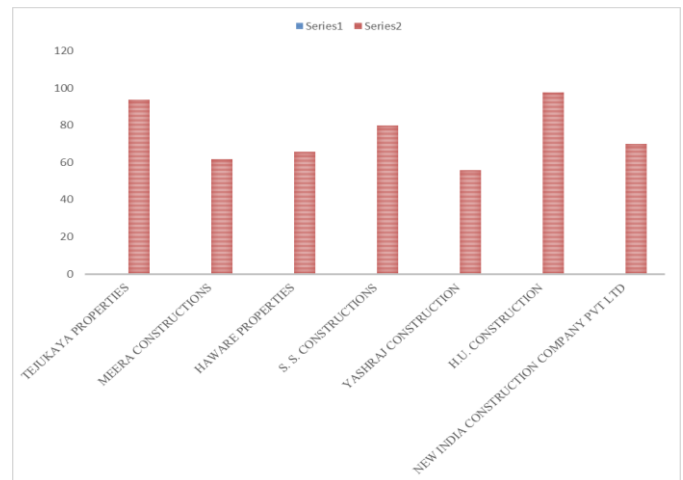


Chart -1: Graph showing no of delays in days of working site.

4. Results & Discussion:

From the above information collected results we can get justified answer that disputes only lead to delays of work what so ever may be the reason .we found out various alternative method to alter the no of days delay in our project work. Also found that by means of mediator we can easily justify the solution and can be carry forward the work efficiently.

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