



India is set to Become the Third Largest Construction Dispute Market

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In the construction contracts worldwide, the complexity of roles of stakeholders involved coupled with the long lifecycle of the project, offers a breeding ground for disputes. Indian construction sector is no exception to this.

India is the fifth-largest economy with a Gross Domestic Product (GDP) of USD 3.5 trillion, as per the latest estimate by International Monetary Fund (IMF). India aims to cross the USD 5 trillion mark by 2031 to become the third-largest economy, predicts the Centre for Economics and Business Research (CEBR), one of the UK's leading economics consultancies. However, India has early plans to achieve this target, may be by FY 2025-26.

Like in many countries, Infrastructure, specifically, construction has a key role to play in India's economy. Construction industry contributes 7% - 8% to India's GDP in terms of Gross Value Added (GVA) and it is the second-largest industry after agriculture in Indian economy. It is also the second-largest employer and the second-largest recipient of foreign direct investment in India.

According to the Economic Survey, to achieve this ambitious USD 5 trillion targets, India needs to spend USD 1.4 trillion on infrastructure. In the Union Budget 2022-23, the Indian Government has given a massive push to the infrastructure sector by allocating INR 10 lakh crore (approximately USD 130.57 billion) to enhance the infrastructure sector. A mere brief study of the Union Budget 2022-23 by the Indian Government would highlight that India is in a mood to throttle the construction sector to reach the podium of the top three construction sector economies in the world.

With the rising commerce in the construction sector, the quantum of disputes is also rising and it is logical

too. Disputes are inevitable, what matters is their efficient resolution. India is a rising construction market, rising swiftly. Thus, India is going to be a big customer of the construction dispute resolution services sector.

It is no fact that India has already some major construction projects ongoing and many are in the pipeline stage. As of 01 October 2019, there were 1635 projects with an anticipated completion cost of INR 23,41,784.84 crore (approximately USD 310 billion) for Central State Infrastructure Projects, as per the annual report issued by the Infrastructure and Project Monitoring Division (IPMD). Out of these 1635 projects, 455 projects are mega-projects with a value of more than INR 1000 crore (approximately USD 130 million). The distribution of these projects highlights that the major share which is more than 70 % of the anticipated cost of these projects lies in the construction of roads and railway projects.

This is evident that many projects of national highways (of NHAI-National Highways Authority of India) and railways (of Dedicated Freight Corridor Corporation of India, metro, bullet train, etc.) are presently at various stages of execution. These projects are being executed on different modes that is item-rate, EPC or PPP mode.

According to the same report, there was a cost overrun of more than 20% from its original cost for 1635 projects under review. The railway sector had a cost overrun of more than 40%. Similarly, 565 projects out of 1635 projects had time overrun, with time overruns ranging from 1 month to 324 months.

As per the latest report issued by the Ministry of Statistics and Programme Implementation, there is a

hit of INR 4.83 trillion (approximately USD 64 billion) due to cost overruns in 425 infrastructure projects only. Further, 664 projects, that have a value greater than INR 150 crore, are affected due to time overruns. The average time overrun for these projects is over 40 months.

The reasons for the time overrun can be, but are not limited to:

1. **Issues with Union Ministries**
 - Environment, Forest and Wildlife Clearances;
 - Eco-Sensitive Zone Clearance;
 - Tree Cutting Permission;
 - Grant of Working Permission;
 - Approval for private railways siding construction;
 - Industrial License Permission;
 - Road Crossing of Pipelines/Transmission lines;
 - Grant of Right of Way;
 - Shifting of Utilities.
2. **Issues with State Governments**
 - Land Acquisition issues;
 - Removal of encroachments;
 - Relief and Rehabilitation plan;
 - No Objection Certificate under Forest Rights Act;
 - Power and Water supply;
 - Consent to establish and operate from State Pollution Control Board;
 - Transfer of Government Land;
 - Law and Order issues;
 - Right of Way permission;
 - Removal of encroachment;
 - Diversion of forest land

Similarly, the reasons for cost overrun can be, but are not limited to:

1. **Policy related issues:**
 - Changes in rates of foreign exchange;
 - Statutory Duties/Taxes;
 - General Price Rise / Inflation.
2. **Others:**
 - Time overruns of the project
 - High cost of environmental safeguards and rehabilitation measures;
 - Changes in the scope of projects;
 - Disturbed conditions;
 - Under-estimation of original cost;
 - Spiraling land acquisition costs;
 - Monopolistic pricing by vendors of equipment services.

It may sound disheartening that the Indian construction sector suffers this badly, compounded with the complications created by Covid-19. However, it opens up the opportunity for the Indian construction dispute resolution services sector.

With so many factors in play, construction dispute resolution services become pivotal. India eyeing to be the third-largest economy, with the third-largest construction sector, has to develop an efficient and sufficient dispute resolution services sector too. In India, it

is not only the Indian parties involved in the construction disputes, but most of the mega projects also involve foreign parties.

Here lies the opportunity for India to be a provider of construction dispute resolution services. Construction disputes in India can be—and in practice are—resolved by the full spectrum of prevalent dispute resolution methods, such as settlement, mediation, conciliation, arbitration and litigation.

However, litigation is not the best way to resolve these disputes. There is an enormous backlog of cases in the Indian judiciary. Thus, there is a need for efficient Alternate Dispute Resolution (ADR) procedures, such as conciliation, mediation, and arbitration.

India has started responding to these demands of ADR, which is reflected in the major amendments to the Arbitration and Conciliation Act (1996), which was amended in 2015, 2019 and 2020. Now, this act governs the arbitrations covers both domestic arbitration and international commercial arbitration seated in India involving at least one foreign party, and deals with matters such as the appointment of arbitrators, interim relief and set-aside proceedings.

India is a party to New York Convention (1958) and has recently signed the Singapore Convention on Mediation.

Traditionally, Indian parties have preferred ad-hoc arbitration involving retired High Court or Supreme Court judges serving as arbitrators. In contrast, foreign investors in India generally prefer institutional arbitration using rules like those of the International



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Chamber of Commerce (ICC), London Court of International Arbitration (LCIA) or the Singapore International Arbitration Centre (SIAC).

Now, the parties are increasingly using the services of these international arbitral institutions. India is moving forward toward the institutionalization of arbitration. India has various arbitral institutions that administer both domestic as well as international arbitrations, such as the International Centre for Alternative Dispute Resolution (ICADR), the Indian Council of Arbitration (ICA), the Delhi International Arbitration Centre (DAC), and the recently established, Mumbai Centre for International Arbitration (MCIA).

It is in the beneficial interests of the construction sector to get efficient dispute resolution services. India has a massive potential to be a consumer as well as a provider of construction dispute resolution services. This is reflected in the consistent jump of India's ranking in recent years in 'ease to do business' index published by the World Bank.

It is a golden opportunity for the dispute resolution industry in India and it is set to grab this opportunity with both hands.