

**India Urgently Requires a Law in The
Lines of Malaysia’s “Construction
Industry Payment and Adjudication Act
2012” To Save The Contractors And
Create Cash Flow In The Construction
And Infrastructure Industry**

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Introduction: Everyone in the world knows that construction Industry is one of the key drivers for growth of a Nation. The present government is ambitiously announcing various infrastructure and housing projects involving billions of USD. In such a situation the present situation of payments to the contractors in the construction and infrastructure industry is very bad. The available remedies like court cases and arbitration have proved to be time consuming and consequentially billions of dollars are locked in the court corridors and lengthy arbitration proceedings. It is important to note that even through there are many efficient arbitrators in the country who really drive the parties towards the final award, due to huge pendency in courts enforcement of awards takes many years to see the finality. Such a situation not only has created a cash crunch in the industry but also has stopped the investment inflows into the industry.

The Malaysian Approach: A similar situation has been prevailing in Malaysia and the local contractors did not have sufficient cash flow to handle the huge construction projects happening in Malaysia in the recent times. The Government of Malaysia wanted to find a way to release those locked funds and create a cash flow into the industry. The solution came out from the Government is Construction Industry Payment and Adjudication Act, 2012 which came into effect on 15th April 2014. The said Act is really expected to perform like a kick starter to the industry.

The salient features of the said Act are as follows:

- In case of a payment due with regard to any type of construction contract including all activities related to construction like designing, supply etc., the party can issue a notice under this Act.
- If the owner/ main contractor does not pay the dues, then adjudication can be initiated
- Parties can appear either by themselves or through representatives
- Consolidation of connected proceedings are possible
- In the absence of a decision between the parties with regard to adjudicator, KLRCA (Kuala Lumpur Regional centre for Arbitration) shall appoint the adjudicator

- The adjudicator has elaborate powers including order the discovery and disclosure, appoint experts, limiting hearing time, award costs, inspection at site etc.,
- The adjudicator needs to give his decision within 45 days of appointment
- Appeal to High Court is available on very minimum grounds
- Costs of adjudication is reasonable.
- In case the main contractor is not paying as per the order, the amounts can be collected from the Principal directly.
- Importantly the Act prohibits conditional payment clauses in the construction contracts.

Comments by the Author: In India already many contractors are ruined by the delayed payments and prolonged litigations with either the owners or main contractors. Since the judicial delivery system is overburdened it is not able to respond timely to the requirements of the Industry. If the Government of India can quickly think of a legislation in similar lines, surely it will act as a kick starter to the industry.

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