

Brick by Brick: How Arbitration Settles Construction Conflicts

Introduction

Due to the time-sensitive and technical nature of construction projects, arbitration has come to be a widely used method of dispute resolution in the construction industry. It offers a discreet, effective, and expert vehicle for resolving disputes without recourse to time-consuming court actions. Arbitration under construction contracts is not only an option; it is frequently baked into contracts as the sole method of dispute resolution. The basis of arbitration in construction starts with the contract. The majority of construction contracts today contain an arbitration clause defining the extent, rules, and procedure of arbitration in case of any future dispute. Parties can opt for ad hoc arbitration, ruled by rules and procedures agreed between them, commonly following the [Arbitration and Conciliation Act, 1996](#) (in India) or the UNCITRAL Model Law globally.

Composition of the Tribunal

The arbitration procedure is usually set in motion when a notice of arbitration is sent to the other party by one side, officially instituting the process. The notice specifies the character of the dispute, the relief claimed, and the suggested arbitrator or tribunal. Where the arbitration clause has made provision for a group of arbitrators, each can appoint an arbitrator, and these two chosen arbitrators appoint the third, who serves as the chairman-arbitrator. In institutional arbitration, the institution itself may help to make appointments if parties are unable to agree. The tribunal composition is vital in construction disputes since, ideally, it comprises professionals with legal and technical construction experience.

After constituting the tribunal, an initial meeting is usually conducted where the timeline of submissions, hearings, and procedural issues is agreed upon. This phase is critical in establishing timelines and ensuring an organized sequence of the arbitration. Construction arbitrations typically entail large sets of documents, drawings, invoices, letters, technical reports, and project schedules, so disclosure and management of documents become critical features. Parties can be permitted by the arbitrators to present evidence in stages, especially where multi-dimensional disputes are involved with various stages of the project or different packages. One of the characteristic challenges of construction arbitration is the technical claims.

Construction cases are more complex than ordinary commercial disputes in that they necessarily involve a close understanding of engineering standards, architectural specifications, and practice in project management. Both parties would usually engage the services of experts, civil engineers, quantity surveyors, architects, or delay analysts, who will present detailed reports and provide evidence during hearings. The tribunal must then decide on these expert reports. Section 26 permits the arbitral tribunal to appoint independent experts to submit technical opinions

The Process

Construction arbitration frequently involves a broad range of claims, including delays and overruns in time, cost escalation, defective workmanship, or warranty breach. A typical claim is for an extension of time (EOT) in which the contractor asks for extra time to finish the project based on delays by the employer or force majeure events. The claims are typically followed by claims for prolongation costs. On the other hand, employers can counterclaim for liquidated damages in case of late delivery or poor performance.

The construction arbitration hearing process is usually lengthy, complex, and technical. Witness testimonies, expert opinions, and cross-examinations are involved in the process. The setting is less formal than a courtroom, yet the rules of evidence and fair hearing still apply. This award by an arbitral tribunal is enforceable under the Arbitration and Conciliation Act, 1996 of India, and under the New York Convention in more than 160 nations across the world. The award is to be delivered by the tribunal within the time limit set by the Act, i.e., 12 months in domestic Indian arbitrations (extendable by 6 months with agreement of the parties) under Section 29A.

Pros and Cons

The award can be in the form of monetary compensation, declarations, specific performance, or division of costs. One of the substantial benefits of arbitration in construction is confidentiality. Arbitration is not public, as with court cases, and so commercially sensitive information is not revealed. This is particularly relevant for large infrastructure companies or government agencies worried about their reputation at stake. Arbitration also presents a level of flexibility.

Yet, arbitration in construction does have its criticisms. It is expensive, especially when it involves international experts, senior barristers, and multiple hearings. The amount of paper generated and the necessity for extensive expert analysis are such that arbitration is just as complicated and time-consuming as litigation. In India, the judicial acceptability of the role of arbitration in construction has grown. Courts have reinforced the limited scope for interference with arbitral awards and have promoted enforcement. Initiatives from the government, including the 'Vivad se Vishwas' scheme in public contracts and the shift towards institutional arbitration through institutions such as the India International Arbitration Centre (IIAC), attest to arbitration being accepted as an important mechanism for resolving disputes in infrastructure projects.

Conclusion

Arbitration within the construction sector is a relatively new yet vital concept. It ensures that disagreements are expeditiously, equitably, and technically resolved. where large projects are at stake and continuity is paramount, arbitration is an essential means to resolve matters without jeopardizing the overall construction project. Though it comes with its own set

of difficulties, legislative amendments are making sure that arbitration continues to be the backbone of construction dispute resolution worldwide and maintains the balance between parties.

