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Resolving Disputes Avoiding Litigation Alternate Dispute Resolution Practices for Indian Infrastructure Industry

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ABSTRACT

As per a survey conducted by Construction Industry Development Council (CIDC), it is estimated that around Rs. 1.35 lakh crores are involved in contractual disputes in infrastructure projects in different courts of the country which is already facing the problem of huge backlog. Government of India has taken up infrastructure developments of huge magnitude under Public-Private Participation (PPP) in the areas like irrigation, roads, ports and power projects, which need abundant private sector investments. The infrastructure projects involve lot of uncertainties during the implementation stage, innumerable conflicts/disputes between the employer and the contractor surface, day in and day out leading to disputes. Government has identified the dispute resolution in large public contracts is an area of growing concern.

Many foreign companies are willing to invest and set up joint venture projects in India but they apprehend that in case of any dispute the Indian courts would take long to decide the claim which in turn will lead to increase in overall cost of the project. Thus it can be said that slow dispute resolution process prevailing in the country is keeping the foreign investment at bay. Therefore, there is a compelling need to take steps to facilitate quick enforcement of contracts, easy recovery of monetary claims, reduce the pendency of cases in courts and hasten the process of dispute resolution. For the purpose of speeding up the dispute resolution process, alternate modes such as Arbitration, mediation, conciliation should be explored and brought into practice.

This paper explores the various dimensions of disputes arising out of infrastructure construction industry and their possibility of being resolved amicably by alternate modes of dispute resolution. The Alternate dispute resolution doesn't declare one party as winner rather it promotes and calls for joint efforts of both the parties in resolution of disputes outside the courtrooms, which not only helps in early resolution of disputes but also keeps the relationship between the parties cordial for future partnerships. Thus the progress of the infrastructure projects would increase by implementing alternate means of dispute

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resolution.

I. INTRODUCTION

There Development of infrastructure is the key for the development of economy. In order to achieve faster economic growth, a country must have world class infrastructure which would help in developing industries and people. In order to achieve this it is required from the government that various policies would be initiated that would ensure time-bound creation of world class infrastructure in the country. India is embodying 3.33 % of the world economy and infrastructure is one of the major contributors to India's Gross Domestic Product (GDP). Major infrastructure development requires a substantial influx of investment capital. The policies of the any government seek to encourage investments in domestic infrastructure from both local and foreign private capital.

Development of infrastructure involves large number of projects being carried out across India amidst varied political, economical, social and climatic conditions and challenges. Before we proceed further and discuss the topic in detail it is required that we first understand the term 'Infrastructure'. The definition of 'infrastructure' is nebulous and temporarily changing with technological innovation. Therefore, what is regarded as infrastructure today (such as optical fiber networks) could not have been envisioned as such some sixty years ago. Therefore term infrastructure involves construction and maintenance of highways, streets, roads, and bridges; mass transit; airports and airways; water supply and water resources; wastewater management; solid-waste treatment and disposal; electric power generation and transmission; telecommunications; and hazardous waste management.²

The concept of infrastructure includes not only these public works facilities, but also the operating procedures, management practices, and development of policies and means that would facilitate the transport of people and goods, provision of clean drinking water and a variety of other uses, safe disposal of society's waste products, provision of energy where it is needed, and transmission of information between people.³

The infrastructure affects the development of communities at large. First, a robust infrastructure system ensures that we not only move goods and services, but also people

² Anupam Rastogi, 'The Infrastructure Sector In India 2005', India Infrastructure Report 2006, Oxford University Press, New Delhi.

³ Infrastructure for the 21st Century, Washington, D.C., National Academy Press, 1987.

in the most effective ways possible. Second, a properly designed infrastructure reconnects the social fabric of communities. Lastly, infrastructure inspires communities with magnificent buildings and other physical assets.

Infrastructure development is one of the major factors contributing to overall economic development in many ways. If there is lack of infrastructure development then it would surely create bottlenecks for sustainable growth of the country and its people. Therefore, development of proper infrastructure in the country contributes to investment and growth through an increase in overall productivity and efficiency as it acts as a link between resources to factories, people to jobs and products to market, which without infrastructure would be very difficult.

The infrastructure contracts are unique with a distinctive character, characterized by operating environment where there are several stake-holders with competing interests, involve several agencies and sub-contractors for various disciplines like electrical, sanitary, sewerage etc, making the entire project execution activity a complex affair, have usually a long time frame which may at times result in conflicts between the employer/owner and the contractor, have several uncertainties including soil conditions, vagaries of weather, have problems related to availability resources like local material, labor, machinery etc. The employer/owner in many of these projects is government or a public sector authority and enjoys a much more exalted stature as compared to the contractor resulting in inequities in the operation of the contract.⁴

Each of these projects attached with it so many completely non controllable parameters which invariably results into disputes involving claims and counter claims. The industry has reached a situation where virtually no project concludes without disputes and now it seems that disputes are inevitable in construction industry. Such disputes adversely affect relationships between stakeholders and disturb the working environment. In most cases, the work comes to a grinding halt, thereby locking large sums of money. This leads to cost and time overruns putting a severe burden on the economy. Further, a delay in resolution of dispute tends to jeopardize the project due to escalation of prices during the pendency of case. The disputes have to be resolved at the earliest. The commercial disputes require quick and amicable settlement in the interest of development of trade and commerce of the nation.

⁴ Ashwinie Bansal, 'Arbitration: Procedure and Practice', Lexis Nexis, Butterworths, Wadhwa, Nagpur.

As per the survey undertaken by the Construction Industry Development Council⁵ (CIDC), it is estimated that as on 2017, around Rs. 1.35 lakh crores were locked in contractual disputes in infrastructure projects being executed by various government departments and corporations in India. Further, investment in private sector being almost equal to that in public sector, the amount of money locked in disputes in both these sectors is estimated to be of the same proportion. Data from the road ministry shows 112 cases involving Rs 25,000 crores were pending under arbitration between the National Highway Authority of India (NHAI) and developers till end of April 2015.⁶ As many as 295 infrastructure sector projects worth Rs 150 crores or more each were delayed with total cost overrun of over Rs 1 lakh crores.⁷ Large numbers of projects are stalled in the infrastructure sector. The private sector has a high rate of stalling; 16 percent of its projects under implementation are currently held up.

Government of India has taken up infrastructure developments of huge magnitude under Public-Private Participation (PPP) & Build-Own-Operate (BOO) mechanisms in the areas like irrigation, roads, ports and power projects, which need abundant private sector investments. Public Private Partnerships (PPPs) are now the major mode for construction and operation of infrastructure projects which is prevalent both in developed countries around the globe as well as the emerging or developing countries. Public Private Partnerships are expected to augment resource availability as well as improve efficiency of infrastructure service delivery. Time and cost overrun in construction of Public Private Partnership projects are also expected to be lower compared to traditional public procurement. The adoption of standardized documents which may include model concession agreements and bidding documents for award of Public Private Partnerships projects have streamlined and accelerated decision-making by agencies in a fair manner.

In the infrastructure construction industry the main dispute revolves around the fact of unforeseen or unexpected subsurface conditions which results into major conflicts between the parties. In these contracts, the practice is to rely entirely on preconstruction documents such as engineering plans and specifications to predict the possible site conditions and accordingly formulate a scheme for carrying out the contract. It has been discovered many a times that too after the work has begun that, as a result of inaccurate or insufficient data,

⁵Construction Industry Development Council (CIDC) is set up by the Planning Commission, Government of India jointly with the Indian construction industry to take up activities for the development of the Indian construction industry?

⁶'Heads-Up 2016: Infrastructure sectors 2015 and what to look for this year', The Indian Express, dated 01-01-2017.

⁷ Flash Report released by Ministry of Statistics and Program Implementation in August 2010.

human error or unforeseen conditions, actual site conditions do not correspond to the plans and specifications on which the contractor has relied. Construction litigation is typically the end product of this discrepancy between actual conditions and preconstruction predictions. But now parties are aware of the fact that litigation consumes much of their time and expenses more so when government is a party. The delays associated with the resolution of government contract disputes can rise to intolerable levels when a construction contract is involved since most construction projects are based on rigid time schedules and take several years to complete even in the absence of disputes. When disputes do arise, they can add several years and millions of dollars to the total cost of a government construction project.

The most common mode of resolution of a dispute is through courts. The conventional court litigation is costly, time consuming, cumbersome and unfriendly. The cases remain undecided for years for one reason or the other. The frustration growing with the delay in dispute resolution through the conventional court litigation has led the commercial world in general, and the infrastructure industry in particular to consider other types of simple, time saving and moderate mechanisms for dispute resolution.

In India there has always been a practice to resolve dispute outside the court rooms amicably. Today everybody is aware about the backlog of cases present in our judicial system, despite the fact that Indian judiciary is one of the oldest judicial system. Letting infrastructure/ construction industry related disputes remain pending for long time would in turn only affect the development of the country. Thus, there is a need to look for alternatives to settle disputes in cost and time efficient manner. At this juncture the effectiveness of Alternate Dispute Resolution comes into light. ADR procedures are non-adversarial wherein both parties come face to face, work out the modalities and reach to an amicable solution together. There is no likelihood of winning or losing the case. They best suit the parties to provide speedy settlement in a private set-up on a win-win basis. The parties being aware of the risks involved, the pros of this methodology outweighs those of others, given the independence of decision making enjoyed by them. The disputes are settled comparatively speedily and amicably, in private, with much less or little or no expenses prevailing goodwill of the persons involved with lesser stress.

The Indian law of arbitration is contained in the Arbitration and Conciliation Act 1996. Arbitration has increasingly become a preferred option to settle commercial disputes globally as well as in India. The objective of the Act was intended to provide for speedy and cost effective dispute resolution procedure and is very successfully trying to achieve

the objective with each matter. Alternative Dispute Resolution procedures have more reasons for application to disputes pertaining to infrastructure as they provide an initial platform to sort out the disputes in a reasonably short time, protect the concern of market goodwill, maintain business relationships of the parties which could be endangered in the beginning of dispute and subsequently lost in the adversarial nature of court proceedings. Also Due to prevailing backlog of cases in courts, Alternative Dispute Resolution mechanisms appears to be one of the most promising means of resolving disputes. Because the present adjudicatory system with the legacy of Anglo–Saxon jurisprudence consists of lots of formalities and technicalities leading to a large number of cases pending before various courts in India.

Alternative Dispute Resolution provides various modes of settlement including, arbitration, conciliation, mediation, negotiation. Thus, development could only be done if after careful identification of types of disputes in infrastructure/construction industry they are quickly resolved. The elements involved in the construction industry are diverse which makes it an unstable area for the growing economy of the country. It faces fluctuation demand cycles, project specific product demands, uncertain production conditions and it combines a diverse range of specialist skills. There is huge and diverse involvement of participants from different fields in the construction industry which in turn makes it complex as compared to other prevailing industries due to this, conflict and disputes are inevitable and can easily occur. Therefore these complex disputes could well be resolved through alternate modes of dispute resolution. Thus , if analyzed properly the absence of specific legal framework is holding back long term investments both by the Indian players and by the foreign countries and the foreign companies. This has particularly affected the investments in public private partnership projects. The investors expect high quality and strong legal framework to be assured of their expected returns. Investments through FDI mode expect reliable and specific institutional provisions, such as arbitration of disputes and legal procedures. Further the investors, both Indian and foreign, are apprehensive of the laws, regulations and rules being suddenly changed. There is a need by the government to come out with standardized formats to record each stage of work.

II. DISPUTES IN INFRASTRUCTURE INDUSTRY

Disputes are frequent and usual in construction projects because of the complexity of the construction process and involvement of large number of contributors from different field. The disputes involved are not apparent on face but are hidden and only come forward after

the initiation of projects. The reason behind these disputes may not be mala fide intention on part of either party but such as cant be anticipated. Even with the best of intentions the plans may not work as expected when they are applied to the actual site. Dispute also occur through accidents (Injury), mismanagement, human error, disagreement between the parties or lack of communication. Dispute affect the various points such as cash flows of the company and severely affects relationships between parties. Therefore, Dispute in business is inevitable and the construction industry is no different. Construction disputes has an effect on all stakeholders which may lead to unfair and unjust mode of project delivery which includes amongst other things reducing the profit margins, increased cost, reduced quality and level of service. Disputes although often resolvable, inevitably bring many challenges and legal issues to take into consideration. When a project ends up in a protracted dispute, the project will fail to meet its original goals and expectations. In addition, clients will suffer from high legal fees, delayed completion and occupation and general dissatisfaction. The contractor's profits will diminish and to these will be added additional legal fees. The construction industry being a risky business and generally does not build many prototypes and hence, each different project is individual in many respects. On most of the occasions, the department comes out with the notice inviting tender (NIT) without proper clearances from the concerned authorities, preparation of drawings and estimates including the possession of land. The work will not begin on time and thus there is delay right at the beginning of the project. Further, as the work progresses, it is a common feature that in most of the works, the drawings and estimates or bill of quantities keep changing. The variation in the quantities in many projects will also be enormous. The department in the first place does not take the responsibility of any lapses on their side. There is also a delay on the part of the employer to record the measurement and make the payment on time. This prompts the contractor to invoke the arbitration clause. The appointment of arbitrator itself will take quite a sometime. Sometimes, the contractor approaches the law courts to make the appointment. Entire process of arbitration, right from the appointment of the arbitrator, conduct of arbitral proceedings to the making of arbitral awards will take at least a year or two on most occasions.

There are also disputes at post execution stage. These disputes pertain to final payment to the contractor and the employer making deductions for which the contractor may object. Again the matter ends up in arbitration or litigation. There are other several issues for disputes between the department and the contractor pertaining to quality control, coordination between various agencies involved in the project, interpretation of clauses of

contract etc.⁸

III. CAUSES OF DISPUTES

The causes of disputes are broadly classified as external and internal factors as financial, physical or technical commercial and psychological. Some of major causes are⁹ :

- Incorrect ground strata
- Contract containing faulty and ambiguous provision
- Faulty administration of contract
- Hindrance due to other contractors working on the site
- Levy compensation for delay
- Claims for extension of time and application of penalty clause
- Deviations
- Suspension of work
- Unreasonable attitude adopted by the contractor
- Delays in payment of bills
- True interpretation of the contract documents
- Change in mode of payment

Further, the below enumerated matters need to be addressed in order to minimize the possibility of future disputes : need of single-point responsibility contracts; clarification of responsibilities; allocation of risk to the parties who are best able to control it; covering risk elements by appropriate insurance products; developing and applying appropriate internal Dispute Resolution procedures; making all the stake holders of the project to work as a team; agreeing for jointly developed formats for quality management and quality assurance.¹⁰

In order to avoid the disputing environment it is necessary that all the conditions which are subject to change or vary must provide for an equitable price and time adjustment as and when such situation arises so as to avoid unnecessary litigation later.

IV. RESOLUTION OF INFRASTRUCTURE INDUSTRY DISPUTES BY ADR MODES

The primary and foremost objective of any welfare and democratic society is to maintain

⁸ 222nd Report on 'Need for Justice-dispensation through ADR.', Law Commission of India, Ministry of Law, GOI, April, 2009.

⁹ Report no.245, Law Commission of India on 'Arrears and Backlog: Creating Additional Judicial Manpower, July 2014.

¹⁰ Allan Ashworth, 'Contractual Procedures in the Construction Industry', Fifth Edition, Pearson Education Limited, England, 2006.

peace in the society by obviating the disputes and also to provide effective dispute resolution mechanism incase any strife occurs in the society.

A dispute resolution framework emphasizes dispute avoidance strategies. The frame work is found in all the major standard form contracts for engineering and construction works such as the FIDIC (International Federation of Consulting Engineers) and NEC3 (New Engineering Contract renamed as Engineering and Construction Contract) suites of contract. Therefore, these days construction dispute resolution revolves majorly around three main concepts:

- Dispute avoidance,
- Dispute management and
- Dispute determination/resolution

Here, Avoidance focuses on preventing the emergence of the dispute all together or reducing its occurrence. Dispute management focuses on nibble disputes in the bud as soon as they emerge. Finally, resolution focuses on helping the parties to address disputes amongst themselves or with the help of a neutral third party.

The procedural formalization of justice gave tremendous rise to consumption of time and high number of cases and resultant heavy amount of expenditure. Obviously, this led to a search for an alternative complementary and supplementary mechanism for less stressful resolution of disputes any organizations those produce standard form of construction contracts or provide major financing for construction projects mandate some form of dispute resolution process prior to judicial intervention. Many standard form construction contracts require parties to first attempt to resolve dispute arising during and after projects. The processes include mediation/conciliation, Dispute Review Board (DRB), Dispute Adjudication Board (DAB) and institutional arbitration. For some time now, companies involved in various aspects of construction have embraced mediation and arbitration as effective means for settling disputes, including payment issues, design and construction claims, warranty matters, and delay claims.

The most widely used and accepted Dispute Resolution mechanism in construction industry is the Dispute Board or Dispute Review Board. It is used to describe a dispute resolution procedure which is normally established at the outset of a project and remains in place throughout the project's duration. The Dispute Review Board is a panel of three experienced, respected and impartial reviewers. The Dispute Review Board is organized

before construction begins. The panel gets acquainted with the contract and meets periodically. The Dispute Review Board members are kept abreast of the developments and progress, and made familiar with the project procedures and the participants, and are provided with the contract plans and specifications. The Dispute Review Board meets the employer and the contractor representatives and encourages the resolution of disputes at the job level. The DRB process helps the parties to solve problems before they escalate into major disputes.

V. MAJOR ADR MODES APPLICABLE TO INFRASTRUCTURE INDUSTRY

Major modes of dispute resolution in infrastructure industry includes¹¹:

- **Arbitration:** It is a voluntary process of submitting dispute to a neutral third party who would resolve the dispute and gives a resolution. For application of this method of dispute resolution presence of an agreement between the party to refer the dispute to arbitration is necessary.
- **Negotiation:** In this process the parties discuss and resolve the dispute amongst themselves without presence of any third party.
- **Mediation:** It is also a voluntary process wherein mediator helps the parties to reach a resolution and his task is merely of a facilitator.
- **Neutral Fact-Finding:** It is a voluntary process wherein a neutral third party, which could be selected either by the parties themselves or by the court, investigates an issue and files a report in the court.
- **Early Neutral Evaluation:** It is a process which usually takes place immediately after a case has been filed before the court. The case is referred to an expert who evaluates and provides a neutral evaluation of the dispute. The evaluation done by this expert can explain the parties the strengths and weaknesses of their case and may influence them towards a settlement.
- **Case Evaluation:** It is a non-binding voluntary process in which parties present the facts of their case to an evaluator who advises the parties on the strengths and weaknesses of their position in the case.

VI. THE MAIN ADVANTAGES OF ADR PROCEDURES

- Speed

¹¹ shodhganga.inflibnet.ac.in/bitstream/10603/44117/9/09_chapter%203.pdf

- Expert decision makers
- Reduced business disruption
- Preservation of business relationships
- Predictability of outcome
- Creative business-driven solutions
- Privacy and confidentiality
- Procedural flexibility and party control
- Substantial cost savings

Infrastructure disputes are normally complex and unique. The ADR procedures if applied carefully depending upon the nature of dispute will address the issue and in turn helps to focus on the development rather than disputes.

VII. ARBITRATION AS A MEANS OF DISPUTE RESOLUTION IN INFRASTRUCTURE INDUSTRY

As per the prevailing patterns Arbitration appears to be the first choice of dispute resolution out the national court in the construction industry in various countries around the globe.

Among the potential advantages of arbitration of infrastructure projects disputes are:

1. Infrastructure project disputes often involve technical subject matter that is more suitable for resolution by an arbitrator hand-picked by the parties for his or her specialized competence. It has often been observed that the arbitrator's specialized competence will enhance the quality and efficiency of decision making.
2. The greatest advantage of Arbitration is that it offers a neutral decision maker which is beneficial for the multi-national participants in infrastructure projects, each of whom may be reluctant to litigate disputes in each other's national courts.
3. Arbitration is faster, confidential, less expensive means of resolving disputes than litigation, which in turn help in preserving the long term relationships.
4. Another major advantages of international arbitration and of infrastructure project arbitration is that arbitral awards are easily enforceable almost worldwide as a result of the New York Convention.

VIII. CONCILIATION/MEDIATION AS A MEANS OF DISPUTE RESOLUTION IN INFRASTRUCTURE INDUSTRY

The other alternative could be Mediation or Conciliation. These procedures can be effectively employed for commercial contracts. In Mediation or Conciliation the parties to

disputes are not bound by the law. This system has been prevalent in India since ancient times where family disputes voluntarily submitted were settled by the headman of a village or family priest.

Conciliation as well as mediation process employs a neutral third party who facilitates the parties before it to reach an amicable resolution by communicating their disputes with each other. It is a non-binding process and agreement reached by parties would have an effect of arbitral award on agreed terms. A mediation is more informal and the mediator only has to facilitate the parties and not have to impose and settlement upon them. Whereas, conciliation is more formal in structure and procedure. The conciliator can even suggest the terms of resolution to parties. He plays an active role.

The biggest advantage of Conciliation/Mediation procedure is that it gives freedom to the parties to withdraw from the proceedings without affecting their legal position at any stage of the proceedings and it also maintains the confidentiality of the process even after the proceedings are over.¹² In some Asian Countries, particularly in China and Japan, an arbitrator even settle the dispute through conciliation or mediation where ever suitable. Chinese arbitrators usually have a practice of resolving dispute by employing variety of ways in an effective manner.

Not all disputes in the construction industry are suitable to be resolved through mediation/conciliation nor are the probability of success equal in all of them. For a dispute to be successfully resolved in mediation, it should have characteristics like parties desire to avoid the publicity because of their reputation in the field and parties have already established long-term cooperation which they would like to continue in future joint projects also. Also where the contracted project has not yet been completed and parties wish the contract to remain operational then a skilled mediator can help the parties to reach an agreement without any publicity. In mediation the agreements entered in the course of are acceptable and stand the greatest chance of being implemented. The outcome represents a solution which has been voluntarily agreed to by mutual agreement. The outcome is not imposed on the parties by the adjudicator; hence, is not a win for one party and a loss for the other. The law protects the sanctity of negotiated settlements and recognizes their enforceability in India by placing them at par with an arbitral award on agreed terms. Such an award is enforceable as if it were a decree of a Court. Mediated outcomes are less likely

¹² S.K Dixit, Joint Director, Academics & Professional Development, ICSI.
(<http://www.icsi.edu/ Web Modules/Programmes/PCS>)

to be evaded by parties because they represent an assessment by parties of what is in their best interest.¹³ Conciliation and mediation both look to maintain an existing business relationship and to rekindle a lost balance of power between two parties. The earliest possibility through conciliation or mediation would be highly desirable in terms of saving time and cost.

IX. CONCLUSION

The infrastructure projects are unique. The projects involve large number of professionals with different stakes playing complex roles in varied conditions with respect to site, weather, machineries, work force, work culture and many more, leading to non-fulfillment of one or other clause of conditions of contract and the project heading to disputes involving claims and counter claims. Globalization is attracting huge foreign investments required for major infrastructure projects. The governments and private companies of Japan, France and Malaysia are investing in a big way. The government of India has opened many sectors for FDI. Rapid pace of liberalization and globalization has bred in more litigation in commercial transactions. Disputes involving especially foreign parties are to be addressed in a fair and time bound manner to allay the apprehensions in the minds of investors that India is not a safe country for investments. Therefore, the need is to develop credible dispute resolution mechanisms.

Litigation is inappropriate for resolving disputes related to construction. The prime reasons are: non familiarity of most judges with the technological aspects, inflexible and formal court processes, the high costs associated with conventional litigation, delay, restricted scope of claims and remedies as well, and many more. This leads to lock up of funds, damages future business relationships and frustrates parties.

The American Arbitration Association (AAA) conducted a survey to measure, the viability of alternative dispute resolution (ADR) in resolving construction disputes and managing the inherent risks involved in construction projects. More than 150 construction-related professionals were called to participate in the study, which is available to industry professionals whether affiliated with the AAA or not. Close to 90% of the respondents indicated they had participated in some form of ADR, a clear indication that ADR processes are widely used in the industry. The most common method of ADR used was arbitration, followed by mediation. The survey results also pointed to an emerging desire to find more

¹³ Dr. Justice Dhananjaya Y. Chandrachud, 'Mediation: realizing the potential and designing implementation strategies', Paper Presented in International Conference on ADR and Case Management, organized by Law Commission of India, Ministry of Law & Justice, Government of India, May 3 - 4, 2003, New Delhi.

effective means to both avoid and resolve disputes. The responses demonstrated a growing understanding that, with each project, comes a unique set of circumstances that may require stakeholders to explore custom-designed processes for managing issues and resolving disputes.¹⁴

Therefore, Resorting to ADR is no more a choice but is inevitable.

¹⁴https://www.adr.org/sites/default/files/document_repository/The%20Construction%20Industry's%20Guide%20to%20Dispute%20Avoidance%20and%20Resolution.pdf