



Subject: Professional Practice - I

Topic: Arbitration

Presented by: Ruchi Saxena

ARBITRATION

- Disputes are part of human living
- In ancient times disputes referred to Village Panchayats for speedy settlements
- During British Rule, Arbitration was encouraged
- Arbitration Act, 1899 was the first Act
- Replaced by Arbitration Act, 1940 as full code
- The Arbitration and Reconciliation Act, 1996 based on the UN Model Act was passed in 1996
- Act provides for–
 - Domestic Arbitration
 - International commercial and
 - Enforcement of foreign Arbitral awards

Modes of Settlement of Disputes

- 1. Capitulation– weaker party give in –to retain goodwill/ long term business relationship with stronger party
- 2. Negotiation--Both parties sink differences and try to reach amicable settlement
- 3. Arbitration– Disinterested/impartial third party appointed to adjudicate
- 4. Litigation– Disputes taken to court resulting in abnormal delay and heavy expenditure
- 5. Dispute Resolution Board– Board constituted on award of contract to resolve disputes as and when they arise

ARBITRATION

- --Settlement of a dispute (whether of fact, law, or procedure)
- between parties to a contract
- -- by a neutral third party (the arbitrator)
- -- without resorting to court action.
- -- Arbitration is usually voluntary but
- -- sometimes it is required by law.
- -- If both sides agree to be bound by arbitrator's decision
- 'award' becomes a binding arbitration.
- Exact procedure to be followed (if not included in the contract under dispute)
- – governed usually by a country's arbitration laws, or
- --by arbitration rules prescribed by International Chamber Of Commerce (ICC)

ARBITRATION

- Arbitration most popular mode of settling disputes in building and construction disputes
- Most construction projects provide for arbitration
- Helps in imparting justice in a:
 - -- speedier and
 - -- cost-effective manner
- Determining of disputes by the decision of one or more – persons known as Arbitrator
- Every dispute – which can be settled by a civil court can be settled under Arbitration
- It is an alternate method of settling disputes

ARBITRATION– Objectives

- Make provision for arbitral procedure which is:
 - -- fair,
 - -- efficient
 - -- capable of meeting needs of specific arbitration
- To Minimise supervisory role of Courts
- Arbitral tribunal to give reasons for the award
- To ensure Arbitral tribunal remains within its jurisdiction
- Permit Arbitral tribunal to use:
 - -- mediation,
 - -- conciliation or
 - -- other procedures to settle disputes
- To make decisions of Tribunal enforceable as a degree of court

Definitions

- Arbitrator– A person appointed to settle disputes
- Arbitration Agreement– A written agreement between client and contractor to settle future disputes
- Order of reference– Order containing names of the arbitrator, specific dispute, nature, time limit for award
- Presiding arbitrator–An umpire when each party's arbitrator or both parties arbitrator choose one presiding arbitrator
- Award– Written decision of the arbitrator on completion of the proceedings

Arbitration Vs Litigation

- Advantage of Arbitration over litigation:
- More Speed
- Less Expensive
- More Privacy
- Informal Proceedings
- Expertise of the Arbitrators in the field
- Flexibility in choice of meeting place and location
- finality of decision
- Continued good relations between parties—owners and client

Procedure for Arbitration

- Specific clause to be introduced in contract–settling disputes by arbitration
- Aggrieved party to approach the designated authority to appoint arbitrator with list of all/selected disputes and amount involved for each dispute–
- Arbitrator is then appointed with list and ––referred with the papers submitted
- Few contracts provide for direct resolution of disputes by parties– failure to do so can lead to appointment of an Arbitrator
- Arbitration conducted under the provisions of Arbitration and Conciliation Act, 1996
- Parties are to be treated on equality and given full opportunity to present their case

Procedure for Arbitration

- Parties are free to agree on the procedure for Arbitral Tribunal
- Parties free to agree on the place and language for arbitration
- Arbitration proceedings start from the date of receipt of request for arbitration
- Claimant to state facts supporting the claim, issues involved and remedy sought
- Respondent to give defence against these claims
- Tribunal to decide on oral/documentary evidence
- Experts appointed by Tribunal in case of specific technical issues
- Assistance of court may be sought for taking evidence

Procedure for Arbitration

- Decision of the Tribunal to be by majority– being in odd numbers
- Award to be in writing and signed by all members
- It is to be reasoned award unless otherwise agreed to by parties
- Award amount, if not paid, to carry interest @18% per annum from date of award to date of payment
- Award to be final and binding
- Enforced as – decree of the Civil Court

Characteristics of Good Award

- Sticking to the scope of defined issues
- Stick to time limit
- Unambiguous, unconditional, complete and clear decision
- Judgment and decision that of the Arbitrator only and no one else
- Complete application of mind of Arbitrator's