

Future of Arbitration in Nepal

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15 August, 2016

Arbitration of Disputes in Nepal

- ▶ Arbitration Act 2038 (1981)
- ▶ Arbitration Act 2055 (1999 A.D.)
- ▶ NEPCA founded in 1991
- ▶ NEPCA Rules of Arbitral Proceedings, 2003
- ▶ NEPCA Arbitration Rules, 2016

Volume of Disputes

- ▶ NEPCA Venue/Facilitated - 293 cases since 1990
- ▶ Currently:
 - 28 cases of Arbitration - Contract Price NRs. 3 billion (appx)
 - 17 Cases of Adjudication - Contract Price NRs.13 billion(appx)
- ▶ Claims: Adjudication/DB - 20 % of contract price (appx)
 - Arbitration - 3 % of Contract Amount
- ▶ Awards: Adjudication- 50% of Claim amount (appx)
 - Arbitration - 70 % of Claim amount
- ▶ Almost equal amount of arbitration cases are probably dealt by outside NEPCA (adhoc and international arbitration centres)

Future

Accelerated Development Goals

- ▶ More Infrastructures
- ▶ More Investment
- ▶ More Contracts
- ▶ More Disputes

Impact of Disasters

Surge in Claims and Disputes:

- ▶ Earthquake of 25 April and 12 May 2015
- ▶ Blockades of border

Causes of Claims and Disputes

Time and Cost Overruns due to:

- ▶ Political Instability
- ▶ Good Governance issues
- ▶ Contract Planning and Management Capabilities
- ▶ Capacity/Technology Issues
- ▶ Procurement Issues
- ▶ Socio-cultural environment

Role of ADR / Arbitral Institutions

- ▶ Provide fair, inexpensive, expeditious and high quality dispute resolution services in resolving trade, commercial, investment and dispute of similar nature among public and private business enterprises.
 - Facilitate smooth Implementation through Adjudication/Dispute Board
 - Improve Party Confidence in Final and Binding settlement by Arbitration

Role of Arbitral Institutions

- ▶ Minimization of disputes
- ▶ Research and Feedbacks from Arbitration Awards
- ▶ Improve Awareness in reliability of designs and cost estimates
- ▶ Adoption of contract types other than DBB(Employer design)/FIDIC Red book model.

Issues

Arbitration Agreement

- ▶ Governing Law
- ▶ Procurement Act
- ▶ Standard Bidding Document
- ▶ Time, cost and venue of arbitration in ICB contracts

Implementation of Arbitration Award

- ▶ Arbitration Act Article 30 - Implementation of award

Future

- ▶ Cooperation among Arbitral Institutions
- ▶ Accessibility of Awards for Research and Feedbacks
- ▶ Improvement of Design and Cost-estimate reliabilities
- ▶ Training on Contract Management
- ▶ Adoption of D&B and EPC type contracts
- ▶ Institutional arbitration
- ▶ Homogeneity of Arbitration Agreement
- ▶ Compatibility of Fees
- ▶ Place of Arbitration

Cooperation with SARCO

- ▶ Exchange of Panel of Arbitrators
- ▶ Referral of disputes
- ▶ Regular Communication
- ▶ Regular Visits

Thanks