

## 4.6 ARBITRATION AND LEGAL REQUIREMENTS

In a contract or an agreement between two parties, there may be the possibilities of difference of opinion or disputes between the parties. The problems or disputes may be technical, financial or managerial in nature. The various reasons for the problems in a contract are as follows.

1. Delayed payments
2. Mis-conceptual contract documents
3. Improper execution
4. Late issue of drawings and specifications
5. Poor communications
6. Delays in procuring the materials
7. Accidents etc.

The arbitration has been adopted as an alternative dispute resolution method to overcome this difficulty. Arbitration is the method or process of settlement of a dispute between two parties (namely contractor and the owner), by an impartial person, selected and agreed upon by both the parties.

The definition of arbitration includes the following three important concepts.

1. It is the reference of disputes and differences by parties (which are at least two members).
2. This reference is made to a person (or persons) other than court of law.
3. The person(s) determine the award in a judicial way, after hearing the parties involved.

In case of building contracts, a condition of contract pertaining to the arbitration is invariably added for the settlement of disputes. The proceedings of arbitration are controlled by the provisions of the Arbitration Act 1940 in India.

#### **4.6.1. ARBITRATOR AND REFEREE**

In some cases, the parties in a contract to a suit agree to refer the matter to be free and they agree to honour the statement made by the referee. The persons, chosen and given the right to give decision are called arbitrators.

The arbitrators after hearing the parties in dispute give their award, which is later on incorporated into the court.

The arbitrators can either proceed on the basis of their knowledge or make enquiries and take evidence and then give their decision based on evidence.

When both the parties agree upon a person to act as arbitrator and appoint him as a judge, he is known as sole arbitrator.

When both the parties don't agree upon a common person, then each party is asked to appoint his own arbitrators. In this case they are known as joint arbitrators.

#### **4.6.2 Qualities of a Good Arbitrator**

Following are the primary qualities of a good arbitrator:

1. He should act fairly and honestly in the arbitration proceedings through out the reference.
2. He should have the clear idea about contract laws and regulations,
3. He should have the working knowledge of the law.
4. He should not allow his award to be influenced by negotiations for settlement of disputes between the parties before him.

### 4.6.3 TYPES OF ARBITRATION

Following are the three kinds of arbitration as per the provisions in the Arbitration Act 1940:

1. Arbitration without intervention of a court
2. Arbitration with intervention of a court (where there is no suit pending)
3. Arbitration in suits

#### **1. Arbitration without Intervention of a Court**

The arbitration without intervention of a court arises from the execution of an arbitration agreement. Under some unexpected situations, the court may set aside the award of the arbitrator.

After the award by the arbitrator is declared, the parties concerned can apply for a decree on the award.

#### **2. Arbitration with Intervention of a Court (where there is no suit pending)**

This section of the act gives an alternative right to the parties to an arbitration agreement. After having the application made by the parties, the court passes suitable orders. The appointment of arbitrator can be done jointly by the parties or one arbitrator by each party or by the court.

#### **3. Arbitration in Suits**

When a suit is pending before a court and when the parties desire to settle the dispute through arbitration before the judgment is pronounced, they can apply for the same. In such cases the court may refer the matter to the arbitrator, appointed in such a manner as may be agreed upon, between the parties.

#### 4.6.4. PROCESS OF ARBITRATION

The process of arbitration is as follows

1. The arbitrator arranges for the preliminary meeting with both the parties, regarding the subject matter in general and gives necessary directions to the concerned parties.
2. The arbitrator declares the name of the umpire and other relevant features of the arbitration proceedings.
3. One of party (client) opens his case and submits all the documents.
4. The respondent (the other party of arbitration) opens his file and submits all the documents.
5. The respondent sums up his case.
6. The client sums up his case.

In this manner, the arbitration proceedings come to an end, and the arbitrator proceeds to decide his award in the matter.

#### 4.6.5. ADVANTAGES OF ARBITRATION

Following are the advantages for the settlement of disputes:

1. Arbitration is the quick process of solving a dispute.
2. The expense for arbitration is comparatively lesser than the expenses for court action.
3. Arbitration eliminates the legal formalities, technicalities and precedents.
4. The process of arbitration is private and not in open as in case of the court law.
5. The parties can fix their mutually convenient date, time and place for hearing.
6. The arbitrators are selected by the parties, having technical skill with construction activities, such a person easily find the solution for the disputes, between the parties.

#### 4.6.6 QDR METHODOLOGY

For any dispute in a contract system, arbitration is the best method for dispute solution. The Association of Consulting Engineers India formulated a methodology called Quick Dispute Resolution (QDR) for solving the disputes.

