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SUPERVISING THE CONSTRUCTION INDUSTRY'S MARKET TURMOIL AND PRICE ESCALATION: METHODS FOR EFFECTIVE DISPUTE RESOLUTION AND RISK MITIGATION

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ABSTRACT:

This article mainly portrays about the market turmoil in construction projects which can lead to price swings, volatility, and investor apprehension. Therefore, to address these issues, organizations should implement long-term contracts, alternative suppliers, and technology to increase worker productivity. Furthermore, price escalation is a serious problem, with disagreements frequently resulting from poor design, broken contracts, delays, and unanticipated events. It is also evident that alternative dispute resolution procedures, such as arbitration and mediation, can assist in resolving conflicts.

INTRODUCTION:

A time of notable volatility and unpredictability in the financial markets is referred to as "market turmoil." Abrupt and severe price swings, elevated volatility, and heightened investor apprehension distinguish it. While market volatility may be a challenging and scary time for investors, those who can manage it well can take advantage of unique opportunities. Investors can create methods to take advantage of the current market conditions and make substantial gains by comprehending the causes and consequences of market upheaval.¹

Before being able to propose new remedial measures to stop the escalation, it is crucial to learn about and comprehend the many ideas and factors associated with cost escalation. Construction projects sometimes involve cost overruns and cost escalation.²

¹ Navigating Market Turmoil (last seen on 15.06.2024)- <https://fastercapital.com/topics/navigating-market-turmoil.html>

² S. Kanchana, Anumol Sukumaran, 'A Critical Study on Cost Escalation in Construction Industry', Kanchana et.

A construction project usually involves many individuals with various backgrounds and interests, as well as the coordination of numerous unrelated but linked tasks. More than any other economic activity, construction projects are prone to cost inflation due to their complexity.

STAIR-STEP MODEL OF DISPUTE RESOLUTION:

Project managers should exercise caution when selecting the best alternative dispute resolution (ADR) technique, even if there are many variables to consider. However, the selected alternative dispute resolution (ADR) strategy needs to minimize the costs associated with litigation and guard against project cost overruns (Kiriti & Wanjohi, 2019).

O'Reilly and Mawdesley's (1994) Stair-Step Model of Dispute Resolution shows various ADR approaches and their correlation with hostility and costs.³

According to the Stair-Step Model of Dispute Resolution, choosing negotiation as the preferred ADR method leads to cheap expenses.

Alternative Dispute Resolution provides a variety of methods for preventing, managing, and resolving conflicts. To handle different possible conflicts in any relationship or at any point in the development or escalation of an issue, new strategies are continuously being created. Four stages— The parties frequently integrate these strategies—Prevention and Cooperation, Dispute De-Escalation, Control and "Real Time" Resolution, Facilitated Resolution, and Binding Resolution—into a system or flow of events. A Chart of disagreement Resolution Stages and Steps illustrates the increasing levels of animosity, expenses, and resolution time that characterize an unresolved disagreement.

DIFFERENT TECHNIQUES FOR RESOLVING CONSTRUCTION DISPUTES:

- A popular method of resolving disputes is negotiation, in which the parties involved, or their representatives attempt to settle the conflict without the assistance of an impartial third party. As agreed, upon by both parties, it is a private, confidential, voluntary, and

al., Vol.5 (Iss.2): February 2018 (last seen on 15.06.2024) – <https://doi.org/10.29121/ijetmr.v5.i2.2018.163>

³ Amila N.K.K. Gamage, Suresh Kumar, 'Review of Alternative Dispute Resolution Methods in Construction Projects',13.02.2024 (last seen on 16.06.2024)- https://saudijournals.com/media/articles/SJEAT_92_75-87.pdf

unstructured process.⁴ Avoiding adopting strongly held positions in the dispute and instead focusing on finding solutions that meet the requirements and interests of both parties is one of the traits of direct negotiation that contributes to its effectiveness. The success of the negotiation will depend on how well the parties can communicate with one another during the whole process. When a disagreement arises, negotiation should be the initial course of action and should settle the issue at this point.⁵

- It may be significant to remember that arbitration, like litigation, centers on the parties' respective legal rights. Sometimes an arbitration process is like a court case; however, confidentiality is protected in arbitration, and others cannot attend the hearing unless both the parties and the arbitrator have given their implicit consent. The primary disadvantages of arbitrations are frequently attributed to issues around the jurisdiction and level of expertise of the arbitrator.⁶
- In the process of trying to reach a mutually agreeable resolution to their disagreement, the disputing parties enlist the aid of an unbiased third party, the mediator, through the facilitative process known as mediation. It follows that utilizing mediation to settle conflicts is a voluntary process; the mediator serves as a facilitator in what is effectively a form of "brokered negotiation" or facilitated negotiation between the opposing parties. Unlike in arbitration or litigation, where the arbitrator or the court will declare the parties' legal rights in the form of an award or a judgment, a mediator does not make decisions on behalf of the parties⁷
- Board of Dispute Review Using Dispute Review Boards, also known as Dispute Resolution Boards, to settle disagreements is another type of alternative dispute resolution. Around the world, "preventive law" is becoming more and more popular to cut expenses for projects, legal bills, and time. The board's procedures are specified in advance in the contract, and the contractor chooses one member, the owner chooses another (both must approve the other's choice), and a third is chosen.⁸

⁴ Sujal Patel, Anand Patel, 'DISPUTE RESOLUTION IN CONSTRUCTION INDUSTRY

, April 2017, Volume 4, Issue 04, (last seen on 04.07.2024)- <https://www.jetir.org/papers/JETIR1704084.pdf>

⁵ Sujal Patel, Anand Patel, 'DISPUTE RESOLUTION IN CONSTRUCTION INDUSTRY

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⁶ Sujal Patel, Anand Patel, 'DISPUTE RESOLUTION IN CONSTRUCTION INDUSTRY

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CASE LAW

In the context of arbitration, the case of **Hindustan Construction Company Ltd. v. Union of India (2019)**⁹ is one related to enforcing arbitral awards. In most instances, the arbitral awards were challenged by the government department under the Arbitration and Conciliation Act, 1996**, Section 34 that puts an automatic stay on the arbitral awards. This would often cause delays for HCC.

HCC argued that this stay mechanism was unequal because it "prevents the filing of a timely recovery application, notwithstanding the winning of an arbitration." The NITI Aayog Scheme permitted partial recovery-75% of the award-and was still cumbersome and demanding; it also required big bank guarantees, an additional 10% compounded guarantee annually. HCC assailed it as arbitrary because it goes against the purpose and efficiency of arbitration.

The case underlines the tension between the rules placed upon arbitration by the government and the best principles of dispute resolution in arbitration. The trend of the court ruling is in emphasis on ensuring that arbitration remains an efficient means for the resolution of construction disputes while ensuring fairness in requirements to enforce arbitral awards.

CONCLUSION:

Navigating market turmoil and price escalation in the construction industry requires a multifaceted approach. Techniques for Alternative Dispute Resolution that are frequently employed in the construction sector, along with the benefits and drawbacks of each approach and the variables that influence selecting a suitable ADR plan when construction conflicts arise. This study emphasizes how important it is to have effective and efficient processes in place to deal with disagreements that arise inevitably in construction projects because of their dynamic and intricate character. ADR techniques like mediation, arbitration, negotiation, expert determination, Dispute Review Boards, and adjudication are gradually replacing traditional litigation due to its time-consuming and expensive nature.

The main risk management techniques that will help the stakeholders in the construction sector address unintended risk failures are highlighted in this study. The development of alternative dispute resolution mechanisms has given people a new avenue for conflict settlement.

⁹ AIR 2020 SUPREME COURT 122

Conflicts can also result in monetary losses, project delays, and damaged relationships, all of which can contribute to the failure of a construction project. As a result, ADR becomes an essential remedy. Project managers must decide which alternative dispute resolution (ADR) method to use to resolve conflicts and successfully complete their projects within the original timeframes.

