

Types and Causes of Construction Claims – A Review

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ABSTRACT

Majority of construction works are carried out through contracts and most of public works in India are modelled on General Conditions of Contract (GCC) and Special Conditions of Contract formulated by Central Public Works Department (CPWD/MoRTH/NHAI/PWD/CIDCO/MMRDA). Such Public Works Contracts have inherent limitations of being adapted on case to case and thus, are perceived to be rigid and prone to disputes. An attempt has been made to understand and evaluate the relationship between contract conditions and different claims that are usually encountered in construction disputes. An assessment has been done to determine the root cause of various claims with respect to contract conditions with a view of suggesting certain changes in General Conditions of Contract(GCC) and Special Conditions of Contract (SCC) for effective contract management. Suggestions have been put forward on the basis of limited study as changes that can be made in GCC and SCC in projects of Central Authorities, State Authorities and Private players for avoiding the claims to arise in the first place.

Keywords: Claim, Construction, Contract Management.

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I. INTRODUCTION

The construction industry in India is the second largest industry after agriculture (Indianconstructionindustry.com, 2007). Given the fact that strong infrastructure facilities form the backbone of a nation's economy, the performance of project execution has not been commensurate with increased focus on infrastructure development in India. As per a study conducted by McKinsey and Company (Gupta, Gupta and Netzer, 2009), on an average, projects in India across sectors suffer from time and cost over-runs to the tune of 20% to 25%, with some sectors affected by more than 50%. Frequent and long-drawn disputes between contractors and clients also slow down the progress of construction work. In India, as per the report, of @ INR 5600 Cr. Gross Domestic Product (GDP) loss due to inefficient execution, @ INR 3500 Cr. is attributable to these time and cost over-runs, many of which are a result of disputes at some stage of the process. Disputes are common and unavoidable in most construction projects due to a number of uncertainties that may occur. According to various researchers like Hellard (1987), Kumaraswamy (1997), Odeh and Battaineh (2002), Assaf and Al-Hejji (2006) and Yates and Epstein (2006), disputes generally arise because of varied contractual reasons like ambiguity in contract documents, poor communication, changes in scope and can also arise due to unforeseen circumstances and force majeure.

The Indian government is upgrading the Infrastructure facilities by investing millions of rupees every year. Construction Projects have complexity, uncertainty, long construction periods, involve many parties and require the integration of different work components (Civil, Mechanical, Electrical, Plumbing, Water supply & Drainage) to work together as a single unit. The projects require highly specialized designs, detailed plans and specifications, high-risk construction methods, effective management, appropriate resources and logistics, skill full supervision, close co-ordination and monitoring, Risk analysis and Mitigation Plan.

Thus, claims are the integral part in such projects. Today, construction projects are the subject of more claims than in any other industry. Claims appear to hinder the completion of construction and cause delays in delivering projects. These claims are undesirable because they require significant time and resources to resolve and because they cause adversarial relationships among the parties involved.it is therefore in the common interest of all involved parties to prevent them, minimize them or resolve them as amicably as possible. Identifying common claim types and their causes is essential in devising ways and means to minimize and hopefully avoid them in future projects. This research presents the review of results of a pilot study of the types and causes of construction claims in the construction industry. The recommendations to prevent/reduce claims in construction projects are then presented. It is expected that the findings of this research will help construction firms avoid the main causes of claims and accordingly minimize delays and cost overruns in construction projects.

II. LITERATURE REVIEW

Construction Claim can be defined as a request by either party to the contract, usually the Contractor, for compensation for damages caused by failure of the other party to full fill his part of obligations specified in the contract. The compensation is usually in the form of the additional payment or an extension of time (EOT). Construction claims are measured by many project participants to be one of the most worrying and unpleasant events of a project. The high competition has forced contractors to submit bids / tenders within minimum profits in order to stay in business. In addition to their multiparty nature, projects are becoming more complex and risky. This has placed an added burden on contractors to construct increasingly sophisticated and risky with less resources and profits. Under these circumstances, there is a remarkable growth in number of claims within the construction industry continues to increase.

Knowledge of Different construction claim types allows owners to recognize potential claims situations. This recognition can protect the owners from incurring losses and assist in recovering compensation. In this paper the Construction claims types are divided into mainly nine different types. Most of the claim types discussed are interrelated frequently occurring and most of them may pertain to a particular situation.

III. RESEARCH OBJECTIVES:

The main purpose of this research is to,

1. Undertake a comprehensive analysis of construction claims in construction projects.
2. Identify and analyse the types of claim and their causes in construction projects.
3. To give conclusions and recommendations for future researches based on the analysis and severity of claims in construction projects.

TYPES OF CONTRACTUAL CLAIMS:

There are several types of construction claims out of which some of the listed below after studying the research papers, journals, books etc.

- 1) Delay Claims
- 2) Price Acceleration Claims
- 3) Change of Work Order Claims
- 4) Extra item and Variation Claims
- 5) Different Site Condition Claims
- 6) Damage Claims
- 7) Loss of Profit Claims
- 8) Wrongful withholding of Deposits Claims
- 9) Force Majeure Claims

CAUSES OF CLAIMS:

There are many kinds of conflicts occur in construction industry between the parties which mostly converts into the claims. After taking the opinion of experts like experienced Contractor, Client, Designers, Arbitrator, Professionals etc. of the construction sector as well as after reviewing the research papers related to construction claims I have listed down the following causes of claims.

- Delay in Supply of Drawings.
- Delay in Handing over the Site.
- Delay in Supply of materials.
- Delay in Payments.
- Delay in Starting work.
- Delay in Completing the work.
- Work actually done but not measured and paid.
- Refund of deposits.
- Loss due to extra overheads on account of extension of time limit.
- Loss due to idling of resources.
- Due to Design errors.
- Due to inadequate or incomplete specifications.
- Due to inadequate information related to design.
- Due to Inadequate bid information.
- Due to Inadequate time for bid preparation.
- Due to Change in work scope.
- Due to Changes in plans and specifications during construction.
- Due to Insufficient plans and specifications.

- Due to Extra items and Variations.
- Due to Non granting of Completion by Engineer in charge.
- Due to Partiality by the Engineer.
- Due to Unrealistic expectations.
- Due to Poor management and administration of the construction site.
- Due to Ambiguities in contract documents.
- Due to Different interpretations of the contract provisions.
- Due to Inadequate investigation of site.
- Due to Unbalanced bidding.
- Due to coating very low rates in the Tender.
- Due to Changes made or changes which occur not at the request of the owner.
- Due to Extension of time (EOT).
- Due to financial failure of the contractor.
- Due to technical inadequacy of the contractor
- Due to Poor quality of construction work and use of wrong equipment.
- Due to Failure to follow authorized procedures.
- Due to Employers' Lack of Construction Knowledge.
- Due to Strikes by Workers.
- Due to Stoppage of Work by workers.
- Due to Failure of parties to cooperate with each other in the performance of the work.
- Due to Accidents.
- Due to Natural Calamity.
- Due to Increase in Material / Fuel Cost.
- Due to Court intervention.
- Due to Weather conditions.
- Due to Unforeseen ground conditions.

MOST FREQUENT CAUSES:

From the list of above claims most of the claims mostly settled down between the parties by their mutual understanding as well as by Negotiation but some of the claims which are frequently occurs and which may not settle, create the disputes between the parties are listed and explained below. These types of claims which do not settle and converts into the dispute can be solved by the Advanced Dispute Resolution Methods.

- Payment related Claims
- Change Claims
- Delay Claims
- Extra work Claims
- Contractual Claims
- Difference in pricing and measuring Claims
- Different site condition Claims
- Acceleration Claims
- Damage Claims
- Contract termination Claims
- Force majeure claims

PAYMENT RELATED CLAIMS:

In the construction industry most of claims arise for the not payment or delayed payment of Running bills, Final bills, unreasonably deduction of money from bills without any strong reason, delay in payment of security deposit, miscellaneous deposit etc.

CHANGE CLAIMS:

Almost every construction project encounters change. Whether it's a change to the scope of work, a revision to the specifications, or an impact to the means and methods of performing the work, changes can significantly impact a project's cost and schedule. Due to change in work scope the claim may take place between the contractor and client. Due to change in work scope or change in design the quantity of work may increase or decrease and if it is the work from which contractor is going to get the maximum profit then he can claim for increased rates for performing the work or extra money for completing the work.

DELAY CLAIMS:

Construction delay claims, or disputes related to schedule impacts, are one of the most common types of disputes in the construction industry. Delay claims typically relate to unanticipated project events and /or circumstances which extend the project and /or prevent work from being performed as originally planned. There are many common causes for schedule delays on a construction project. Any project faces delays and disruptions especially the mega /complex projects of today, with many interfaces. Proving delay and /or disruption is not an easy task and it is a time consuming process especially in the mega /complex projects with thousands of activities, lots of details and interfaces with the involvement of many stakeholders.

EXTRA WORK CLAIMS:

Extra work is any work that is ordered by the owner after construction has started that was not included in the original contract. The extra work being performed by the contractor is a result of a clarification of the contract documents. However, the contractor believes that he is performing extra work, while the owner believes the work was part of original contract.

CONTRACTUAL CLAIMS:

Contractual claims concern matters with consideration to the contract itself. This includes any disagreement on the responsibility or liability of some parts that are not included in the documents. The main reason of these types of claims are poorly written contracts

DIFFERENCE IN PRICING AND MEASURING CLAIMS:

These types of claims deal with the disagreement regarding measurements at the final stage in the construction. Also, these claims include the differences in pricing by the contractor and the owner of some of the materials. Also, the change and the extra work usually create some differences in pricing.

DIFFERENT SITE CONDITIONS CLAIMS:

A changed condition refers to some physical aspect of the project or its site that differs materially from the indicated by the contract documents or that is of an unusual and differs materially from the conditions ordinarily encountered.

ACCELERATION CLAIMS:

Acceleration refers to the owners directing the contractor to accelerate his performance so as complete the project at an earlier date the current date of work advancement will permit. It occurs when the contractor is ordered, either directly or constructively, to speed up performance in some way. These types of claims may occur in big projects which directly involves immediate commercial operations and in the interest of Nation.

DAMAGE CLAIMS:

Property damages may occur due to the act of the owner or due to safety related problems. This type of claims is very rare because usually contractors have the total responsibility for the site.

CONTRACT TERMINATION CLAIMS:

When contract termination has occurred before the contractor has begun the work, the contractor may be entitled to recover the loss of the expected profit, or the difference between the contract price and the anticipated cost of the work. If the owner has terminated the contract after the contractor has begun the work, the contractor may be entitled to recover the loss in various ways. If the contractor has completed the work in full compliance with the contract prior to termination, he should expect to recover the full contract price. Recovery and liability under terminated contracts varies widely.

FORCE MAJEURE CLAIMS:

When force majeure has occurred; the contractor may be entitled to recover the loss in various ways as per Government Circulars / Notifications and Disaster Management Authority's / Competent Authority's order as stipulated in tender.

CLAIM SETTLEMENT METHODS:

When the contractor discovers the problem, he should try to eliminate or avoid it. If he cannot do so, then he should write to a letter to the owner to make a formal claim. This is the first step in claim procedure. The problem is approached during regular meetings, or a special meeting may be arranged to settle or discuss this dispute. If all that did not succeed, then mediation could be friendly way for settling the claim. Otherwise, arbitration or litigation could be other ways to solve the claims. These methods could be as under:

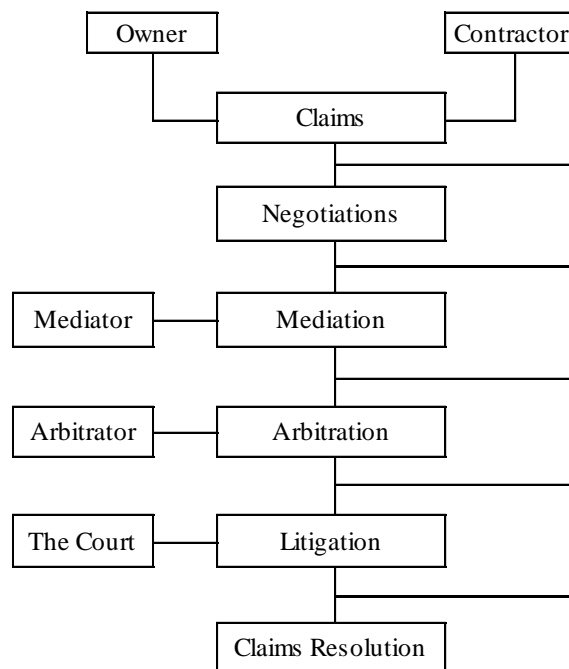


Figure-2 Claim Settlement Methods

IV. CONCLUSION:

Based on the results of this research, the following conclusions can be drawn:

1. Delays in Payments and Decisions from the Authority are the main important cause of claims because they result in a financial problem and disputes between the Employer and the Contractor.
2. Correspondences / Documents plays a very important part in the contract. At the time of writing the agreement, everything is usually acceptable for all parties, but the problem arises when the progress is affected either by Contractors fault or by Employer's fault.
3. One of the major claim factors is that both owners and contractors do not put a good plan before starting a project. The owner usually does not know what he needs exactly. Also, contractors usually do not use any type of scheduling / planning / methodology which may result in delay.
4. Another factor is that there is no control of the construction market, anyone could become a contractor. As a result, tough competition leads to submit lower bids, and therefore, the quality of work did not meet standards.
5. Sub-surfacing problem and accidents happen during the project but are not important causes of delays.
6. The economic impact and shortage of money in recent years has resulted in an increased number of claims. Profit margins have decreased and may become harder to maintain the establishment.
7. Delay in receiving / denial of NOC from various government bodies also leads the disputes.

V. RECOMMENDATIONS:

1. In the contract the rights and responsibilities of the contractors as well the rights and responsibilities of the Employer and Engineer should clearly define.
2. Give reasonable time to the design team to produce clear and complete drawings, bills of quantities, and specifications with no or minimum error and discrepancies.
3. Careful preparation of the contract documents helps to avoid disputes. Therefore, the documents will help to avoid disputes. Therefore, the contractor should ask the owner to write the change orders instead of giving oral change orders.
4. Contractor should have signed change (variation) orders duly approved by Client before starting doing any change in work on site.
5. Provide a proper mechanism for processing and evaluating change (variation) orders that pay for direct costs, indirect costs, and loss of productivity associated with any changes.
6. The contractor should take care of his work superiority by getting skilled staff and labour with using good management techniques / skills.
7. The government should create a set of procedures to control the quality of the construction work. Also, it should develop licensing contractors to make it more difficult to get certified.
8. The most excellent solution to claim lies in establishment of partnership between the owner and the contractor. Each party should try to solve the problems from the first moment they arise.

9. Use software like MSP, Primavera etc. to make bar charts, critical paths, planning, scheduling, cost control, productivity analysis, mitigation plan, and most importantly the project progress report to control the delay of the project.

10. Develop mutual problem solving attitudes on project between contractor and client.

11. Maintain proper job records on a timely manner including Time sheets, Diary records, Reports, Photographs, Records of labour, Record of materials, Records of plant on site, and its utilization, Weather and its effect on progress, unforeseen circumstances, Natural Calamities, Force majeure act, Progress of the construction etc.

Note: Efficacy of an arbitration award begins with an ideal agreement. There must have instances, wherein while preparing copies of the contract documents, some important lines in critical clause provisions goes either missing or gets inadvertently omitted. As any award is pronounced keeping in view contract provision, factual background leading to the dispute and law precedents laid down by courts on identical disputes. Hence, existence of disputes in construction contracts cannot be wished away completely.

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