PREFACE

In my capacity as Convenor, Technical Committee, I have the pleasure of sharing my thoughts with my esteemed friends from various walks of life and from diverse professions. The topic of the Conference, i.e. “Role of Arbitration in Engineering Contracts” does not in any manner restrict the scope or limit the ambit of discussions. In fact, the topic itself contains both judicial as well as engineering elements. This fact, by itself, explains the participation of persons from various fields like engineering, law and executives in the Conference. The confluence of such esteemed persons is a testimony to the fact that nowadays there is hardly any dividing line in any profession. Basic knowledge of different professions is not only essential but also the need of the hour. To illustrate, an engineer in the field who has scant knowledge of law relating to contracts or labour or arbitration would not be in a position to deal with the exigencies arising at the site during the currency of the contract. Interpretation of the terms of the contract is also of paramount importance so that injustice is not meted out to the executing agency, nor is the executing agency is in a position to extract undue sums of money from the employer. Similarly, labour problems frequently arise at the site of work. Unless the engineer has basic working knowledge of the labour laws, there is every chance that some wrong decision may be taken, which would hurt the employer at a later date. Knowledge of law does not mean deep and intricate knowledge, but working knowledge. This can be acquired by regularly updating oneself by reading law journals, commentaries by renowned authors, participation in meaningful seminars/conferences, constant interaction with experts etc. The engineers should also actively participate in arbitration proceedings, so that the interest of the employer is safe-guarded. Before

briefing the advocate handling the arbitration matter, it is imperative that the engineer is abreast of the facts and terms of the contract. While preparing cases for arbitrations, I have commonly experienced that departmental engineers are not in the know of all the facts. The normal excuses handed out is that the work was executed by some other person or that due to work pressure it was not possible to find time for studying the case. There is no denial to the fact that a person who has got the work executed would be in the best possible position to properly explain the facts, but if he is not available, is it not the solemn duty of the successor to get acquainted with the case by reading the documents? I am not, even for a moment, being critical, but just speaking from experience. This mindset has to change. It is with this in the backdrop that I strongly advocate engineers having working knowledge of law. I also am a strong votary of the engineers thoroughly going through the contract documents and having the terms thereof on their fingertips. A contractor would shirk approaching such an engineer with an unreasonable demand since he would be aware that he would be confronted with the contractual provisions to defeat his demand.

It is always advisable to settle the disputes amicably between the parties during the currency of the contract or, in any case, before finalization of accounts. Wherever it is not possible for resolution of disputes at the initial stages, then resort can be had to other dispute resolution mechanisms, like conciliation, mediation, arbitration etc. I have consciously mentioned conciliation and mediation before arbitration since I firmly believe that amicable resolution of disputes is the best way of settling issues. In fact, if the disputes are settled through conciliation or mediation, the matter rests there. However, in case the parties resort to arbitration, then it opens the doors for a never-

ending battle. Although I am in favour of the institution of arbitration, but in its present form, it needs some amount of overhauling.

Arbitration and Conciliation as modes for settlement of disputes between the parties have a long and time honoured tradition in this country. They have a social purpose to fulfill. It is all the more relevant now when the courts of law are already having huge pendency of cases, running into lacs in some High Courts. The judicial system prevalent in courts is governed by procedure prescribed under various enactments. Many provisions are very technical and have become synonymous with technicalities and obstructions, leading to delays. The procedure is so cumbersome that sometimes it takes decades for final resolution of disputes. The litigation becomes highly expensive, time consuming and once a person gets in it, he finds it difficult to extricate himself and gets frustrated and exhausted – mentally, physically and financially. Therefore, an alternate mechanism for resolution of disputes has been evolved by reference of disputes to domestic tribunals, i.e. arbitral proceedings. It is intended to ensure fair, efficient and speedy trial, giving finality to the decision.

Disputes are a common-place in all facets of life. Hence, if there are disputes in the engineering field, it is not too uncommon. The only remedy is resolution thereof, be it through any means. It would be appropriate that resolution of engineering disputes be left to the wisdom of the engineers. There are a plethora of judgments from various courts where it has been emphasized that awards rendered by experts in their respective fields should not be interfered with lightly. The genesis of the said rule of law is that courts cannot substitute its views for that of an expert, more so in view of the

judge not being possessed of the expertise of a particular technical field. However, a caveat must be added here. Courts can certainly interfere when there is a blatant violation of the contract or when the trade practice and usage does not support the conclusion of the expert. Section 28 of the Arbitration and Conciliation Act, 1996 takes into its encompass such like situations. It must be added here that such interference is too minimal. Awards of experts are normally upheld.

There has been a phenomenal response for this Conference, which is evidenced from the fact that a record number of papers have been received from eminent persons. I am sanguine that the deliberations that would take place would enrich the participants and the novel ideas that emanate from the deliberations can be utilized for betterment of the field of arbitration.

I take this opportunity to heartily congratulate the organizers of the Conference for their painstaking efforts in organizing the Conference and also members of the Technical Committee for scanning through the multitude of papers for being printed in this booklet. I, on my part, would eagerly look forward to participating in the Conference and leaving the venue with more sagacity.

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