Enhancing Amicable Settlement of Construction Disputes

Via A Systems Approach

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Abstract

Given the uniqueness, complexity and the presence of multiple parties, disputes are inevitable in construction projects. None of the alternative means of dispute resolution easily offer a platform for amicable settlement; instead a third party is given a considerable stake in managing the whole process and making judgments, the result of which is often being in either favor or against a disputed party. This article evaluates the potential of the employer and contractor, often being the main protagonists, to settle their disputes internally within the existing system they reside. A sample size of 15 in each group was involved in this empirical study. A Mann Whiney U test revealed that the disputants prefer a consensual approach by internalizing their disputes so that a third-party intervention is not necessarily indispensable. A model on dispute process based on the theory of systems is identified and proposed for further research.

Keywords: Adjudication, Amicable settlement, Arbitration, Disputes, Mediation

INTRODUCTION

Literally, a dispute is an issue pending resolution; be it commercial, contractual or technical in any typical construction context. In essence, disputes are not necessarily confined within a single contract between the contractor and the employer whose relationship is bilateral. The actuality is that disputes may arise at any point of time between any parties or among many parties (Jayalath, 2014a). Disputes could therefore crop up between the contractor and engineer, contractor and the engineer's representative, contractor and employer's representative, employer vs. nominated supplier etc. Specifically, the government contracts are not meant to address the relationship between the employer being the head of the entity who is signing the contract as the legal person and the engineer being the employer's personnel who is appointed to administer the contract. Both personalities in effect represent the same organization. However, the quantity surveyor is naturally the first point of contact to interact and debate, agree or disagree on amounts certified due under

the contract or otherwise (Jayalath, 2014a). On the other hand, the ‘dispute’ provisions in contracts

where the employer and contractor are traditionally in bi-lateral relationship do not specifically address the quantity surveyor's capacity to contractually engage in dispute resolution. As the last resort, parties tend to refer to the dispute provisions given in the contract that defines the contractual relationship basically in form of rights and obligations. However, much effort is required to find an interpretation arising out of the contract. Obviously, not all the issues can be resolved merely on the strength of the contract alone. A tendency is therefore to look for alternative means, one of which is amicable settlement.

Amicable settlement is often off-the-cuff venues for extra or new opportunities where the disputants are able to reexamine the matters whatsoever disagreed and arrive at either full or partial unanimity as far as possible. Amicable settlement is generally sought at the employer's interpolation whenever the dispute is found to have been not capable of being settled at the engineer or quantity surveyor office. In essence, the inspiration behind amicable settlement is the mutual concern about the interrupted progress, long term relationship and the least cost involved in the dispute process itself. The hesitation about the dual role of the engineer in some contracts is also a motive behind amicable settlement (Issaka et al., 2006). This duality of the engineer's role in terms of contract administrator and employer's representative lessons the confidence placed upon the contractor. Since most of the contracts have been customized based upon the FIDIC versions or at least in bespoke contracts where there are vast chunks of texts copied straightway from standard forms of contracts of similar application, the question of duality is inevitable.

Amicable settlement might offer a prospect for an interim award or a temporarily-binding decision, as the case may be. Indeed, the parties tend to despair in a method that works well in terms of time, cost and reliability of the process (Jayalath, 2014b). This argument has been rational from a contextual point of view. In a way, disputes are not healthy in construction as a market where few buyers and few sellers engage in transactions. Parties strongly believe in a process that does not intensify the magnitude of the differences apparently because of the fact that the employer is the potential of future projects and he is the paymaster to many. Further, the reality is that contracts may entail loopholes, ambiguities, errors and omissions and contracts do not offer at all times fully fledged answers for all the issues encountering. Hence, amicable settlement has become a widely held approach in the resolution of disputes.

Ayeni (2019) highlights the importance of proficiency in handling settlement procedures and suggests several non-structural reforms. Aida (2007) in his research on Sulh, the ethics of Arabian law, contends that no precedence should be given over the formal, truth-seeking procedures of adjudication. Aida emphasizes on formality in the pursuit of truth. In an empirically analyses on investor-state arbitration cases that settled amicably after the arbitration has commenced but before

the final award is rendered emphasized that the major criticisms leveled against amicable

settlement are not as evident in practice (Ubilava, A. 2019). Many, including standard forms, require that parties undertake a process of amicable dispute resolution before they embark on other forms of resolution. Accordingly, amicable settlement has been popular in commercial contracts in general and construction contracts in particular (Jayalath, 2012).However amicable settlement is quite often taken place ad-hoc. A formidable question is therefore how a 'formality' could be assigned to this 'amicable settlement' as an approach with a clearly delineated internal process acceptable to all the parties. This research paper is to add this body of knowledge.

Research Aim and Objectives

This research has been focused towards assigning formal attire in the process of amicable settlement internally within the disputant organizations without any third party intervention. The objectives are to discourse how parties would generally prefer to characterize their own dispute settlement efforts, introduce the concept of internalizing disputes and gauge the perceived opinion of disputants as to importance of internal treatment to their disputes.

RESEARCH METHODOLOGY

Alternative Dispute Resolution (ADR) is a widely deliberated discipline in the construction industry. The broad research topics that were addressed during the literature review were construction disputes, amicable settlement and connected issues in that regime. Anecdotal review of the subject matter is abundant. Some empirical research does also exist. A comprehensive literature survey was therefore undertaken to establish the notions underlining how negotiations take place in the construction arena and how would parties generally prefer to act upon in a given issue. A questionnaire prepared using 5 point Likert scale was subsequently disseminated among the purposively selected major contractors and consultants renowned in the field of construction. The individual perception of the contractors and employers, towards the proposed mechanism was obtained. Mann Whitney Utest was used to measure the differences of opinion at 95% statistical significance.

As mentioned, a group of 15 contractors was taken to be the target sample in the empirical component of the study. Contractors were purposely selected out of the C1 category according to the national and central grading system applicable in Sri Lanka. C1 contractors are a fair group of sample representing the financial threshold between 600 to 1500 Million Rs worth of work in hand a year. A group of employers representing 15 state sector employer organizations undertaking public projects was selected. A prerequisite to participate in the research is to have at least a single previous experience on the dispute process. A questionnaire was distributed among the participants citing 20 pieces of perceived opinion in form of affirmative statements.

LITERATURE SURVEY

Cornerstone of Negotiation

The term "negotiation" refers to the ways in which information is conveyed about what we want, what we desire, and what we expect from other people as well as how we receive information about other people's wants, desires and expectations (Ross, 2006). On the similar note, Fisher and Ury (1991) state that it is a basic means of getting what you want from others. Ross (2006) and Fisher and Ury (1991) are of the view that negotiation is an applied science. Michael and Wayne (1981) viewed that negotiation is the art of getting what you want. All in all, negotiations involve a complex range of financial, business and contractual issues in the commercial world (Ashcroft, 2004). Ashcroft (2004) further states that in many instances commercial negotiations place a severe strain on those who seek to negotiate the finer points of a deal. As Rowlinson (2011) suggests, complex construction projects are often exposed to uncertainty and high risk coupled with problems of imperfect information. This results in project environment easily becoming a breeding ground for adversarial relationships and defensive behavior. Since people are the host to minimize these negative effects, managing differences in people seem to be one critical task.

Malhotra and Bazerman (2008) defined the psychological influence as "the effort to positively influence another party's attitude towards a given idea or proposition without changing the incentives or objective information set of the other party" (para. 8). Therefore, a mix of ideas, thoughts and attitudes will make the game of negotiation either win or lose. The soft negotiator wants an amicable resolution, but he always ends up with feeling bitter and exploited (Fisher and Ury, 1991). There is a way of negotiating that neither hard nor soft, but rather both hard and soft. This method identified as 'Principled Negotiation' developed at the Harvard Negotiation Project suggests that the parties look for mutual gains wherever possible and if interests are conflicting, the parties are meant to argue on fair standard independent on the other parties' will (Fisher and Ury, 1991). Meanwhile, Ross (2006) looks in a different angle to principled negotiation, as firstly the negotiation is not a science, secondly it is not a situation in which winning is everything and thirdly it is not an event with continuity – the parties involved, their motives and their goals are different and are all subject to change at any moment during the course of the negotiation.

Ross (2006) answers basically two questions as; "Are there any rules in negotiation? No, there are no rules in negotiation" and "Are lying, cheating and deception permitted? "Yes, anything goes". Therefore Ross looks at negotiation with full of strategies than the barefoot negotiation. As mentioned by Alfredson (2008), a strategy is "a careful plan or method, especially for achieving an end", whereas the use of tactics refers to "the skill of using available means" to reach that end. As per Ethan et at (2007), some of the negotiation techniques can be identified as gathering information by means of encouraging dialogue, active listening, eye contact, using silence and

communicating with your delegation by signals and other strategies, using time effectively,

redirecting the topic, holding a topic for future discussion, using breaks, changing the players.

Some of the commonly used negotiation tactics are trade-offs, good cop/ bad cop, delays, deadlines, nibbling, emotional outbursts, flinch/dunce, reciprocity, authority ploys, mindset traps, dominant or preemptive strikes, inducements, silence, recessing, hypothetical questions, personal favors, divide and rule (Ren, 2011). Studies of Loosemore (1999) concluded (as cited in Yiu and Cheung, 2011) that disputes are often escalated as a result of misunderstandings and tactical miscalculations during the bargaining process. Therefore negotiation tactics also play a major role in the success of the negotiations. The negotiation is not identified as a science since the satisfaction is the final outcome. To succeed a negotiation both parties have to persuade to a state of sharing satisfaction. However satisfaction is purely subjective to emotional state that linked directly with a person's personality. In negotiation rarely can achieve something that is entirely tangible or measurable. There is no absolute right or wrong answers in a negotiation. Satisfaction should be the real goal, not the best price or getting everything one asked for. (Ross, 2006) As revealed by Pui (2008), one possible cause of failure of negotiation is insensitivity to behavioral expectations. According to Yiu and Cheung (2011), if the negotiator is able to successfully negotiate and settle a subsequent dispute, then strong self-efficacy expectancies may hold for performing negotiation efficiently in future tasks. Therefore success of a negotiation is not gaining the said negotiation itself, but all future negotiations also. Hence the importance of behavioral aspects of the psychology of negotiation is one of the main cause affecting to the success or failure in the negotiation.

There can be many stages in the construction process where the negotiation need. They can be negotiation before contract with competition, negotiation before contract without competition, negotiations during the contract (Dunning, 1992). As stated by Charoenngam (2011), construction negotiating situations occur, change order negotiations, errors in Drawings and Specification negotiation, differing site conditions negotiation and delayed progress payment negotiation. "The construction project contract negotiation is so complex that many factors affect its success including preparation for negotiation, the status of persons involved in the negotiation, negotiation skill, negotiation strategy, contract details, negotiation goals and so on" (Othman et al, 2010). "In order to improve efficiency of negotiations, proper preparation is important, considering all stages of negotiations: from data accumulation through initial goal setting to the completion" (Urbanaviciene et al, 2009). Negotiation is a process need by everybody in day to day activities in order to solve problems with others and to come up with satisfying solutions to all. Negotiations can be between two parties or more. Furthermore there can be unassisted negotiations or assisted negotiations where the involvement of a third party is there. In a negotiation views of the parties

and the view of the negotiator or the third party in an assisted negotiation can be differ from one

another. Therefore identifying the goals of the parties to the negotiation is very important.

Claims and Disputes in Construction

Projects with complex designs and conditions often give rise to additional costs and delays for the contractor. This may consequently lead to costly and lengthy resolution of these claims. Contractors tend to claim that owners do not always act fairly in the event of judging their entitlement to compensation (Fawzy and El-adaway 2012). It has become a matter of concern to resolve these claims for the parties involved. These claims can turn into serious disputes if these conflicts are not effectively addressed and resolved in a timely manner (Seifert 2005). The importance of the claim-dispute resolution process can be highlighted critical to any project to minimize cost, time, and tension (Cheeks 2003). When a claim is submitted, the contractor should closely follow the steps in the contract conditions. In order for the parties to track claims the International Federation of Consulting Engineers (FIDIC) has published its standard contract protocol. Consultation discussions on the matter take place following a claim has been notified and detailed particulars are submitted. At this point, the matter has not yet evolved into a dispute.

Avoiding/Minimizing Claims

Claims can be avoided and minimized in multiple ways. It is important that a claim is addressed from the onset of the project. The provisions present in the contract should allow for realistic expectations. Dispute avoidance is a mutual effort between parties that work together. To minimize claims, finish the project within budget and on schedule (Cheeks 2003). In order for the project to "start right" accurate contract language and appropriate alternative dispute resolution methods should be present in the contract. Solving disputes in a timely manner can accomplish "Staying right", before turning to arbitration. It is the quality of people can greatly influence the disputes not the people themselves in the project. People take part in resolving issues on projects either by facilitating or hindering. The ultimate project success can be influenced by good communication skills, capable management and ideal responsibility structures (Diekmann and Girard 1995).

Specifics in Construction Disputes

Loosemore (2010) concluded that the majority of construction disputes are unintentional, involuntary and indeed unwanted. This argument is realistic as no party would prefer disputes, at the outset. Disputes are not uncommon within the industry (Chappell, Power-Smith, and Sims, 2005). Further, the traditional means of resolving construction disputes have proved to be not that helpful at all times (Jayalath, 2019). This is mainly due to time and cost sparingly associated with

even alternative means. Concerns are therefore to strengthen and equip the construction industry

with necessary means and tools to deal with challenges associated with dispute resolution.

Adjudication is one such initiative aided by recommendations of the report 'Constructing the Team' in 1994 (Latham, 1994). Adjudicators engage in an inquisitorial role (Palmer and Roberts, 2008). Adjudicators are given a mandate to establish the procedure, decide upon own jurisdiction and the scope of any dispute referred to and even decides provisional relief such as interim or conservatory measures. Adjudicators ascertain the facts and figures needed for a decision, to a great extent, on their own specialist knowledge (Jayalath, 2019). In kernel, adjudication is a process where the disputants still depend upon a third party. Danial (1992) argues that adjudication does not necessarily achieve final settlement and is ideal as a tool for temporary measures to get rid of or ease out the dispute escalating.

Reaching an agreement via arbitration is again crucial, apparently because of the involvement of different legal systems, foreign entities and customs, by lateral and multi-lateral treaties in between countries and so on. Thus, in recent years, arbitration is the remotest choice of the parties (Dursun, 2013). This is apparently because of the fact that the present day globalization has tended towards a sizeable amount of multinational contracts entered by the parties in different legal systems (Carlquist, 2006). Arbitration is similar to reassembling a perilous 'jigsaw puzzle' with many of the sections mislaid forever (Blackkaby et al., 2009). However, the guiding principle, which makes arbitration flexible, is none other than party autonomy (Dursun, 2013). It is considered that the principle of party autonomy is the centerpiece of arbitration (Ansari, 2014). Arbitration agreement is the main source of arbitration, quite often (Shackelford, 2006). Thus, guiding principle of party autonomy can be concluded as the freewill of parties enabling the parties to craft the arbitration process effectually (Abdulhey, 2004).

In recent years' arbitration is the furthermost favored choice to reach an amicable settlement (Dursun, 2013). Guiding principle of party autonomy can be concluded as the freewill of parties to design the arbitration process in an effective manner to reach to an amicable settlement (Abdulhey, 2004). Researchers have identified the importance of proposing suitable elements of party autonomy and strategies of party autonomy hence arbitration has become another type of a litigation making parties in the construction projects suffering with commercial loss and the delays. Therefore, it is significant to understand the fact that if parties recognize the need of party autonomy and strategies of party autonomy in orders to minimize the problems and amicable settlement in arbitration process. The practice of arbitration continues to provide a less formal and less expensive method to reach amicable settlement compare to the courts (Ranasinghe, 2015). Redfern and Hunter (2004 further stated that there are some international and local institutions, which offer this specific arbitration process to cater the amicable settlement in arbitration process

and party autonomy has given the opportunity for contractual parties when they want to use an

expedited procedure to get the benefit of it. Most important thing in the fast track arbitration is to avoid the unnecessary delay and reach to an amicable settlement through arbitration since sometimes-ordinary arbitration processes will take more time to solve the disputes when parties use more flexible procedure using party autonomy (Welser and Klausegger, 2008). In arbitration principle of party autonomy has given an opportunity to decide the use of evidence in a flexible manner according to the procedure that they have chosen for amicable settlement (Turner, 2010). In other hand it will be a crucial factor to find out the week point of the opposing party through expert evidence hence experts will provide the impartial, independent opinion after the objective assessment providing parties an amicable settlement.

Mediation is poorly conceived and applied (Ismail et al., 2010). Particularly, evaluative mediation is an oxymoron (Love et al., 1998). A criticism is that the evaluative mediator is not so different from traditional judges and arbitrators (Love et al., 1998). In this way, mediators compromise neutrality leading to a settlement in favor of the party with the strongest legal argument. This tends to encourage the parties to be competitive and adversarial (Palmer and Robert, 2008). If the neutral takes on an additional role, then the decision making process may tend to become confused. Hence, the mediators must avoid such 'trash and bash' approach that blurs the line of demarcation between mediation and other ADR processes (Riskin, 1996). In essence, construction issues are hotly contested predominantly when the issues become inextricably intertwined, global and rolled up. A win lose outcome is nearby when the argument on time extension is founded on the basis of concurrent delays and liquidated damages is denied on the same vein by the other party. Concurrent delays are a defensive means by shield to one party and shored to other party.

Amicable Settlement vs. Arbitration or Litigation

Both in contracts and the dispute resolution in the construction industry, amicable settlement has become a crucial point. As opposed to arbitration and litigation, amicable settlement gives the opportunity to exercise some degree of control on how a dispute is resolved. Amicable resolution prevents time-consuming, and costly court procedures. It is always a good idea to have control over the whole dispute process rather than leaving a third-party judge out of nowhere to make decisions for both parties. The amicable dispute resolution is preferred over the initiation of arbitration proceedings in many methods such as standard forms. That way, amicable settlement is more of a prerequisite to the commencement of arbitration than a choice. Frequently early amicable settlements are the rational preference of legal counsel. In the event one or both parties require more serious measures or negotiations have failed, disputes often lead to arbitration or litigation

(Panov and Petit 2015). There are many influencing factors on parties to go for amicable settlement

than litigation or arbitration. To name a few such incentives but not all, the desire to maintain good relationships, concerns for the time and cost, concerns about the lack of assets of the opposing party (Panov and Petit 2015).

Amicable Settlement as an approach

When an agreement is reached to satisfy all parties involved, avoiding lengthy and costly dispute resolution procedures can be considered an amicable settlement of a dispute. These settlements can take place at various points along the dispute timeline, early on or it may also be delayed depending on the attitude and quality of the people involved. Amicable settlement is mentioned in the Sub-Clause 20.5 of the 1999 FIDIC conditions of contract. As per the above document, following a dissatisfaction notice is issued, the involved parties are granted some time to resolve the dispute amicably. Amicable settlement is prerequisite to the beginning of arbitration. Booen (2000) mentions that no method is specifically mentioned in selecting the procedure of choice, such as direct conciliation, negotiation, and mediation.

Amicable settlement is an open warranty where the parties can of course begin before or after the court action or any other means. Basically, it is a deal which derives from a consensual agreement of the parties during negotiations. Aligned with the theory that parties own both the dispute and outcome, settlement is possible at any stage of the dispute escalation. It is a shared solution that will endure, if efficacious, a better solution than an imposed one. A neutral, who is not necessarily a third party, gives a sense of fairness while bringing new thoughts in articulating a solution. Disputants are given to "tailor" a solution meantime as they consider important and of assistance to them. Neutrality being a principle cannot however sacrifice fairness, both in process and outcome (Jayalath, 2014b). Neutrality means no imposition of individual views on the parties.

ADR methods buoy up the parties to mutual agreement(s) where possible as it generally allows a win-win situation rather than winner-take-all situation. It paves the easy way to justice due to low cost implication on one hand and the non-requirement of grossly applying rules of evidence on the other hand (Niriella, 2016). Of them, amicable settlement is an approach with negotiations that help produce an agreement upon courses of action for a collective advantage (Jayalath, 2014a). Many, including bespoken forms, require that parties embark on a process of amicable dispute resolution before they invoke other means (Jayalath, 2014a). This is imperative in spite of various giveaways that would have negotiated casually on ad-hoc basis. If the dispute can be treated internally without inviting a third party, it means the parties have almost entered into a non-adversarial approach and it has to be developed into a formal process. However, a mechanism lacks.

Organizations contain individuals belonging to groups or sections having interaction each other.

Organizations are integrated social systems. In the same vein, construction projects are a system having a host of activities interconnected to a logical sequence. Construction projects are typically represented by a generalized model capable of being broken down into sub systems. Interaction between the sub systems is taken place according to the project timescale. This is an important basis from which the unique requirements of the project can be identified and accommodated. Interactions can be sequential, in parallel, or reciprocal within each subsystem and between multiplicities of subsystems. As construction projects are dynamic and heterogeneous by its nature, there is continual change brought about by the uniqueness of the project and the heterogeneity within which it exists (Cleland and King, 1988). The proposed Engineering Business Support (EBS) Modality is run on the notion of business systems. It is introduced on the premise that projects operate not in a vacuum but in a system that interaction between the functions and the parties are inevitable for its own sustenance. Figure 1 depicts the conceptual analogy of the Engineering Business Support Model showing how parties interact each other for an amicable solution.

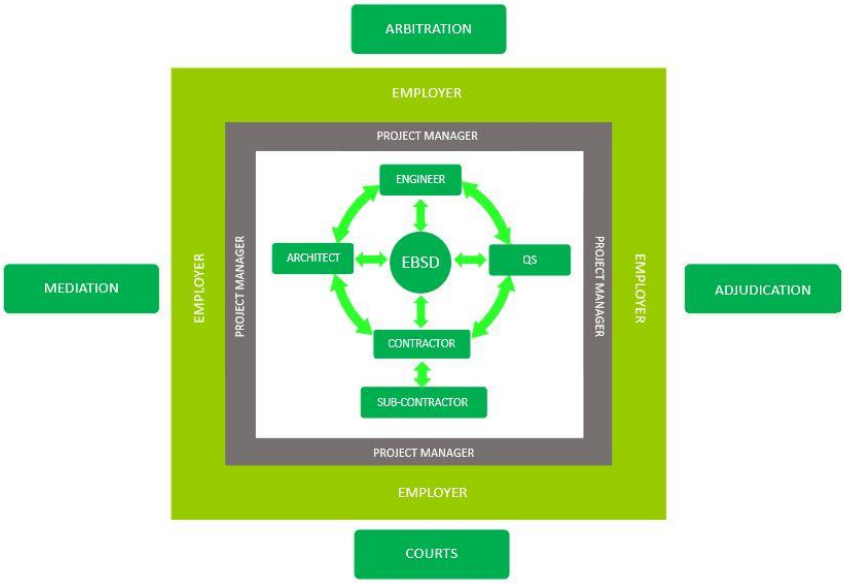

Figure 1: Engineering Business Support Analogy

The mechanism is such that the employer makes a stopover once he received the materials of the dispute including the history of what has been so far referred to and commented by the parties at the project level. It could be in form of a claim or a counter claim or even an appeal made by the contractor or his representatives including nominated sub-contractors. At this juncture, the employer refers the dispute to an in-house neutral in order to first evaluate the same independently and recommend a solution or option that best fits the party's requirements. As stated, these neutrals are permanently based in-house, whose role is either facilitative or evaluative, or a combination

depending on the merits of the issues, the approach to be taken to sort out the issues. Neutrals are

in essence neutrals so that they do not necessarily represent the employer. However, they exchange a gamut of opinion with technical, legal, financial and other departments hand in hand to take a holistic view of the matters under consideration. Such an arrangement in fact avoids too formal approaches inherent in other alternative methods such as arbitration.

In Engineering Business Support model, expert inputs are closely resembled while giving emphasis on the accepted norms of the construction industry (Jayalath, 2009). Neutrals give advisory opinion also when parties need guidance on technical matters that is preventing a further dispute (Jayalath, 2009). When a dispute does arise, it is given early attention and addressed contemporaneously (Jayalath, 2011a). Familiarity with the project is one of the advantages the EBS modal has where the facts are better understood by neutrals in administering the dispute (Jayalath, 2011b). This is important particularly in almost every mega projects, the staff who were at the kick off rarely remains at the completion and handing over. This interim staff movement from project to project often deprives a third party the benefit of their first-hand know-how of events. Table 1 offers a comparison between EBS modality and other alternative mechanisms as well as litigation.

	Characteristics	**Engineering Business Support Model**	**Other Alternative Methods of Dispute Resolution**	**Litigation**
1	Function	Internal and Linear (system based)	External and Hierarchical	External and Hierarchical
2	Scope	Dealing with internal dynamics, business relationships, public interests in addition to commercial and contractual eligibility and quantum	Dealing with technical, commercial and contractual eligibility and quantum	Determining what is legal and what is not
3	Time saving	No additional time and within the contract period	Time fixed by a third party	Time fixed by court
4	Cost saving	No separate cost allotted	Cost is borne/shared by/between parties	Cost is borne individually
5	Privacy	Not open to 'Contractual Employer'	Not open to public	Open to public
6	Confidentiality	Discussions, negotiations and documentation are confidential	Legally privileged and without prejudice (in most cases)	Form part of the public record

7	Neutrality	Pursuit of options	Outcome depends on	No stake in the

		and a wider range of possible outcomes, such as better understanding of others' perspective	settlement authority of the participants and strength of the arguments	dispute. Outcome depends on the evidential capability
8	Reference	Contract, customs and common sense	Contract and customs	Law and contract
9	Contribution	Voluntary participation,	Voluntary/mandatory participation	mandatory participation once legal action is initiated
10	Mode of interaction	Emphasizes mutuality over self-interest	Emphasizes reconciliation over termination	Emphasizes what the law says
11	Finality	Likely to comply with a recommendation just as a decision is accepted in anyway.	an arbitration award is final, and is not subject to being reversed upon an appeal	Absolutely final
12	Binding nature	There is no such thing as a winning or losing party	Binding as long as the participants agree on the outcome within the time bar given	Absolutely binding
13	Process	A process of discussion and narrowing differences	Third party decides upon the process to be involved	Simply adhere to court proceedings
14	Outcome	A custom-made win-win outcome on all or part of the issues	May result in an apportionment of losses	Decisions rendered can act as precedent in future similar cases
15	Focus	Focuses on consensus-building and is future-oriented	Focuses on the facts and is past-oriented	Aims to determine the parties' legal rights

Table 1: Characteristics distinguishable from other alternative mechanisms

Attempting to resolve disputes through amicable settlement as opposed to arbitration or litigation gives the parties on either end of the dispute the chance to exercise some degree of control over the way their disputes are administered and resolved. A number of factors may motivate a party to settle amicably before resorting to litigation or arbitration. These could include the desire to maintain good relationships with the other party, the concerns for the time and cost, the weakness of one's own case, and the concerns about the lack of assets of the other party, (Panov and Petit 2015).

FINDINGS AND DISCUSSION

The findings of the questionnaire were distributed among the participants citing 20 pieces of perceived opinion in form of affirmative statements. Mann-Whitney Utest (MWU test) was adopted to affirm the variances of group opinion, if any. The hypothesis set out in the research is as follows;

Ho: There is no statistical difference between the groups.

H1: There is a statistical difference between the groups.

The sum of ranks assigned in each category is given as T1 and T2 for the purpose of Ustat calculations. 5% is the statistically tested significance. Table 2 indicates the individual calculation of Perceived Opinion 1 only, due to space restriction of this research paper.

Participant (Employer)	**Rating**	**Rank**	**Participant (Contractor)**	**Rating**	**Rank**
1	3	10.5	1	3	10.5
2	4	19	2	4	19
3	4	19	3	5	27
4	5	27	4	2	4
5	2	4	5	3	10.5
6	3	10.5	6	2	4
7	3	10.5	7	2	4
8	5	27	8	5	27
9	1	1	9	3	10.5
10	2	4	10	4	19
11	4	19	11	3	10.5
12	5	27	12	4	19
13	4	19	13	3	10.5
14	4	19	14	4	19
15	5	27	15	5	27
T		243.5	T		221.5

Table 2: Ranking of the opinion on perception 1

Table 3 depicts the final results of the MWU tests piloted for 20 Perceived Opinion. 5

	Perceived Opinion	T1	T2	Usat	5%	Ho
1	Construction, as a market, is oligopolistic by nature	243.5	221.5	86.5	No	A
2	Disputes are a phenomenon in construction	268	197	62	Yes	R
3	No one wants to name 'parties' as 'disputants'	255	235	75	No	A
4	Everyone needs a faster settlement than a formal resolution	264	200	65.5	No	A
5	Tendency is always to invite a third party by contract	242	223	88	No	A
6	Third party intervention no has impact on the bilateral relationship	278.5	183.5	51.5	Yes	R
7	It is 'relationship' that ties parties and reinforces the cohesion towards a dispute free project delivery	263.5	201.5	66.5	No	A
8	The majority of disputes involves both time and money	243.5	221.5	86.5	No	A
9	Quite often, disputes arise between the contractor and the engineer and quantity surveyor at the outset	243	222	87	No	A
10	Engineer and quantity surveyors are often remunerated by the employer on a separate contract whose remit is to protect the interests of their paymaster	233.1	220.2	96.9	No	A
11	Claims are addressed contemporaneously so that claims get accumulated pending settlement nearing completion	192.5	272.5	57.5	Yes	R
12	The role of Engineer and Quantity Surveyors can be expected independent and impartial at all times	193	277	53	Yes	R
13	Parties prefer to too much depend upon external agencies (costly, time taking and lack of control)	189.5	275.5	54.5	Yes	R
14	High degree of control, as a participant, would like to have	194	271	59	Yes	R
15	Parties prefer to take hold of decision making authority for this dispute?	199.5	265.5	64.5	No	A
16	Low degree of decision making authority would the parties like the third party to have	222.5	242.5	87.5	No	A
17	Parties prefer no power dynamics at play within this dispute	212.5	252.5	77.5	No	A
18	Parties prefer not to entail too much structural features such as time-constraints or resource allocation	220	245	85	No	A
19	Parties do not necessarily proffer the contract as the solution finder	220.5	244.5	85.5	No	A
20	Amicable settlement is welcome	236	235	94	No	A

Table 3: Mann Whitney U Test Results (Note; For n1=15 and n2=15 the critical value of U is 64 and 51 for two tailed test at the 0.05 and 0.01 significance levels respectively) Note; A – Accept and R - Reject

The message is that the perception of two groups is not that indifferent. It is found that the

respondents are positive with the amicable settlement with a component of formality assorted with it. Parties eventually prefer to depend upon internally guided ruling or process which in turn help preventing further dispute escalation and restore bilateral relationship. Parties prefer to take hold of decision making authority for this dispute? Low degree of decision making authority would the parties like the third party to have Parties prefer no power dynamics at play within this dispute Parties prefer not to entail too much structural features such as time-constraints or resource allocation Parties do not necessarily proffer the contract as the solution finder amicable settlement is welcome. This is where the party autonomy plays a pivotal role.

CONCLUSIONS

It is clear that parties prefer to entertain their autonomy in dispute resolution as much as possible. In a context where the autonomy plays a pivotal role in amicable settlement, naturally the question arises that, the parties had better to amicably settlement their differences before they escalate into disputes. Hence, this study offers an early signal on promoting more effective usage of internal resources in the struggle of dispute settlement, meeting an integral part of this research paper. In line with the foregoing desire, the parties prefer to use all of their strengths to internally sort their differences. This is in essence a kind of internalizing disputes so that a third party is no longer important. However the concept of internalization warrants some kind of a formality on the notion that organizations are systems having interrelated functions. The main feature of the Engineering Business Support modality is articulable in such a way that the parties need not invoke the dispute clause with the idea of adhering to the dispute gauntlet merely because the contract provides for. Parties prefer not to feel a confronting sense of a dispute. In this way, amicable settlement underpinned by an internal formal process helps internalize the disputes without being exposed to a third party or to the general public. This effort of ‘internalizing’ the dispute itself is a giant step in dispute resolution arena.

IMPLICATIONS OF THE STUDY

This study offers key insights on how amicable settlement as an approach would promote faster settlement of disputes in construction, acts as a catalyst to avoid dispute escalating thereby restoring contractual relationship. Parties would eventually prefer not to call their employer a disputant but some kind of internal mechanism to deal with disputes once arises. In this study, the process is given a blend of formality where the employer organizations are able to revisit their internal dispute mechanisms and revamp the process involved if any for the betterment of the parties engaged in construction projects.

DATA AVAILABILITY STATEMENT

All data, models, and code generated or used during the study appear in the submitted article.

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