

SUCCESS OF ADJUDICATION AS A PRIMARY ADR METHOD IN SRI LANKAN CONSTRUCTION INDUSTRY

Muruthameregnne Janitha Shyamal

119325 G



Degree of Master of Science in Construction Law &
Dispute Resolution
Electronic Theses & Dissertations
www.lib.mru.ac.lk

Department of Building Economics

University of Moratuwa

Sri Lanka

July 2016

SUCCESS OF ADJUDICATION AS A PRIMARY ADR METHOD IN SRI LANKAN CONSTRUCTION INDUSTRY

Muruthameregnne Janitha Shyamal

119325 G

Thesis / Dissertation submitted in partial fulfillment of the requirements for the
Degree Master of Science Construction Law and Dispute Resolution
 University of Moratuwa, Sri Lanka
Electronic Theses & Dissertations
www.lib.mrt.ac.lk

Department of Building Economics

University of Moratuwa

Sri Lanka

July 2016

DECLARATION, COPYRIGHT STATEMENT AND THE STATEMENT OF THE SUPERVISOR

I do hereby state that this research is my own work. It is original new work and it does not contain any previously published material or any content of any other academic course, other institute or any university of higher education. Further this does not include any other person’s published knowledge. Any reference to previously published data is acknowledged.

I acknowledge humbly and kindly the intellectual support and guidance given by my supervisor Mr. Suranga Jayasena for the success of the research study. Further if I wish to publish whole or any part of this research work I do publish the names of my supervisors and refer all the contributing author(s) respectively.

University of Moratuwa is hereby granted the non-exclusive right to reproduce and distribute my thesis/dissertation, in any means as it wishes. Finally, I retain the right to use the research work by any other person in any means.



University of Moratuwa, Sri Lanka.
 Electronic Theses & Dissertations
www.lib.mrt.ac.lk

Signature:

Date:

Declaration by the research supervisor.

I, Suranga Jayasena – senior lecture of the Department of Building Economics of University of Moratuwa, affirm that the above author Mr. M.J. Shyamal has carried out the research under my supervision in the fulfilment of his Masters in Construction Law and Dispute Resolution.

Supervisor’s signature:

Date:

DEDICATION

Dedicated to my Parents with much love,



University of Moratuwa, Sri Lanka.
Electronic Theses & Dissertations
www.lib.mrt.ac.lk

ACKNOWLEDGEMENTS

I express my heartiest greetings to all, who encouraged me in many ways to make this research a success.

Mr. Suranga Jayasena, Senior lecture of the Department of Building Economics of University of Moratuwa, is the key person behind the success of my research, being the supervisor. He correctly and timely guided me, advised me and corrected me where and when necessary.

I must convey my sincere thanks to the Department of Building Economics of University of Moratuwa and the Head of the Department Dr. Yasangika Sandanayake, former Dean of the Faculty of Architecture, Professor Chitra Wedikkara and all the academic staff, as they have identified the necessity of the Masters programme in Construction Law and Dispute Resolution at the Department of Building Economics in year 201



University of Moratuwa, Sri Lanka.
Electronic Theses & Dissertations
www.lib.mrt.ac.lk

Finally, I express my heartfelt gratitude to the industry practicing professionals who dedicated their valuable time and shared their intellectual properties with me in my research findings in many ways.

ABSTRACT

Due to the rapid growth of the construction industry and its complexity and multiparty involvement, disputes are unavoidable. Construction industry requires an effective dispute resolution system which has key characteristics like fast and cost effectiveness to avoid unnecessary delays and cost overruns. Litigation as the conventional dispute resolution system has proven that it is not appropriate for construction disputes due to its inherent characteristics.

Alternative Dispute Resolution (ADR) mechanisms have been developed to accommodate this requirement to resolve the construction disputes. Adjudication is one of the most significant and well spread ADR method in construction industry. Adjudication has introduced to the Sri Lankan construction industry through Federation Internationale Des Ingenieurs Conseils (FIDIC) standard form of contract and Institute for Construction Training and Development (ICTAD) standard forms of contracts, and recently through Construction Industry Development Act No. 33 of 2014.



University of Moratuwa, Sri Lanka
Electronic Theses & Dissertations
www.lib.mrt.ac.lk

Purpose of this research was to study prevailing practice of adjudication in Sri Lankan construction industry in terms of applicability, procedure and skill level of professionals involved in the process. Based on that to assess the success of adjudication as an ADR method in the Sri Lankan construction industry and to finally find an answer whether the industry is getting full potential of adjudication to resolve the construction disputes.

The findings of the study reveal that though adjudication is widely used, the industry does not receive its full benefits.

Key Words – Sri Lankan construction industry, disputes, ADR methods, adjudication, success

CONTENTS

DECLARATION, COPYRIGHT STATEMENT AND THE STATEMENT OF THE SUPERVISOR.....	ii
DEDICATION.....	iii
ACKNOWLEDGEMENTS	iv
ABSTRACT.....	v
LIST OF FIGURES	ix
LIST OF TABLES	x
LIST OF ABBREVIATIONS	xi
LIST OF CASES.....	xii
1. INTRODUCTION TO THE RESEARCH	1
1.1 BACKGROUND.....	1
1.2 RESEARCH PROBLEM AND RATIONALE	5
1.3 AIM AND OBJECTIVES	6
1.4 METHODOLOGY	6
1.5 SCOPE AND LIMITATIONS.....	6
1.6 CHAPTER BREAKDOWN.....	7
2. LITERATURE REVIEW.....	8
2.1 INTRODUCTION	8
2.2 CONSTRUCTION INDUSTRY AND DISPUTE RESOLUTION.....	8
2.3 HOW CONSTRUCTION DISPUTES ARE RESOLVED.....	9
2.3.1 DEVELOPMENT OF ADR.....	10
2.4 ADR METHODS IN CONSTRUCTION INDUSTRY.....	13
2.4.1 RECOMMENDATION BASED.....	13
2.4.2 ADJUDICATION BASED	13
2.5 FORMS OF ADR METHODS	14
2.6 CONSTRUCTION ADJUDICATION.....	16
2.6.1 HISTORICAL BACKGROUND OF CONSTRUCTION ADJUDICATION	17
2.6.2 LEGAL ASPECTS OF CONSTRUCTION ADJUDICATION	18
2.6.3 JURISDICTION OF THE ADJUDICATOR.....	20
2.6.4 LIMITATIONS OF ADJUDICATION	21

2.7	CONSTRUCTION ADJUDICATION ALL OVER THE WORLD	22
2.7.1	UNITED KINGDOM	23
2.7.2	UNITED STATES OF AMERICA.....	24
2.7.3	SOUTH AFRICA.....	25
2.7.4	NEW ZEALAND	25
2.7.5	AUSTRALIA.....	26
2.7.6	MALAYSIA.....	27
2.7.7	SINGAPORE.....	27
2.7.8	HONG KONG.....	28
2.8	SRI LANKA	28
2.8.1	AVAILABLE PROVISIONS FOR ADJUDICATION	28
2.8.2	RELATED REGULATORY BODIES	29
2.9	FACTORS AFFECTING SUCCESS OF ADJUDICATION	30
2.10	SUGGESTED FACTORS TO TEST THE SUCCESS OF ADJUDICATION IN SRI LANKAN CONSTRUCTION INDUSTRY	33
2.11	RESEARCH PROBLEM	33
2.12	SUMMARY	35
3.	RESEARCH METHODOLOGY	36
3.1	INTRODUCTION.....	36
3.2	RESEARCH DESIGN.....	36
3.3	RESEARCH APPROACH.....	37
3.4	RESEARCH STRATEGY	38
3.5	RESEARCH TECHNIQUES.....	38
3.5.1	SAMPLING.....	38
3.5.2	DATA COLLECTION	39
3.5.3	DATA ANALYSIS	39
3.6	SUMMARY	40
4.	ANALYSIS OF DATA AND FINDINGS	41
4.1	POPULATION SIZE AND SAMPLING.....	41
4.1.1	RESPONDED PROFESSIONS	41
4.1.2	AWARENESS TO ADJUDICATION	42
4.1.3	EXPERIENCE RANGE OF RESPONDENTS.....	42

4.1.4	WORKING ENVIRONMENT OF RESPONDENTS	43
4.2	UNDERSTANDING OF ADJUDICATION AND ITS PRACTICE IN THE INDUSTRY	44
4.2.1	KNOWLEDGE LEVEL OF ADJUDICATION	44
4.2.2	AWARENESS OF ADJUDICATION PROVISIONS.....	45
4.2.3	ATTRACTION LEVEL OF ADJUDICATION	46
4.2.4	REASONS FOR ATTRACTION OF ADJUDICATION.....	47
4.3	CONTRACTUAL AND LEGAL ASPECTS.....	48
4.3.1	FAMILIARITY OF ADJUDICATION PROVISIONS IN THE INDUSTRY.....	48
4.3.2	REQUIREMENT OF A PAYMENT AND ADJUDICATION ACT ...	49
4.3.3	SUGGESTIONS FOR ANTICIPATED PAYMENT AND ADJUDICATION ACT.....	50
4.4	SUFFICIENCY OF TRAINING, KNOWLEDGE LEVEL AND OTHER FACTORS	50
4.5	SUCCESS OF ADJUDICATION IN SRI LANKAN CONSTRUCTION INDUSTRY.....	52
5.	CONCLUSIONS AND RECOMMENDATIONS	54
5.1	SUMMARY OF STUDY.....	54
5.2	CONCLUSIONS.....	55
5.3	RECOMMENDATIONS.....	55
5.4	LIMITATIONS OF THE STUDY	56
5.5	FURTHER STUDIES.....	56
	BIBLIOGRAPHY	i
	APPENDIX.....	viii
	Data Collection Chapter 4.1.....	viii
	Data Collection Chapter 4.2.....	ix
	Data Collection Chapter 4.3.....	x
	Data Collection Chapter 4.4.....	xii
	Data Collection Chapter 4.5.....	xiii

LIST OF FIGURES

Figure 2-1: ADR options available in construction industry 14

Figure 2-2: CIDA Act procedure for adjudication 30

Figure 3-1: The Research onion 37

Figure 4-1: Involvement in Adjudication..... 42

Figure 4-2: Experience range of responded professionals 43

Figure 4-3: Knowledge level of adjudication..... 45

Figure 4-4: Awareness of adjudication provisions..... 45

Figure 4-5: Level of attraction of adjudication 46

Figure 4-6: Reasons for attraction of adjudication..... 47

Figure 4-7: Familiarity of adjudication provisions 49

Figure 4-8: Sufficiency of training, knowledge level and other factors. 51

Figure 4-9: Factors affecting to success of adjudication..... 52



University of Moratuwa, Sri Lanka
 Electronic Theses & Dissertations
www.lib.mrt.ac.lk

LIST OF TABLES

Table 2-1: ADR options available in construction industry in detail.....	14
Table 2-2: Factors affecting to success of ADR	31
Table 2-3: Factors affecting to success of ADR	32
Table 2-4: Factors affecting to success of adjudication.....	32
Table 2-5: Suggested factors to test the success of adjudication	33
Table 4-1: Professional skill base responded	41
Table 4-2: Type of organizations	43
Table 4-3: Services offered by organizations.....	44
Table 4-4: Scope of anticipated Act.....	50



University of Moratuwa, Sri Lanka.
Electronic Theses & Dissertations
www.lib.mrt.ac.lk

LIST OF ABBREVIATIONS

ADR	Alternative Dispute Resolution
CIDA	Construction Industry Development Authority (formerly ICTAD)
CIDB	Construction Industry Development Board
DAB	Dispute Adjudication Board
DRB	Dispute Resolution Board
FIDIC	Federation Internationale Des Ingenieurs Conseils
HC	High Court
HGCRA	Housing Grants Construction and Regeneration Act
HK	Hong Kong
HKIAC	Hong Kong International Arbitration Centre
ICTAD	Institute for Construction Training and Development (presently CIDA)
ISM	Institute for Surveyors Malaysia
NSW	New South Wales
NZ	New Zealand
RICS	Royal Institution of Chartered Surveyors
SG	Singapore
UK	United Kingdom
USA	United States of America
VAT	Value Added Tax



University of Moratuwa, Sri Lanka.
 Electronic Theses & Dissertations
www.lib.mrt.ac.lk

LIST OF CASES

Dawnays Ltd Vs. Minter Ltd [1971] 1 W.L.R. 1205

Emson Eastern Vs. EME Development Co (1991) 55 BLR 114

Susan Dunnett Vs. Railtrack Plc

Frank Cowl Vs. Plymouth City Council

Modern Engineering (Bristol) Vs. Gilbert-Ash (Northern) (1974) AC 689

Gilbert Ash (Northern) Ltd Vs. Modern Engineering (Bristol) Ltd (1974)

Palmers Ltd Vs. ABB Power Construction Ltd [1999] Adj.L.R. 08/06

Mercury Vs. Director General of Telecommunications (1994) 138 S.J.L.B 183

British Shipbuilders Vs. VESL ([1997] 1 Lloyds Rep 106)

Balfour Beatty Construction Ltd Vs. Lambeth London Borough Council (2002)
EWHC 597

Discaim Project Services Ltd Vs. Opecprime Ltd (2000) BLR 402

Macob Civil Engineering Ltd Vs. Morrison Construction Ltd [1999] BLR 93

Gilbert Ash (Northern) Ltd Vs. Modern Engineering (Bristol) Ltd (1974)



University of Moratuwa, Sri Lanka.

Electronic Theses & Dissertations

www.lib.mrt.ac.lk