

**FOCUS ON ASIA CONSTRUCTION LAW  
CONFERENCE 2015, SINGAPORE**  
**SOCIETY OF CONSTRUCTION LAW: SESSION 4**  
**DEVELOPMENT ON CONSTRUCTION LAW IN  
INDIA**



CHAMBERS OF  
**Ratan K. Singh**  
[www.rkschambers.com](http://www.rkschambers.com)

Mr. Ratan K. Singh  
 Advocate and Arbitrator  
 Chairman, Society of Construction Law, India  
 Director, CIarb., India

**LEGAL REGIME IN CONSTRUCTION SECTOR**

- ✘ Till now, there has been no specific Statute for construction contract in India
- ✘ In India, there is no security of payment Statute like in United Kingdom, Australia, Singapore and Malaysiya
- ✘ Society of Construction Law, India is taking up this issue at different levels

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## LEGISLATIVE MEASURES

- ✘ Major legislative measures adopted are the following:
  - + Amendments to the Arbitration and Conciliation Act, 1996
  - + The Real Estate (Regulation and Development) Bill, 2013 as amended up to 2015
  - + Public Contracts (Resolution of Disputes) Bill, 2015



## ARBITRATION AND CONCILIATION ACT

- ✘ Aim to ensure faster settlement of commercial disputes
- ✘ Amendments as suggested by the Law Commission of India:
  - + Encouraging Institutional Arbitrations
  - + Setting aside of Arbitral Awards: Decide the appeal within 1 year
  - + Cap on the fees of an arbitrator
  - + Settle the case within 18 months



## JUDICIAL PRONOUNCEMENT: LATEST DEVELOPMENTS

- ✘ Bharat Aluminium v. Kaiser Aluminium (2012)
  - + Applicability of Part I on Foreign Awards
- ✘ Chloro Controls Ltd. v. Severn Trent (2012)
  - + Multi Party, Multi Agreements Arbitration
- ✘ Shri Lal Mahal v. Progetto Grano Spa (2013)
  - + Interpretation of 'Public Policy' in Foreign Awards
- ✘ Swiss Timing v. Organising Committee, CWG (2014)
  - + Subject Matter of Arbitration widened



## REAL ESTATE (REGULATION AND DEVELOPMENT) BILL, 2013

- ✘ Background
  - + Till 1980s; Real Estate was largely the concern of State Institutions
  - + With Liberalization, conscious encouragement given to growth of private sectors
  - + Today, construction sector contributes substantially to the GDP
  - + Currently, this sector is largely unregulated and opaque
  - + There is very less or no accountability against developers and builders in the absence of effective regulation
- ✘ Aim
  - + Protect the interest of consumers
  - + Promote fair play in transactions
  - + Timely execution of projects, standardization and professionalism



- ✘ Features
  - + Establishment of Real Estate Regulatory Authority
  - + Registration of Projects and Real Estate Agents
  - + Mandatory Public Disclosure of all Project Details
  - + Compulsory deposit of 50 Percent
  - + Functions of Promoter and Real Estate Agents
  - + Rights and Duties of Allottees
- ✘ Real Estate Regulatory Authority
  - + Act as the Nodal Agency
  - + Render advice to the Government
- ✘ Fast Track Dispute Settlement
  - + Dispute resolution through Adjudicating Officers
- ✘ Real Estate Appellate Tribunal
  - + Hear Appeals from orders of Adjudicating Officers
- ✘ Bar on Jurisdiction of Courts



## PUBLIC CONTRACTS (RESOLUTION OF DISPUTES) BILL, 2015

- ✘ Around Rs. 200 Billion worth claims are pending with NHAI.
- ✘ Bill aims to streamline the institutional arrangements for resolution of public contracts.
- ✘ It applies to resolution of disputes arising from contracts entered into by Public Authority for construction and infrastructure projects including PPP and matters connected therewith.



### × Composition

- + Chairperson
- + Vice-Chairperson
- + Members

### × Functions

- + Adjudicate upon disputes and differences
- + Refer disputes and differences to arbitration
- + Adjudicate upon disputes involving a public authority, service provider or contractor
- + Exercise supervisory control over the arbitral proceedings

### × Pecuniary Jurisdiction

- + Amount of ₹5 crores or more
- + Any lower amount in respect of any class or category of cases



### × Timeline for resolution

- + 120 day limit for completion of the arbitration
- + Exceptional cases; additional time will be given
- + There is also a time limit of 180 days for the tribunal to complete the proceeding and issue an order.

### × Appeal only to Supreme Court of India



## Finance Budget 2015: Impetus provided for Growth

- ✘ The New Government's first full budget attempted to strike a balance between:
  - + supporting investment,
  - + boosting social sector spending and
  - + introducing investor and market friendly measures
- ✘ There has been a clear thrust on infrastructure development as many announcements have been made in this regard.
- ✘ The Government has decided to pump in Rs.70,000 Crores as investment in the infrastructure projects.
- ✘ The Finance Ministry of India, Mr. Arun Jaitley stressed on the need to revitalise the PPP mode of infrastructure development.



- ✘ The Government with its "Make-in-India" programme has received attention through stress on simplifying processes.
- ✘ Affordable housing, 100 smart cities and infrastructure development have been key area of focus in this budget.
- ✘ The Finance Minister has provided several policy road maps, increased budgetary allocations and announced administrative measures to expedite the growth of infrastructure, which in turn will boost the construction sector as well.



## MAJOR ANNOUNCEMENTS

- ✘ Total budgetary allocation increased by 27% in construction of Roads
- ✘ Award construction of 10,000 Km this year.
- ✘ Excise duty on petrol and diesel to the extent of Rs. 4 per litre into Road Cess.
- ✘ This will bring additional Rs. 400 billion to fund investment in roads.
- ✘ Revisiting PPP Model with risk rebalancing wherein government will bear a major part of the risk.



- ✘ Setting up of National Infrastructure Fund with initial funding of Rs. 200 Billion from Government.
- ✘ Projects will be awarded on Plug and Play basis
- ✘ Re-Introduction of tax free infrastructure bonds in rail, road and irrigation sector.
- ✘ Setting up of Public Debt Management Agency (PDMA) for providing additional avenues for fund raising
- ✘ Appointment of an expert committee for replacing multiple prior permissions as per the existing regulatory mechanism
- ✘ Housing Sector to be given a major boost: Target to build 60 million units by 2020.



## CONSTRUCTION SECTOR: ECONOMIC PERSPECTIVE

- ✘ The Indian construction industry is an integral part of the economy and is poised for solid growth due to: industrialisation,
  - + urbanisation and
  - + economic development
  - + people's expectations of improved living standards
- ✘ It accounts for being the 2<sup>nd</sup> largest employer and contributor to economic activity, after agriculture sector.
- ✘ More than 35 Million people are estimated to be employed under the construction sector.
- ✘ According to the Central Statistics Office (CIO) Report, 2015, The construction activity registered an increase of 4.8 percent, up from 2.5 percent a year ago.
- ✘ As per the 2014 Report of National Council of Applied Economic Research, the construction sector contributes 8.2% of the GDP.
- ✘ As per industry estimates, the Indian real estate market is estimated to be approximately USD 78.5 Billion in 2013 and is expected to grow to approximately USD 140 Billion by 2017.



### ✘ Growth Drivers:

- + Estimated urban housing shortage of 18.8 Million dwelling units
- + Housing shortage in rural India is estimated at 47.4 million units
- + Need for re-generation of urban areas in existing cities and the creation of new, inclusive smart cities to meet the demands of increasing population
- + Future cities of India will require smart real estate and urban infrastructure.
- + These cities will be supported and encouraged to harness private capital and expertise through PPPs, to bolster their infrastructure and services in the next 10 years.
- ▶ The ongoing delivery of major construction projects in India is expected to be boosted by the continued growth of the economy, by foreign direct investment and an influx of international businesses and corporations.





## FDI IN CONSTRUCTION SECTOR

- ✘ 100% FDI through the automatic route is permitted in townships, housing, built-up infrastructure and construction-development projects.
- ✘ Conditions:
  - Area Requirements:
    - + In case of development of serviced plots, no minimum land area requirement.
    - + In case of Construction-development projects, a minimum floor area of 20,000 sq. Meter.



### Capital Requirements:

- + Investee company to bring minimum f USD 5 Million
- + This investment has to be made within 6 months from the commencement of the project
- ✘ These conditions are not applicable to:
  - + Hotel & Tourist Resorts;
  - + Hospitals
  - + SEZs
  - + Educational Institutions
  - + Recreational Facilities Old Age Homes
  - + Investment by NRIs
- ✘ Exit Clause
  - + Permitted to exit on completion of the project or after development of trunk infrastructure



- + Government may permit, repatriation or transfer from one non-resident to another, before completion of the project
- + These proposals will be considered by FIPB on case to case basis
- ✘ FDI not permissible in following sectors:
  - + Real Estate Business
  - + Construction of Farm houses
  - + Trading in TDRs

“Real estate business” means dealing in land and immovable property with a view to earning profit or earning income therefrom and does not include development of townships, construction of residential/ commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships.

