



SUPPLY CHAIN DISPUTE RESOLUTION THROUGH ALTERNATIVE DISPUTE RESOLUTION (ADR) MECHANISM (VIZ, ARBITRATION, MEDIATION, CONCILIATION, AND NEGOTIATION) IN INDIA.

VIKASH KUMAR

Chief Executive Officer (CEO)

Centre for Alternative Dispute Resolution Education and Research (CADRER INDIA) Email:
cadrer@cadrerindia.org

Abstract: Generally, encountering conflicts/disputes in Supply Chain (value chain/network) Management (SCM) are unavoidable/inevitable owing to the contractual complexities and empirical eventualities (including incidental contingencies) and their efficient resolution through Alternative Dispute Resolution (ADR) mechanism (viz, Arbitration, Mediation, Conciliation, and Negotiation) in India is ubiquitous across all the Industries/Sectors. The alternative dispute resolution (ADR) methods and mechanism (viz, Arbitration, Mediation, Conciliation, and Negotiation) are always preferred to conventional Court-Litigation in business world owing to the impregnated propitious proposition with the ADR techniques. However, arbitration and mediation are the most preferred ADR techniques for supply chain dispute resolution not only in India but also in the World. In India, the Arbitration and Conciliation Act, 1996 (including amendments in 2015, 2019, and 2021) has been enacted to entrust necessary governing framework for dispute resolution through Arbitration and Conciliation mechanism or techniques of ADR across the business landscape including Supply Chain.

This study primarily endeavours to elucidate the fundamental framework of ADR methods and mechanism efficacy vis-à-vis the empirical framework of Supply Chain (value chain/network) dispute resolution in India.

I. INTRODUCTION

Fundamentally, supply chain (value chain/network) management is resource & relationship management from the point of conception (inception) of the target goods/services, its creation/conversion, its conveyance, and permeating considerations (promises) across/within the entire value chain/network. The supply chain management (value chain/network) endeavours to an effective management of all activities/functions related to resource management as well as relationship management for sustainable & inclusive economic and social return.

Today, the inevitable conglomeration(s) and covenant(s) in business world in respect of the Supply Chain (value chain/network) Management are imperative outcome of the persistent impetus of effective Cost and Competition management for sustainable growth and equitable (ethical) gain.

The supply chain value network(s) is/are essentially intertwined with several contracts involving various (internal or/and external) entities/agencies commensurate with the agreed considerations. And, in a (complex/multifaceted) supply chain (value chain/network) management, empirically, discharge of contract by performance without any deviation (differences/departures) by each of the participating entities or a perfect performance of contract (even in any business domain) is an off-centre business assumption/expectancy. The conflict(s) or dispute(s) stemming from any (material) deviation (differences/departures) in supply chain (value chain/network) management may precipitate into a litigation risk. Wherefore, an effective conflict/dispute management is essential for an efficient supply chain (value chain/network) management.

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resolution through ADR methods & mechanism (viz, Arbitration, Mediation, Conciliation, and Negotiation) in compare to conventional Court-Litigation is fundamentally more expeditious, economical, and efficacious owing to its structural as well as functional framework duly augmented by effectuating enactments.

II. CONCEPTUAL FRAMEWORK OF SUPPLY CHAIN (VALUE CHAIN/NETWORK)MANAGEMENT

The supply chain management (SCM) is a comprehensive system framework of strategic integration of functional domains (viz. procurement, warehousing, production/conversion, operation/ processing, logistics, distribution, customer services, etc.) by multipartite contractual collaboration(s)/alliance(s) involving internal or/and external participants (viz. supplier, vendors, customers, etc.).

The supply chain performance depends on the performance of the supply chain participants/partners together consistent with the negotiated contract(s) with agreed consideration(s). Any difference or departure from the contractual terms/obligations/considerations by any contracting entity/party gives rise to conflict or dispute among the supply chain participants/partners which may have (adverse) cascading and consequential effect on the performance of the supply chain management and would adversely affects the value proposition of the supply chain.

The supply chain practices across the Industries/Sectors grounded on any of the six Supply Chain Management (SCM) models (viz, ContinuousFlow Model, Fast Chain Model, Efficient Chain Model, Agile Model, Custom-configured Model, and Flexible Model) aim pragmatically at the effective accomplishment of the intriguing considerations duly acknowledging the ensnared transactional dynamics & disruptions.

III. UNAVOIDABLE OPERATIVE DISRUPTIONS AMID CONTRACTUAL COMPLEXITIES IN SUPPLY CHAIN (VALUE CHAIN/NETWORK) MANAGEMENT

Practically, conflict or dispute is unavoidable in the supply chain value (chain/network) proposition owing to the fact that they are premised on the complex contractual architect or dynamics of performance and considerations in sync with the central objective(s) of the enterprise or venture. In a business scenario, any dispute in supply chain value (chain/network) proposition directly attributes to the cost of the goods/services and eventually defeats the strategic scheme of cost effectiveness and competitiveness.

Empirically, any incidental or unanticipated (identical/critical) differences or departures beyond the acceptable tolerance level of the intriguing considerations in a supply chain value (chain/network)proposition captivate the concern of the supply chain participants to anticipate or/and cope with the risk of consequential loss in terms of return & sustainability. The risk of business relations is equally captivating because toxic business relations imply/induce loss of business prospect. The exacting standards of execution of contractual obligation/consideration in a supply chain value (chain/network) proposition is caveat to the consenting and concurring participants.

The business world is no stranger to the severity of supply chain value (chain/network) proposition disruption/disarray precipitating myriad crisis, even sometime resulting into extermination or extinction from the business landscape.

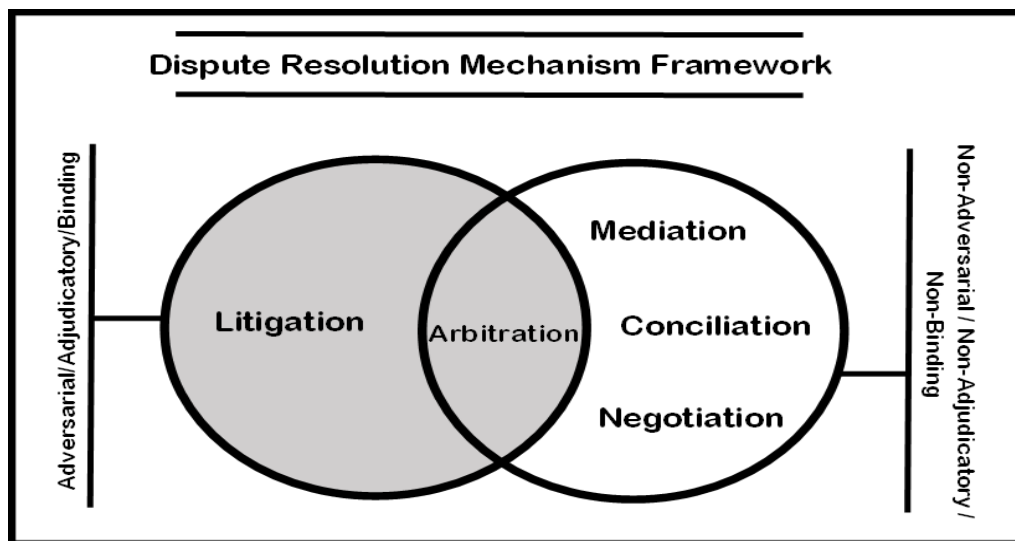
The transactional as well as transformational perspective of supply chain management nudges every participant(s) or stakeholder(s) of supply chain (value chain/network) affairs to devise an effective conflict/dispute management system in anticipation of the inexorable departures/deviations from the (contractual) considerations and concomitant risk thereof. The conflict(s) or dispute(s) stemming from many (material) deviation (differences/departures) in supply chain (value chain/network) management may precipitate into a litigation risk. Wherefore, an effective conflict/dispute management is essential for an efficient supply chain (value chain/network) management.



IV. ADR MECHANISM AMENABLE TO SUPPLY CHAIN DISPUTE RESOLUTION IN INDIA

The Alternative Dispute Resolution (ADR) techniques/mechanism endeavours to resolve/settle the contractual disputes ensue/emanate in supply chain management affairs in an expeditious and equitable manner consistent with the extant law/rules.

The ADR techniques/mechanism/methods/models may be broadly classified into adversarial/adjudicatory and non-adversarial/non- adjudicatory. Arbitration is regarded as adversarial/adjudicatory technique of ADR whereas Mediation, Conciliation, and Negotiation are regarded as non-adversarial/non-adjudicatory techniques of ADR. As conventional Court-Litigation is also adversarial/adjudicatory and binding also. Whereas, Arbitration may be either binding or non- binding but Mediation, Conciliation, and Negotiation are only non- binding forms of ADR.



The conceptual framework of the following ADR techniques is primarily entrenched into its fundamental proposition propounded and espoused by the enactment(s) as well as the germane Courts' pronouncements:

- **Arbitration:** Arbitration is one of the ADR techniques/methods of dispute resolution which essentially hinges upon the prudence of Arbitrability, principles of Party Autonomy including confidentiality and principles of natural justice.
- **Mediation:** Mediation is one of the ADR techniques/methods of dispute resolution unlike Arbitration wherein the disputing parties mutually exert themselves to arrive to a point of agreement (as a resolution to the dispute without resorting to litigation or other modes of ADR) with the *active* assistance of neutral entities namely 'Mediator'.
- **Conciliation:** Conciliation is one of the ADR techniques/methods of dispute resolution like Mediation wherein the disputing parties mutually explore and arrive at a point of agreement (as a resolution to the dispute without resorting to litigation or other modes of ADR) with the assistance of neutral entities namely 'Conciliator'.
- **Negotiation:** Negotiation as one of the ADR techniques/methods of dispute resolution manifests resolution of dispute by the disputing parties mutually explore and arrive at a point of agreement (as a resolution to the dispute without resorting to litigation or any other modes of ADR).

In India, the Arbitration and Conciliation affairs are governed by the Arbitration and Conciliation Act, 1996 which is primarily based on the UNCITRAL (United Nations Commission on International Trade Law) Model Law on International Commercial Arbitration (1985). The Arbitration and

Conciliation Act, 1996 has been amended in the year 2015, 2019, and in 2021 to make this law more effective and efficacious in earnest. The fundamental framework of the enacted ADR Laws viz, Legal Services Authorities Act, 1987, Commercial Courts Act, 2015, Arbitration and Conciliation Act, 1996 in India are primarily endeavoursto create an enabling pre-Litigation ecosystem (outside the Court of Law) for expeditious & efficient dispute resolution and has mandated effective governance/regulation of dispute redressal mechanism or techniques with due enforceability.

V. CONCLUSION

The ADR methods and mechanism (viz. Arbitration, Mediation, Conciliation, and Negotiation) are critical in an effective supply chain (value chain/network) management (SRM) in India and also in the World. The impact of litigation risk on business prospect has always been unpropitious or deleterious and imperatively necessitates an effective alternative dispute resolution (ADR) mechanism.

An effective dispute resolution mechanism is key to achieve or accomplish success in supply chain (value chain/network) management (SRM) not only in India but across the world and the ADR methods and mechanism (viz. Arbitration, Mediation, Conciliation, and Negotiation) are conspicuously significant. The Arbitration and Conciliation Act, 1996 (including Amendments in 2015, 2019, and 2021), which is primarily based on the UNCITRAL (United Nations Commission on International Trade Law) Model Law on International Commercial Arbitration (1985), has given due impetus on the pragmatic/applied perspective of dispute resolution landscape of supply chain (value chain/network) management (SRM) in India.

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