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Dispute Resolution Practices followed in Nepalese Construction Contracts



Gyanendra Prasad Kayastha

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Abstract:

Construction disputes are primarily technical in nature. They may arise during the execution of the project or post the project's completion. More often than not, if the dispute is not resolved quickly and efficiently it has a cascading effect on the project and leads to inefficiencies like cost overrun and time overrun for the owner and cash flow issues for the contractor. Dispute resolution practices in Nepal are different from the ones in developed countries. One distinct problem in Nepalese context is that claims remain pending for a considerable amount of time. Two of the most common reasons for claims in Nepalese construction contracts are owner-dominated contracts and a lack of knowledge about contractual rights. This paper discusses about various forms of Alternative Dispute Resolution (ADR) Practices and ADR practices followed in Nepalese construction contracts for resolving the disputes.

Introduction:

The most common causes of disputes in construction projects are

- Omission and errors in the contract documents; Differing and unexpected site conditions;
- Failure of the owner, contractor and/or sub-

contractor to understand or comply with the contractual obligations;

- Failure to properly administer the contract; Poorly drafted, incomplete, delayed and/or unsubstantiated claims;
- A biased Engineer or Project Manager; and

ADR is the procedure for settling disputes without litigation, such as arbitration, mediation, or negotiation. ADR procedures are usually less costly and more expeditious. They are increasingly being utilized in disputes that would otherwise result in litigation. One of the primary reasons, parties may prefer ADR proceedings is that unlike, adversarial litigation, ADR procedures are often collaborative and allow the parties to understand each other's positions. ADR also allows parties to come up with more creative solutions that a court may not be legally allowed to impose.

ADR Procedures:

There are many different forms of ADR; including adjudication, mediation, early neutral evaluation and expert determination.

1. Adjudication

Adjudication is a compulsory form of dispute resolution in the construction industry. The process of adjudication was introduced by a piece of legislation

entitled in the **Housing Grants, Construction and Regeneration Act 1996**. Adjudication decisions are binding unless and until they are revised by an arbitration award or court judgment. Adjudication is therefore a particularly effective tool to resolve issues which may affect (or are already affecting) the smooth running of a project. It provides for swift, enforceable decisions; allowing the parties to concentrate on the essential project deliverables without the distraction of ongoing issues and disputes.

2. **Mediation**

Mediation is a private and without prejudice process, meaning that the parties are free to have wide-ranging and ‘warts-and –all” discussion which will never be shared with the court or tribunal if litigation later arises. Because it is private and less confrontational than litigation, it intends to ‘lower the temperature’ and creates a more conducive atmosphere for constructive settlement outcomes.

3. **Negotiation**

This is simply representatives of the parties meeting and attempting to negotiate a settlement of the dispute settlement. This method is often used in relatively minor disputes which can be usually resolved in a short timescale.

4. **Early Neutral Evaluation**

Early neutral evaluation is a dispute resolution method which consists of an independent and impartial evaluator giving an assessment/evaluation of the

merits of each side’s case. The evaluation is confidential, without prejudice and non-binding-importantly, this means that it is not shared with the trial judge.

5. **Expert Determination**

An independent expert is appointed to decide the outcome of the dispute. This expert’s conclusions are legally binding on all parties, unless decided otherwise before the process begins.

6. **Conciliation**

This is a process similar to mediation, where an independent expert is appointed to facilitate a solution to a dispute, as a neutral third party. The process differs from mediation in that as a result of the process, the conciliator will propose a non-binding settlement agreement for the parties to sign.

7. **Dispute Board**

There are various types of dispute boards under ADR umbrella. Using a panel of mutually agreed impartial experts to resolve construction disputes can be a highly effective alternative to litigation.

8. **Arbitration**

Arbitration is another form of alternative dispute resolution method that can be used for finding solutions for construction disputes. However, the contract should include a clause about arbitration in order to refer to the arbitration process. A private tribunal will determine the outcome and it is final and binding the parties involved. The final outcome is known as award.

In the arbitration process, the arbitrator acts as a neutral third party.

When to use ADR in the Construction Contract?

ADR is typically faster and affordable compared to the litigation process. However, it is important to know when ADR should be used for construction contract dispute and when it should not be used.

If the communications between the parties are totally broken then it may necessary to consider the litigation process than spending time on ADR such as mediation and arbitration. Further, if there is an imbalance of power between the parties then ADR may not be the solution.

However, if communication between the parties is not broken entirely then they can consider ADR to find solutions for their disputes. Further ADR processes are confidential and will help the parties to maintain their privacy.

ADR Provisions in the Construction Contracts:

The following dispute clauses are mentioned in the National Competitive Bidding (NCB) & International Competitive Bidding (ICB) construction contracts.

NCB Contracts

Standard Bidding Documents for NCB contracts issued by Public Procurement Monitoring Office (PPMO) had the provisions of Adjudication/ Dispute Boards until 2072 as per Public Procurement Act (PPA) and Public Procurement Regulations (PPR), 2063/64.

Earlier, under Dispute Settlement Clause 23 and Procedures of Dispute Clause 25, it is mentioned as follows:

- 1.1 The Employer and the Contractor shall attempt to settle amicably by direct negotiation any disagreement or dispute

arising between them under or in connection with the contract.

- 1.2 Any dispute between the parties as to matters arising pursuant to this Contract which cannot be settled amicably within thirty days(30) after receipt by one party of the other party's request for such amicable settlement may be referred to the Adjudicator or Dispute Resolution Committee (DRC) by either party as specified in Special Conditions of Contract (SCC) within 15 days after expiration of the amicable settlement period.

- 1.4 In case of arbitration, they arbitration shall be conducted in accordance with the arbitration procedures published by NEPCA at the place given in SCC.

In revised version, the provision of Adjudication/ DRC was scrapped and no longer exists under Nepal Government funding. Therefore, presently, there is a provision of only arbitration clause in the contract document for resolving disputes.

ICB Contracts (FIDIC 1999 - Red Book)

Dispute Board is applicable in ICB contracts under FIDIC Red Book 1999

GCC Sub-clause 20.2 – Disputes shall be adjudicated by a Dispute Adjudication Board (DAB) in accordance with Sub-clause 20[Obtaining Dispute Adjudication Board's Decision]. The Parties shall jointly appoint DAB by the date stated in the Appendix to Tender.

GCC Sub-Clause 20.6 - Unless settled amicably, any dispute in respect of DAB's decision (if any) has not become final and binding shall be finally settled by international arbitration.

ICB Contracts (FIDIC 2017 - Red Book)

Dispute Board is applicable in ICB contracts under FIDIC Red Book 2017

GCC Sub-clause 20.2 – Disputes shall be adjudicated by a Dispute Avoidance Adjudication Board (DAAB) in accordance with Sub-clause 20[Obtaining Dispute Avoidance Adjudication Board's Decision]. The Parties shall jointly appoint DAAB by the date stated in the Appendix to Tender.

GCC Sub-Clause 20.6 - Unless settled amicably, any dispute in respect of DAB's decision (if any) has not become final and binding shall be finally settled by international arbitration.

Conclusions:

ADR is more common in the construction industry in order to resolve dispute. Each ADR methods have advantages and disadvantages. Parties to the contract should choose the particular type of ADR to find a solution for their disputes depending on the situation and type of dispute. Thus, the ideal

approach to resolve disputes in the construction sector would be to have a *dispute resolution system* in place which is both preventive and adjudicatory in nature and use strategies to resolve dispute through avoidance, negotiation, collaboration and adjudication. The dispute resolution system incorporated in the contract should be tailored to suit the requirements of the project and meet the expectations of the parties.

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Recognition and Enforcement of Foreign Arbitral Award in Nepal and the People's republic of China



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Abstract

The easy Enforceability of Foreign Arbitral Awards is considered one of the most important factors in the success of international commercial arbitration. International commercial arbitration is growing in Nepal in multiple sectors. The center for arbitration disputes is coming with new ideas and policies. The recognition and enforcement of the foreign arbitral award are considered as one of the challenging tasks by the national bodies due to multiple factors. Most of the international legal arrangement is already ratified by Nepal and also proper observation is been given to enforce such instruments. Nepal has also opened up new avenues for foreign investment and also multiple investment disputes are subject to arbitration. Arbitration is considered one of the emerging fields in the Nepalese legal fraternity. The arbitration has several positive impacts, in terms of selecting forum, fixing arbitration seat, in case of conflict of applicable laws, issues of jurisdictions, forum shopping, etc. generally, the dispute settlement clauses are considered as an integral part of any contracting documents either of bilateral, multilateral, government to government or at the individual level. This Article has explained and also made a comparative study on the recognition and enforcement of the foreign arbitral award in Nepal and China. Nepal offers and has joined various international centers like Singapore Arbitration Center, Hongkong Arbitration Center, Malaysia Arbitration Center, and others.

Keyword: *Enforcement, Recognition, Award, New York Convention and UNCITRAL*

1. Introduction

The judicial model of decision-making is a strong one; it has been worked out in detail over centuries; and deep in our culture is a habit of obeying it. To that extent, confirmation of the courts is needed to enforce arbitral decisions.¹ The Traditional judicial process has played a major role in resolving maritime disputes. Justice emanates from sovereignty and imposes itself upon obedience, and arbitration has its source in liberty. Parties can only submit to arbitration to the extent expressly allowed by the law. Arbitrators exercise a public function to the extent that law allows them. The drift toward the judicial model of procedure and substance compromises² the advantages that arbitration offers – informality, speed, and expertise, economy, and business practicality. Mandatory arbitration may have the perverse effect of driving up the overall cost of litigation,

¹ Common law” is the legal system of England, the Commonwealth countries and the US. Beginning in England in the eleventh century, the common law developed through a long accumulation of judicial decisions, bound together by a flexible requirement of following earlier decisions on the topic. “Civil law” legal systems rely on detailed statutory codes as the main source of law, and judicial decisions matter much less. As an illustration of how dependent upon the authority of the common law the arbitration tradition has become, one leading article on reinsurance arbitration cites court decisions 132 times, custom & practice once, and arbitral decisions not at all. Paul M. Hummer, *Reinsurance Arbitrations from Start to Finish: A Practitioner’s Guide*, 63 Def. Counsel J. 228 (1996).

² *Sutcliffe v Thackrah*[1974] AC 727 HL.

as litigants realize to pursue their claims, they may have to go through arbitration, and then into the courts. Arbitration is from one side a private exercise – it is formed by private agreement, and the particular shape it takes is a result of conscious private choice. From another point, it is an exercise in adjudication – resulting in an award that the force of the state makes obligatory on the litigants in much the same way as the judgment of a public tribunal.

There is an effort to balance the contractual and jurisdictional models of arbitration.³ Arbitration is the process by which a difference among parties as to their mutual legal rights is referred and determined with binding effect by the application of a law by an arbitral tribunal instead of a court. Private arbitration, enabled by pre-dispute agreements whereby parties waive their rights to determine future disputes in a public courtroom, has a long history in the US, UK, Greece, Belgium, and other countries and until lately, arbitration reigned in two domains: commercial-maritime transactions and labor-management relations.⁴ Arbitration “is a matter of consent, not coercion, and parties are generally free to structure their arbitration agreements as they see fit.”⁵ Arbitration enhances access to justice by permitting claimants to bring claims they could not afford to bring in court.⁶ Maritime arbitration, like the commercial arbitration out of which it arose, is a creature of contract. Moreover, maritime arbitration has become popular as an alternative to litigation, because of the costs, delays, and procedural complications of court proceedings.⁶ Maritime arbitration is covered within the “general” conventions on commercial arbitration.⁷

Nepal had reformed the number of sectors for the attraction of Foreign Direct Investment (FDI) for the development of trade and commerce which we are seeing since the 1980s. Some of the activities initiated by Nepal were like deregulation of the financial sector, trade liberalization, current account convertibility, the abolition of major trade restrictions, several privatization programs and policies, revision of the trade treaty with India, financial reform programs, and downsizing of the role of government. Accordingly, Nepal made bilateral agreements with 18 countries. Likewise, on April 23, 2004, the country joined the World Trade Organization (WTO) as the 147th member.

Arbitration, the most formal and oldest method of Alternative Dispute Resolution⁸ in international commerce,⁹ has become the most popular method to resolve international commercial disputes since the mid-1980s.¹⁰ Parties welcome arbitration mainly because it provides a certain degree of neutrality. Arbitration helps the parties to be partially free from anyone’s local jurisdiction, a very important factor to foreign investors.¹¹ However, arbitration cannot be completely independent of a national jurisdiction system, especially since the arbitration award must be recognized and enforced by local courts. For decades, many conventions have attempted to

3 Nathan Isaacs, “Two Views of Commercial Arbitration,” 40 Harv. L. Rev. 929, 930, 932, 934, 940 (1927). Alan Scott Rau, “Integrity in Private Judging,” 38 So. Tex. L. Rev. 485, 487 (1997).

4 Paul L. Sayre, “Development of Commercial Arbitration Law,” 37 Yale L.J. 595 (1928). Margot Saunders, “The Increase in Predatory Lending and Appropriate Remedial Actions,” 6 N.C. Banking Inst. 111, 137 (2002) (“Creditors use arbitration clauses as a shield to prevent homeowners from litigating their claims in a judicial forum, where a consumer-friendly jury might be deciding the case.”). David S. Schwartz, “Enforcing Small Print to Protect Big Business: Employee and Consumer Rights Claims in an Age of Compelled Arbitration,” 1997 Wis. L. Rev. 33, 60 (arguing that businesses “prefer arbitration to litigation for their patterned, repetitive disputes with minor players” because of “lower damage awards” in arbitration).

5 Volt Info. Sciences, Inc. v. Bd. of Trs. of Leland Stanford Junior Univ., 489 U.S. 468, 479 (1989).

6 W. Tetley, International Conflict of Laws, 1994 at p. 390: “Arbitration is...the settling of disputes between parties who agree not to go before the courts, but to accept as final the decision of experts of their choice, in a place of their choice, usually subject to laws agreed upon in advance and usually under rules which avoid much of the formality, niceties, proof and procedure required by the courts.”

7 European Convention on International Commercial Arbitration, April 21, 1961, 484 U.N.T.S. 364, UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958,

8 Alternative Dispute Resolution.

9 Lucy V. Katz, Enforcing an ADR Clause – Are Good Intentions All You Have?, 26 Am. Bus. L.J. 575, 577 (1988)

10 Christine Lecuyer-Thieffry & Patrick Thieffry, Negotiating Settlement of Disputes Provisions in International Business Contracts: Recent Developments in Arbitration and Other Processes, 45 Bus. Law. 557, 581 (1990).

11 Shengchang Wang, Resolving Disputes in the P.R.C. 48 (1996)

fascinate the recognition and enforcement of international arbitration awards throughout the world. These conventions such as the New York Convention had a significant impact on the development of arbitration in the international context. After China opened its door to the world, arbitration was used as a means to meet the requirement of daily increasing foreign investments in the country. Its arbitration system has been built up and its national arbitration law was made after the UNCITRAL Model Law.

After China became a new member of the World Trade Organization, international investment is expected to grow even more quickly, so arbitration in China should develop in line with recognized international standards. However, since the importance and influence of arbitration in China has only developed in recent years, there are still some defects in its regulations and practice. One group of defects involves the recognition and enforcement of arbitration awards in China, as many foreign investors and writers have complained.¹² Some foreign writers criticized the defects in the enforcement of arbitration awards as “legendary for victorious parties seeking to enforce awards in China.”¹³ Others claim that “China’s spotty record in honoring international arbitration awards even constitute one of the reasons cited for the delay in China’s admittance to the World Trade Organization.”¹⁴

The New York Convention’s applicability in the GCC states, keeping in mind especially what the New York Convention classifies as a “nondomestic” arbitral award,¹⁵ the same being discretionary, according to van den Berg,¹⁶ and to be determined by the enforcing state Arbitral awards can be categorized according to the seat of the arbitration.¹⁷ There are variations, however, in practice; and for purposes of this study, the variations will be analyzed in this chapter, including the impact of the Shari’a on the distinctions between domestic, foreign, non-domestic, international, and ICSID arbitral awards. This section explains these distinctions and clarifies their scope. As stated by Redfern, “even states that make no formal distinction between “domestic” and “international” arbitrations in their legislation are compelled to recognize the distinction when it comes to the enforcement of arbitral awards.”¹⁸ A problem, however, is that “each state has its test for determining whether an arbitral award is ‘domestic’ or ‘foreign.’”¹⁹

The New York Convention became effective in China on 22 April 1987. China made two reservations: the reciprocity reservation and the commercial reservation. According to the reciprocity reservation, China will recognize and enforce only the arbitral awards rendered in the signatories to the Convention; according to the commercial reservation, only the arbitral awards that have been rendered in commercial cases will be recognized and enforced by China. The recognition and enforcement of arbitral awards, China has entered into the Arrangement for the Reciprocal Enforcement of Arbitral Awards between the Mainland and Hong Kong (Hong Kong Arrangement), the Arrangement for the Reciprocal Recognition and Enforcement of Arbitral Awards between the Mainland and Macau (Macau Arrangement), the Supreme People’s Court’s Provisions on the People’s Courts’ Recognition of Civil Judgments Made By Courts in the Taiwan Area (Taiwan Provisions),

12 Randall Peerenboom, *Seek Truth From Facts: An Empirical Study of Enforcement of Arbitral Awards in the PRC*, 49 Am. J. Comp. L., 249, 250 (2001 Spring). Also see Charles Kenworthy Harer, *Arbitration Fails to Reduce Foreign Investor’s Risk in China*, 8 Pac. Kim L. & Pol’y 393 (March, 1999)

13 Pat K. Chew, *Political Risk and U.S. Investments in China: Chimera of Protection and Predictability?*, 34 Va. J. Int’l L. 615, 639 (1994).

14 Brown & Rogers, *supra* note 143, at 348

15 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (10 June 1958) 21 UST 2517, 330 UNTS 38 (entered into force 7 June 1959) art I, s 1. [The New York Convention]

16 Albert Jan van den Berg, ‘The New York Convention of 1958: An Overview’ in Emmanuel Gaillard & Domenico Di Pietro (eds), *Enforcement of Arbitration Agreements and International Arbitral Awards— The New York Convention in Practice* (Cameron May 2009) 39, 54.

17 Simon Greenberg, Christopher Kee and J Romesh Weeramantry, *International Commercial Arbitration An Asia-Pacific Perspective* (Cambridge 2011) 400

18 Alan Redfern and others, *Law and Practice of International Commercial Arbitration* (4th edn, Sweet & Maxwell 2005) 13, 1-23.

19 Redfern and Hunter (n 4) 16 (explaining that this problem was recognised by the New York Convention and its approach to defining a “foreign” award).

and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention or Washington Convention).²⁰

The Hong Kong Arrangement allows a party to enforce a Hong Kong arbitral award in mainland China and provides that such an award may be refused by courts in mainland China only on the grounds identical to those listed in Article V of the New York Convention. The arrangement also provides that any arbitral awards made by one of the recognized China arbitration commissions (eg, the China International Economic and Trade Arbitration Commission) may be enforced by the Hong Kong courts. As an effect, arbitral awards rendered in ad hoc arbitrations in mainland China may not be enforced through the Hong Kong Arrangement, but not vice versa. The Supreme People's Court's Notice Regarding the Enforcement of Hong Kong Arbitral Award in Mainland China provides that the courts in mainland China will recognize and enforce ad hoc arbitral awards rendered in Hong Kong.

The Macau Arrangement allows a party to enforce a Macau arbitral award in mainland China and provides that such an award may be refused by courts in mainland China only on the grounds identical to those listed in Article V of the New York Convention. The Taiwan Provisions allow a party to enforce arbitral awards rendered by Taiwanese arbitration institutions in mainland China and provide that such an award may be refused by courts in mainland China only on the grounds *similar* to those listed in Article V²¹ of the New York Convention. As to the ground related to "violation of public interest", the Taiwan Provisions provide that an award may be refused by courts if its enforcement violates the basic legal principles such as the one-China policy or damage public interest.

As to the ICSID Convention, in 1993, China notified ICSID that, under article 25(4)²² of the ICSID Convention, it agreed to submit to ICSID's jurisdiction only the disputes concerning compensation for expropriation and nationalization. However, if a later bilateral investment treaty or free trade agreement (or any similar kinds of treaties) ratified by China provides that China agrees to submit all kinds of disputes that arise out of the treaty to ICSID's jurisdiction, such a provision shall prevail according to the Vienna Convention on the Law of Treaty. For example, in the case of *Unsung Housing Co, Ltd v the People's Republic of China*, ICSID Case No. ARB/14/25, the parties resolved their dispute in ICSID based on the Agreement Between the Government of the Republic of Korea and the Government of the People's Republic of China on the Promotion and Protection of Investments that entered into force on 1 December 2007, which allows the parties to submit an "investment dispute" (not limited to disputes concerning compensation for expropriation and nationalization) to the jurisdiction of ICSID.

The Arbitration Law of the People's Republic of China became effective on 1 September 1995, and was followed by the following judicial interpretations:

- the Interpretation of the Supreme People's Court concerning Some Issues on Application of the Arbitration Law of the PRC (2006 Interpretation), effective as of 8 September 2006;
- Provisions of the Supreme People's Court on Several Issues concerning the Hearing of Cases Involving the Judicial Review of Arbitration (Hearing Provisions), effective as of 1 January 2018;

²⁰ <https://globalarbitrationreview.com/jurisdiction/1004926/china>

²¹ Ibid.

²² Article 25 (4) Any Contracting State may, at the time of ratification, acceptance or approval of this Convention or at any time thereafter, notify the Centre of the class or classes of disputes which it would or would not consider submitting to the jurisdiction of the Centre. The Secretary General shall forthwith transmit such notification to all Contracting States. Such notification shall not constitute the consent required by paragraph (1).

- Provisions of the Supreme People’s Court on Issues concerning the Reporting and Examination of Cases Involving the Judicial Review of Arbitration (Reporting Provisions), effective as of 1 January 2018;
- Provisions of the Supreme People’s Court on Several Issues concerning the Handling of Cases of Enforcement of Arbitration Awards by People’s Courts (Enforcement Provisions), effective as 1 March 2018; and
- Several official replies were issued by the Supreme People’s Court to address questions that arose from specific cases.

China’s Arbitration Law deviates from the UNCITRAL Model Law in the following aspects:

- China’s Arbitration Law provides that an arbitration provision is invalid unless it designates an arbitration institution to administer the arbitration. As a result, an award rendered by an ad hoc arbitration seated in mainland China will not be recognized and enforced by the courts
- China’s Arbitration Law only allows “foreign-related” arbitrations to have their seats outside mainland China
- “Fork-in-the-road clause”²³ does not work under China’s Arbitration Law. Such a clause will be treated as a selection of a court to resolve the dispute.²⁴
- The Arbitration Law does not directly provide certain types of interim measures, such as maintaining and restoring the status quo pending the determination of the dispute and taking or refraining from taking certain actions. However, those measures are available under the Civil Procedure Law.²⁵

The predominant arbitration bodies relevant to international arbitration include the China International Economic and Trade Arbitration Commission (CIETAC), the Beijing International Arbitration Center (BIAC), the Shanghai International Arbitration Center (SHIAC), the Shenzhen Court of International Arbitration (SCIA), and the China Maritime Arbitration Commission (CMAC). In addition to the above institutions, there are approximately 200 other arbitration commissions in China established according to the Arbitration Law, including local commissions such as the Xiamen Arbitration Commission. Technically speaking, any arbitration commission established according to the Arbitration Law may accept foreign-related cases according to the General Office of the State Council’s Notice Regarding Certain Issues to be Clarified for the Implementation of the Arbitration Law of the People’s Republic of China. Practically, however, most of the foreign-related cases were handled by the institutions mentioned in the first paragraph.

On 22 October 2013, SHIAC established the Shanghai Pilot Free Trade Zone Arbitration Center. On 1 May 2014, the Shanghai Pilot Free Trade Zone Arbitration Rules (FTZ Rules) were released. The FTZ Rules²⁶ were considered innovative in the following aspects:

23 Previous tribunals have found that for a fork-in-the-road clause to apply, the same dispute between the same parties must have been submitted to the local courts before resort to international arbitration and have drawn clear distinctions between contract and treaty claims. For further see, <http://arbitration-blog.kluwerarbitration.com/2009/12/16/two-roads-two-tribunals-recent-fork-in-the-road-interpretations/>.

24 https://www.microsoft.com/inculture/sports/gabriel-medina-institute-surfs-next-wave/?ocid=AID2483404_QSG_373350

25 <https://www.refworld.org/pdfid/3ddbca094.pdf>

26 http://www.shiac.org/Trade/index_E.aspx.

- A third party is allowed to join the arbitration provided that the consents of the parties and the third party are obtained.
- The parties are free to recommend arbitrator(s) outside the panelist.
- Interim measures such as interim injunction, evidence preservation, and property preservation are allowed before and during the arbitration proceedings.

On 1 January 2015, the FTZ Rules were amended with a few slight changes. For example, the new article 3.2²⁷ allows modification or amendment on these rules agreed by the parties, which shall prevail except where such an agreement is inoperative or in conflict with a mandatory provision of the law of the place of arbitration. On 4 May 2014, the Shanghai Second Intermediate People's Court issued its opinions on the implementation of the FTZ Rules (the FTZ Opinions). The FTZ Opinions provide that:

- If a party applies for preservation before or during the arbitration, such application shall be accepted immediately,” and that “under urgent circumstances, if the relevant requirements provided in-laws are satisfied, a decision shall be made within 24 hours and then transferred for enforcement immediately.
- The emergency arbitral tribunal mechanism is provided.
- The parties are allowed to agree on rules on evidence. For example, the parties may stipulate that the IBA Rules of Taking of Evidence shall apply.
- The tribunal is allowed to issue a decision on a party's application for an interim measure (eg, evidence preservation) as long as it is appropriate under the laws of the jurisdiction where the interim measure is to be enforced. (It is not allowed in mainland China.)
- The FTZ Rules provide a “summary procedure” for small-value claims. Under such procedure, the dispute will be determined by a sole arbitrator and an award will be rendered within three months (rather than within six months under the standard procedure).

According to article 31 of the Arbitration Law, an arbitration commission established according to the Arbitration Law may act as the appointing authority when parties cannot reach an agreement on the choice of an arbitrator for the arbitration administered by that arbitration commission. The Arbitration Law does not explicitly stipulate whether foreign arbitral institutions may conduct the arbitration in mainland China.

In 2013, the Supreme People's Court, in its decision *TheReply of the Supreme People's Court regarding the Dispute on the Validity of an Arbitration Agreement between Anhui Longline Packing and Printing Co, Ltd and BP Agnati SRL* ([2013] Min Si Ta Zi No.13), determined that an arbitration agreement, which provided that the dispute between the parties should be resolved in ICC with the “place of jurisdiction” in Shanghai, was valid. In particular, the Supreme People's Court clarified that since the arbitration agreement unambiguously designated an arbitration institution to resolve the dispute, the arbitration agreement was valid following article 16²⁸ of the Arbitration Law. This decision paved the way for foreign arbitral providers to conduct the arbitration in mainland China.

27 Article 3 ,The following disputes may not be arbitrated: (1) marital, adoption, guardianship, support and succession disputes; (2) administrative disputes that shall be handled by administrative organs as prescribed by law.

28 Article 16, an arbitration agreement shall include arbitration clauses stipulated in the contract and agreements of submission to arbitration that are concluded in other written forms before or after disputes arise. An arbitration agreement shall contain the following particulars: (1) an expression of intention to apply for arbitration; (2) matters for arbitration; and (3) a designated arbitration commission.

On 9 September 2017, Xiaoli Gao, the Associate Chief Judge of the 4th Civil Adjudication Division of the Supreme People's Court, published an article *the Nationality of an Arbitral Award should be Determined by the Place of Arbitration rather than the Locality of the Arbitration Institution* on the *People's Judicature*, which is the Supreme People's Court's official periodical. In this article, Judge Gao held the opinion that foreign arbitral service providers should be allowed to practice in China unless it contradicts Chinese mandatory prohibitive law. We will see the evolution. There is no specialist arbitration court in China. The Chinese courts, especially the ones in first-tier cities like Beijing, Shanghai, Shenzhen, and Guangzhou, are generally familiar with the law and practice of international arbitration and are experienced in recognizing and enforcing arbitral awards, including foreign awards. As to the requirements on the formalities of an arbitration agreement, article 16 of the Arbitration Law provides that an arbitration agreement shall include four elements to be valid:

- In writing, no matter stipulated in a contract or provided in a separate agreement;
- The expression of the parties' intention to submit for arbitration;
- The matters to be arbitrated; and
- The arbitration institution was selected by the parties.

Also, article 17²⁹ of the Arbitration Law provides that an arbitration agreement shall be invalid under any of the following circumstances:

- Matters agreed upon for arbitration are not arbitrable;
- An arbitration agreement concluded by persons without or with limited capacity for civil acts; or
- One party forces the other party to sign an arbitration agreement using duress.

An arbitration agreement can cover future disputes. Parties may elect the applicable law to govern a foreign-related arbitration agreement. Article 14³⁰ of the Hearing Provisions provides that during the court's identifying the law applicable to determine the validity of a foreign-related arbitration agreement according to article 18³¹ of the Law of the Application of Laws to Foreign-related Civil Relations if parties have not elected the applicable law, the court should decide to apply the law which supports the validity of the arbitration agreement if the law at the locality of the arbitration institution differs from the law at the place of arbitration. According to article 3³² of the Arbitration Law of PRC, the following disputes shall not be submitted for arbitration:

- Disputes concerning marriage, adoption, guardianship, child maintenance and inheritance; and
- Administrative disputes falling within the jurisdiction of the relevant administrative organs according to law.

29 Article 17 An arbitration agreement shall be null and void under one of the following circumstances: (1) The agreed matters for arbitration exceed the range of arbitrable matters as specified by law; (2) One party that concluded the arbitration agreement has no capacity for civil conducts or has limited capacity for civil conducts; or (3) One party coerced the other party into concluding the arbitration agreement.

30 Ibid.

31 Article 18 If an arbitration agreement contains no or unclear provisions concerning the matters for arbitration or the arbitration commission, the parties may reach a supplementary agreement. If no such supplementary agreement can be reached, the arbitration agreement shall be null and void.

32 Article 3 The following disputes may not be arbitrated: (1) marital, adoption, guardianship, support and succession disputes; (2) administrative disputes that shall be handled by administrative organs as prescribed by law.

However, it is worth noting that although antitrust disputes are not mentioned in the above article, they were determined to be non-arbitrable in China in a recent judicial decision. In *Nanjing Xusong Technology Co, Ltd v Samsung (China) Investment*, (2015) Su Zi Min Xia ZhongZi No. 00072, the Jiangsu High People's Court held that antitrust disputes were non-arbitrable based on the following reasons:

- The current legal regime explicitly provides civil litigation as the only way to settle civil antitrust disputes;
- Public policy plays a pivotal role when weighing the arbitrability and the current statutes do not explicitly provide that antitrust disputes are arbitrable; and
- If the case involves the interest of the public, the third party, and consumers, which breaks through the privity of contract.

It is worth noting that mainland China is not a jurisdiction where case law has a binding effect. The above decision has been criticized by some leading practitioners. According to the Arbitration Law, a third party cannot be bound by an arbitration agreement without its express consent. The rules on joinder of third parties are provided under the rules of certain arbitration institutions. For example, according to article 18 of the 2015 CIETAC Rules, before the constitution of the tribunal, a party may join an additional party to the arbitration by filing a request for joinder with CIETAC, if there is prima facie evidence that the arbitration agreement binds the additional party. If the request is filed after the tribunal has been constituted, a decision shall be made by CIETAC after the arbitral tribunal hears from all parties including the additional party if the arbitral tribunal considers the joinder necessary. Article 31 of the 2015 SHIAC Rules provides that the parties may request a third party to be joined in arbitration with its consent by a joint written application. A third party may also apply in writing to become a party in arbitration with the written consent of both parties. The tribunal shall decide on the joinder of a third party, or, if the tribunal has not been constituted, the Secretariat of SHIAC shall make such a decision.

The Arbitration Law does not expressly address this issue. The rules on consolidation are provided under the rules of certain arbitration institutions. For example, article 19 of the 2015 CIETAC Rules provides that CIETAC may consolidate two or more arbitrations per a party's request under one of the following circumstances:

- All of the claims in the arbitrations are made under the same arbitration agreement;
- The claims in the arbitrations are made under multiple arbitration agreements that are identical or compatible and the arbitrations involve the same parties as well as legal relationships of the same nature;
- The claims in the arbitrations are made under multiple arbitration agreements that are identical or compatible and the multiple contracts involved consist of a principal contract and its ancillary contract(s); or
- All the parties to the arbitrations have agreed to consolidation.

According to article 19 of the Arbitration Law and article 57 of Contract Law of People's Republic of China, an arbitration agreement is independent of the contract. Article 20 of the Arbitration Law provides that if the parties object to the validity of the arbitration agreement, they may apply to the arbitration institution for a decision or to a people's court for a ruling. If one of the parties requests for a decision from the arbitration institution,

but the other party applies to a people's court for a ruling, the people's court shall give the ruling. Before the hearing, a party may submit an objection to the tribunal's jurisdiction to a competent court or the arbitration commission where the arbitration is administered. If former, the court shall decide on the jurisdiction issue; if later, the commission may authorize the tribunal to decide on its jurisdiction without interference from a court. In practice, the tribunal may determine the jurisdiction issue after it has heard the merits of the case.

2. Recognition and Enforcement of Foreign Arbitral Award in Nepal.

Enforcement of a foreign award may be a more complex matter, frequently governed by treaty obligations. There is no universal law available to regulate international commercial arbitration. There are many different national systems of law, which may need to be consulted depending upon where the arbitration takes place and what issues are involved. Question of the capacity of the parties to an agreement, the validity of the arbitration agreement, the arbitrability of the subject matter of dispute, and the recognition and enforcement of the award of arbitral tribunal all fall to be determined by the national system of law.³³ In case Nepal is a party to any treaty which provides for recognition and implementation of decisions taken by arbitrators in foreign countries, any decision taken by an arbitrator within the area of the foreign country which is a party to that treaty shall be recognized and implemented in Nepal³⁴. If a party is willing to implement an award made in a foreign country in Nepal shall apply to the Appellate Court³⁵ within 90 days from the date of the award. But the laws of the country of the petitioner or the laws of the country where arbitration proceedings have been conducted should not contain provisions under which the arbitration award taken in Nepal cannot be implemented. In case the Appellate Court is satisfied, it shall forward the award to the District Court for its implementations. A foreign award shall be not be implemented if the awarded settled dispute cannot be settled through arbitration under the laws of Nepal and if the award is against the public policy of Nepal.

The Arbitration Act 1999 of Nepal is fairly elaborate on these matters. The award must give reasons. It must state briefly particulars of the matter referred to arbitration and the decision and reason for the decision. The amount awarded as principal and interest should be mentioned in the award and the decision has to be read out by the arbitrator.³⁶ Sec. 26 has dealt with the provision regarding the award. Sec. 24 of the Act provides that - Except when otherwise provided for in the agreement, the arbitrator shall pronounce the decision ordinarily within 120 days from the date of submission of documents. In domestic arbitrations, in some countries, the time within which an award is to be given may be extended by the court or by the consent of the parties. According to ICA Rules of arbitration, Art.24, the time limit within which the Arbitral Tribunal must render its final Award is six months. Such a time limit shall start to run from the date of the last signature by the Arbitral Tribunal or by the parties of the Terms of Reference. The Court may extend this time limit according to a reasoned request from the Arbitral Tribunal or on its initiative if it decides it is necessary to do so. As per Article 25, when the Arbitral Tribunal is composed of more than one arbitrator, an Award is given by a majority decision. If there be no majority, the Award shall be made by the chairman of the Arbitral Tribunal alone; the Award shall state the reasons upon which it is based.

33 LuitelBishnu "Arbitration; As a Means of International Commercial Dispute Settlement "Nepal Law Review vol,28,2019 p.348.

34 Arbitration Act, 1999 (MadhyasthataAin), s 34(2) (Nepal)

35 Ibid, sec. 34(1).

36 G.K Kwatra, "Arbitration And Contract Law in SAARC Countries", Kanjirowa Publication, Kathmandu, 2004 p. 6.

The ordinary time set for delivering domestic arbitral awards by the arbitrator is within one hundred and twenty days after the filing of the statement of claims, defense, rejoinder if any but within thirty days after the closure of the oral hearing. Principles of majority decision are recognized in arbitration. All the members of the tribunal must sign the award. But if a member of the tribunal refuses or fails for some reason or incapacity to sign the award is sufficient for its enforcement and finality. The Act has also considered such a case if the arbitration agreement does not otherwise provide, it recognizes the determining role of the presiding arbitrator which is called 'umpire' whose decision in the event of a disagreement or differing opinions among the tribunal members as to any decision or prevails over others. However, the award once delivered could not be revised, but the arbitrator may give an additional award on items presented in the claims but omitted in the final award upon the application of a party the consent of the other to be made within 30 days of the award. The additional award must be published within 45 days of the application of the party to that effect.³⁷ The period within which the award is to be executed is 45 days and failing the district court of competent jurisdiction at the motion of the concerned party to be made within thirty days after expiry of the time of forty-five days shall require enforcing the award in the same manner as if it were its decree. The court is required to enforce the award ordinarily within 30 days after an application is made to the effect. The Arbitration Act does not envisage an appeal to lie from the arbitral award. The old Arbitration Act 1981(2038) had also adopted the above provision.

Article 69 of the ICSID Convention instructs member states to "take such legislative or other measures as may be necessary for making the provisions of the Convention effective . . ." Such legislative measures include an obligation to ensure that an ICSID award "shall be binding on the parties and shall not be subject to any appeal or any other remedy."³⁸

3.Recognition and Enforcement of Foreign Arbitral Award in China

According to the New York Convention 1958, the contracting states shall ensure and recognize arbitral awards made by any contracting states. The reasons for refusal of recognition or enforcement of foreign-related arbitral awards shall only be limited to the conditions prescribed in Article 5 of the New York Convention. These conditions have been converted to detailed articles in the legislation of China.

b. Related Domestic Legislations in China

According to Article 4 of Notice of the Supreme People's Court on the Enforcement of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards joined by China, the competent court shall examine the arbitral award when it accepts the application by a party concerned for recognition and enforcement. The court shall recognize the validity of the arbitral award and enforce it following the procedure prescribed in the Civil Procedural Law if it finds that no condition prescribed in Article 5 (1) and (2) of the New York Convention exists. The court shall rule to reject the application and refuse to recognize and enforce the arbitral award if it finds that any of the conditions prescribed in Article 5 (1) and (2) exists.

On October 29th, 2017, the seller, Noble Resources International Pte. Ltd.("Noble"), and the buyer, Shanghai Xintai Real Estate Co. Ltd. ("Xintai") have entered into Iron Ore Purchase Agreement. This agreement

³⁷ Supra Note No. 26 at p. 110

³⁸ ICSID Convention, art. 53.

stipulated that selling and delivering iron ore shall be following the terms and conditions in the second part of the Global ORE Standard Iron Ore Trade Agreement, version L2. (hereinafter referred to as "Standard Agreement") by quotation. Standard Agreement explicitly provides that any disputes or claims arising out of trades or agreements between two parties shall be submitted to Singapore International Arbitration Center ("SIAC") for arbitration,³⁹ which shall be conducted following SIAC's arbitration rules in effect at the time of applying for arbitration, and the arbitral tribunal shall be constituted by three arbitrators.⁴⁰

Owing to the dispute arose during the performance of the agreement, Noble applied to SIAC for arbitration on January 1, 2015, claiming that Xintai has fundamentally breached the contract, requesting Xintai to undertake liabilities for breaching a contract, and it applied for Expedited Procedure. Xintai objected to the Expedited Procedure and the constitution of the tribunal four times. However, SIAC never responded to it and approved the application for Expedited Procedure by Noble, besides, the arbitration was carried out by sole arbitrator.

After hearing, the arbitral tribunal made the final arbitral award in August 2015 supporting all the arbitration claims raised by Noble, i.e., Xintai shall compensate liquidated damage for \$1,603,100 as well as relevant interests and legal fee to Noble. After the render of the arbitral award, Xintai did not fulfill its obligations under the arbitral award.

In February 2016, Noble applied to Shanghai No. 1 Intermediate People's Court for the recognition and enforcement of this arbitral award made by SIAC. The court held the view that the focus of this dispute is whether or not the constitution of the arbitral tribunal or the arbitration procedure did not comply with the parties' agreement, as stipulated in the New York Convention.⁴¹ This court points out that the Standard Agreement was invoked and applied by Iron Ore Purchase Agreement which executed by two parties, and the Standard Agreement does have arbitration clauses which include "the arbitral tribunal shall be constituted by three arbitrators", so there is an effective written arbitration clause between the parties. Secondly, the application of the Expedited Procedure, in this case, did not violate any agreements between the two parties. Lastly, the constitution of the arbitral tribunal does not comply with the parties' agreement. Despite that the arbitration clause stipulates that the arbitral tribunal shall be constituted by three arbitrators and Xintai explicitly objected to the sole arbitrator, SIAC conducted the arbitration with a sole arbitrator, which violated the agreement of the arbitration clause. In consideration of the above, the court ruled to refuse recognition and enforcement of this arbitral award, according to relevant provisions of the New York Convention and Civil Procedural Law of the People's Republic of China.

Conclusion

Commerce refers to those activities of human beings which can be measured in terms of money. The volume of international trade and commerce has grown rapidly and crossed all territorial boundaries. The reasons for this are many, worldwide liberalization of trade policy, relaxation of foreign investment rules, new technology, increasing consumerism and consumer awareness both in developed and developing countries, have contributed to the growth. Moreover, trade has been regarded as a means of faster growth, higher living standards, and new opportunities. However, the growth in international trade has inevitably led to international disputes beyond the

39 <https://www.hoganlovells.com/en/publications/prc-court-refuses-to-enforce-siac-arbitral-award-arising-out-of-the-expedited-procedure-where-arbitration-agreement-provided-for-three-arbitrators>.

40 <https://www.siac.org.sg/our-rules>.

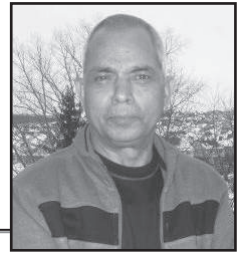
41 Ibid.

jurisdiction of the nations. Many contractual relationships- that arise in the course of international transactions are going to be sources of disputes, where the parties, at some stage, will have to decide on the means of resolving their disputes.

Since there are various methods of dispute settlement mechanisms; like state-provided mechanism as court adjudication, alternative methods as arbitration and conciliation. The decision is one that depends on the relative advantages and disadvantages of the available methods. As the number of international disputes mushrooms so too does the use of arbitration to resolve them. The non-judicial nature of arbitration makes it both attractive and effective for several reasons. The decline in mediation may correspond to a recent increase in the use of arbitration in China. For most Chinese parties, arbitration strikes an appropriate balance between mediation and litigation. Arbitration tribunals are viewed as less confrontational than litigation, thus appealing to the Confucian philosophy and Communist principles. Further, the flexible nature of arbitration can allow parties to resolve disputes more easily. Many foreigners also prefer arbitration as a fair and efficient vehicle for resolving disputes. Foreign parties might view the Chinese judicial system as lacking the commercial expertise to resolve business contracts, adhering to slow and complex court procedures, and practicing local protectionism.

Today, it is an uncontested fact that arbitration is the dominant method of settling international commercial disputes because of more or fewer uniformities and harmonization of the arbitral process. Several arbitral institutions are emerged to provide effective and expert services in the fields. It has developed as a more technical and sophisticated mechanism of international commercial disputes settlement. Side by side, a poor segment of the societies are lacking behind from the process because of their lack of expertise and costs bearing capacity. So a question is still there, whether the modern international commercial arbitration is equally competent to provide justice to all as equal as to settle disputes. In both Nepal as well as China, the existence of an arbitration agreement is one of the substantive requirements for the execution of foreign awards in China.

Techniques & Tools of ADR



Vinod Dhungel
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Any method of resolving disputes without litigation process may be termed by Alternative Disputes Resolution (ADR). It refers to any means of settling disputes outside of the court room. It typically includes early neutral evaluation, negotiation, conciliation, mediation & arbitration. It is an attempt to establish an alternative mechanism other than the traditional methods of dispute resolutions. It is an effective tool to reduce the load of an overburden court system. Nay, it provides the opportunities of direct participation & communication between the disagreeing parties by avoiding expensive time lagging & complicated legal procedural steps to be followed in the formal process of justice.

The philosophy behind the concept of alternative dispute resolution can be summed up as an instrumental tool that assures the equitable satisfaction to both the disagreeing parties in the dispute settlement process. As we termed ADR as an instrumental tool in the settlement process of disputes between the disagreeing parties, it can be considered as the complementary & supportive friends towards the judicial reforms. The rationale behind this concept is vital in the reduction of cost & time in resolving the disputes & helps to make more accessibility towards the justice for the marginalized social groups. The dispute settlement process itself is a complex one because

the combination of more than a single party with varied & conflicting interest in the disputed subject matter & the eagerness to win individually makes complication further more. So, in order to facilitate the resolution process some sorts of universal mechanism is advised to implement there & this constitutes the providing of encouragement to the disputant parties to negotiate directly with each other & encourage themselves to come in a settlement by negotiation. In this respect we as a mediator must bear in mind that there must not be intervention of the third party in a strict sense that indicates the role of the mediator is extremely limited on facilitating the disagreeing parties to negotiate each other. We Know ADR refers to any means of settling disputes outside of the court room. So it can be resolved by adopting either the process of early neutral evaluation, negotiation, conciliation, mediation or the arbitration. In the context of Nepal the last two methods are generally in vogue in resolving disputes without the intervention of formal court. The process of arbitration in this respect has been formally recognized with the enactment of Arbitration Act, 2038 which has been repealed with the enactment of Arbitration Act, 2055, an elaborate provision on the arbitration process has been laid down followed by Arbitration (Court Procedure) Rules, 2059 fulfilled the gap in this respect. Of course, it has to be more effective with the time

bound inclusive legal provision to cope up the increasing complexities of the modern corporate global disagreement between the contracting parties.

Mediation an informal alternative tool to litigation is generally popular to resolve the disagreement between the parties. It is a private informal process in which the parties are assisted by one or more neutral third party in their effort towards settlement. Of course, the mediator does not decide the outcome itself but the settlement lies ultimately with the parties themselves. The mediation process constitutes itself the first play of agreeing to appoint a trained & impartial third party to resolve their dispute & in doing so the key decisions are made by parties themselves not by the mediator because mediator do not judge or arbitrate the dispute instead they facilitate & assist the parties themselves in bringing about a mutually agreeable solution to the problem. In other words, the facilitators or the mediators are strictly independent towards the disputed parties & their role in the decision making process is strictly limited to the facilitator. It is a voluntary process on the part of mediator & will not judge or advise the parties.

With the enactment of Mediation Act, 2068 Nepal formally accepted the concept of informal process of resolving disputes within its jurisdiction between its subjects & the contracting parties. The preamble of the Act itself aims to provide legal provision on the procedure of mediation to settle disputes through mediation in a speedy & simple manner to make the process of disputes settlement less costly to enhance the access of general public to justice & to maintain the interest & convenience of general public. The provision of the act 2(h) defined mediation being a process to be followed to settle a dispute or case with the assistance of a mediator. The provisions of the Mediation Act itself

clearly differentiate mediation from arbitration. If we look into the clause 2(h) of the Arbitration Act, 2055 it defines "Arbitrator" as an arbitrator appointed for the settlement of a dispute and the term also includes a panel of arbitrators. The clause 3 sub clause (1) & (2) clearly indicates if any agreement or issues coming under that agreement shall be settled through arbitration according to the procedure prescribed in that agreement. Thus the mandatory condition precedent for the arbitral process as per this provision is the existence of the agreement between the parties in disputes where as the clause (3)⁴ of the Mediation Act, 2068 enhance the process of mediation in the absence of agreement also.

The process of resolving disputes through mediation is found to be quite effective from the view point of remedial aspect because the disputed parties themselves participate in the resolving process by negotiating each other that resulted long lasting effective & once it solved, the disagreement between them is solved forever. Unlike in the arbitration process the mediation session begins from the introductory phase where the parties introduced themselves letting know each other & this phenomena help to boost up the self confidence of the parties themselves. We know the disputed parties in the mediation process are sovereign themselves that is why they are facilitated to make the rules that are to be followed during the process & they are voluntarily supposed to follow strictly that rules during the course of action. After the formulation of the rules to be followed during the process the opening of the subject matter of the disputes begins there- in followed by the reaction of the other party & here lies the important task for the mediator to do the listing of the main issue by asking them about their contention & to re-organized facts & issues so as to make them in a closeness proximity towards the differences of

the parties. Another duty of the mediator in this phase is to sum-up the issues & clarify its cause & action towards the disputed parties. Sometimes the mediator may launch the brain-storming process & Caucus for both the parties separately as a private, confidential meeting of member of one side to discuss their concern. This process helps the parties in finding out the alternative of the solutions & the final phase of preparing the resolution comes there, where time setting of the execution of the drafted resolution & their effect towards the parties are clearly pronounced there-in black and white.

The philosophical aspect of mediation is the avoidance of rigidity in the process of resolving disputes between the parties. Unlike in the formal process of hearing, the concept of legal jurisprudence does not govern in mediation. Rules & procedures are flexible because they are agreed upon by the parties concerned & as per their consent they are drafted by the mediator. The absence of the formal pleading during the process no rules of evidence is applicable there-in along with absence of formal representative. The complete process of mediation lies within the concept of equitable applicability rather than the rule of law as the outcome is resulted by the decision made by the third party on the basis of negotiations between the disputants themselves based upon the Win-Win concept rather than uniformly applied legal norms. The fundamental philosophy governed by the direct & active involvement of the disputants communicating with each other in the settlement process further paves the way of creative settlement of the disputes.

To sum up, alternative disputes resolution is an informal process & technique that disputant parties can use to settle disputes themselves with the help of the third party. As the formal judicial system is entangled with the complex legal system substantive as well procedural, ADR being an informal process of resolving disputes is free from hassle of the formal system. The problem of the case back log impairs the formal judicial system and is always questionable towards its effectiveness. The remedial aspect is not satisfactorily. Complex procedures of the court & too much formality along with costly expenses are not affordable by the poor & illiterate people. As a result the accessibility of those marginalized people towards the formal judicial system is quite negligible. That is why alternative disputes resolution process is treated as a means to substitutes the corrupt, biased and discredited formal judicial system.

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Different laws applicable in international commercial arbitrations



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Arbitration is now the principal method of resolving international disputes involving states, individuals, and corporations.¹ Although this method of dispute resolution originally started as a more private method of dispute resolution between merchants and traders², its growth and adoption by the international community has grown due to its numerous advantages such as privacy, respect of consensus and time and cost efficiency.

Under ideal circumstances, parties would specify the law governing the arbitration agreement, law governing arbitration proceedings, and the law governing the substantive issues. Since we do not live in an ideal world, arbitration clauses are often less than imperfect, and in some cases may lead to disputes themselves.

Redfern and Hunter on International Arbitration identifies at least five different systems of law that may be applicable in international arbitrations, which have been listed below:³

- 1) law governing arbitration agreement;
- 2) the law governing the existence and proceedings of the arbitral tribunal (*lex arbitri*);
- 3) law governing substantive issues in dispute (applicable/ governing/ substantive law);
- 4) other applicable rules and non binding guidelines and recommendations; and
- 5) law governing recognition and enforcement of the award.

These laws are often overlapping and not easily distinguishable from one another. A brief description of the laws applicable to arbitrations is given hereunder:

1) Law governing arbitration agreement

The law governing arbitration agreement looks into matters such as validity of the arbitration agreement, as well as arbitrability of the dispute. For instance, if the law of Nepal is chosen as the law governing the

1 N. Blackaby, J. Martin Hunter, Constantine Partasides, Alan Redfern, Redfern And Hunter on International Arbitration. Oxford ; New York :Oxford University Press, 2009, 65

2 Van Wezel Stone, Katherine: 'Dispute Resolution in the Boundaryless Workplace' (2000– 2001) Ohio State Journal of Dispute Resolution 16: 427-489 and *ibid.*

3 *Supra* 1

arbitration agreement, the validity of the arbitration agreement will be tested as per the requirements of the Civil Code, 2017. Further the issue of arbitrability will also be tested as per national laws and regulations. This would mean that matters related to criminal offenses including offenses against the state and constitutional matters would not be arbitrable.

Unless specified by parties, the law governing arbitration agreement may be determined by either the contract in which the arbitration agreement is contained, or by the law of the seat.

There is a strong presumption that the law governing the arbitration agreement often follows the law chosen by the parties choice of law chosen to govern the contract.⁴ Despite the principle of separability, an arbitration clause is not totally independent from the contract which entails it.

However, the English Court of Appeal in *Sulamerica cia Nacional de Seguros SA and ors v Enesa Engenharia SA and ors*⁵ held that English law was the governing law of an arbitration, based on the seat of arbitration, as per the closest and most real connection. In this particular case, parties had exclusively chosen Brazilian law and submitted to the exclusive jurisdiction of Brazillian Courts. While similar decisions were taken by Belgian and Swedish Courts ⁶ however the English court departed from this position in a more recent judgment, by stating that seat of an arbitration as an implied choice of the law of the arbitration agreement.⁷ The rationale behind the earlier judgments appear to be so as to validate the arbitration agreement, which parties were attempting to renege from.

French Courts have also developed their own jurisprudence which relies on interpreting intention of parties, while the Swiss model is based on a mixed approach of combining methods to uphold the validity of an arbitration agreement.⁸

2) Law governing the existence and proceedings of the arbitral tribunal (lex arbitri)

In general, *lex arbitri* covers issues such as constitution of arbitral tribunal and its challenge, arbitral tribunal's entitlement to rule on its own jurisdiction, equal treatment of parties, freedom to agree upon detailed rules of procedure, including submission of documents, hearings, interim measures of protection and court assistance when required, power of arbitrators, form and validity of arbitration award including finality.⁹

In absence of parties specific choice, the *lex arbitri* is chosen on the basis of the seat, i.e. country of choice where the arbitration proceedings are to be held. Parties often choose a country that is neutral for international arbitrations. Neither party would have either a connection or place of business or residence, but the country would be chosen based on its arbitration regime.¹⁰

4 Lew, 'The law applicable to the form and substance of the arbitration clause'(1999) 9 ICCA Congress Series 114. and Derains, 'The ICC arbitral process, Part VIII: Choice of law applicable to the contract and international arbitration' (2006) 6 ICC International Court of Arbitration Bulletin 10, at 16– 17. Also see position of Singapore High Court in *BCY v BCZ* [2016] SGHC 249

5 [2012] EWCA Civ 638.

6 See *Bulgarian Foreign Trade Bank Ltd v Al Trade Finance Inc.*, Case No. T1881–99, Swedish Supreme Court, 27 October 2000, (2001) XXVI YBCA 291 and *Maternaco SA v PPM Cranes Inc.*, Brussels Tribunal de Commerce, 20 September 1999 (2000) XXV YBCA 673

7 *Enka Insaat Ve Sanayi AS v OOO "Insurance Company Chubb" & Ors* [2020] EWCA Civ 574

8 *Supra* 1, page 160-161,

9 *Supra* 1, Page 163

10 see White & Case and Queen Mary School of International Arbitration, University of London, 2010 International Arbitration Survey: Choices in International Arbitration, available online at http://www.arbitrationonline.org/docs/2010_InternationalArbitrationSurveyReport.pdf.

The *lex arbitri* will be different from the law that governs the substantive matters. For instance, an Indian and a Chinese party may choose to have the seat of their arbitration in Hong Kong, with the substantive matters of the dispute to be decided by the law of England. In such a case, the arbitration itself and the way it is conducted, will be governed by arbitration laws of Hong Kong, whereas the substantive issues such as interpretation and validity of the contract would be governed by laws of England.

The seat is the place to which the arbitration is legally attached.¹¹ This does not mean any physical activity, such as tribunal's meeting or hearings, but has implications in terms of law applicable to the arbitration proceedings, interference of courts as well as regarding the nationality of the award.

While seat and place are used interchangeably, venue has a physical connotation often referring to the locale where arbitration hearings are to be held.

Interestingly, the Nepali Arbitration Act, 2055 (1999) (the "Act") refers to "स्थान" or "location". Section 12 of the Act talks about "location of office of the arbitrator". This refers to a place specified in the agreement, failing which it would be the place selected by the arbitrators, failing which it would be the place specified by the arbitrator in light of all relevant circumstances. While this may be a translation issue, it is pertinent to note that the Act does not refer to seat, or make a distinction between seat and venue. This has in practice, often caused confusion and led to discussions amongst arbitrators.

It is important to have seat/ place of arbitration in the Act, for the reasons mentioned above, and as explicitly covered under Article 20 of the UNICTRAL Model Law on International Commercial Arbitration.

3) Law or relevant rules governing substantive issues in dispute (applicable/ governing/ substantive law

Although international commercial contracts are quite detailed, and arbitrators are bound to decide the arbitration within the confines of the act, an agreement intended to create legal relations does not exist in a legal vacuum.¹² The law governing substantive issues in general governs the interpretation and validity of the contract, rights and obligations of parties, mode of performance and the consequences of breaches of the contract.¹³ To elucidate, if parties chose the law of Nepal as the governing law, then the provisions of the contract, rights and obligations of the parties would be interpreted as per Nepali law including judicial interpretation as per precedents.

Under the Act, Section 18 provides that the substantive law of the arbitration shall be Nepal, and also provides for guiding principles of *ex aqua bono* and *amiable compositor*.

4) Other applicable rules and non binding guidelines and recommendations

Another important developments in the field of transnational law was that of *lex mercatoria* which draws on public international law, general principles of law as well as UNIDROIT Principles of International Commercial Law and Principles of European Contract Law. Under the guise of applying *lex mercatoria*, an arbitral tribunal may in effect pick such rules as seem to the tribunal just and reasonable, which may

11 MClIwrath and Savage, International arbitration and mediation, a practical guide, Michael MclIwrath, 2010, Page 25

12 Supra 1, 169

13 Supra 1,

or may not be what the parties intended when they made their contract.¹⁴ In line with this practice, the Act also provides that the arbitrators shall pay attention to commerciable usages applicable to the concerned transaction while settling the dispute.¹⁵

5) Law governing recognition and enforcement of the award

The nationality of an award is often chosen based on the seat of the award.¹⁶ If parties have exclusively chosen the jurisdiction of a particular court, the law governing the recognition and enforcement of award would be as per the choice of the parties. However, given the international nature of business, parties may choose to enforce the award in different countries, which is when the New York Convention on the recognition and enforcement of awards, 1958 would be applicable.

This article sets out in very simple terms the complex and coterminous nature of laws applicable to arbitration, and is in no way exhaustive of other laws, rules and principles that parties may choose to apply or the arbitral tribunal may adopt for the purposes of the arbitration. In the Nepali context, the different laws applicable to an arbitration although argued in arbitrations are yet to be tested in Court.

14 Supra 1, Page 177

15 Section 18(3) of the Act

16 Supra 12

Nepal Council of Arbitration (NEPCA) Sub-Committees

Various subcommittees were formed in order to achieve the objective of the Council. The subcommittees are as follows:

a. Membership Scrutiny Committee

- | | |
|---------------------------------|---------------|
| i. Mr. Baburam Dahal | - Coordinator |
| ii. Mr. Bhoj Raj Regmi | - Member |
| iii. Mr. Shailendra Kumar Dahal | - Member |

b. Arbitrator/Adjudicator/DB Appointment Committee

- | | |
|-------------------------------|--------------|
| i. Mr. Dhruva Raj Bhattarai | -Coordinator |
| ii. Ms. Gosai K.C. | -Member |
| iii. Mr. Murali Prasad Sharma | -Member |

c. Panelist Committee

- | | |
|--------------------------------|---------------|
| i. Mr. Birendra Bahadur Deoja | - Coordinator |
| ii. Mr. Bhoj Raj Regmi | - Member |
| iii. Prof. Khem Nath Dallakoti | - Member |

d. Publication Committee

- | | |
|-----------------------------------|--------------|
| i. Dr. Rajendra Prasad Adhikari | -Coordinator |
| ii. Mr. Baburam Dahal | -Member |
| iii. Mr. Matrika Prasad Niraula | -Member |
| iv. Mr. Gyanendra Prasad Kayastha | -Member |

e. Training Committee

- | | |
|--------------------------------|--------------|
| i. Ms. Gosai K.C. | -Coordinator |
| ii. Mr. Matrika Prasad Niraula | -Member |
| iii. Mr. Naveen Mangal Joshi | -Member |

f. NEPCA Secretariat Improvement Committee

- | | |
|-----------------------------------|--------------|
| i. Mr. Baburam Dahal | -Coordinator |
| ii. Ms. Gosai K.C. | -Member |
| iii. Dr. Rajendra Prasad Adhikari | -Member |
| iv. Mr. Matrika Prasad Niraula | -Member |

g. NEPCA Arbitration Rules Amendment Committee

- | | |
|--------------------------------|--------------|
| i. Mr. Birendra Bahadur Deoja | -Coordinator |
| ii. Prof. Khem Nath Dallakoti | -Member |
| iii. Mr. Sailendra Kumar Dahal | -Member |

Activities of NEPCA/Seminars & Trainings

1. On July 25, 2021, (10 Shrawan, 2078), Nepal Council of Arbitration organized an Online Webinar titled as "Arbitration in Nepal – Law and Practice" for its valued members. Key policy makers, CEOs, and senior management executives, project management specialists, contract specialists, arbitrators, senior officer from bureaucracy, senior lawyer, engineers and contractors were participated in the webinar. Officially, webinar started with welcome remarks by chairman of NEPCA, Er. Dhruva Raj Bhattarai focusing on the purpose and importance of webinar. Mr. Baburam Dahal, General Secretary moderated the session. Mr. Balaram K.C., Former Judge – Supreme Court and Life Member of NEPCA made key presentation on the subject. At the end Mr. Bipulendra Chakravartty, Senior Advocate, vice-chairperson of NEPCA declared end of the program along with his remarks. The total of 120 numbers of participants from different field participated in the webinar with keen interest.



2. On 28th Feb to 4th March, 2021, NEPCA conducted one-week training on "Construction Management and Dispute Settlement" at NEPCA training hall, Kupondole, Lalitpur. All together 38 participants were participated on the training program. Law practitioners, Government Officials, Private Companies and Individual Professionals also took part in training. NEPCA's Chairman Er. Dhruva Raj Bhattarai, General Secretary Mr. Baburam Dahal and Former General Secretary Mr. Gyanendra Prasad Kayastha distributed the certificate to the participants. Finally, training closed by group photo.



3. Nepal Council of Arbitration (NEPCA) in collaboration with SAARC Arbitration Council (SARCO) organized a Regional Webinar on "Arbitration in Nepal - Present and Future" on May 8, 2021 (Baisakh 25, 2078) through google meet platform. Officially, inauguration session of webinar started with introductory remarks by Dr. Faazan Mirza, Deputy Director, SARCO focusing

on the purpose and importance of webinar. Chairman of NEPCA, Er. Dhruva Raj Bhattarai, addressed with his welcome remarks. Mr. Binod Kumar Bhattarai, Governing board member of SARCO from Nepal, also addressed with his remarks. Mr. Md. Helal Chowdhury, Director General of SARCO, also addressed with his remarks to the participants.

The introduction session was followed by the Technical session including Panel presentation and discussion which was moderated by Dr. Faazan Mirza, Director General, SARCO. Er. Birendra Bahadur Deoja, Immediate Past President of NEPCA, Prof. Purna Man Shakya, Vice President of SAARC Law, Dr. Rajendra Prasad Adhikari, Executive Member of NEPCA and Prof. Khem Nath Dallakoti,

Executive Member of NEPCA were the panel members and made key presentation on the topic of "Introduction to NEPCA Roles in hosting Arbitration Procedure", "Enforcement of Local and Foreign Arbitration on Awards", "Use of FIDIC Condition of Contract in Nepal and "Future of Arbitration in Nepal relating to SARCO" respectively .



WEBINAR

Arbitration in Nepal – Present and the Future

08th May 2021 – 11:30AM Nepal Time





Mr. Md. Helal Chowdhury
Director General SARCO



Mr. Dhruva Raj Bhattarai
Chairperson NEPCA



Moderator:
Mr. Faazan Mirza
Deputy Director,
SARCO



Mr. Birendra Bahadur Deoja
Former Acting Secretary, Ministry of Culture
Tourism and Civil Aviation & Arbitrator



Mr. Purna Man Shakya
Senior Advocate of Nepal &
Vice President of SAARC LAW



Prof. Khem Dallakoti
Professor, Tribhuvan University & Chief
Arbitrator & Dispute Review Expert



Dr. Rajendra Prasad Adhikari Specialist,
Nepal Administrative Staff College
Arbitrator & Dispute Review Expert

Join in: **Google Meet**
Link: meet.google.com/uaz-wbee-tha

At the end, Mr. Gyanendra Prasad Kayastha, Former General Secretary of NEPCA and Dr. Faazan Mirza, Director General, SARCO concluded the program with their Vote of Thanks. The total of 130 numbers of participants from different field participated in the webinar with keen interest.

The webinar objective was to play an important role to shed light on the effects of COVID-19 on the ADR arena in Nepal and the way forward along with the role played by SARCO and NEPCA as the catalysts in expanding the concept of arbitration in Nepal.

4. On 9th August to 13th August, 2021, NEPCA conducted one-week training on Construction Management and Dispute Settlement at NEPCA training hall, Kupondole, Lalitpur. All together 50 participants were participated physically and Virtual on the training program. Law practitioners, Government Officials, Private Companies and Individual Professionals also took part in training. NEPCA's Treasurer Mrs. Gosai K.C, Executive Member Mr. Matrika Prasad Niraula and Former General Secretary Mr. Gyanendra Prasad Kayastha distributed the certificate to the participants. Finally, training closed by group photo.



Panel List of NEPCA

S.N	Name	Profession	Address
1	Mr. Babu Ram Dahal	Advocate	Babarmahal, Kathmandu
2	Mr. Bhoj Raj Regmi	Engineer	Baluwatar, Kathmandu
3	Mr. Bhoop Dhoj Adhikari	Former Judge	Baneshwor, Kathmandu
4	Mr. Bindeshwor Yadav	Engineer	Baneshwor, Kathmandu
5	Mr. Bipulendra Chakravarty	Senior Advocate	Biratnagar, Morang
6	Mr. Birendra Bahadur Deoja	Engineer	Baneshwor, Kathmandu
7	Mr. Birendra Mahaseth	Engineer	Kathmandu
8	Mr. Dev Narayan Yadav	Engineer	Kathmandu
9	Mr. Dhruva Raj Bhattarai	Engineer	Gyaneswor, Kathmandu
10	Mr. Dinker Sharma	Engineer	Mandikatar, Kathmandu
11	Mr. Dipak Nath Chalise	Engineer	Maligaun, Kathmandu
12	Mr. Durga Prasad Osti	Engineer	Baneshwor, Kathmandu
13	Mr. Gokul Prasad Burlakoti	Advocate	Babarmahal, Kathmandu
14	Mr. Gyanendra Prasad Kayastha	Engineer	Sanepa, Lalitpur
15	Mr. Hari Prasad Sharma	Engineer	Baneshwor, Kathmandu
16	Mr. Hari Ram Koirala	Freelancer Consultant	Kathmandu
17	Mr. Indu Sharma Dhakal	Engineer	Mahankal, Kathmandu
18	Prof. Kanak Bikram Thapa	Dean Law Faculty	Ratopul, Kathmandu
19	Mr. Keshav Bahadur Thapa	Engineer	Babarmahal, Kathmandu
20	Prof. Khem Nath Dallakoti	Engineer	Battisputali, Kathmandu
21	Mr. Lekh Man Singh Bhandhari	Engineer	Sainbhu, Lalitpur
22	Mr. Madhab Prasad Paudel	Chief Commission	Jagritinagar, Kathmandu
23	Mr. Mahendra Nath Sharma	Engineer	Battisputali, Kathmandu
24	Mr. Matrika Prasad Niraula	Senior Advocate	Anamnagar, Kathmandu
25	Mr. Mohan Man Gurung	Engineer/ Advocate	Bagbazar, Kathmandu
26	Mr. Narayan Datt Sharma	Engineer/ Advocate	Gyaneswor, Kathmandu
27	Mr. Narayan Prasad Koirala	Advocate	Baneshwor, Kathmandu

S.N	Name	Profession	Address
28	Mr. Narendra Kumar Shrestha	Advocate	Baneshwor, Kathmandu
29	Mr. Naveen Mangal Joshi	Engineer	Kobahal Tole, Lalitpur
30	Mr. Niranjan Prasad Poudel	Engineer	Tukucha, Kathmandu
31	Mr. Poorna Das Shrestha	Engineer	Balkot, Bhaktapur
32	Mr. Rajendra Kishore Kshatri	Advocate	Lainchour, Kathmandu
33	Mr. Rajendra Niraula	Engineer	Balkhu Kathmandu
34	Prof. Dr. Rajendra Prasad Adhikari	Project Mgmt, Advocate	Bishalnagar, Kathmandu
35	Mr. Rajendra Prasad Kayastha	Engineer	Maharajgunj, Kathmandu
36	Mr. Ram kumar Iamsal	Engineer	Bhimsengola, Kathmandu
37	Mr. Rameshwar Prasad Kalwar	Engineer	Balkhu, Kathmandu
38	Mr. Sanjeev Koirala	Engineer	Balkumari, Lalitpur
39	Mr. Satya Narayan Shah	Engineer	Mahalaxmi, Lalitpur
40	Mr. Shambhu Thapa	Senior Advocate	Koteswhor, Kathmandu
41	Mr. Sharada Prasad Sharma	Engineer	Baneshwor, Kathmandu
42	Mr. Shree Prasad Agrahari	Engineer	Gairidhara, Kathmandu
43	Mr. Som Nath Paudel	Engineer	Teku, Kathmandu-12
44	Mr. Subash Chandra Verma	Engineer	Gothatar, Bhaktapur
45	Mr. Sunil Kumar Dhungel	Engineer	Baneswor, Kathmandu
46	Mr. Suresh Kumar Regmi	Engineer	Maligaun, Kathmandu
47	Mr. Surya Nath Upadhyay	Advocate	Budhanilkanta, Kathmandu
48	Mr. Tul Bahadur Shrestha	Engineer	Kathmandu
49	Mr. Tulasi Bhatta	Senior Advocate	Anamnagar, Kathmandu
50	Mr. Udaya Nepali Shrestha	Former Secretary, Law	Satdobato, Lalitpur
51	Mr. Varun Prasad Shrestha	Engineer	Baneshwor, Kathmandu

NEPCA Life Member

S.N	Name	Profession
1	Mr. Ajaya Kumar Pokharel	Engineer
2	Mr. Amar Jibi Ghimire	Advocate
3	Mr. Amber Prasad Pant	Advocate
4	Mr. Amod Kumar Adhikari	Engineer
5	Mr. Anil Kumar Sinha	Advocate
6	Mr. Anup Kumar Upadhyay	Engineer
7	Mr. Awatar Neupane	Advocate
8	Mr. Babu Ram Dahal	Advocate
9	Mr. Badan Lal Nyachhyon	Engineer
10	Dr. Bal Bahadur Parajuli	Engineer
11	Mr. Bala Krishna Niraula	Engineer
12	Mr. Bala Ram K.C.	Former Justice, Supreme Court
13	Mr. Balaram Shrestha	Engineer
14	Mr. Bedh Kantha Yogal	Engineer
15	Mr. Bhagawan Shrestha	Engineer
16	Mr. Bharat Bahadur Karki	Advocate
17	Mr. Bharat Kumar Lakai	Advocate
18	Mr. Bharat Prasad Adhikari	Lawyer
19	Mr. Bhava Nath Dahal	Auditor
20	Mr. Bhim Pd. Upadhyay	Engineer
21	Mr. Bhoj Raj Regmi	Engineer
22	Mr. Bholu Chatkuli	Engineer
23	Mr. Bhoop Dhoj Adhikari	Advocate
24	Mr. Bhupendra Chandra Bhatta	Engineer
25	Mr. Bhupendra Gauchan	Engineer
26	Mr. Bikash Man Singh Dangol	Engineer
27	Mr. Bimal Prasad Dhungel	Advocate
28	Mr. Bimal Subedi	Judge, High Court
29	Mr. Bindeshwar Yadav	Engineer

S.N	Name	Profession
30	Mr. Bipulendra Chakravartty	Senior Advocate
31	Mr. Birendra Bahadur Deoja	Engineer
32	Mr. Birendra Mahaset	Engineer
33	Mr. Bishnu Mani Adhikari	Advocate
34	Mr. Bishnu Om Baade	Engineer
35	Dr. Bishwadeep Adhikari	Advocate
36	Mr. Bodhari Raj Pandey	Former Justice, High Court
37	Mr. Chabbi Lal Ghimire	Lawyer
38	Mr. Chandeshwor Shrestha	Advocate
39	Mr. Chandra Bahadur KC	Engineer
40	Mr. Daya Kant Jha	Engineer
41	Mr. Deo Narayan Yadav	Engineer
42	Mr. Dhanraj Gyawali	Secretary, PMO
43	Mr. Dhruva Raj Bhattarai	Engineer
44	Mr. Dhundi Raj Dahal	Engineer
45	Mr. Digamber Jha	Engineer
46	Mr. Dilli Raman Dahal	Legal
47	Mr. Dilli Raman Niraula	Engineer
48	Mr. Dinesh Kumar Karky	Lawyer
49	Mr. Dinesh Raj Manandhar	Engineer
50	Mr. Dinker Sharma	Engineer
51	Mr. Dipak Nath Chalise	Engineer
52	Mr. Dipendra Shrestha	Engineer
53	Mr. Durga Prasad Osti	Engineer
54	Mr. Dwarika Nath Dhungel	Social Sciences Researcher
55	Mr. Fanendra Raj Joshi	Engineer
56	Mr. Gajendra Kumar Thakur	Engineer
57	Mr. Gandhi Pandit	Advocate
58	Ms. Gauri Dhakal	Former Justice, Supreme Court

S.N	Name	Profession
59	Mr. Ghanshyam Gautam	Engineer
60	Mr. Girish Chand	Engineer
61	Mr. Gokul Prasad Burlakoti	Lawyer
62	Dr. Gopal Siwakoti	Law Practice
63	Ms. Gosai K.C	HR Management/Environment
64	Mr. Govinda Kumar Shrestha	Former Judge High Court
65	Mr. Govinda Prasad Parajuli	Former Chief Justice, High Court
66	Mr. Govinda Raj Kharel	Advocate
67	Mr. Gyanendra Prasad Kayastha	Civil Engineer
68	Mr. Hari Bahadur Basnet	Former High Court Judge
69	Mr. Hari Bhakta Shrestha	Engineer
70	Mr. Hari Narayan Yadav	Engineer
71	Mr. Hari Prasad Dhakal	Engineer
72	Mr. Hari Prasad Sharma	Engineer
73	Mr. Hari Ram Koirala	Engineer
74	Mr. Hari Ram Koirala (2)	Ret. Chief Judge
75	Mr. Harihar Dahal	Advocate
76	Mr. Hariom Prasad Shrivastav	Engineer
77	Mr. Hum Nath Koirala	Construction Entrepreneur
78	Mr. I.P. Pradhan	Engineer
79	Mr. Indra Lal Pradhan	Engineer
80	Mr. Indu Sharma Dhakal	Engineer
81	Mr. Ishwar Bhatta	Engineer
82	Mr. Ishwar Prasad Tiwari	Engineer
83	Mr. Ishwori Prasad Paudyal	Engineer
84	Mr. Jagadish Dahal	Advocate
85	Mr. Jaya Mangal Prasad	Advocate
86	Mr. Jayandra Shrestha	Adviser/Finance
87	Mr. Jayaram Shrestha	Advocate
88	Mr. Jivendra Jha	Engineer

S.N	Name	Profession
89	Mr. Kamal Kumar Shrestha	Former Joint Secretary, PMO
90	Mr. Kamal Raj Pande	Engineer
91	Prof. Kanak Bikram Thapa	Former Dean, Advocate
92	Mr. Kedar Man Shrestha	Engineer
93	Mr. Kedar Nath Acharya	Former Justice, Supreme Court
94	Mr. Kedar Prasad Koirala	Advocate
95	Mr. Keshari Raj Pandit	Former High judge
96	Mr. Keshav Bahadur Thapa	Engineer
97	Mr. Keshav Prasad Mainali	Advocate
98	Mr. Keshav Prasad Ghimire	Engineer
99	Mr. Keshav Prasad Pokharel	Engineer
100	Mr. Keshav Prasad Pulami	Engineer
101	Prof. Khem Nath Dallakoti	Engineer
102	Mr. Khem Prasad Dahal	Accountant
103	Mr. Kishor Babu Aryal	Engineer
104	Mr. Komal Natha Atreya	Engineer
105	Mr. Rishi Ram Koirala	Engineer
106	Mr. Krishna Sharan Chakhun	Engineer,
107	Mr. Kul Ratna Bhurtyal	Former Chief Justice
108	Mr. Kumar Sharma Acharya	Senior Advocate
109	Mr. Kushum Shrestha	Senior Advocate
110	Mr. Lal Krishna K.C.	Engineer
111	Mr. Lava Raj Bhattarai	Engineer
112	Mr. Laxman Krishna Malla	Engineer,
113	Mr. Laxman Prasad Mainali	Lawyer
114	Mr. Lekh Man Singh Bhandhari	Engineer
115	Mr. Lok Bahadur Karki	Advocate
116	Mr. Madan Gopal Maleku	Engineer
117	Mr. Madan Shankar Shrestha	Engineer,
118	Mr. Madhab Prasad Paudel	Former Secretary, Law

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122	Mr. Madhusudan Pratap Malla	Engineer
123	Mr. Mahendra Bahadur Gurung	Engineer
124	Mr. Mahendra Kumar Yadav	Engineer
125	Mr. Mahendra Narayan Yadav	Engineer
126	Mr. Mahendra Nath Sharma	Engineer
127	Mr. Mahesh Bahadur Pradhan	Engineer
128	Mr. Mahesh Kumar Agrawal	Entrepreneur
129	Mr. Manoj Kumar Sharma	Engineer
130	Mr. Manoj Kumar yadav	Engineer/Legal
131	Mr. Matrika Prasad Niraula	Senior Advocate
132	Mr. Meen Raj Gyawali	Engineer
133	Mr. Min Bahadur Rayamajhee	Former Chief Justice, Supreme Court
134	Mr. Mitra Baral	Civil Service
135	Mr. Mohan Man Gurung	Engineer/Advocate
136	Mr. Mohan Raj Panta	Engineer
137	Mr. Mukesh Kumar Kafle	Engineer
138	Mr. Mukunda Sharma Paudel	Advocate
139	Mr. Murali Prasad Sharma	Advocate
140	Mr. Nagendra Nath Gnawali	Engineer
141	Mr. Nagendra Raj Sitoula	Consultant
142	Mr. Narayan Datt Sharma	Advocate/Engineer
143	Mr. Narayan Prasad Koirala	Engineer
144	Mr. Narendra Bahadur Chand	Engineer,
145	Mr. Narendra Kumar Baral	Engineer
146	Mr. Narendra Kumar K.C	Lawyer
147	Mr. Narendra Kumar Shrestha	Former Deputy Attorney General
148	Mr. Naveen Mangal Joshi	Engineer

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152	Mr. Pawan Karki	Engineer
153	Mr. Poorna Das Shrestha	Civil Engineer
154	Mr. Prabhu Krishna Koirala	Advocate
155	Mr. Prakash Jung Shah	Engineer
156	Mr. Prakash Poudel	Engineer
157	Ms. Prativa Neupane	Advocate
158	Mr. Purna Man Shakya	Senior Advocate
159	Mr. Purnendu Narayan Singh	Engineer
160	Mr. Purusottam Kumar Shahi	Engineer
161	Mr. Puspa Raj Pandey	Lawyer
162	Mr. Radheshyam Adhikari	Advocate
163	Mr. Raghav Lal Vaidya	Senior Advocate
164	Mr. Rajan Adhikari	Advocate
165	Mr. Rajan Raj Pandey	Engineer
166	Mr. Rajendra Kishore Kshatri	Advocate
167	Mr. Rajendra Kumar Bhandhari	Former Justice, Supreme Court
168	Mr. Rajendra Niraula	Engineer
169	Mr. Rajendra Poudel	Engineer
170	Dr. Rajendra Prasad Adhikari	Project Mgmt, Advocate
171	Mr. Rajendra Prasad Kayastha	Engineer
172	Mr. Rajendra Prasad Yadav	Engineer
173	Mr. Raju Man Singh Malla	Advocate
174	Mr. Ram Prasad Acharya	Lawyer
175	Mr. Ram Prasad Gautam	Advocate
176	Mr. Ram Prasad Shrestha	Legal
177	Mr. Ram Prasad Silwal	Engineer
178	Mr. Ram Prasad Silwal	Engineer
179	Mr. Ram Shanker Khadka	Lawyer

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180	Mr. Ramesh Kumar Ghimrie	Advocate
181	Mr. Ramesh Prasad Rijal	Engineer
182	Mr. Ramesh Raj Satyal	Auditor
183	Mr. Rameshwar Lamichhane	Engineer
184	Mr. Rameshwar Prasad Kalwar	Engineer
185	Mr. Ravi Sharma Aryal	Judge of Supreme Court
186	Mr. Resham Raj Regmi	Senior Advocate
187	Mr. Rishi Kesh Sharma	Engineer
188	Mr. Rishi Kesh Wagle	Dean KU, Law
189	Mr. Rishi Ram Sharma Neupane	Engineer (Water Mgmt)
190	Mr. Roshan Soti	Engineer
191	Mr. Rudra Prasad Sitaula	Lawyer
192	Mr. Rupak Rajbhandari	Engineer
193	Mr. Sahadev Prasad Bastola	Former Judge
194	Mr. Sajan Ram Bhandary	Advocate
195	Mr. Sanjeev Koirala	Engineer
196	Mr. Santosh Kumar Pokharel	Engineer
197	Mr. Sarala Moktan	Advocate
198	Mr. Sarb Dev Prasad	Engineer
199	Mr. Saroj Chandra Pandit	Engineer
200	Mr. Saroj Kumar Upadhaya	Engineer
201	Mr. Satya Narayan Shah	Engineer
202	Mr. Shailendra Kumar Dahal	Senior Advocate
203	Mr. Shaligram Parajuli	Engineer
204	Mr. Shambhu Thapa	Senior Advocate
205	Mr. Sharada Prasad Sharma	Engineer
206	Ms. Sharda Shrestha	Former Justice, Supreme Court
207	Mr. Sher Bahadur Karki	Advocate
208	Mr. Shishir Koirala	Engineer
209	Mr. Shital Babu Regmee	Engineer

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210	Mr. Shiva Kumar Basnet	Engineer,
211	Mr. Shiva Prasad Sharma Paudel	Engineer
212	Mr. Shiva Prasad Uprety	Engineer
213	Mr. Shree Prasad Agrahari	Engineer
214	Mr. Shree Prasad Pandit	Lawyer
215	Mr. Shyam Bahadur Karki	Engineer
216	Mr. Shyam Bahadur Pradhan	Former Justice
217	Mr. Shyam Prasad Kharel	Engineer
218	Mr. Siddha Prasad Lamichanne	Lawyer
219	Mr. Som Bahadur Thapa	Lawyer
220	Mr. Som Nath Poudel	Engineer
221	Mr. Subash Kumar Mishra	Engineer
222	Mr. Subhash Chandra Verrma	Engineer (Civil)
223	Mr. Sujjan Lopchan	Advocate
224	Mr. Suman Kumar Rai	Advocate
225	Mr. Suman Prasad Sharma	Engineer
226	Mr. Suman Rayamajhi	Chartered Accountant
227	Mr. Sunil Bahadur Malla	Engineer
228	Mr. Sunil Ghaju	Engineer
229	Mr. Sunil Kumar Dhungel	Electrical Engineer
230	Mr. Sunil Kumar Dhungel	Engineer
231	Mr. Sunil Man Shakya	Legal
232	Mr. Suresh Chitrakar	Engineer
233	Mr. Suresh Kumar Regmi	Engineer
234	Mr. Suresh Kumar Sharma	Engineer
235	Mr. Suresh Man Shrestha	Former Law Secretary
236	Mr. Surya Dev Thapa	Engineer
237	Mr. Surya Nath Upadhyay	Former CIAA Chief/Advocate
238	Mr. Surya Prasad Koirala	Advocate
239	Mr. Sushil Bhatta	Engineer
240	Mr. Suvod Kumar Karna	Chartered Accountant

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241	Mr. Tanuk Lal Yadav	Engineer
242	Mr. Tara Dev Joshi	Advocate
243	Mr. Tara Man Gurung	Engineer
244	Mr. Tara Nath Sapkota	Engineer
245	Mr. Tej Raj Bhatta	Advocate
246	Mr. Tek Nath Acharya	Chartered Accountant
247	Mr. Thaneshwar Kafle	Advocate
248	Mr. Tilak Prasad Rijal	Lawyer
249	Mr. Tilak Prasad Rijal	Lawyer
250	Mr. Trilochan Gauchan	Advocate
251	Mr. Tul Bahadur Shrestha	Advocate
252	Mr. Tulasi Bhatta	Senior Advocate
253	Mr. Udaya Nepali Shrestha	Former Secretary, Law
254	Mr. Uddhav Prasad Kadariya	Tax Counselor

S.N	Name	Profession
255	Mr. Uma Kanta Jha	Engineer
256	Mr. Umesh Jha	Engineer
257	Mr. Upendra Dev Bhatta	Engineer
258	Mr. Upendra Rja Upreti	Advocate/Engineer
259	Mr. Varun P. Shrestha	Engineer
260	Mr. Vinod Prasad Dhungel	Former Judge
261	Mr. Vishnu Bahadur Singh	Engineer
262	Mr. Vishwa Nath Khanal	Engineer
263	Mr. Yadav Adhikari	Nepal Police
264	Mr. Yagya Deo Bhatt	Engineer
265	Mr. Yajna Man Tamrakar	Engineer
266	Mr. Yaksha Dhoj Karki	Construction Entrepreneur
267	Mr. Yoganand Yadav	Engineer
268	Mr. Yubaraj Snagroula	Senior Advocate

NEPCA Ordinary Members

S.N.	Name	Profession
1	Mr. Abhi Man Das Mulmi	Engineer
2	Mr. Ajay Adhikari	Engineer
3	Mr. Ambika Prasad Upadhyay	Engineer
4	Mr. Ananta Acharya	Engineer
5	Mr. Babu Lal Agrawal	Engineer
6	Mr. Bharati Prasad Sharma	Engineer
7	Mr. Chet Nath Ghimire	Advocate
8	Mr. Deepak Man Singh Shrestha	Engineer
9	Mr. Devendra Shrestha	Architect
10	Federation of Contractors' Association of Nepal	Institutional
11	Mr. Gouri Shankar Agrawal	Engineer
12	Mr. Guru Bhakta Niroula Sharma	Advocate
13	Mr. Kalyan Gyawali	Engineer
14	Ms. Kamala Upreti Chhetri	Advocate
15	Mr. Kashi Raj Dahal	Chief, Administrative
16	Mr. Laxman Prasad Adhikari	Engineer
17	Mr. Mahendra Kanta Mainali	Advocate
18	Mr. Narendra Kumar Dahal	Financial Analyst
19	Mr. Prabhu Krishna Koirala	Advocate
20	Mr. Pramesh Tripathi	Engineer

S.N.	Name	Profession
21	Mr. Pramod Krishna Adhikari	Engineer
22	Mr. Puskar Pokhrel	Advocate
23	Dr. Rabindra Nath Shrestha	Engineer
24	Mr. Rabindra Shah	Engineer
25	Mr. Raj Narayan Yadav	Engineer
26	Mr. Rajeev Pradhan	Engineer
27	Dr. Ram Chandra Bhattarai	Lecturer, T.U.
28	Mr. Sadhu Ram Sapkota	Lawyer
29	Mr. Santosh K. Pokharel	Engineer
30	Mr. Satyendra Sakya	Engineer
31	Mr. Shankar Prasad Agrawal	Advocate
32	Mr. Shankar Prasad Yadav	Engineer
33	Mr. Shant Raj Sharma	Financial Analyst
34	Mr. Shiva Ram K.C	Engineer
35	Mr. Sita Prasad Pokharel	Advocate
36	Mr. Sital Kumar Karki	Advocate
37	Mr. Temba Lama Sherpa	Engineer
38	Mr. Tilak Prasad Rijal	Lawyer
39	Mr. Tribhuvan Dev Bhatta	Advocate

Table 1. Indicative Status of Adjudication Cases in the Year 2077/78 in NEPCA

SN	R.Date	Case Name	Contract Amount	Description of Claim	Admin. Cost	Award Date	Claim Amount	Award Amount	Award Decision	Rules Followed
1	01/08/2076	Nandu Akash JV Vs. District Election Commission, Malangwa, Sarfahi	13309549.44	Construction of Office Building of District Election, Malangwa	60000.00	06/04/2077	3286996.21	3286996.21	Claim Accepted	NEPCA Rules
2	29/08/2076	Kaika - Kumar JV Vs. DOWRI, Tikapur	1717915453.51	RUIP/Lamki Extension/CB-04/07273	507500.00	09/03/0278	133888901.00	44945051.73	Claim Accepted	NEPCA Rules
3	09/06/2077	Ashish Prithivi JV Vs IDO, Mugu	95404159.80	Bridge Construction Works of Karnali River Matarable Bridge.	371650.00	10/02/2078	81311465.93	429700.00	Claim Rejected	NEPCA Rules
4	30/01/2077	NEA Vs. Tata Projects	2100550767.00	Kaigandaki Transmission Corridor (Dana-Kushma 220KV transmission line)	456475.00	21/01/2078	148975135.00	33586971.40	Claim Accepted	NEPCA Rules
5	14/06/2077	Shyam Sundar Nirman Sewa Vs CLPIU (Education)	203729904.73	Construction of 4 Schools building complex in Gorkha District	55164.00	10/12/2077	1621283.00	1621283.00	Claim Accepted	NEPCA Rules
6		Administrative Cost Received from 3 DB Cases			1153750.00					
			4130909834.48		2604539.00		369083781.14	83870002.34		
							8.93%	22.72%		

Table 2. Indicative Status of Arbitration Cases in the Year 2077/78 in NEPCA

S.N	R. Date	Case Name	Issues	Arbitrators Status	Date of Decision	Administration Cost	File to District Court	Appeal	Contract Amount	Claim	Award Amount	Award Decision	Appeal Decision	Rules Followed
1	12/04/2075	DOR Vs Lohani & Brothers-Lohani & Sons Joint Venture	Construction of Bridge at Pamfa River, Chipileti Bridge	E	26/06/2077	1410000.00	19/08/2077	No Record	37778658.13	2061205.06	2061205.06	Claim Accepted	No info	NEPCA
2	25/08/2075	Diwa-Jagriti JV Vs. DOR	KHCP/CG/19/068/069; Construction of Road Works (Ghurmi Chatalara Koshi Corridor)	E	06/01/2077	308063.00	08/12/2077	No Record	8214111.30	75562661.70	0.00	Claim Rejected	No info	NEPCA
3	25/08/2075	Himdung & Thokar Construction Pvt. Ltd Vs. DOR	KHCP/CG/12/068/069; Construction of Road Works (Ghurmi Chatalara Koshi Corridor)	E	06/01/2077	294120.00	08/12/2077	No Record	8523678.80	77467556.08	0.00	Claim Rejected	No info	NEPCA
4	12/05/2076	Bhairab Hospital Vs. Priera Niman Sewa - 2077/78	015/068/069 - Construction of 1st and 2nd Floor of A - Block, Bhairab Hospital	ELE	27/04/2077	317901.00	15/08/2077	No Record	176550544.00	28743798.42	11095405.39	Claim Accepted	No info	NEPCA
5	20/04/2076	Himal Hydro Vs. Mountain Hydro	तल्लो बिना बोला जलविद्युत परियोजना निर्माण कार्य सम्बन्धी	ELE	08/04/2077	1099916.82	10/02/2077	No Record	1572176925.25	1239833632.00	90578944.81	Claim Accepted	No info	NEPCA
6	22/04/2076	Lama Danfe Golden Good Vs DOR	3373124/TRIP/JV/07172-01 Improvement of Road to Six Lane Standards	E	12/11/2077	380000.00	02/07/2078	No Record	4484430761.44	24244684.81	17840614.30	Claim Accepted	No info	NEPCA
7	22/04/2076	Lama- Danfe-Dukchu Vs. DOR	3373124/TRIP/JV/07172-02 Improvement of Roads to six Lane standards of Jalahi - Janakpur Section	E	12/11/2077	380000.00	02/07/2078	No Record	496032465.29	20478263.71	15969007.11	Claim Accepted	No info	NEPCA
8	05/08/2076	Sapana K.S. Nandagada Vs. DOR	DR/MNR/3371574/07172-079 Construction of Bridge along Connecting Dhangadhi 6 and 7, Kailali	LLE	17/09/2077	183500.02	14/11/2077	No Record	31432854.73	50000000.00	2803355.81	Claim Accepted	No info	NEPCA
9	20/03/2076	GM Construction Pvt. Ltd Vs District Administrative Office	Construction Of Building	EEL	28/08/2077	2.60.000	11/07/2077	No Record				Claim	No info	
10	15/07/2076	Kalka-Tamang-Pacific JV Vs. DOR	ACQMP/TRIP/BB-01/070/71	LLE	14/11/2077	400000.00	01/10/2078	No Record	456401486.10	110725300.00	67130923.60	Claim Accepted	No info	NEPCA
11	28/09/2076	Ashish Niman Sewa Vs DOR, Surkhet	DROS/KT/3371574/069-70/160 ; Construction of Steel Truss Bridge Over Bherinadi Bairital, Chisapani in Jajarkot district	LLL	17/03/2078	243750.00	05/11/2077	No Record	78906575.50	17700000.00	8428020.00	Claim Accepted	No info	NEPCA
12	09/11/2076	KFA-CMC-SMART JV Vs. Home Ministry	Consultant Service for Conducting Psychosocial Service	LLL	30/12/2078	245000.00	03/04/2078	No Record	59824347.00	15357167.42	2126942.71	Claim Accepted	No info	AAAct
13	09/05/2076	Sita Information Networking VS TIACAO	Design, Installation, Commissioning and Operation of Common Use Terminal Equipment System at TIA	LLL	09/03/2077	590000.00	11/07/2077	No Record	Unknown	220000000.00	0.00	Claim Rejected	No info	UNCITRA
14	12/02/2076	NRNA Vs. DE-For Designer	Dispute relating to Planning, Architectural and Engineering Redesign and Construction Management for LAPRAK Model Settlement Development Project (LMSDP)	LLL	26/12/2077	120000.00	28/02/2078	No Record	8834912.00	4250000.00	3952910.42	Claim Accepted	No info	NEPCA
15	03/07/2077	Bhairab Construction Vs DOR, Harkakathwa Bridge -002	HRP/3372244/071-72/BC-002 "Construction of RCC Bridge for Harkakathwa River, Nava Road Madhuwani Road, Sarlahi"	EEL	26/03/2078	169250.00	06/01/2078	No Record	10356974.00	5500000.00	3840000.00	Claim Accepted	No info	NEPCA
16	03/07/2077	Bhairab Construction Vs DOR, Harkakathwa Bridge -005	HRP/3372244/071-72/BC-005 "Construction of RCC Bridge for Harkakathwa River, Nava Road Madhuwani Road, Sarlahi"	EEL	26/03/2078	169250.00	06/01/2078	No Record	10377469.00	7625881.80	5214840.83	Claim Accepted	No info	NEPCA
17	19/03/2076	Kankai/Gorkha/Appropriate JV Vs DOR, Western Regional, Gorkha - C1(Re)	11 CRP/3373204/073-74/MYC1 (Re); Construction of Motorable RCC Bridge Across Ajura Khola Benighat Anghat Larkebhanyang Road	L	10/04/2077	198873.00	12/06/2077	No Record	45148420.07	2072681.65	0.00	Claim Rejected	No info	NEPCA

18	19/03/2077	Kankai/Gorkha/Appropriate JV Vs DOR, Western Regional, Gorkha - C4	12 CRP/3373204/073-74/MYC4; Road Upgradation Works Along Phinimaar Jaabaari Bhachhek Road (CH 0+000 onwards)	L	11/04/2077	198873.00	12/08/2077	No Record	114644522.72	10643827.07	0.00 rejected	No info	AAct
19	19/03/2078	Kankai/Gorkha/Appropriate JV Vs DOR, Western Regional, Gorkha - C2 Re	11 CRP/3373204/073-74/MYC2 (Re); Road Up gradation works along 11 kilo Chhepeiaar Bhaluswaara Barpak Road (CH 17+000--22+200)	L	12/04/2077	198873.00	12/08/2077	No Record	134873885.83	9074700.12	0.00 rejected	No info	AAct
20	28/03/2077	Nepal Adarsha -Tamang JV Vs. DOR	EEAP/NCB/DG-03; Earthquake Emergency Assistance Project	ELL	13/03/2078	338982.00	25/05/2078	No Record	275245262.14	39745412.00	5066296.73 Accepted	No info	NEPCA
21*	13/07/2077	TOIL- Santoshi JV (R) Vs. DOR @	RIP/EXIM/TS-04	EEE	08/05/2077	180000.00	14/07/2077	No Record	Unknown	80000000.00	23213535.40 Accepted	No info	Bath*
22*	06/09/2077	Simple Media Network Vs. Kamakhya Digital Cable Network	Exclusive distribution Ship, Master Distribution Ship	LLL	12/02/2077	340000.00	02/07/2078	No Record	Unknown	400297975.20	53000000.00 Accepted	No info	Bath*
23*	11/11/2076	Madav Khamti Nirman Sewa Vs National Reconstruction Authority NRA Center level Project Implementation Unit Education	ESRP/MOE/CLPIU/073/074-Nuwakot-03	EEE	04/07/2077	240000.00	06/09/2077	No Record	214385826.50	58797051.22	18947501.02 Accepted	No info	NEPCA
24*	07/05/2076	Rishi Tundi Jv Vs Department of Roads	Variation, Interest	E.E.E	27/4/2077	80000.00	23/06/2077	No Record	468632894.00	65283900.47	16271000.01 Accepted	No info	AAct
25*	08/12/2077	Mahadev Khimti Nirman Sewa Vs Department of Transportation Management	Mechanical Works of Vehicle Fitness Test Center (VFTC)	ELE	16/10/2077	74000.00	20/12/2077	No Record	16925000.00	6696270.78	397640.31 Accepted	No info	AAct
						6891351.84			8709697773.80	2527161969.51	347938143.51		
										29.02%	13.77%		

* Indicate Re-Award after receiving file from court



Note:



Note:





Executive Committee Meeting

NEPCA Staff



Mr. Rajeev Pradhan
Director



Mr. Bipin Paudel
Manager



Mr. Purnadhoj Karki
Asst. Account Officer



Mr. Baburam Tamang
Receptionist



Mrs. Sabita Khadka
Office Helper



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Kupondol, Lalitpur, Nepal
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