

Strategic DRBs: Why They're The Smartest Line of Defence in Infra Projects



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Dispute Review Board

A Dispute Review Board (“DRB”) is a concurrent mechanism for resolution of disputes before resorting to arbitration or litigation. The DRB is constituted at the very start of a construction project and consists of independent and impartial professionals. The DRB follows construction progress, encourages dispute avoidance, and assists in resolving disputes that may arise during the execution of the project.

The objective of having a DRB is to avoid and adjudicate disputes by and/or resolving disputes as and when they arise during the life cycle of the project and simultaneously ensuring uninterrupted flow of work.²

DRBs and arbitration are both ADR methods, but DRBs are actively involved during the project through site visits and early recommendations, while arbitration is invoked only after disputes arise. Indian courts have affirmed the binding nature of DRB clauses, holding that parties must follow the agreed dispute board process before initiating arbitration, thus upholding the integrity of multi-tiered dispute resolution frameworks. Jammu & Kashmir & Ladakh HC ruled that if a party fails to initiate and notify the constitution of the DRB, the only remaining option for resolving the dispute is through arbitration.³

Fédération Internationale Des Ingénieurs-Conseils

Founded in Belgium in 1913, FIDIC (Fédération Internationale Des Ingénieurs-Conseils) represents consulting engineers globally, with members in around 100 countries. It introduced its first standard form contract in 1957, becoming a key authority in international construction contracts.⁴

¹ Indian Council of Arbitration, *Improving the Functioning of Dispute Review Boards (DRB) in India: Standard Operating Procedures for Dispute Boards in India 1* (World Bank & Indian Council of Arbitration, Apr. 2016), <https://icaindia.co.in/pdf/Final-SOP.pdf>

² Amit Meharia & Sambhav Choudhary, *Dispute Avoidance/Adjudication Board: Shift in Dispute Resolution of EPC Contracts*, MCO Legals (Aug. 5, 2024), <https://www.barandbench.com/view-point/dispute-avoidance-adjudication-board-shift-in-dispute-resolution-of-epc-contracts>.

³ Pardeep Elecs. & Bldg. Pvt. Ltd. v. Union of India, Arb. P No. 47/2023, High Ct. J&K & Ladakh at Jammu, Nov. 21, 2024

⁴ Introduction to the FIDIC Suite of Contracts (Updated), JD Supra (Jan. 11, 2020), <https://www.jdsupra.com/legalnews/introduction-to-the-fidic-suite-of-41980>.

Construction and engineering projects often face complex disputes. To ensure timely and fair resolution, FIDIC has integrated Dispute Adjudication Boards (“**DABs**”) and Dispute Avoidance/Adjudication Boards (“**DAABs**”) into its widely adopted Rainbow Suite of Contracts, promoting smoother project execution and stronger stakeholder cooperation.⁵

FIDIC contracts are widely accepted as the global standard in the consulting and construction industry. Their success lies in a balanced approach to roles, risk allocation, and clear guidance on providing factual assessment to suit specific project needs. In India, they are commonly used in large-scale infrastructure and engineering projects, particularly by public sector bodies like NHA and AAI.

To ensure transparent and timely resolution of unforeseen disputes in renewable energy projects, the MNRE has set up a three-member Dispute Resolution Committee (“**DRC**”) for issues beyond contractual terms with SECI/NTPC. This mechanism covers appeals on Extension of Time (“**EoT**”), including policy or legal delays. Appeals must be filed within 21 days along with a 5% fee of the financial impact. The DRC, following norms akin to FIDIC and NHA DRBs, submits recommendations to MNRE within 21 days for final approval by the minister.⁷

The National Highways Authority of India (“**NHA**”) has instituted 97 DRBs to proactively resolve disputes in infrastructure projects before they escalate. Each DRB, comprising three independent members, conducts regular site visits to monitor progress and address issues early. This approach ensures factual clarity, supports smoother conciliation or arbitration, and reduces litigation. DRB has proven effective in accelerating project timelines and promoting collaborative dispute resolution.⁸

⁵ Enhancing Project Delivery Through FIDIC DABs and DAABs: Insights and Innovations, FIDIC (Aug. 16, 2024), <https://fcl.fidic.org/enhancing-project-delivery-through-fidic-dabs-and-daabs-insights-and-innovations/>.

⁶ Consulting Engineers Ass’n of India (CEAI), Dispute Resolution Mechanism in FIDIC-Based Construction Contracts in India, <https://www.ceai.org.in/dispute-resolution-ceai/> (July 31, 2022).

⁷ Ministry of New & Renewable Energy, Shri R.K. Singh Approves Dispute Resolution Mechanism for Solar/Wind Sector, PIB Delhi (June 19, 2019), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1575005>.

⁸ Ministry of Road Transport & Highways, NHA Settles 60 Conciliation Cases in FY 2021-22, PIB Delhi (Apr. 6, 2022), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1814074>.

How global best practices show DRBs success rates.

Globally, FIDIC's DABs and DAABs offer effective early dispute resolution in construction projects, reducing delay and maintaining continuity. With expert-led, project-specific oversight, they help avoid costly legal battles—achieving a 94% success rate per ADB's 2018 study. Their structured yet flexible approach preserves stakeholder relationships and fosters collaborative risk management. These features make them vital tools for successful project execution.⁹

A limited study of 28 cases revealed a high success rate for government authorities before DRBs. In cases involving the Airports Authority of India (AAI), 92% of claims were decided in AAI's favor. Similarly, in 18 cases involving the NHAI, 60% of the claims were awarded to NHAI—highlighting the effectiveness of DRBs in supporting public sector claims.¹⁰

Landmark Delhi HC Ruling Affirms DRB Decisions as Binding Arbitral Awards with Direct Enforceability and Defined Limitation Period

SJVN awarded JHC a contract in the Nathpa Jhakri Hydro Project¹¹, where a dispute over DG set power costs was upheld by the DRB. Though the DRB directed payment of Rs.1.83 crore with interest, SJVN did not comply. Courts held such DRB decisions are arbitral awards and dismissed SJVN's suits. JHC's 2021 execution petition was later rejected as time-barred, with the court clarifying that DRB awards are enforceable from the date they are issued.

This ruling provides legal clarity that a DRB's decision no longer requires court confirmation for its enforcement. It also clarifies limitation period of DRB's decision as 12 years from its decision in accordance with article 136 of limitation act.

The ruling makes it clear that simply filing or keeping a suit pending to challenge a DRB award does not pause the limitation period, especially in the absence of an interim stay—effectively rejecting any justification for

⁹ *Enhancing Project Delivery Through FIDIC DABs and DAABs: Insights and Innovations*, FIDIC (Aug. 16, 2024), <https://fcl.fidic.org/enhancing-project-delivery-through-fidic-dabs-and-daabs-insights-and-innovations/>.

¹⁰ Sumit Sharma & Sushil Kumar Solanki, *An Analysis of Dispute Review Boards in Public Sector Organizations in India*, 4 *Int'l J. Advances Eng'g & Mgmt.* 90 (May 2022), https://www.ijaem.net/issue_dcp/An%20Analysis%20of%20Dispute%20Review%20Boards%20in%20Public%20Sector%20Organizations%20in%20India.pdf.

¹¹ *M/s Jaiprakash Hyundai Consortium v. SJVN Ltd.*, EFA(OS) (Comm) 15/2024, CM Nos. 14977/2025 & 33334/2025 (Del. HC May 27, 2025).

The court emphasized that parties who had earlier claimed DRB recommendations to be arbitral awards cannot later reverse their position to delay enforcement—underscoring the fundamental principle that legal arguments must remain consistent reinforcing doctrine of estoppels. This judgment stands as a landmark development, marking the first definitive move by the court to treat DRB decisions as binding and enforceable.

Cost saving nature

Dispute boards offer a faster and more cost-effective alternative to arbitration and litigation in infrastructure projects. Typically, a three-member dispute board costs only 0.05%–0.3% of a project's total cost, whereas arbitration can reach up to 10% (Chapman 2009). With daily adjudicator fees averaging \$3,000—far less than arbitration's \$500–\$1,500 hourly rates—dispute boards not only reduce financial burden but also help maintain working relationships, which is crucial in regions like Asia-Pacific (Castro 2013). Lawyers enhance the effectiveness of dispute boards by drafting procedures, advising clients, and offering decisions with legal weight, often resolving issues more swiftly due to their familiarity with the contract.¹²

Dispute can take years to resolve through arbitration, and even longer through litigation.

NJDG lists data of total no of pending cases at supreme court of India are 39.04 % less than a year-old cases date.¹³ In district courts total pending cases are 66.89 % which are more than a year old.¹⁴ Similarly in high court data shows total no of pending cases as 75.57 % which are more than a year old.¹⁵

¹² Livia Sapochetti, Veronica Wee & K.E. Seetha Ram, *Bringing Lawyers Back to the Table for FIDIC Contracts and Dispute Boards*, Asia Pathways (Asian Dev. Bank Inst., Oct. 25, 2022), <https://www.asiapathways-adbi.org/2022/10/bringing-lawyers-back-to-the-table-for-fidic-contracts-and-dispute-boards>

¹³ Supreme Court of India, National Judicial Data Grid (NDJG), <https://scdg.sci.gov.in/scnjdg/> (last updated July 4, 2025).

¹⁴ District Courts of India, National Judicial Data Grid (NDJG), https://njdg.ecourts.gov.in/njdg_v3/ (last updated July 4, 2025).

¹⁵ High Courts of India, National Judicial Data Grid (NDJG), https://njdg.ecourts.gov.in/hcnjdg_v2/.

In recent years, many infrastructure projects in the construction sector have become entangled in lengthy legal battles. Often, even after an arbitral award is granted, payment is delayed due to court challenges, which can take several years to resolve. This delay blocks substantial funds tied to these projects, creating liquidity issues for contractors and concessionaires. As a result, their financial health deteriorates, which in turn affects their ability to repay loans—contributing to rising NPAs in the banking sector.¹⁶

Conclusion

DRBs serve as a timely and economical dispute resolution tool, actively minimizing conflicts during infrastructure projects. With judicial recognition equating their decisions to arbitral awards, they ensure enforceability and reduce prolonged litigation. Their preventive approach enhances project efficiency, safeguards liquidity, and supports the broader health of the infrastructure and finance ecosystem.

¹⁶ Cabinet Comm. on Econ. Affs., *Cabinet Approves Initiatives to Revive the Construction Sector*, Press Info. Bureau (Nov. 20, 2019), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1592542>.