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Analysis on Critical Success of Alternative Dispute Resolution in Cross Border Business Transaction

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Abstract

This sector of the research helps by introducing an international dispute resolution process through an alternative way. Increase of cross border business resolution that can take place in business from the ADR has been demonstrated in this section in detail. Performance of USADI and CCIC in the process of alternative dispute resolution has been introduced in this section. Mutual collaboration development to promote mediation between the US and China has been introduced in this section. Legal perspective of ADR in China and the progress they are making in the path of international business relation development has been discussed in this section in detail. Apart from that, a method that is commonly followed in resolution of business issues has been addressed. The process of mediation and the benefits that it can get from introduction of the ADr through meditation has been included in this section. Application of ADR in a broader perspective has also been introduced in this

section. Other than that, the gap in literature has been mentioned in this section and a detailed conceptual framework has also been added.

LITERATURE REVIEW

1. Introduction

A literature review is one of the most important chapters which could be considered as the base of any research. This chapter provides in-depth ideas about the research topic to understand the effectiveness, influence and impact of the topic in the practical world. As per the topic of the current study, dispute management could be considered one of the most important factors for cross-border e-business. As per the modern business trends, cross-cultural business expansion is necessary for the growth and development of e-commerce businesses. This chapter develops the ideas of disputes along with management of those issues with rules and regulations. The use of the internet along with the demand and necessity of consumers of different regions for different cross border products and services have enabled the e-commerce business to spread across cultural countries.

The rules and regulations, trading format, and taxation procedures are different for different countries and that significantly increased disputes in this kind of business (Amro, 2019). However, the resolution of the dispute is necessary to be resolved in time to force business smoothly. The dispute management regulation, methodology, and system are also different for different regions but it carries similarities to maintain effectiveness in solving cross border issues. In this chapter, a brief discussion of the online and alternative dispute resolution process is presented as per the opinion and findings of past researchers.

2. Dispute resolution in cross border business and online method

Business expansion in cross-cultural countries becomes the modern trend of internationalization of business. E-commerce businesses often proceed with immense risk of dispute. Resolution of disputes could be inevitable in the case of maintaining business growth and development. The use of the internet has expanded a lot and it is the easiest way to expand the market in cross border countries (Bakhramova, 2022). Offline transactions of funds, ideas, and revenue could be risky and the same could be considered for online transactions too due

to the high chances of cybercrime. E-commerce transactions often resulted in e-dispute which could be harmful to cross-border business. For the safety of e-commerce businesses in cross-culture, it is an absolute necessity to ensure about all parties become concerned for the safety of transactions. There need to be intact imperativeness regarding e-disputes to be resolved soon. As per the opinion of Amro (2019), cross border disputes should be resolved before the transaction as uncertainty in legal regulations could be inhabitant for both consumers for purchasing services or products through the internet.

“Online Dispute Resolution (ODR)” could be considered one of the best solutions to manage e-dispute in cross-border business. It is a similar process to the traditional “Alternative dispute resolution (ADR)” method but is more easy and quick to provide faster resolution of e-dispute. ODR method could be considered as the legal provision of the country's government to boost cross-border business expansion. ODR could be referred to as the deployment of computer networks and several applications to resolve disputes through ADR methods (Usanti *et al.,* 2020). This process fastens the process of ADR and makes it more reliable and valid. However, both the common offline disputes and e-disputes could be solved through this method. There are several types of ODR systems such as online settlement, online arbitration, online resolution of consumer complaints, and online mediation. It could be stated that both of the ODR systems are most effective, innovative and credible to provide the most effective and trustworthy solution for dispute management process in the case of e-commerce business in cross border countries especially in China.

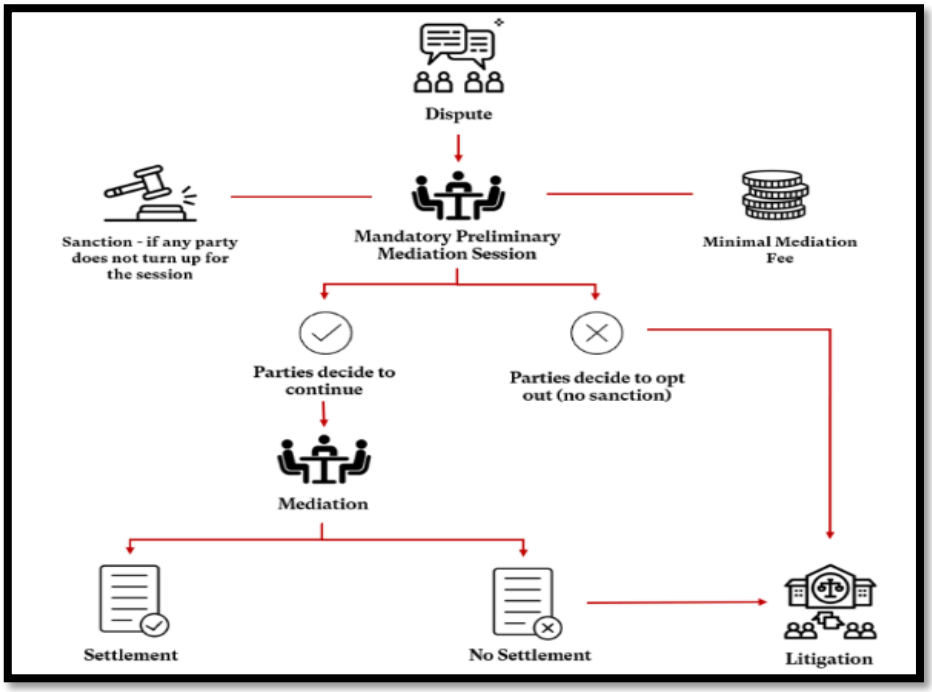

Figure 2.1: Process of "Online Dispute Resolution (ODR)" (Source: Evans, 2019)

As per the opinion of Strzelecki (2019), online settlement uses the expert system in order to settle down financial claims automatically. It is effective, especially for the cross-border monetary transactions which needed additional safety from being stolen through cybercrime. On the other hand, Bakhramova (2022) has stated that Online arbitration could be considered the most necessary ODR method that resolves disputes through websites with the support of highly qualified arbitrators. This process of ODR could be effective to resolve cross-border e-dispute, especially regarding any kind of legal procedures that differ across cultures especially in China. In case of resolution of disputes faced by the end of consumers, there is Online resolution of consumer complaints is the most trustworthy ADR system. This online dispute resolution methodology is effective to obtain consumer complaints (Evans, 2019). This service effectively uses e-mail to collect consumer complaints from cross-border businesses. Online mediation is another effective type of ODR system that effectively deals with qualified mediators to solve e-dispute in China. It could be stated that each and every dispute management system under ODR are specialized for each kind of dispute occurred in the e-commerce business. In the case of cross bordered countries,

effective negotiation along with providing effective solutions could be made under this process to maintain effective communication.

2.1 Online Settlement

The online settlement as ODR possesses to resolve financial disputes is famous in the US. In the strict sense, this system is the most advanced form of dispute resolution in case of solving e-dispute for financial purposes. Cybersettle is the first website for the resolution of disputes in the case of financial issues (Sinaga *et al.,* 2020). This website could be considered one of the most needed websites for resolving financial issues in cross border e-commerce businesses. Developed countries are the most effective to use this system to resolve their business-related disputes focusing on financial issues in cross-border business especially in China. Using an expert system, Cybersettle offers quick online settlement in the case of insurance-related claims in cross-border e-business. The second website for dispute resolution could be considered to be Clicknsettle. This system offers business parties to resolve any kind of monetary dispute using an expert system (Abedi *et al.,* 2019). In fact, the system has been built in such a process that each party never knows the sum has been offered by an alternative party. It matches each double-blind demand and offers of business parties. This system enabled parties to proceed with three offers and the plaintiff need to counter those offers with alternative three demands. During a 60-day period, the system offers possible dispute resolution. It could be stated that the Click settle application is more advanced than Cyber settle.

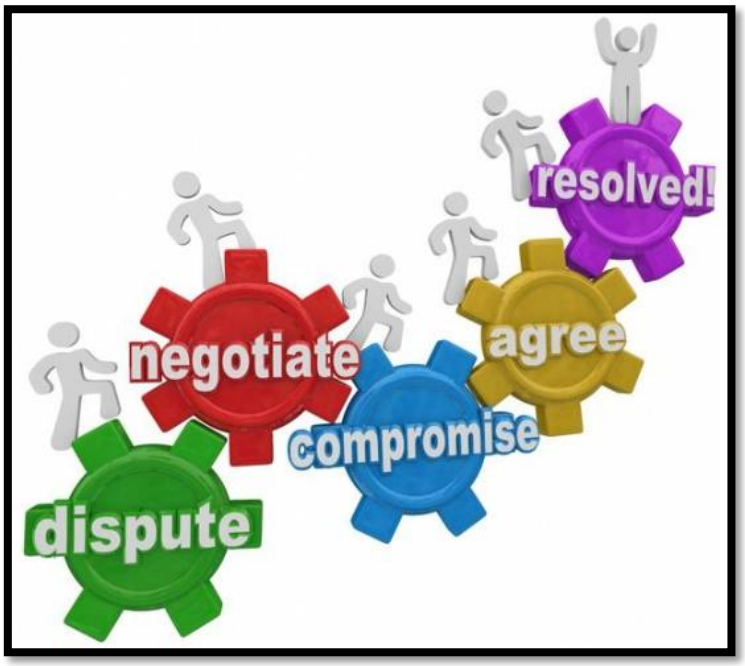

Figure 2.2: Online settlement process
(Source: Erie, 2019)

The main factor of this online settlement is that both sites are confidential and it maintains the data confidentiality effectively. These sites are user friendly and allow both parties to end up with an agreed-upon formula. The same algorithm is used by both parties to match demand and offers (Csilla, 2019). In case of reaching no settlement, parties could still negotiate with each other as they are unaware of the amount to be demanded or offered. However, it could be stated that online settlement applications and sites are extremely users- friendly and it offers the parties effective solutions for the monetary disputes in the e-commerce business. Confidentiality is the triggering factor for providing immense security using those applications. This settlement system also reduces the expenditure of parties indulging in disputes to maintain cost-effective e-dispute resolution, especially focusing on monetary transactions (Erie, 2019). In the case of providing solutions for financial insurance-related disputes along with other monetary issues, this online settlement as ODR methodology is incredible.

2.2: Online arbitration

Online arbitration is only used by Canadians to resolve any kind of e-resolution

to provide a solution for e-dispute that occurred in e-commerce businesses across border countries. It could be considered as the virtual tribunal to settle down any kind of domain name dispute. It is true that "24 The ICANN (Internet Corporation for Assignment Names and Numbers)" has proceeded to provide resolution to settle down disputes related to the domain name. In accordance with *"ICANN Uniform Domain-Name Dispute-Resolution Policy. 25"* the disputes of the domain names are resolved effectively. As per the opinion of Csilla (2019), online arbitration could be one of the best ODR processes to provide an unbiased and impartial opinion regarding e-commerce disputes. With the help of qualified arbitrators, online arbitration enabled parties to solve their domain name disputes so that they could proceed with their e-commerce business effectively. It is the most reliable and quick service for resolving disputes in cross border business. A domain name complaint needs to be submitted via email or a web-based complaints form. According to the study of Jongen and Scholte (2021), the arbitrator deal with the claim of parties with *"ICANN 's Rules"* and *"ICANN's Policy"*. There are opportunities for both parties to provide their opinion on their own claim online. After considering the opinion of both parties, arbitrators provide decisions in an unbiased and impartial manner so that it could be a fair deal.

It could be stated that online arbitration is completely safe and sound to be used effectively for the sake of the welfare of e-commerce businesses, especially across borders. As per the opinion of Kanwal *et al.,* (2020), it is the online arbitration facility that enabled dispute concerned parties to resolve their issues, especially domain name related problems so quickly that they could proceed with the business again soon. The charges for online arbitration are low which effectively makes the business resume its proceedings after resolving disputes. It is true that global e-commerce value is increasing rapidly and increasing the business has resulted in increasing disputes also. According to the research of Abedie *et al.,* (2019), proper dispute management especially under domain-related disputes could be best solved through effective online arbitration facilities. In the case of developed countries, the facilities of online arbitration are advanced and that helped e-business to proceed with effective consideration of dispute resolution so that the organization could make possibilities to resolve conflicts soon. Dealing with the most appropriate ODR system is essential for the development of e-commerce businesses in cross-border countries. As per the opinion of Jongen and Scholte (2021), online arbitration is completely reliable and valid as there are chances for complete justice for dispute solutions. However, this online arbitration system under the ODR methodology could be

effective for maintaining trust and loyalty among e-commerce businesses.

2.3: Online resolution for consumer complaints

Consumer complaints in online e-commerce business could be a natural phenomenon which needs to be solved soon to resume business. It is true that consumer demand and choice differ the most as per region basis. It is evident from the study of Jeretina (2018), that consumer complaints often crate severe disputes in e-commerce business as the rules and regulations differ for cross border countries. "Central Better Business Bureau (CBBB)" is one of the most trustworthy online handling platforms for consumer complaints from cross border e-commerce businesses. BBBOnLine is one of the subsidiary corporations of CBBB which effectively deals with cross-border consumer complaints. More than 132 business bureaus are part of CBBB. It was 1912 when the first BBB was founded and the offline SDR system has been formed. Meanwhile, with the assistance of the internet, the ADR system has been transformed into ODR one to assist cross-cultural businesses to resolve their consumer complains related disputes to be solved quickly and effectively.

The offline experience of CBBB was with the ADR system which was combined with 100% name recognition which made the system undertake the very first step of ODR through BBBOnLine. It is true that complaints could be submitted online but all the cases could not be handled through complete online procedures (Plevri, 2020). Meanwhile, the upgraded system of BBBOnLine could tries to provide conciliation after receiving complaints, by approaching an effective and suitable person. In fact, this procedure is effective to solve problems on an immediate basis. Supporting this statement Jeretina (2019) has stated that in the case of failure of online conciliation, a negotiation has been started through telephone or email in the most simplified way. However, it is not completely online but the very first step could be taken online. It is true that handling consumer complaints filly online is not possible as the personal interaction with the consumer complaints is of utmost necessity to evaluate the pain points of consumers so that the business could provide effective solutions to the issue.

The "*European Online Dispute Resolution (ODR)*" has been considered an effective initiative of the European Commission to make online shopping safe and sound and it makes access to the tools and system of quality dispute resolution. All e-commerce online businesses in traders and retailers of Iceland, the EU, and

Norway have been obliged to provide easy access links through the ODR platform along with e-mail addresses to contact the consumer. As per "*Article 14 of the Regulation (EU) No 524/2013*" the ODR system for the EU is tangible, reliable and user friendly to provide effective solutions for consumer complaints about online shopping (Bakhramova, 2022). If the business parties receive notification from the effective ODR platform, it stated that the consumer consists of any kind of unresolved problem for the service or goods they have purchased from an online store. It also determines the effectiveness of consumers to choose our platform to resolve the issue. This ODR platform offers a dispute resolution process in two ways for instance resolving issues directly with consumers and through a dispute resolution body.

In the case of direct consumer resolution, consumers might choose to share details through a complaint form with the business party before submitting their complaints officially. This process enabled consumers to identify if there are possibilities of direct solutions such as direct talking with the business party (van Gelder, 2019). Meanwhile, the business parties from cross-border could exchange messages or calls directly through their websites and could send related attachments such as product or service details, payment attachments and so on. On the other hand, if the notification is concerned about any complaint, the consumer intends to refer the issue to a dispute resolution body. As per the opinion of Yuniarti (2019), dispute resolution bodies are third party dispute resolution body that maintains independence and quality. It helps consumers to resolve their complaints with effective solutions in a confrontational way. However, this process is quicker than the traditional ADR process and less expensive.

2.4: Online mediation

Online mediation could be considered a widely used practice of ODR methodology to resolve e-commerce business relate disputes in cross border countries. It is completely an automated system that effected proceeds computer-prompted information gathering. This system effectively resolves disputes as per the input of the disputant. This system required no third party interaction and it completely uses friendly. The system is more likely to maintain and indulged to deliver individual, personalized, and closed to traditional practice from a certain distance (Terekhov, 2019). E-mediation could be conducted often between parties located far away as well as incorporates direct meetings. Online mediation

primarily relied on text-based communication for instance e-mail. Through video conferencing services such as Zoom, Skype, and Google Hangouts, disputant parties could interact with each other easily and cost-effectively.

In the case of offline mediation, a face-to-face meeting is necessary but in the case of online mediation, there need for textual communication and virtual reality through which disputant parties and the mediator never meet face-to-face (Rule, 2020). It defines that people from each and every part of the world could be able to utilize online mediation so they could resolve cross-border disputes through online mediation. The encrypted mail or chatrooms along with video conferencing enabled the disputant parties to communicate in an effective way so that confidentiality could be maintained (Sela, 2018). Using passwords, both parties could interact with each other in a separate chatroom. The "Centre for Information Technology and Dispute Resolution of the University of Massachusetts" has been finalizing the intervention of "The Third Party" a software application to increase the performance of disputant parties and mediators. However, both parties need to consist of access to the internet and a computer. However, it could be stated that online mediators could be the most reliable and authentic way to resolve the issues so that the organization could flourish itself by mitigating all cross-border e-dispute.

The overall dispute resolution proceeds with step by step process. In the very first step, the disputant party need to fill the dispute on the website of online mediation. The reason and the result of disputes are needed to be mentioned. The next step is initiated from the end of the mediation organization as they contact another party to evaluate whether they intend to take part in the online mediation procedures. Meanwhile, the mediator needed to be chosen by the parties or sometimes assigned by the mediation organization (Ebner, 2021). There needs immense awareness of the rules and regulations of mediation and this information are provided in the website link. However, the selected mediator proceeds to introduce himself and continues to explain the mediation process to disputant parties. Even there need to sign a mediation agreement in some cases in which it should consider that both parties intend to solve their e-despite through the online mediation process. After the evaluation and discussion, the mediators come to the conclusion of the dispute and if it is successful it results in an agreement of settlement (Jeretina, 2018). In the case of the USA, disputant parties need to decide whether the decision is enforceable legally or not, but in the case of the Netherlands, this is automatically enforced without consent.

There are several benefits of online email that effectively bring e-commerce businesses globally to deal with dispute management. *Locational Benefits* could be one of the most effective advantages of online mediation. As per the opinion of Rifai (2022), online mediation enabled e-commerce businesses to solve their disputes without considering the distance of a cross border countries, expenses to stay there or any kind of extra costs. It effectively deals with disputant parties by breaking locational barriers so that disputes could be solved effectively. Through textual communication and creating virtual reality along with video conferencing, disputant parties have broken the locational barrier to interacting with each other. In this respect appointing a choice, the mediator could be possible through online mediation and their qualification has been represented on the website itself. It is the most reliable way to solve online dispute and that enable parties to solve the overall disputes through mediation.

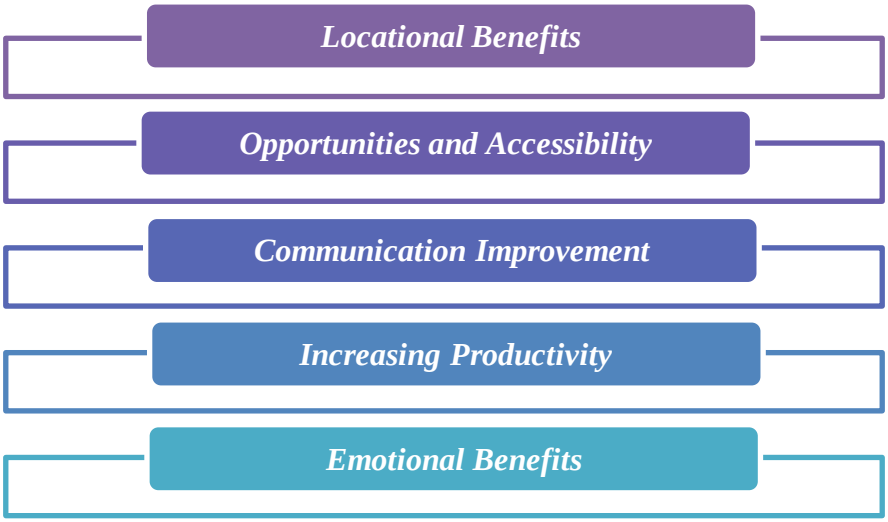

Figure 2.3: Advantages of online mediation
(Source: Created by Learner)

Opportunities and Accessibility are another most effective advantage of inline mediation. It has been found that open access to online mediation has opened several doors of possibilities and opportunities to flourish the e-commerce business. In the time of Covid-19, the offline dispute resolution through offline mediators could have been challenging and that has been effectively resolved with the help of online mediators. In a lockdown, transportation seizing, seizing of international borders, along with movement control order in some countries could

make the offline process of mediation tough and impossible and that made the business face several issues (Anggraini *et al.,* 2022). Through an online mediation system, cross border e-commerce businesses could effectively proceed with several opportunities to flourish by resolving disputes through the online system in this Covid-19 pandemic.

Communication Improvement could be another significant factor to deal with effective dispute resolution so that cross border e-commerce could flourish the more. Online mediation follows the communication through zoom, google duos, Skype or any kind of video conferencing application to make the communication among disputants bodied. *Increasing Productivity* is another effective e-mediation procedure so that cross-border businesses could flourish more. Through this tool, e-commerce businesses could resolve the issues with effective solutions to manage cross border disputes. It is true that disputes often create effective hindrances in the case of business productivity. As per the opinion of Sharma and Singh (2022), an e-mediation process in dispute resolution has brought revolutionary changes in the smooth productivity of e-commerce businesses by resolving issues quickly in a cost-effective way.

Emotional Benefits are also one of the significant advantages of the e-mediation process. It has been found that e-mediation reduced the stress of conflict regarding disputes in cross border e-commerce businesses. The stress, and frustration of business disputes needed to be resolved soon to continue the effective mental health of business parties to maintain effective business. As per the opinion of Anggraini *et al.,* (2022), e-mediation could be the best way to solve disputes soon so that disputant parties could be free of tension that organizations could proceed with their business effectively.

3. Necessity of alternative dispute resolution (ADR) in cross border business

3.1 To solve disputes in a single and simplified procedure

ADR enabled e-commerce businesses across borders to solve their dispute in less complicated ways. It is one of the simplest ways to resolve disputes. As per the opinion of Khan *et al*., (2021), the ADR process enabled disputant parties, especially in the case of cross border business to avoid multi-jurisdictional litigation as per the different rules and regulations of several countries. It is true that laws and rules are not equal in different countries regarding conflict

management and dispute management. ADR represents a simplified way to maintain universal law for resolving cross-border business disputes (Chouhan, 2020). It is a single process in which both parties could resolve their disputes through arbitration or mediation. Hence, it could be stated that the whole process of ADR is necessary to resolve disputes in the most simplified manner.

3.2 Opportunity of party autonomy in dispute resolution

Party autonomy is one of the most effective advantages of the ADR process and it is the most necessary too. According to the research of Alina (2022), party autonomy made the ADR process more flexible so that it could be a simpler and effective way to resolve disputes. Party autonomy is the process in which both disputant parties could include or exclude more than one criteria, rules, and regulations of dispute management to make a customized set of rules as per their necessity of dispute. On the other hand, de Werra (2020) has stated that party autonomy often creates discrimination as both parties need to agree with the rules and regulations. However, it could be stated that ADR maintains an effective dispute management process in cross-border countries by customizing the set of rules as per the demand and need of the dispute.

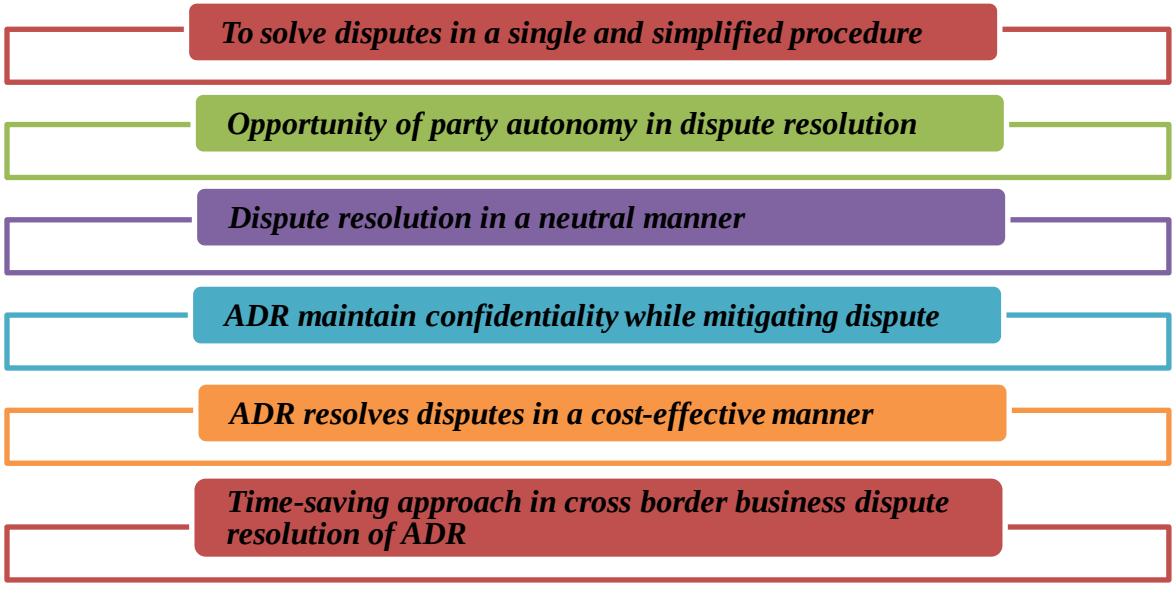

Figure 2.4: Necessity of alternative dispute resolution (ADR) in cross border business
(Source; created by the learner)

3.4 Dispute resolution in a neutral manner

It is true that ADR resolves the dispute in the most effective and neutral manner. The conciliatory or mediator in the process of ADR should consist of no relation with any of the disputant parties. Within the last five years of the time period, no connection should be found between the conciliator and any one of the disputant parties (Ahmad and Ali, 2019). Supporting this statement KADIOĞLU (2019) has stated that there should be no financial, social, or emotional connection or interest between the conciliator or mediator with any one of the disputant parties. These rules and protocols are effective to maintain a neutral, impartial, and unbiased process of dispute resolution. Meanwhile, it could be stated that in case of rising any cross-border business dispute the necessity of ADR is to provide a neutral and clear suggestion that could be significant to resolving the dispute.

It is true that the conciliatory or mediator could only suggest an effective solution and there is no right of themselves to force any party to accept the suggestion. As per the best evaluation and understanding of each and every investigation, hearing, and evaluation of the problems, conciliation may reach an effective recommendation or suggestion (Plevri, 2020). Accepting the suggestion or not is solely dependent on the decision of disputant parties. Conciliatory just find out the lacking of each party and they should solve the problem on their own. However, this regulation of ADR is fruitful in maintaining effective dispute resolution in a neutral manner.

3.5 ADR maintain confidentiality while mitigating dispute

In case of dispute mitigation, the ADR process keeps the immense responsibility for maintaining confidentiality in the business. As per the opinion of Arakelian *et al.,* (2020), it is one of the most important responsibilities of a conciliator, arbitration or mediator to keep their case study secret so that business-related information or data could not be leaked for misconduct. However, the traditional ADR process is more responsible than the Online dispute management process as all the data are shared through an online portal and cybercrime is the threat of leaking data from sharing history. However, it coud be stated from the above discussion that ADR is necessary to solve the business disputes in cross-border countries without any fear of organizational data leakage.

3.6 ADR resolves disputes in a cost-effective manner

Dispute resolution is maintained in a cost-effective way through ADR. It saves the travel cost along with the cost of accommodation in the cross border country. As per the opinion of CELEBİ (2020), due to cost-effectiveness, ADR is granted as one of the most effective ways of resolving disputes. As ADR resolves disputes at the minimum price provided to the arbitrator, conciliatory, and mediators, this process has been considered the most effective way of solving cross border disputes.

3.7 Time-saving approach in cross border business dispute resolution of ADR

ADR is one of the most effective cross border dispute resolution practices that save time for the disputant parties. Shiryaev (2021) has stated that ADR is a much appreciated time-saving process that makes disputant parties solve their conflicts with less involved time. It could be stated that it is expected to solve any dispute quickly as despite occurring the business operational process often face obstacles. Quick resolution of despite make parties engaged in their own work with the effective practice of business process a daily basis without creating any hindrance.

4. "United States Agency for International Development" (USAID) and "Chinese International Commercial Court" ('CICC') in trading dispute solutions

USAID plays a significant role in dispute resolution of business. This is an agency that operates independently under the instruction of the US fen federal government. Administrative civil foreign aid is managed by this organisation (Dengela *et al*., 2018). Maintaining cross border conflict resolution is managed by this organisation in case a US-based agency is stuck in business because of a dispute of government relative issue in a foreign nation. Development of the national business circle is the main aim of this organisation, and it helps SMEs and global businesses in the resolution of conflicts with foreign governments. According to Shelest and Rabinovych (2020), the issues of discrimination and diversity in case of cross border business are also maintained by USAID for the development of a better business environment for US-based citizens in the global context.

The global presence of US-based ADR institutes further boosted the factor of Chinese business collaboration initiatives. According to information, the “Supreme People's Court of China” (SPC) introduced two different organisations in 2018, in support of the *Belt and RoadInitiative* (BRI) of China (Huo and Yip, 2019). The dispute began after the proclamation of the US and an EU business sector, asserting that the BRI project of China is too ambitious. The "Chinese International Commercial Court" (CCIC) was keen on introducing a solution to the matter by application of ADR, as the courtroom trials would have left an impact on the business progress of the total project. The proliferation of the international commercial court was introduced after the intervention of China in the global business sector. Progress of this nation in the development of large scale business in the e-commerce sector has been addressed by the US. The CCIC was internationalised by the Chinese government as the solution to the issue that was taking place in the fast-developing Chinese e-commerce market.

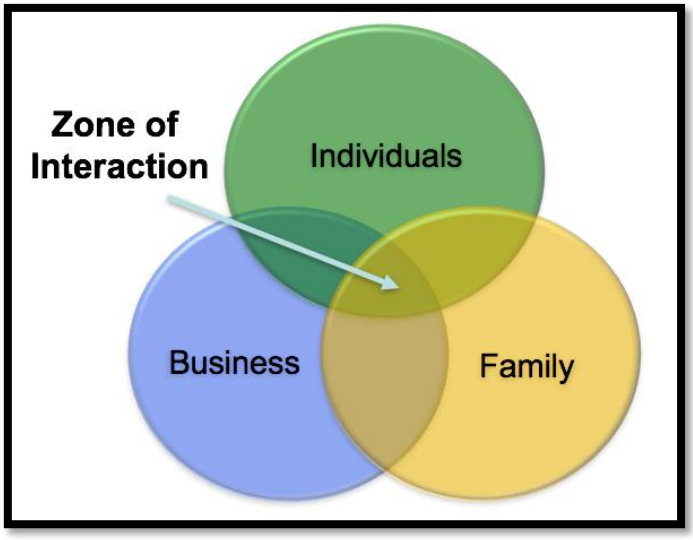

Figure 2.5: Simple Approach to Family business conflict (Source: Solutionist.com.au, 2022)

Family business conflict is an issue that takes place in the path of business development as each of the members involved in the process of business looks after a self-interest instance of a generalised approach to the greater good (Yezza *et al*., 2021). The solution to this issue of a family business can be achieved by identification of the zone of interaction and addressing the benefit of each party involved in the process of business.

According to David (2018) introduction of the additional tariffs of *200 billion USD* in Chinese imports by the US, is a result of business conducting patterns and regulation disputes. The introduction of a solution by application of ODR is necessary as gaining access to the huge e-commerce market of China shall result in the development of a mutual benefit for both Western nations and China. Exchange of thoughts in business and the development of a better collaborative business process would help in the introduction of strong business relations. The framework that has been developed by CCIC helps China to better cooperate with the business rules and regulations of the international sectors. The rapid rise of the economy has been possible after the ADR process that was introduced by the CCIC in the best interest of China (Huo and Yip, 2019). Better coordination in the path of development has been a successful introduction to the sense of bitterness in companies operating in partnership with both nations. For instance, companies like *Apple* and *Huawei* are conducting successful business with the assistance of a dispute resolution process.

The nature of cross border business disputes is more complex than that of the family business dispute. For instance, the business dispute issue in the *Xinjiang province of China* due to the land dispute between two different nations can be taken into consideration (Rippa, 2019). Solution of issues like these can take time to be solved and the level of complexity is higher. The process of facilitation becomes necessary in solving this kind of issue; identification of the issue with both sides involved in cross border business is a necessary factor. After that, USAID focuses on the consultation and negotiation process in business. Most of the time these types of issues are solved by voluntary agreements between two parties involved in the process of ADR (Voorn *et al*., 2019). During the past few decades influences of the USAID in mitigation of the cross border business issue has been visible, most the case political issue mitigation and development of business have become easier after compilation of the initial survey of the situation that business owners are facing in business (Obi, 2018). The phase of decision making in business involves the process of the identification of each facilitator and the development of the solution based on the mutual benefits of both business parties.

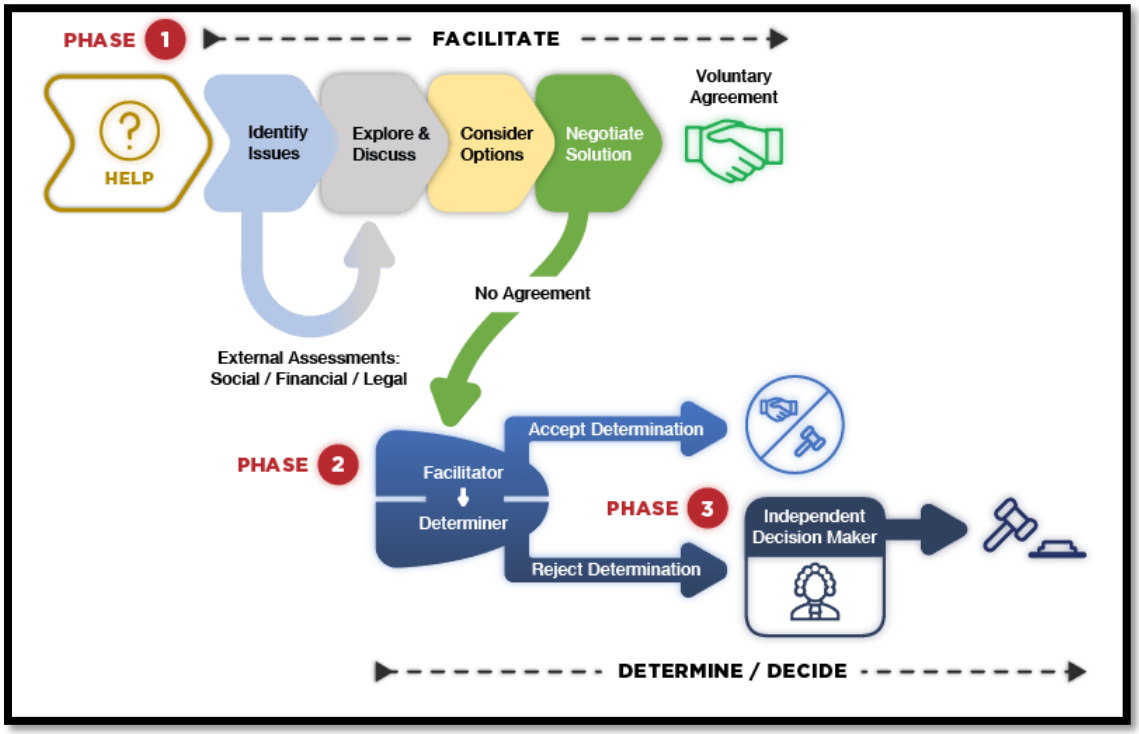

Figure 2.6: Critical process of cross border business dispute resolution (Source: Solutionist.com.au, 2022)

The BRI initiative of China is a vision of the Chinese government for the development of a path or economic corridor between nations for faster delivery of products and management of goods and services (Huo and Yip, 2019). The introduction of better negotiation by CCIC helped in avoiding foreign scepticism about the ambitious project that has been launched by the Chinese government. This organisation also helps in the reduction of correction in business, the process of business in various companies of China become more transparent after the introduction of such framework. Coordination with international rules and regulations of the international business is necessary for maintaining better progress in the international market. The CCIC increased the reach of the Chinese BRI initiative to the world for the development of a better place for business by the method of ADR.

The development of alternative business dispute resolution (ADR) has been the primary aim of USAID in terms of the cross border trading process. According to Elagin (2020), agencies like these are even effective in making business issue

mitigation in nations where the judiciary system is not properly functional. Business development by complying with the litigation process in cross border business and factor of ligation is maintained by this agency. The system of payment in business development is managed by this organisation and faster development of business is managed because of this issue.

According to Arai and Kapoor (2019), there are speculations that the vision and aim of CCIC are unclear. However, speedy progress with the framework of business development has assisted the organisation in not only instructing of benefit the BRI project to the world, but the merit of Chinese business planning and progress has also increased dramatically. All the legal disputes that take place at times of making coordination with US counterparts in the international sector of business, the easier resolution is being inducted by the CCIC in collaboration with USAID, according to the international trading policies that have been introduced by the United Nations. This organisation also helped in the development of the international market for Chinese products (Brown *et al*., 2022). The introduction of China as the new manufacturing hub by the CCIC has been successful as the value-for-money products that are manufactured by Chinese farms have successfully gained their position in the international market. Development of Chinese presence all over the world and gaining access to the electronic market of nations has been possible by the Chinese manufacturer through the ADR framework that has been adopted by CCIC (Huo and Yip, 2019). Business development in collaboration with the global manufacturer following the local rules and regulations of business has been the best process of inspiring faith in the customer segment that Chinese organisations hold across the world. Speedy process of business decision making and mitigation of the disputes of cross border business through alternative methods was possible by China through the operations and suggestions of CCIC in the global business sector.

4.1. The payment system in cross border business

The payment system in cross border business is an essential factor that often faces issues due to a lack of global currency exposure. Many of cases economic sanctions come into action in case of cross border trading. According to Veebel and Markus (2018) making business deals with countries that are suffering from economic sanctions imposed by the United Nations and other EU countries cannot use dollars at times of making business transactions. Making changes in the payment system is complex as a new type of currency needs to be inducted

into the system. Food intake conducts training relations with Russia and Iran to some extent.

Placing the ADR in place of the judiciary system is not possible, the application of ADR is like the process of enquiry rather than a factor of judgement (Bali, 2018). Based on necessity, suggestions of change in the business regulation can be asserted by the arbitrator in business in times of dispute. Most of the time the measures that can be used the solution the issues in international business are made by a third-party service provider. Economic issue mitigation and prescribing solutions to this issue can be handled by making a suggestion that will work in favour of both parties involved in cross border business.

According to Xiaonan (2020), the way that can be applied for reduction of the trial issue resulting from any kind of issue in business can be made according to the need of the situation. The function of collaborative law in business is immense in terms of large scale problem-solving in cross border business situations (Forrest, 2021). The factor of collaboration increases the chances of control over any kind of rough situation in the process of cross border business. The process of meditation is necessary for a business that helps both parties involved in the process of beneficial traction to come to a solution for the business. development of a line of communication that helps in solving issues of financial traction issues can be managed after the introduction of such law in business. Based on a review by Armstrong and Siddiqui (2020) making payment of a good through a barter system helps solve the issue of cash payments. Many times settlement that is managed by the third party without making any kind of judicial trial of dispute in terms of payment issue is made through the barter system. This helps both parties in making traction in business by having goods or services that are of equal value to the cash that needs to be paid by the service business partner. Such innovative solution development also helps in maintaining long term business relations with other parties.

5. Legal perspective of ADR in China

Dealing with cross border Disputes in the e-commerce business, alternative dispute resolution (ADR) is advanced and compliant along with cost and time-worthiness to provide an effective solution. The traditional mediation process could be regarded only as a contact between disputant parties and it could not be automatically enforced. civil litigation or commercial arbitration should be

initiated to enforce it on the ground of contract breach. In August 2019, China has signed the "Convention on International Settlement Agreements Resulting from Mediation" (Ojelabi and Noone, 2020).It consists of far-reaching significance in order to be ensured about settlement agreements which are included in this convention on *"Recognition and Enforcement of Foreign Arbitral Awards"* along with *"Choice of Court Agreement"* and *"Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters"*.

Commercial mediation Intervention

There are overall four ways to resolve disputes in the e-commerce international business in Chinauch negotiation, arbitration, conciliation or mediation, and litigation. However, mediation is a significant and widely used process for effective dispute resolution in China. This process is effective to solve disputes in cross border countries effectively. In the case of commercial conduct, the non-litigation to litigation procedure in China goes through the following stages (Chaisse and Kirkwood, 2021). In the very first stage, the event needed to be negotiated properly and documents should be prepared. In the second stage, the overall argument and consultation process are maintained. In the third stage, after the dispute, mediation and settlement occurred. In the last and fourth stages, arbitration and litigation occurred.

Previous failures in arbitration and litigation in China with the United States have encouraged the rise of ADR in this country. This situation has also increased the wide spread criticism due to its complexity, cost, and length in China. Additionally, the development and growth of ADR in China could be traced back to its unique culture and background. Deep-routed historical preferences could be granted in case of both non-adversarial and informal means of dispute that could be evolved to the basis of traditional and cultural perspectives. In the case of disputes of non-confrontational types, the faces of disputant parties could be reserved and the commercial relationship should be maintained (Ramirez, 2021). This process is undertaken from China government to protect the privacy and trust of disputant parties to solve their business dispute confidentially. It also serves the firm commitment in the mediation process for dispute resolution in China and also helps to maintain several forms of conciliation in both arbitration and litigation proceedings.

In the case of China, there are several forms of ADR which are combined with arbitration and litigation and are referred to as hybrid processes. This process

leads to legal binding results under effective and appropriate circumstances. However, in the case of legal practice in China, the definition of ADR could have led to an outcome that is bound legally through the hybrid procedure in case of being agreed by both disputant parties. Meanwhile, in China, intervention through the third party to a dispute is widely acceptable (Li *et al.,* 2018). After that, the ultimate negotiation is not regraded without the intervention of a third party as a type and form of ADR. However, arbitration consists of severe advantages along with similarities with ADR.

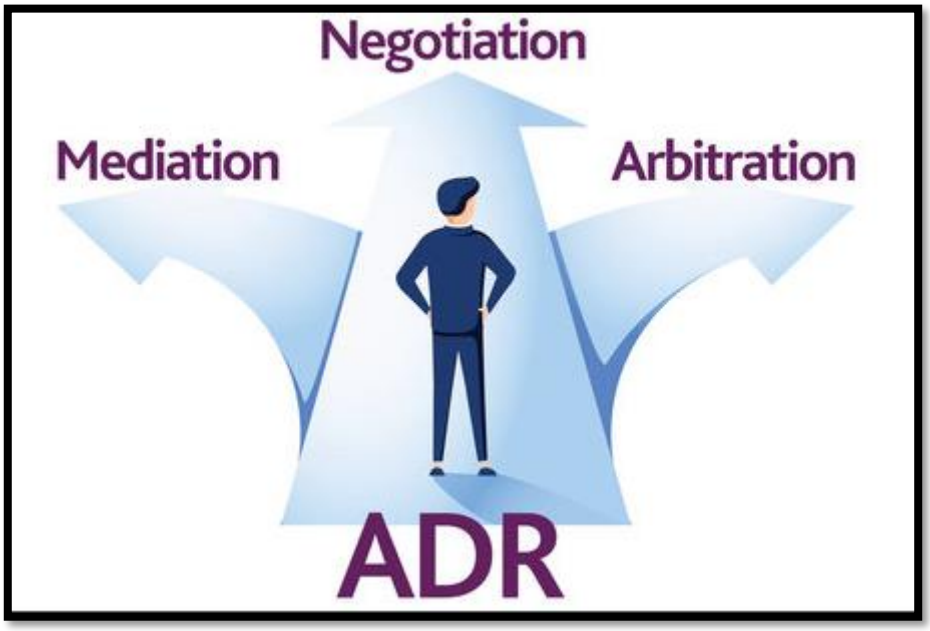

Figure 2.7: Types of ADR
(Source: Li *et al.,* 2018)

In the case of China, the overall process of ADR is classified into two segments that are hybrid processes and non-hybrid processes. In the case of a hybrid process, the ADR is combined with arbitration proceedings and court proceedings. On the other hand, in the case of a non-hybrid process, the process of ADR could be conducted by ADR institutions and helps the overall review of the type of ADR is necessary for the dispute (Yao *et al.*, 2020). This concept has been legalized by the Chinese government with effective intermediation of the internet and smart devices to maintain remorse ODR procedures too. The wide used ADR process in China is conciliation or mediation and the rest procedures are used in rare occurrences.

Mediation could be considered an independent third-party technique through which disputes could be resolved with the assistance of a mediator. A mediator always assists disputant parties in order to focus on real strengths and interests rather than opposing their emotion and attempting to draw toward a necessary settlement (Yang and Chen, 2021). The most crucial factor is that a mediator never acts as a judge in the dispute management process but rather made parties focus on strong factors. They even do not recommend any possible solutions but rather emphasize the is and cos of every situation and let parties individually solve their problem by their own ability and analysis. On the other hand, in the case of conciliation, the conciliator is more interventionist in comparison to the mediator and endeavors bringing disputant parties together along with assisting them so that they could focus on their actual issues.

5.1 Conciliation during court proceedings

In the case of civil disputes with cross-border countries the judges from China endeavor to conciliate the whole case under the principle of autonomy of disputant parties though it is not that mandatory in all cases. However, the court could help disputant parties to settle down their problems but they will not compel parties to forcefully reach any settlement. In case of reaching any settlement, the whole agreement of settlement should be signed by judges of Chinese court if judgment and it will be sealed from court to produce Conciliation Statement. The consolidation statement that has been issued by the court must be similar to the contents of the court judgment (Chaisse, 2019). However, the overall statement will not become fruitful until it is accepted and served but disputant parties including tier valuable signature. If any one of the disputant parties retracts consent to the settlement offered by the court, it will become invalid and the whole court proceeding could have been resumed.

If a Conciliation Statement has been insured by the court in China, along with gaining legal effect, therefore it consists of the same effect as a court judgment. Meanwhile, no approval against the overall settlement is allowed. As the Settlement has been reached by disputant parties along with their mutual consent, there will be no scope for redirecting the whole process (Yang and Chen, 2021). If anyone among both parties refuses to perform the other party could apply for enforcement. However, it could be stated that in China the overall rules and regulations for ADR are strict and that effectively brought revolutionary

changes in the growth and development of the whole dispute management practice in the e-commerce business in China.

5.2 Conciliation conducted by arbitration institutions

Arbitration institutions are the private-owned body that is effectively drawn without the support of the Government of China for the process. The case of *"Arbitration Law of the People's Republic of China"*, clearly reflects that the application of conciliation in the case of arbitration proceedings is necessary (Chaisse and Kirkwood, 2021). As per the law, before giving a judgement, an arbitral tribunal might attempt first for conciliation. In fact, in the case of an agreement despite the settlement, the arbitral tribunal needs to issue Conciliation Statement that follows the settlement outcome. *"China International Economic and Trade Arbitration Commission (CIETAC)"* is concerned with the promulgation of arbitration

Rules of arbitration as per CIETAC, stipulate that in case of both parties consists of the desire for mediation or conciliation, and if one disputant party and another disputant party agree on it, as consulted by the arbitration tribunal, it could conciliate overall case under its cognizance through the process of the arbitration tribunal. However, the arbitration tribunal might proceed with the conciliation in such a manner that is supposed to be appropriate. As per the opinion of Ramirez (2021), arbitration institutions in China consist of their own rules and regulations for the overall conciliation. Meanwhile, the overall process is different from the court conciliation process. It is true that the conciliation processes are operated by the third party principle and they often suggest necessary settlement for both parties if they accept it through their own evaluation the arbitration organization received payment as per commission basis.

5.3 Conciliation by conciliation institutions

"China Council for the Promotion of International Trade (CCPIT)" is one of the most effective regulatory bodies that maintain dispute management with cross border e-commerce business from the end of China. It has been found that the "*Conciliation Center of CCPIT"* could be considered the most effective promoter of ADR. This factor has illustrated the most helpful model for the conciliation process in the case of institutional disputes across borders. However, in the case of institutional conciliation, parties often invest more flexibility and freedom so that

they are allowed to select of conciliation rule that they intend for adhering to (Ojelabi and Noone, 2020). In fact, in this institutional conciliation, they could exclude as well as include provisions with the mutual consent of the disputant body. However, the only rule applicable is that the parties could not violate the mandatory and basic provisions of arbitration law.

In fact, the enforceability of the settlement is also different from the previous two procedures. For Chinese law, the agreement of conciliation has been reached and it could be accepted by two parties. In the case of un-acceptance of the decision, they could precede the same from starting again. However, these factors are more flexible than court arbitration and arbitration institutes too. It could be stated that in the case of China, the conciliation institutions related arbitration process ate most suitable due to their immense flexibility.

5.4 ADR organization

"Conciliation Center of China Council for the Promotion of International Trade (CCPIT)" and "China Chamber of International Commerce (CCOIC)" had been established in 1987. 40 sub-centers have been established in 1992. It is true that conciliation centers are scattered in China and it has formed a so-call network of conciliation. However, this network effectively deals with foreign-related cases specialized in e-commerce disputes. It is true that in the case of dispute management trading activities between China and the USA are dealt with by ADR organizations. However, the mission of the Conciliation Center along with its sub-center is to provide a strong and significant conciliation framework according to international standards and practices. However, these procedures have improved the investment and trading environment in the case of China which influences the flourish of the e-commerce business in China globally.

It is true that with the business trade with the USA, China has faced several disputant factors. It is true that since 2018, *"United States Trade Representative (USTR)"* has released 34 billion US Dollars' worth of imported products from china and it is subjected to implement a 25% import tariff under *"Section 301 of the Trade Act of 1974"* (Meinderts, 2020). This regulation could be implemented over machinery, metal goods, and electrical equipment along with industrial goods. In fact, this factor has made an effective loss in the business export and export process of China in the USA. this kind of rise in import tariffs has created huge disputes in the economic perspectives. However, in the case of the Chinese

government, the overall dispute management has been conquered through effective innovation while in this country the government has enabled effective dispute management through arbitration.

It could be stated from the above discussion that the Chinese government has maintained enough strict rules and regulations for the growth and development of e-commerce business in cross border countries. It has been found that the Chinese rules and regulations are flexible in some cases that maintained effective evaluation of the arbitration. These rules and regulations are effective to maintain enough strictness along with enough flexibility to maintain proper perspectives of the e-commerce business (Meinderts, 2020). The growth and development of the e-commerce business in China are the result of an effective dispute management process that enabled the company to maintain its effectiveness in the e-commerce business with a smooth going process.

5.5 Conciliation procedures in China

Scope of Conciliation

There are several kinds of disputes that could be solved under CCPIT conciliation for instance both non-contractual and contractual disputes. Meanwhile, this conciliation includes any dispute related to finance, investment, trade, security, intellectual property, real estate, technology transfer, transportation, as well as a construction contract. As per the opinion of Rusakova *et al.,* (2019), Conciliation Center never accept dispute cases for instance adoption, Marital, guardianship, succession and support related dispute. Meanwhile, administrative disputes that could be handled through constitutional law are not resolved under CCPIT in China. In fact, Labor disputes along with disputes in the case of agricultural collective organizations for contractual management in the agricultural sector in China.

It could be stated from the opinion of Yin (2021), that Conciliation under CCPIT is effective to resolve disputes in a cost-effective and time-worthy manner. In the case of solving cross border e-commerce disputes in China, CCPIT is the most suitable organization to solve disputes. However, in China, the rules and regulations are quite strict due to its political stability with the communist party. The dispute management process is faster than another country could resolve disputes soon and this could be stated as one of the effective reasons for the

flourishment of e-commerce business in this country. However, it could be stated that the Conciliation process is maintained with effective rules and regulations and both disputant parties should follow it.

Party's autonomy

In the case of a flexible conciliation, both parties could vary or exclude some rules of conciliation in the case of resolving their dispute. It is necessary that both parties needed to be agreed with the exclusion or inclusion criteria. The centers of conciliation such as CCPIT or CCOIC in China should accept cases with an effective Conciliation Agreement between those disputant parties. If there is the absence of any agreement between parties, parties' autonomy would be acceptable with consent from each. However, a Conciliation agreement could be referred to as a mediation clause which is inserted in any contract or agreement through which parties could agree (Ho and Vuong, 2021). In case of failure of respondents to confirm the whole agreement for mediation within the provided time limit of 30 days, it would seem as such the party has rejected or declined the conciliation. Even if the respondents may confirm agreement for conciliation after the date of expiry within 30 days' limit of the period, Conciliation Center will decide whether they should accept the confirmation or not.

Party's autonomy has brought enough flexibility to the overall conciliation process in China. As the rules and regulations for ADR are quite strict in this country the scope of a party's autonomy to vary the rules and regulations enabled disputant parties to solve their dispute as per their own criterion. Meanwhile, the conciliator needed to be aware of the implementation of excluded and included rules so that they could suggest the best resolution for the dispute. As per the opinion of Shavkatugli (2022), the party's autonomy also enabled conciliation centers to adopt new rules and regulations set by parties and it also increases their expertise to suggest a more effective resolution process for their further project.

The Appointment of Conciliator

In China, each and every Conciliation Center maintains presenting its list of its own conciliators. In fact, they maintain the Conciliators panel respectively for disputing parties to select mediators or conciliatory as per the need of the case. The panel includes arbitrators, facilitators, judges, neutral advisors and many more to make disputant parties aware of the availability of intermediate to solve

them (Fachinger, 2022). The educational qualification along with experience of success is also mentioned with them. In fact, the panel are selected as per the ability, experience, and success rate of conciliators. Meanwhile despite in cross border countries regarding intellectual property, commercial contracts, technology transfer, security, investment, real estate, communication, construction, as well as insurance. Conciliators needed to be neutral in their judgment and also should be impartial so that their suggestions could be unbiased. In fact, no person could serve the role of conciliator in the case of any dispute if the person consists o any kind of personal or financial interest with any one of the disputant parties. In this respect, a consent form accepting the consolidator from both ends of the disputant parties needed to be provided (Huiying and Guangtian, 2020). In case the consolidation is found guilty and biased their certificate a conciliatory will be cancelled and the case will be dismissed.

However, a conciliator must disclose any kind of connection between himself and any of the disputant parties which could create biases. There are some conditions for becoming a conciliator in certain cases such as:

- Within the past five years, the personal, going to be consolidated for a certain case, should not consist of any kink or connection with any one of the disputing parties.
- In case of any financial interest, the person could not act as a conciliator
- There should not be any kind of social or professional relationship with anyone from the disputant party or related to the business.

In some cases, parties could select their conciliator from outsides and the case could be jointly solved through both conciliators. In that case, the conciliator center would not be liable for any kind of issues or conflict regarding conciliatory. If parties could not agree with opponents' conciliators, they could select from the panel of the conciliation center (Ho and Vuong, 2021). However, it could be stated that conciliation should be the most important factor and for that, the conciliator needed to be qualified enough to mitigate cross border disputes. In the case of China, the trading activities are with several countries. Meanwhile, adhering to effective conciliatory, the country could solve the e-commerce related disputes effectively so that the growth and development of e-commerce could accelerate. After the selection of a conciliator, in the case of selected from a panel provided by the conciliation center, the parties could explore the information regarding the employment of the conciliator, his or her educational status, and experience in

the field, along with credentials and training being a conciliator.

Ways of Conciliation

In the overall conciliation process, at the very first stage, conciliators handle the case by providing understanding and evaluation of the issues and disputes along with involved personalities precisely. After that, the design of the process that could meet the need of both disputant parties is made to foster faster dispute resolution procedures (Shavkatugli, 2022). The overall conciliation could proceed in the location of the conciliation centre or as per the choice of disputant parties after mutual agreements. In the latter case, the expense of proceeding with the conciliation in different places should b bared by disputant parties. It is true that a conciliator could never implement to be imposed upon any of the disputant parties. In fact, only the best suggestion could be provided by the conciliation that an actual decision will be undertaken from the end of disputant parties.
After the selection of the respected conciliator, both disputant parties along with their representative should meet the conciliation in person or by video call or any kind of communication process available. The person might request each of the disputant parties to submit him a written statement about the whole case. In fact, the person conciliating the case could meet parties together or separately but all parties need to be notified regarding the separate meeting to avoid any biases or partiality (Liu, 2020). However, a conciliator is permitted in the case of necessity of any guidance regarding any technical dispute or any critical issues between disputant parties. However, the conciliator could submit the final settlement proposal for the dispute to be resolved.

6. ADR in Business and the process of resolving

Working as a third party helped in the development of a solution in the process of cross border business that helps by preventing the issue from going into a legal court of justice. Setting a line of communication between both parties involved in the business is necessary. Legal issue mitigation by conducting out of court settlements and introduction of a barter system in case of making transactions is made by the arbitrator in case of business solution.

6.1 Mediation

Setting or developing mutual agreement in business in case of cross border

business transactions is the act of a "Mediator" in business (Alexander, 2019). Local rules and regulations are being followed by the agency for passing successful mitigation to the business issue that both parties are facing in a cross border business transaction. The credential in modulation advocacy in the case of international business cannot be denied the development of business for the long term is necessary for the progress of both parties involved in the business. According to Schnabel (2019), a faster solution to the issue that has started to rise in business relations in the cross border transaction process can be solved by mediation. The process of "Mediation" is appropriate when all parties involved in the business process want to continue the business relationship and they are willing to make compromises from both sides for reaching a solution that will help in making faster progress in the business. Mediation is also effective in times of emotional issues at times of setting a solution to the issue of international business. The introduction of a third-party mediator in business is necessary at times for making a generalised solution to the issue that both sides were facing in business.

6.2 Cases when Mediation should be avoided

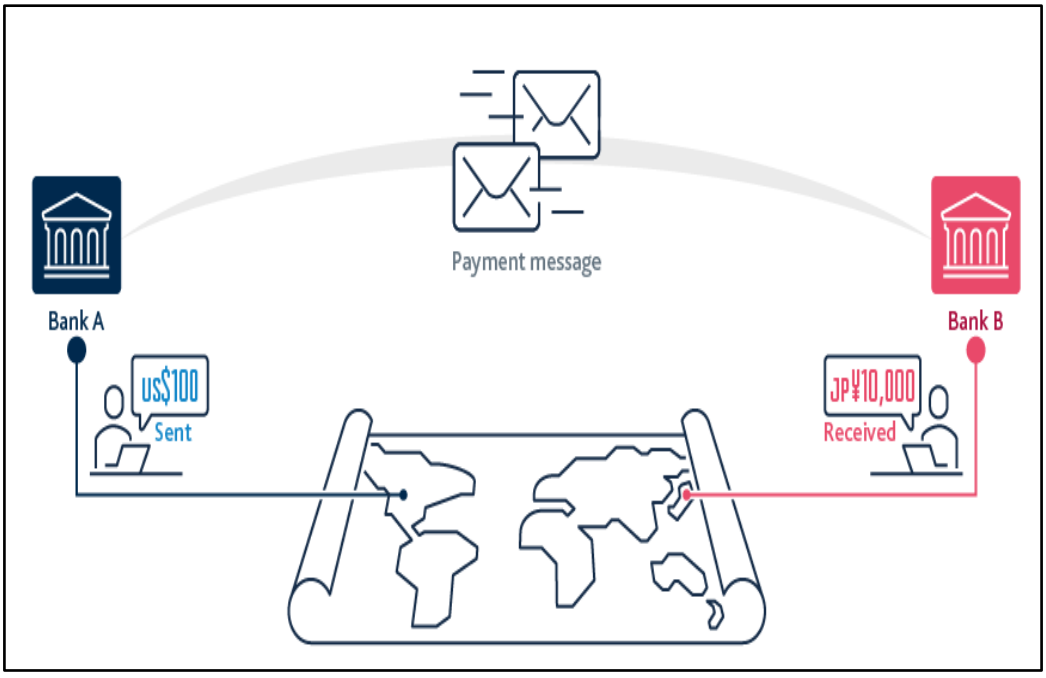

Figure 2.8: Cross border payment issue between the US and the UK (Source: Bankofengland.co.uk, 2022)

Cooperation and compromise are necessary for mediation in alternative dispute management at times of conducting cross border business. In any case, if one party has a significant advantage over the order then the issue may remain and the opportunity for medication cannot come in ADR. For instance, businesses that take place between the US and Japan are generally conducted by accepting the dollar as the mode of traction (Opie and Riddiough, 2020). This case mediation was not possible as the UDS being the global currency, holds an upper hand in the business transaction process. On the contrary, Khan and Safdar (2021) have pointed out that the trading relationship between the US and Japan has been developing since the end of WWII. USD being the dominant currency was not an issue in front of both countries in terms of business development.

6.3 Arbitration

The third-party service providers in cross border business ADR situations can also be an "*Arbitrator*", an individual who is not attracted to any of the parties in dispute (Berger. 2018). The decision of the arbitrator is made based on the agreement of both parties and pieces of evidence made present from both sides. Evidence and rules that are present in the process of abbreviation are relaxed as compared to a formal trial. There are two different processes of arbitration which are identified as "*binding*" and "*nonbinding*". In binding arbitrationboth the parties take the suggestion of the arbitrator for granted, and they skip the trials of a judicial system in the path of solving the argument that has taken place in business (Miller *et al*., 2018). On the other hand, there is the process of non-binding arbitration, where anyone or all the parties involved in the conflict or dispute can appeal for a trial in the legal court and overlook the suggestion of the arbitrator. The process of ADR can be made faster after the application of the binding arbitration process. Solution of the dispute can be achieved faster in this method. In this kind of case maintaining trust over the arbitrator becomes necessary for all the parties involved in the process. The process of decision making and the faster outcome of the dispute become easier after the introduction of arbitrators' advice in ADR (Armstrong and Siddiqui, 2020). Conducting long term peaceful business becomes easier for all the parties involved in the total process.

6.4 Cases when it should be avoided

On the factor that arbitration should be avoided if the parties are involved in cross

border business, ADR holds control of the situation. In this case, the solution to the dispute that has taken place will be controlled by the mutual settlement between all the parties (Vajda, 2018). On the other hand, in the case of a nonbinding arbitration process, the opinion of an arbitrator does not come into action if the parties involved in the dispute want a legal trial. The process and path of ADR resolution should be based on the legal process and if the process is unlawful the method of arbitration cannot be used.

6.5 Neutral Evaluation

The process of "neutral evaluation" can be developed after the introduction of the case by one of the artistries in dispute to the "evaluator". For instance, the introduction of the case in UAE related to the *construction dispute* to the evaluator. All the parties involved in the dispute resolution process came to a peaceful conclusion after proceeding according to the opinion of the evaluator (El-Sayegh *et al*., 2020). Passing information on a solution becomes possible in business by making a detailed analysis of the issue that all the parties involved in a cross border business situation are facing. The strength and weakness of each of the pieces of evidence introduced by parties involved in the conflict are judged by the evaluator. Being an expert in the process of dispute resolution, suggestions are made by the elevator regarding the situation of control and necessary steps that should be adopted by the parties to continue business by securing each of the interests.

The process of neutral evaluation is most suitable where there are issues of technical expertise. All the parties in dispute are facing issues of technical knowledge like the construction issue in the UAE case. Expert solutions from the legal knowledge of the "evaluator" can be useful for the parties involved with ADR in cross border business. If there is no personal or emotional barrier in the issue that is faced by the parties involved with the case, neutral evaluation becomes unnecessary.

6.6 Settlement Conference

The process of settlement conference can be neutral or mandatory for the parties involved with ADR in cross border business. According to Lai (2019) maintaining e-commerce, and blockchain management become possible after gaining assurance of cross border dispute settlements. The judge of the officials in charge

of settlement does not make any kind of settlement for the parties involved in the dispute, rather they help in evaluating the evidence and strength of each evidence for all the parties to conclude (Wang *et al*., 2020). The process of the settlement conference is a factor where settlement is an option that may or may not be selected by the parties involved with ADR. Only the path of dispute resolution is guided by the judges for settlement officials in the process of dispute resolution.

6.7 Overall Benefits

The application of ADR has various types of benefits that can be achieved after the selection of the type of ADR necessary for the situation. The most essential benefit can be saving time in business, and faster solutions to the dispute can develop better business solution processes (Forshaw *et al*., 2019). Reduction in additional expenditure is possible after successful ADR, as the expenditure of the legal trials and loss of business in that time can be avoided by out-of-court settlement in cross border business. Based on a review by Anagnostopoulou (2018) reduction of barriers and better inter-communication increase becomes possible in business after the introduction of the ADR in cross border business solutions. All the parties involved in the process of business develop communication with each other by mitigating the issue they face during the dispute.

An increase of control over the process and the outcomes of the dispute becomes possible after the introduction of the ADR through the mediation process. In ADR all of the parties get more opportunities to express their opinion than in legal trials (Forshaw *et al*., 2019). Other processes of ADR like arbitration provide an opportunity for a party in choosing an expert to express their opinion in the ADR process. Other than that, ADR is a less hostile method of dispute resolution, as an experienced mediator can help the parties involved in the dispute to property communicates with each other. This may help the parties to step into a mutual solution in the process of business. The communication between both sides can also increase after the solution of the dispute by following such processes. An increase of satisfaction on both sides is possible in ADR, as there are no clear winners or losers in this ADR like legal trials (Price, 2018). An increase of a better solution can be achieved after the application of alternative methods of dispute management. Improvement of the attorney-client relationship is also possible in business by the application of ADR. Better communication development becomes

beneficial for long-term business increase. The process is also cost-effective as the majority of the time is saved by avoiding the courtroom trial for the business control management process.

7. Trends of Being an International Mediator

The process of international mediation takes place in both online and offline businesses (Alexander, 2019). The process of mediation in the international sector can offer the parties involved in a dispute of cross border business an opportunity to solve the matter internally. The benefits of avoiding the court trials can be observed in this case. The facility of solving complex disputes by the process of “multi-tiered-dispute-resolution” (MDR) can be gained after application of the international mediation in business. According to the same source of information, the modern sophisticated process of “online-dispute-resolution” (ODR) is also a part of the MDR process (Mitrovic, 2019). The international legal framework of cross border business is followed in the process of international mediation, faster dispute resolution process and the process of apology acceptance can be observed after the application of mediation in cross border dispute resolution. According to the case of "*Ferster vs Ferster & Ors [2016] EWCA 717 (12 July 2016)*", the work achieved by the mediator in bringing a solution to the dispute between two of the parties involved in the dispute. After bringing a solution to the case, both parties involved in the process of a dispute have admitted that the process of ADR through mediation was faster and more effective than courtroom trials (Micheler, 2022). It provides examples regarding the effectiveness of ADR and mediation as a process of ADR in the international market of business.

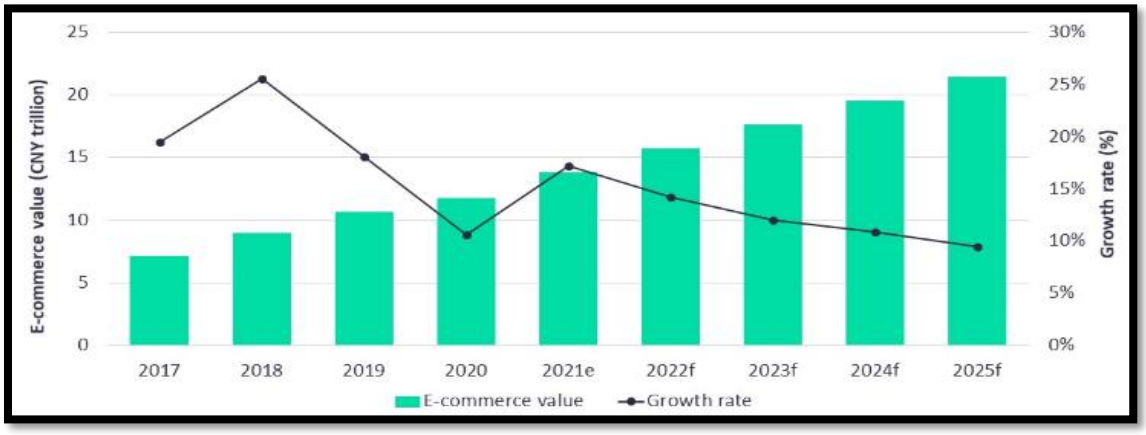

Figure 2.9: E-commerce development of China and estimation of business growth till 2025
(Source: Globaldata.com, 2022)

The Chinese e-commerce industry boost that has taken place in the past few decades is prone to getting into clashes with the western Blockchain in global business (Liu *et al*., 2021). The application of mediation is the best process that can help in the reduction of additional business disputes in the coming future. This industry is estimated to take a boost of 25% by 2025, collection of business with the western organisations in the global business sectors is necessary through the process of dispute resolution. According to information, there is a change in the cross-border disputant profile. Based on that change, the process of dispute resolution by mediation has also changed dramatically. The introduction of the Singapore convention for the "multi-tiered-dispute-resolution" (MDR) process deals with the changes that have taken place in the international director of business (AYDEMİR, 2021). The aim of this convention was better collaboration development among main international business groups. Apart from that, the introduction of the e-commerce sector in the ADR benefits was one of the main aims that helped in the reduction of the issues in cross border business. A better traction process between two types of business can be introduced after the application of mediation to solve minor dispute issues. The process of B2C and B2B business is made easier by the reduction of completion that can be imposed by different types of international legislation. Faster mitigation of business issues and disputes makes the whole process of dispute resolution possible.

The development of partnership and reduction in disputes allows international business groups to conduct operations together. Faster delivery of the prepared materials in the hand of customers both in an online and offline format becomes possible after a reduction in dispute by international mediation or more precisely, the MDR (Buruiană, 2019). Management of purchase contract law in international business is benefited after the application of the MDR. Major Chinese organisations face issues in the development of partnerships and options of vestment in the global market. The process of mediation shall help in the development of an effective business network in the global market. Goodwill maintenance in front of customers regarding the delivery of the products becomes possible in business after the introduction of such a law (Sutherland-Smith and Dullaghan, 2019). Business owners can maintain the customers'

comfort of ordering food online in business by introducing such a law. According to mediators working in the international sector, unexpected engagement can arrive from a dispute that has been solved through the process of international mediation.

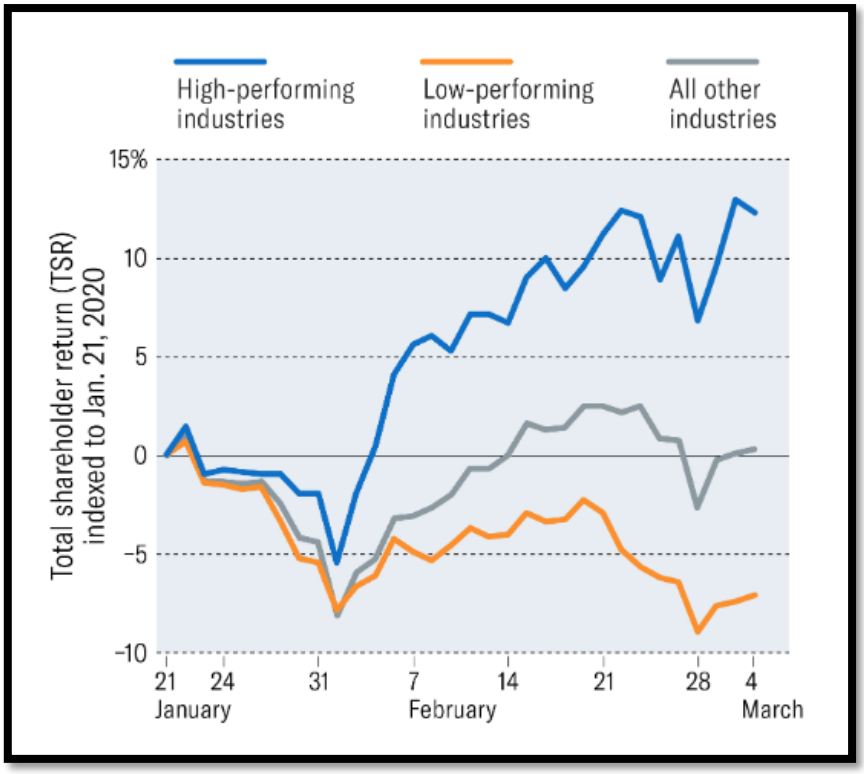

Figure 2.10: Development of E-commerce after an increase in business in Covid-19 and increase in the chance of dispute (Source: Hbr.org, 2022)

Smart business owners often suffer from disputes regarding the global mobility crisis that takes place in many countries after the impact of the covid-19 pandemic (Renaud, 2020). Development of business by making proper coordination with the larger business owners makes the process of goods trader and mobility an easy task for the modern SMEs stepping into global business sectors. The process of mediation offers these small scale business owners to develop better relations with the global players to set business in the larger arena. Making the process of negotiation to mitigate the mobility crisis in e-business is benefited by the process of mediation by such method.

Changes in the demography and the partners working as the investors are prone

to developing business disputes (Aluko and Mswaka, 2018). The process of mediation becomes beneficial at times of cross border trading and the development of relations with new investors in the business. Allocation of investors in business helps in the application of better ideas and innovative approaches in gaining the attention of customers in the online market. Development of business in health, public transport and utilitarian service becomes possible after the development of good coordination in business by the introduction of the mediation process. International investment regulation in business and the rising allocation of business lobbies can be managed by expert mediators in the international sector of business (Basedow, 2019). ADR assistance can be gained not only for the private sectors in global business, but mediators can also develop coordination between state-run departments and cross border operations.

The decision-making process in future business development can also be influenced by the suggestions passed by the mediators in future business sectors. Employment issues in the international sector of business can also be mitigated after collaboration with partners by maintaining the international regulation of business through the process of meditation (Obi, 2018). The policies of corporate social responsibilities (CSR) and the process of human rights maintenance in employee management becomes possible in business taking the assistance of a mediator in the global sector of business. The introduction of a process that helps in solving the cross border dispute in terms of small scale business, online order supply, purchase issues and supply chain management becomes challenging without the assistance of mediators in the global sector business.

7.1 Opening the process of international mediation

Application of the mediation process helps in the development of commercial traction in the sphere of international business. The development of e-commerce after the impact of the pandemic has further boosted the need for a mediation process as mobility and investment crisis has taken place after the impact of Covid-19. According to the information gained from the "International Chamber of Commerce" and the "London Court of International Arbitration" increase in the system of mediation in global business has increased since the mid-1990s (Buruiană, 2019). China is maintaining well balance in keeping relations with the Singapore convention regarding the international phase of mediation for

supporting their e-commerce sectors in the global market (Huo and Yip, 2019). This process is helping by reduction of the dispute with the European counterparts in the global market. A chain of collaboration and better decision making suggestions according to international law becomes possible after the application of the mediation process.

Faster development of business has boosted the need for collaboration between each of the parties involved in the transaction, development, transportation and marketing process both in terms of goods and service sectors. The increase of business in the international sector created a complex environment in business; it further increased after the increase of e-commerce. The beginning of dispute in this kind of situation is common, and the process of trials was lengthy and expensive. Proceeding in the path of ADR by gaining the assistance of the mediator helps in the development of the business and dispute mitigation becomes easier.

The “Centre for Effective Dispute Resolution” situated in London also plays a major role in solving the issue faced by the majority of the business owners working for the development of the business network of the UK across the world (Claxton *et al*., 2018). The introduction of business flexibility and the development of mutual agreement become possible in business after the application of the mediation process in the ADR. The partners involved in the process of business can deliver the solution according to the suggestions used by the mediator in business. The process of MDR is most effective in e-commerce dispute solutions; many B2B and B2C business conflicts have been managed in the European Union after the application of this factor (Alexander, 2019). The introduction of the intellectual property (IP) reservation process can also be associated with the introduction of the mediation. It also works as a part of ADR in the international sector.

The introduction of the "World Intellectual Property Organisation" (WIPO) has helped in the reduction of disputes related to intellectual property rights in the international sector of business. In collaboration with the local authorities, this organisation has successfully reduced disputes all across the world from 2009 to 2017. According to available information, there are 580 cases of a dispute relating to the issue of IP in the international sector for business. The WIPO has been successful in resolving 70% of the issues from these cases (Singhai, 2019). International regulation related to intellectual rights was managed by the

mediators and the development of a fast solution to the issue that both parties invade the dispute could be suggested by the officials. The case of "*Code Revision Commission v. Public.Resource.org*" can be applied for gaining insight into the operational benefits of the mediation process (Shipley, 2019). The authoritative copyright cases that were an issue, in this case, could have been managed learier after the application of the mediation process. The introduction of ADR through the process of mediation in business helps by introducing speed to the dispute resolution and business can progress without facing issues.

7.2 Investor-State Mediation Process

Development of the "investor-state dispute settlement regime" (ISDS) has assisted in the 1960s; the issue that often occurs in international business regarding allocation of investment can be mitigated without reaching the international business court (Alexander, 2019). Development collection with investors across the international business sector becomes possible for both Chinese and Western organizations by application of ISDS in global business. The CCIC to bring a solution to the BRI investment process made collaboration with the ISDS according to the rules and regulations of the investment in international sector business (Liu, 2022). The process of Chinese out-word-foreign-direct-investment (OFDI) is developing fast and collaboration with ISDS was necessary to avoid getting into a dispute with Western companies regarding the investment process.

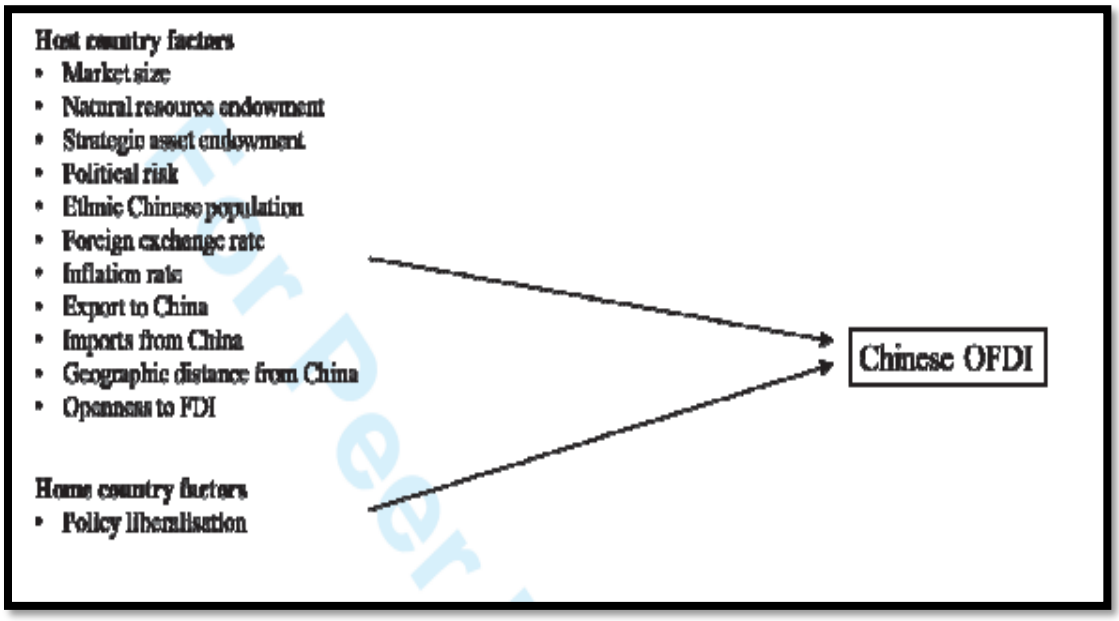

Figure 2.11: Chinese OFDI in the international market by collaboration with ISDS
(Source: Buckley *et al*., 2018)

The policy liberation in the process of outward investment in China is beneficial for the development of business in a speedy method. Application of regulation and time of approval is lower than that of getting a loan from the IMF or the World Bank. The Chinese domestic capital market has witnessed a massive development after the OFDI process in the global market. Many western organisations have proclaimed the number of returns that China demands regarding their investment process in various parts of the world. Introduction of the "UNCITRAL", the international trading law often pointed out that the resentments that are claimed by Chinese authorities in business are way above the expectation level of international trading law (Alexander, 2019). such disputes often take place on a major scale. The ISDS plays a major role in the development of ADR through the mediation process in international investment. The mediation process in the investor-state mediation involves the rules and regulations of the bar association. International investors' mediation in the business of the energy sector has been changed after the introduction of the Asian nation in the process of investment (Ha and Byrne, 2019). International collaboration in development requires frequent rates of mediation as the chance of dispute is quite high in these sectors. Apart from the Chinese agreement process, the EU and Canada

agreement by the process of mediation in investment can be used as an example of international investor mediation (Alexander, 2019). It helps by introducing comprehensive economic development and a trade agreement. Allocation of revenue in the development of the sustainable energy sector becomes available by this process.

7.3 Mediation legal framework

The gradual development of the practice of international mediation in a stage of multimode becomes possible after the application of the "UNCITRAL" regulation process. The instrument of international mediation comes from the instrument of the UN regulation in international business. Development of business faces issues at times despite new partners in the internal market. The application of ADR by the introduction of the mediation process makes the situation more agile, and the progress of business in the international market can sustained.

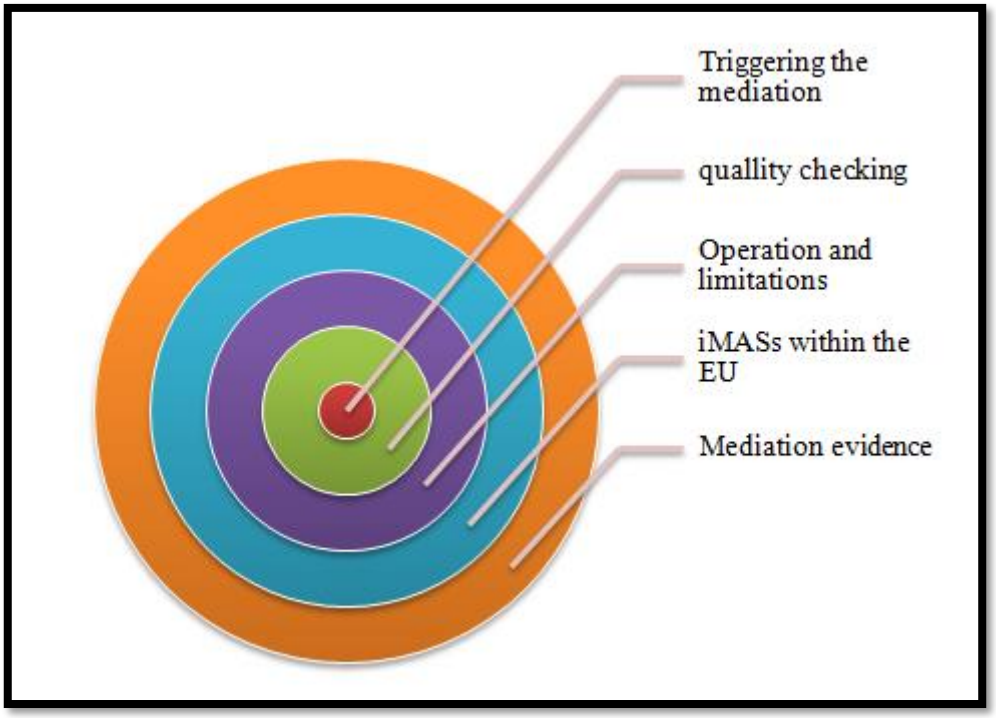

Figure 2.12: Framework of legal mediation
(Source: Developed by the Author)

According to available information, the iMASs is willing to introduce a few

changes in the convention of Singapore. The trading law according to the iMASs will be fully related to the international trading laws after the introduction of a few changes in the system (Alexander, 2019). Assessment of all the scope and possibilities in the law will help in making the mediation more agile and suitable for Chinese and American court parties to work together in the legal system. The introduction of change in the legal framework will help in addition to the change in the New York Convention and establishing connections for the new entrant in the international business market will be far easier after the introduction of this change. The introduction of ADR in case of any dispute in the international business sector will be possible after the introduction of this change in the convention.

7.4 Mediation advocacy

Knowledge of international business law plays a major role in the process of conducting mediation between two or more parties involved in a business dispute (Bahoo *et al*., 2020).

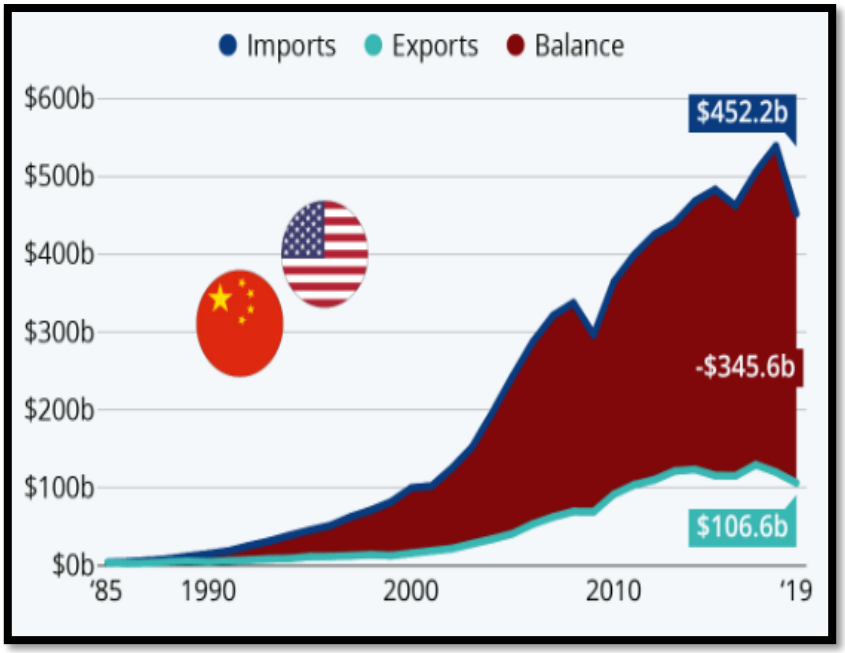

Figure 2.13: Long term perspective of US and China international trading and chance of dispute
(Source: Statista.com, 2022)

According to the report from 2020, Beijing and Washington DC agreed on conducting business. A fresh agreement was signed between the US and China regarding the purchase of 200 billion USD worth of US-based products from the international market. The deal was signed in December 2020 after mitigation of the sudden impact of Covid-19 on business and reduction of the internal dispute between two trading parties (Statista.com, 2022). Assistance two the process of legal advice from the mediators helped both the parties in reducing tension between them. This was achieved by avoiding the obligation of non-compliance by both the parties involved in business through the legal assistance of the mediator (Bahoo *et al*., 2020). The introduction of the digital solution was to be addressed to reduce a dispute of non-compliance in global-scale business.

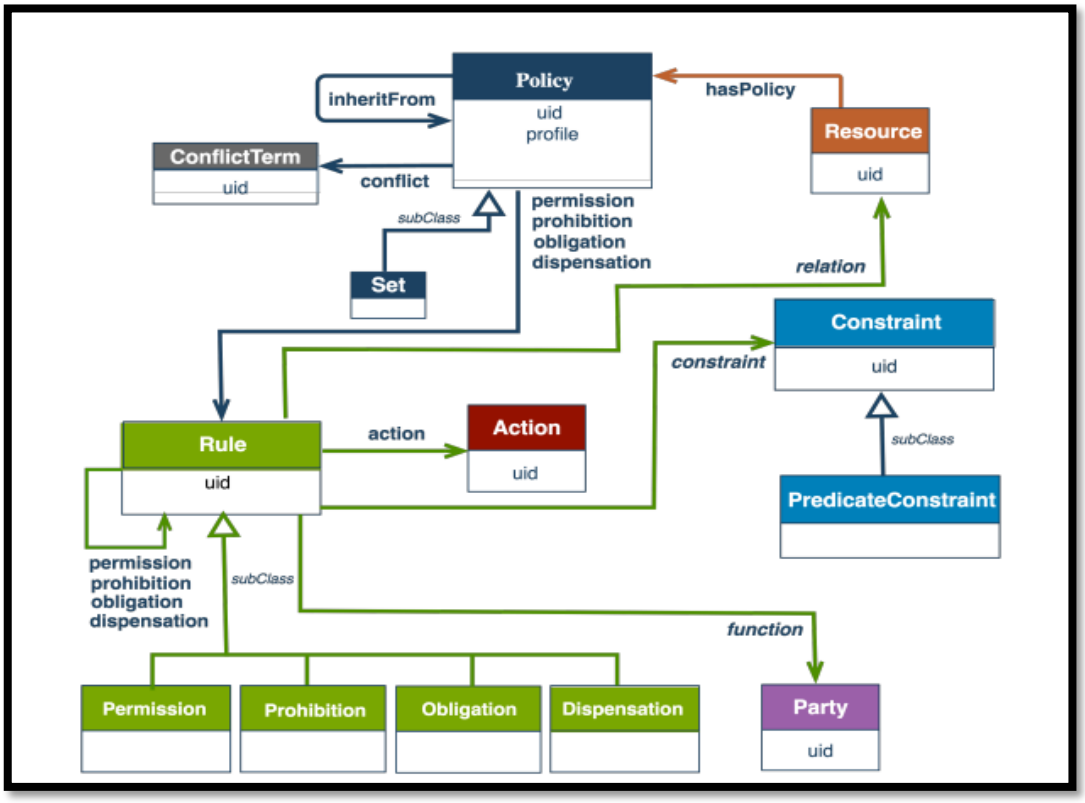

Figure 2.14: ODRL regulatory compliance model for avoiding the obligation of noncompliance by digital path
(Source: Vos *et al*., 2019)

Such provision of non-compliance is similar to England, Singapore and Hong Kong's dispute resolution process (Alexander, 2019). International business tax compliance is another factor that often creates issues for two or more parties involved in the process of business. Taking steps in the process of an ADR to reduce the retention and barriers in business in the international sector the process of mediation appears as an effective decision (Abd Hamid *et al*., 2019). The introduction of the digital process of mediation helps in the development of the change that needs to be introduced in the ADR. Maintaining compliance with the law and following each of the international business policies according to the digital record-keeping system assistance becomes possible in the process of mediation through the introduction of the digital ODRL system of dispute management (Vos *et al*., 2019). The application of modern technologies helps in making a composition of international trading effective and the process of ADR becomes effective through the process of mediation by application of the ODRL framework.

Prescription of appropriate timing, venue setting and maintaining open communication between parties is an essential task for the mediator in the global arena of business (Alexander, 2019). The process of mediation according to the international mediator process should be based on the hard evidence that is presented by both parties. The mediator passes their evaluation as a suggestion to two or more parties involved in a dispute. A mediator in the process of international business dispute solution can play their role through five different processes. Initial of them is the "absent advisor", who is capable of developing a better quality of communication with the parties involved in a dispute (Yablon, 2019). Gaining control of the situation by understanding the crisis of all the parties in a one-to-one meeting format becomes possible through the process of "absent advisor". Other than that, there is an "adviser observer", the role of an "adviser observer" is to be present in the board meeting and guide the two parties on the path of coming to a mutual agreement. Making compliance with the international business law helps in the development of trust and business ethics are preserved by both the parties in business (Serafimova, 2021). Development of the issue mitigation in better collaboration with the international law of business becomes possible after the application of the "adviser observer" system as the method of mediation.

The method of “expert contributor” in the process of international mediation works as a hired lawyer. The mediator in this case needs to be an authority in the

international trading law and regulation and the process of introducing the solution to a dispute following the international trade law should be prescribed by the mediator (Southwick and Southwick, 2020). Business development through an agile method of dispute resolution becomes possible through these meditation processes.

Application of "supportive professional participant" becomes essential at times of setting a good business relationship with a foreign partner (Haug and Mork, 2021). The setting of business deals is achieved by making coordination with the common goals of both business parties and the chance of dispute is reduced after establishing better coordination with the international trading law. The mediator in this method helps bypass legal advice for avoiding disputes and better partnership development. The "spokesperson" is a form of the mediator where he or plays the role of working in a business dispute resolution by taking the place of the client. The solution to any type of business issue is achieved by the legal knowledge of the mediator.

Three major goals can be identified in the process of mediation. The goal of *specific mediation* is, to make the process of ADR lawful and the parties involved in the dispute self-dependent regarding solutions to the issue that are facing in business. The mediator also helps in the development of the negotiation capabilities of each of the parties. The initial goals of international mediation help in self-confidence boost of the parities in dispute. This process becomes highly effective in community restoration process by finding ADR by avoiding legal trials. The *nature* of moderator intervention in the ADR process is generally a guide to the solution of the issue faced by most internal business entities (Alexander, 2019). Analysis of the nature between two parties and participants in the process of the mediator is an essential factor that has to be taken into account by the mediator in business.

8. Due process issues in Dispute management in cross-border business

Online mediation consists of several issues that often create effective hindrances in business dispute resolution. It is true that the most important reason for the success of offline mediation is that it maintains face to face contracts and in the case of online practice it happens through video conferencing and virtual realities. Mediators are often very good evaluators of body language and facial expressions of disputant parties. However, in the online mediation process, there is less scope

for reading body language through virtual meet up. However, it could be stated that there are several issues in the case of online mediation as lack of body language reading trends to continue immense problems. However, several factors are there that become severe issues for maintaining security and safety in the organization. As per the opinion of Sarstedt *et al.,* (2020), online mediation processes are quick and cost worthy but risks are also immense regarding privacy and confidentiality.

There are several factors that affected the process of online mediation such as trust, privacy, Limited Range of Disputes, Impersonal solutions, and Potentially Inaccessibility. However, the overall solution for disputes often gets become conflicting. The revealing organizational data, low performance for certain cases, and lack of availability of mediators often create barriers in the e-mediation process. These factors often get a huge risk to the effective resolution of a cross-border dispute in the e-commerce business. However, the in detail risk factors are discussed below.

8.1 Trust

Trust is one of the most effective issues for the online mediation process. It has been found that online transaction follows no face-to-face interaction between disputant parties and mediators. Hence relying on each other could become a severe issue. For an effective mediation, one of the utmost necessities is to be able to create and establish loyalty and trust between disputing parties and themselves. Online meditation is far more difficult than offline one as there is a lack of face to face meetings. According to the study of Astini (2020), offline mediation takes part between parties and consists of business relationships together. In the case of cross-border e-commerce business, lack of face to face interaction often made the business relation not so stable to trust each other meanwhile the chances to create dispute is high enough. The aim of mediation is to provide a solution for each disputing party in such as way that their business relationship could not damage.

Meanwhile, in the case of online mediation, disputant parties often do not know each other due to working remotely and there are a lot more differences between a real-time and virtual business relationship. The business parties maintain their relationship only through a transactional process so that their relationship could not get chances to build (Aloqool and Alsmairat, 2022). However, in most cases, parties often get involved for the first time while a dispute has been arriving and

there are no chances of building trust for both parties. In this respect, online moderators also face issues to evaluate perspectives of each other as both parties are almost unknown to each other and could not state much about opponents. Due to a lack of face to face interaction along with a lack of trust, online mediation becomes lacks reliability and validity. The only conversation occurred between parties regarding textual communication or e-mail. However, trust issues become the most effective reason for creating issues to rely upon the judgement of mediators.

However, there could be several trust-related problems in the case of issues for online mediation or online transactions. In fact, the identity issue could be one of the major issues behind distrusting disputant parties. In this respect, a digital signature plays an effective role to deal with an identity crisis (Aleem *et al.,* 2021). As per the "Electronic Signatures in Global and National Commerce Act", a digital signature is valid and appropriate to deal with business in every corner. In the case of China, the validity of a digital signature is used to maintain trust in online mediators. However, it could be stated from the above discussion that trust issue could be the most effective challenge in online mediation and there needs immense care in the business deal for resolving disputes in cross border countries.

8.2: Privacy

Privacy could be considered another effective issue in the case of an online mediation system. It is true that business-related disputes could be presented with immense disclosure of organizational data towards unknown parties the mediator and the other disputant party. It is true that due to a lack of business relationships and face to face communication with business traders in the e-commerce business, there are several chances to breach privacy. In case of resolution of a business dispute, both parties need to present their organizational data to the mediator who is unknown to both parties. As per the opinion of Alraja *et al.,* (2019), privacy issues often make disputant parties not cooperate with the mediator and that resulted in more issues in solving the case. In the case of e-commerce business in China, the overall implementation of privacy policy could effectively make the company deal with significant hindrance to resolving the dispute.

End-to-end encryption with the data could be one of the most effective solutions

for privacy concerns in the case of dispute resolution through online mediation. As per the opinion of Koelle *et al.,* (2018), online management could be a serious privacy concern but using end to end information encryption could enable companies to protect their data from breaching due to using an e-mediation platform.

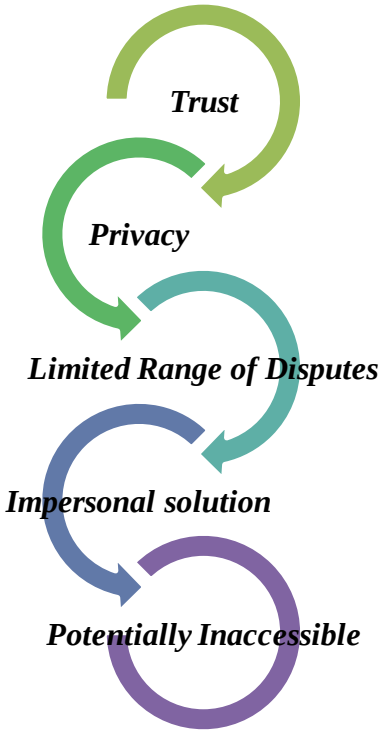

Figure 2.15: Issues and disadvantages of e-mediation
(Source: Created by Learner)

8.3 Limited Range of Disputes

Online mediation could consist of severe disadvantages of limitations on dispute resolution. It is evident that the e-mediation process could solve only some special kinds of disputes which are focused on a single matter of settlement. In the case of fully automated e-mediation, it could resolve only some pacific kinds of disputes and could only handle where the amount of the whole settlement is the significant issue. In the case of a monetary dispute only, e-mediation often provides a solution. As per the opinion of Sela (2018), e-mediation expertise in the monetary cases only where there is no need to use more discussion. The overall dispute needed to be presented and the automated e-mediation process

presents the whole judgement regarding which party needed to face damage.

It has been found that online Meditation consists of several disadvantages and among its limitations, performance is the foremost one. The performance of the e-mediation process is limited to only certain kinds of disputes (Alraja *et al.,* 2019). It is true that the system could proceed with single issues at a single time. In the case of raising multiple disputes among the same disputant parties, it could not read all. For each and every dispute the party needs to appeal several times.

8.4: Impersonal solution

In the case of the offline mediation process in ADR, the disputant parties get enough chances to meet each other and discuss their issues face-to-face but for e-mediation, there are no chances to discuss face to face. In the case of virtual communication, no emotional assessment or bonding could be created between disputant parties or mediators. In the case of any dispute where personal factors needed to be kept in mind, e-mediators could not focus on those factors. According to the study by Kudina and Verbeek (2019), e-mediator effectively deal in a systematic way and lacks personal touch in case of opinion, overview, or judgement. However, this impartial solution often does not become satisfactory for each party and that also could be necessary for further dispute resolution.

Meanwhile, the purpose of the dispute resolution through e-mediation gets failed. However, it could be stated that the most effective issue regarding online mediation could be a lack of expertise in the performance. The impersonal solution could be further considered as one of the most effective issues in the case of business performance. The lack of personal solutions often could not resolve the issues completely and that often creates hindrance in the business performance. It is true that in cross-cultural business there are no trust building relations due to lack of communication and in the case of incomplete or dissatisfactory dispute resolution, the business could proceed with immense loss.

8.5: Potentially Inaccessible

Potential inaccessibility is another major disadvantage of online mediation that has created a hindrance to business growth and development. Accessing the online system could not become everyone's capability. In the case of being habituated to traditional dispute management procedures, parties often face

severe barriers in accessing the system. It might take, hours, weeks or days to solve the conflict and that often lead parties to face a severe obstacle in maintaining business transaction with a lack of progress. According to the study by Astini (2020), the online mediation process often might create a huge disadvantage for technologically unfamiliar people. Meanwhile, potential inaccessibility to the internet and system could make businesses not solve their disputes. It is true that the e-mediation process is cost worthy as there are huge monetary savings from transportation costs, along with accommodation costs to deal with offline disputes. However, the cost of online mediation for each session is not that cost worthy. Sometimes the time might take long and charges are increased on a percentage basis. In the case of solution of dispute fir certain amount, they need to provide percentage base remuneration to the online mediation sites for every session. However, it could be stated that online mediation often becomes disadvantageous to some extent and it could never become a substitute for traditional face for face mediation procedures.

9. Application of ADR in Broad Perspective of Business

The process of alternative dispute resolution in business in the international sector was introduced in the 1980s on a large scale. According to the Harvard business review, more than 600 organisations across the world adopted this method of argument resolution as it was cost-effective and took less time in drawing solutions to global business disputes (Hbr.org, 2022). Most of these organisations were centres of public resources and the majority of them after the adoption of this method reported significant savings in the overall expenditure. According to the review of Jagannathan and Delhi (2020) cases of litigation preferred the lawsuits over the process of ADR, and many of the organisations involved in the business process have increased as the necessity of the situation in global business. Many organisations pointed out that the process of ADR was an issue from the lack of success in solving disputes in times of the 1980s.

Many of the organisations were suffering from the adoption of a large amount of excess baggage, including briefs, judges, lawyers, discoveries, reporters, witnesses and publicity. According to the opinion of investors and business owners, such a process requires additional time for the solution to business disputes (Bakhramova, 2022). A change in this kind of issue was made after the introduction of the legal knowledge to the mediator that was involved in the issue solving process of international business disputes. Taking the advice of such

mediators helped in the development of a solution with a minimal expenditure than courtroom trials.

Based on the analysis made by the Harvard business review the cost of dispute mitigation by application of the ADR process is about $25,000, whereas, the cost that could end an issue by proper courtroom trials shall end up increasing the cost to 2.5 million USD for a business contract worth $700,000 (Hbr.org, 2022). Apart from that, the time that was necessary for courtroom trials was far more than that of mitigation of issues through ADR. According to information from cases of dispute solved through the ADR process, this method of dispute resolution helps by saving money and none of the third parties involved in the business benefits from the dispute issues.

There is a range of procedures that need to be attained by the mediator in the process of dispute resolution through ADR. In case of solving international business issues, the international business regulation needs to be studied and applied by the meteor in this business. Passing suggestions for faster solutions to the issues should be a part of the goal of a mediator. Taking the decision based on hard evidence presented by both sides is the process in ADR, with a lesser cost than that of courtroom trials.

9.1 Objective of the ADR in a broad perspective

The introduction of the "Directive 2013/11/EU" has helped international business between the European Union to develop at a faster rate as the dispute resolution process was faster under the method ADR (Biard, 2018). The development of a parallel directive framework to mitigate the issue that may arise from conducting business between two or more partners was necessary for faster business growth. According to Asthana *et al*., (2020), the fast development of the Chinese economy and business in the international market has helped in correlational progress between the EU and CCIC.

The binding quality standards are necessary for proof of an ADR society that can help others in the mitigation of business disputes in a legal process. Therefore, each of the individuals involved in the process of dispute resolution is out of court. The introduction of the right people in the task was necessary for global organisations. On the other hand, the mediator or the person responsible for ADR between parties in global business should remain neutral, and this person should

not benefit from winning or losing a certain party involved in the dispute (Asal, 2022). An increase in this process can be observed after the 1980s, as the demand for a quick resolution to the issue that was faced by major organisations at times of setting cross-border business needed to be solved in a fast and cost-effective way. The process that is applied by most of the ADR mediators should be transparent to the parties involved in the dispute of business. The mediator will be accountable for guiding the parties in dispute by providing suggestions regarding the process to end the dispute for mutual benefits (Devinatz, 2018). Certain key skills and legal knowledge is required in the mediator for successful dispute resolution between both parties.

The introduction of liberty, legality and fairness is necessary for the process of ADR. International business law shall play a major role in the solution of the issue that counts between two different entities in business (Asal, 2022). The task of a person the responsibility for the moderator of ADR between two or more parties is not to make a decision, but the responsibility lies in providing suggestions. Evaluation of the concerns that have been raised for judgement has to be evaluated by the officials playing the task of the middle man. The decision that is being taken in the process of ADR has to be re-evaluated by the individual, and the long term impact of the final decision has to be evaluated based on its impact on the common people. The introduction of high-quality ADR bodies in the organisation is necessary for the good functioning of the international business.

The “Consumer ADR Directive” is another factor that is a part of the "Directive 2013/11/EU". Protection of the customers against any kind of business fraud activities is the aim of this detective (Biard, 2018). The process of monitoring also falls under this regulation, the decision-making process of the dispute resolution through alternative ways in the global business becomes the responsibility of the mediator. The process of monitoring allows for the evaluation of business partnerships and the effectiveness of the partnership that has been introduced for the development of international business welfare. According to Giabardo (2020) privatised justice is a new format of ADR that has been introduced in the international business sector. Keeping a balance of power between all the shareholders involved in a business becomes possible after the application of the ADR. The process maintenance can also be cost-effective as it does not involve courtroom trials for the solution to the major business disputes.

According to Biard (2018), the process of nutrition is a way to impose the will of

the stronger side on the weak in business. According to the review, the number of shares in the holding of an individual decides the level of power in a business partnership. In this kind of case, the decision making of business is generally done by the major shareholders. Inter-organisational despite in the global business is solved after taking the suggestion of the ADR advisor in business. Introduction of peaceful business opportunity for the long term becomes possible after applying. This factor also involves the process of procurement in business as business disputes with the suppliers are common at times of making cross border transactions.

According to the process of mediation, trust development in the business is necessary for a better business increase in the international sector (Pathiranage, 2019). There are significant amounts of ADR schemes that have been introduced by the EU for refashioning business development and better partnership in the EU. There is a possibility of business development at a faster rate after the introduction of good business. An increase in long term relationships with coordination and business relationship maintenance through ADR introduction becomes possible in the global context.

The labour law in the EU also falls under the directive, it helps by adding an employee induction facility for EU-based businesses in cross border operations. The increase in alternative business dispute resolution after the 1980s and the development of ADR organisations like CCIC have further increased the opportunity for relationship development in cross border business (Devinatz, 2018). Application of the labour facilities in the global business development process in European and Asian nations becomes possible (Pathiranage, 2019). Apart from that, the local population also gets better job opportunities through the global business chain.

The business coordination that has developed in Lithuania, England, Spain and Italy can be used as an example in the process of global business mediation (Biard, 2018). An increase in the business chain between these nations and commonality in the labour management laws has reduced the chance of dispute in business. Sustaining better commercial; relations has become possible after the introduction of the fastest and most cost-effective international business dispute mitigation proceeds. Passing legal advice to the regulatory authorities in business helps in the decision-making process that comes to the benefit of all the stakeholders in a business.

9.2 ICC and International Court of Abbreviation in ADR

The *International Court of Abbreviation* should be kept in mind at times of introducing the change in dispute resolution system. Development of the code in 1923 has assisted in the development process of alternative dispute resolution in global scale business (Iccwbo.org, 2022). The process of working as a solicitor between two or more business entities involved in the dispute at the international sector can be solved after introduction of the code that was formulated in the International Court of Abbreviation in 1923. Reduction of difficulties by solution of business disputes and opening investment options for all the people involved in the process of business in the international sector.

According to Minyar-Beloroucheva *et al*., (2020) business top business issue solution or development of the communication between business owners and foreign governments becomes possible after introduction of this abbreviation. Total process comes under observation of the International Chambers of Commerce (ICC) by following this path of dispute mitigation. According to Ramteke (2020) business despite is resolved by application of the best practices according to the records of business dispute reduction process in record of the ICC. However, there are opinions regarding the necessity of detailed evaluation before imposing any kind of regulation over ADR. Proper formal judgement of the matter is avoided by ICC in the international dispute resolution process through the court of justice. This organisation is much effective in the adr of ADR, where legal suggestions for solution of the issue can be assaulted for reduction of the issue in business (Benkahla *et al*., 2019). Influence on the parties involved in the dispute is provided for agreeing to a resolution that will benefit each party involved in the conflict, and the progress of international business is maintained from such a process. Legal suggestion and supervision over the process of gaining justice becomes possible after application of the change in business.

Role of the ICC is making a confirmation over aunty abbreviation or placing order for his replacement in any case of issue reported from the parties dispute. Apart from that recognition of the challenges that people in dispute are facing in business is also maintained by the ICC (Iccwbo.org, 2022). The process of monitoring in case of arbitration is also made by the ICC, this helps in introduction of the process under the proper way and framework recommended by the international business law. Making scrutinise and monitoring the process of

abbreviation according to the process of international business regulation helps in mitigation of the business dispute without major issue. This legalised process helps in reducing only one-sided loss in the process of dispute resolution.

9.3 International commercial dispute and hub revenue

The disagreement between two parties involved in the process of business agreement or contract is an issue that is common in the international arena and cross border business. Serious consequences that can take place from these disputes are delays in payment of the business. Major investors that are involved with business will not feel safe at times of making decisions of investment without the assurance of good return (Erie, 2019). Apart from that, investors can also withdraw their investment by sensing lack of ethical approach in business from the dispute between major shareholders. According to the same source of information the development of New Legal Hub (NLH) has been beneficial in the process of cross border dispute resolution. Based on the view of the author, development of NLH, and increase of financial centres is the process of maintaining a non-democratic state. The process of regulation in this case will be authoritative. The organisation is capable of passing information to the state regarding the "legitimacy deficit" in the international sector of business. Development of the NLH helps in getting attention of the international business entries to the hub revenue concept in business.

Passing suggestions about novel historic events in international law becomes possible by this process. Development of the belt and road initiative (BRI) of China is managed through application of such a hub economy (Erie, 2019). Evaluation of the various sources of information regarding the Chinese progress with BRI the international court of business law has raised an issue against the issue that the business development process used by the Chinese Government is not ethical. The project of BRI and the *1 trillion dollars* of investment that China is aiming for making a convention from Vanuatu to Hungary, by development of energy and infrastructure based projects is not according to the rules and regulation of international business (Kalathil, 2018). Introduction of this issue resulted in the development of further dispute between the Chinese Government represented by the BRI, CEO in "Dubai International Financial Centre (DIFC) Courts". Introduction of organisations like that of NLH and CCIC helps in international coordination development between two parties. The process of mediation also comes in at times of developing such relation between two parties

involved in the process of business.

The process of globalisation has increased the effectiveness of business since the 1970s, after that increase of goods, people and service formats of business has boosted the competitive system in the market (Ly, 2020). Major issue that started developing is through the development of massive infrastructure in BRI projects, many of the nations that are involved in the path of BRI raised complaints against the unauthorised process of construction that Chinese projects are making on international soil.

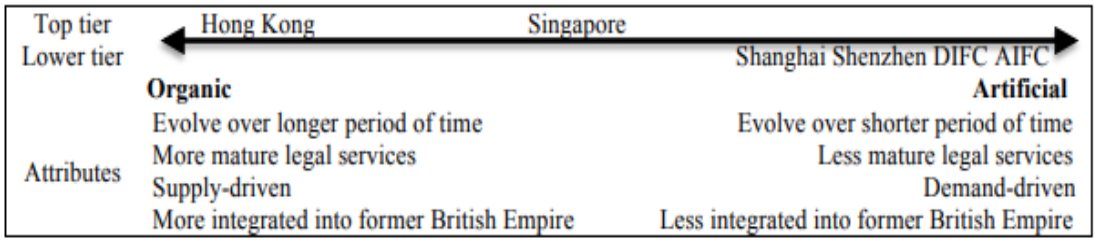

Figure 2.16: Spectrum of legal hubs in BRI deals (Source: Erie, 2019)

Organisations like NLH and CCIC are having a hard time convincing international leaders regarding the legalised process of development that is being followed by the CEO of BRI project (Erie, 2019). There are many critiques that talk about the rising international business issue between the US and China. According to the understanding and analysis, constant failure over the talks of a peaceful solution regarding the Belt and Road Initiative (BRI) can even boost a rising political level of issue between two nations leaving the peace world at risk. Based on that factor, collaboration increase in business is necessary in business and all the issues that are faced by a major number of nations in the international sector as a result of the Chinese BRI project should be evaluated by the Chinese Government.

According to McLaughlin (2021) involvement of CCIC should increase communications with the states that are facing issues from the aggressive BRI project introduced by the Chinese government. The "investor-State dispute settlement" (ISDS) by the process of abbreviation is a task that can be performed by the CCIC in reduction of tension between Chinese Government and all the nation that are coverage of the BRI and the issue each of them are facing from the construction that is aimed to be developed by the Chinese Government.

International business litigators prefers solution of disputes through court of law, according to this concept of work the mediator will be best for solving the issue that Chinese Government is facing from the BRI. The rapid development of China in the international sector of business is reducing the chain of communication and understanding the EU and the rest of Western nations.

There are 136 Chinese organisations that invested in the project of BRI. The reduction of the development in this project and increase of delays that project is facing in business is reducing the will of investors in the path of making further investment in this project (McLaughlin, 2021). This issue can lead to a major loss in the whole project, if introduction of pepper settlement is not introduced. Situation like these presents that "Chinese international investment agreements" (AIIs) demands the process of mediator in solving the ongoing dispute between western nations and the Chinese business sectors. The mediators should introduce plans regarding making progress in the conventional business sector for growth in understanding of business. Increased communication will help introduce international investors in each project founded by the Chinese Government. Apart from that, business relations between governments through the BRI project will be sustained for a long period after development of the entire infrastructure. All the investors invested in the project of BRI shall benefit from the dispute resolution process (Ramteke, 2020). Amalgamation of abbreviation and mediation in the process shall help with introduction of flexibility, agility and better maintenance of revenue after compilation of a project. Circulation of revenue between all the stakeholders in a major project like the BRI shall provide a guarantee to the investors for a good return in the project.

According to information the project of BRI at the time of beginning was estimated to *1 trillion USD* by the state-owned-investors in China. However, increase of delays and the issue that Chinese companies are facing all over the world as a result of their business dispute can increase the budget of BRI project to *8 trillion USD* based on the intimations of same organisations (McLaughlin, 2021). Based on that factor, an increase of coordination with the international investors is necessary in business. This will help in reduction of the financial burden that is estimated by the Chinese investors. Apart from that, the process of meditation in business can increase collaboration between the Western nations regarding benefits of the BRI project that each of the nations will enjoy after its development. The mediator from China should work on communication development with other parties that are partially involved with the BRI project.

According to Erie (2019) the introduction of investment hubs by the large legal sectors has been introduced by China in the last few decades by the government officials in this nation.

Nambisan (2019) distribution of common information between each of the parties involved in a major business is necessary. In the case of global business sectors, government to government communication is necessary for advertisement of a project that will help in the achievement of mutual benefit in long term business. In a similar method the communication between China, US, and the rest of the nations should be made by the process of mediation in international business. According to De Graaff and Van Apeldoorn (2018) the rising cost trading that BRI is facing after a dispute in the international business court can be solved after introduction of the process mediation. The process of calculation is necessary for reduction of ongoing dispute in business under major international sectors. The process of accepting mediation between parties in the international business sector can be possible after obtaining mutual consent about the peaceful resolution of disputes in business. Based on review of Minyar-Beloroucheva *et al*., (2020) the performance of organisations like the CCIC should orient around communication increase in business. Increase in the cognitive communication among the Chinese and Western business sector is the key to achieving success in reduction of communication and rise of dispute between two parties.

Better performance of the organisation regarding protection of rights of both parties in business contracts and promotion of Chinese projects in the western business block. Meditation shall be possible through obtaining mutual respect in the international business sector and communication increase (Ramteke, 2020). Trust development between all the people involved in business is necessary therefore, the advice from the mediators of the Chinese side should be concentration on conventional business development with the nation that are a part of the BRI project. This will help in preparation of ground work for achieving the bigger objective of a major project like the BRI.

Introduction of vision and planning process can assist Chinese government in increasing business with the process of global partnership with the nations that are involved in BRI (Ly, 2020). Presentation of all the benefits that they will get in business should be introduced according to the plan for getting the interest of business persons and the government of those nations. The goodwill

development in the international market is necessary for gaining the attention of people. Communication increase between reach of the parties shall assist in MoU (Memorandum of understanding) development between both parties in business. An introduction of a solution to international business disputes will be possible.

10. Enforcement of online arbitration method for resolving small business cases

There are myriads of disputes in the economic relation between the two power houses of the world economy such as the US and China. The economic relation between these two countries has been essential for solving the issues that have an essential importance on global economy. While PRC has been observing exponential economic growth since the 1970s due to their business investment in the field of electronic commerce and internet, the US has also been observing the exponential growth in the field of retail which will amount to 6.5 trillion dollars in 2021. Therefore, there have been several cases of business relation based issues regarding the business contract of the e-commerce segment of market as well as in the paradigm of payment. There are several factors that are responsible for arising of the disputes such as The issues of payment receipt or non-receipt of the payment, apart from that there are other factors such as the issues of quantity and quality of the goods (Abd Hamid *et al.,* 2019). In this respect there are other issues of disputes regarding the e-commerce trade such as the business action related issues related to late payment or not receiving the payment properly that needs the legal support of alternative dispute resolution evidently. Although there are several cases of issues that are related to the business transactions between the business to business stakeholders, this study will essentially focus on the issues of business to consumer disputes such as the issues related to the samples and manufacturing related issues that involves the import and export of products in cross border business activity.

There are other business issues that are related to legal disputes regarding the click warp. It is one of the most general problems that relate to the agreement and the consent between the users and the internet sites. There are several cases and spaces that are related to the adhesion contracts where the user provides their consent regarding the services and the products. In recent times there are boxes such as ‘I agree’ which is considered as the warp in the online site and when those are clicked by the user it manifests their consent towards the business transactions which is non-negotiable. Thete kinds of agreements are

generally done in the virtual networks especially in the retail field. In this respect the enforcement of the arbitration is generally seen in the business clauses of the click wrap agreements that take place between the user and the intern site manager. This kind of arbitration clauses has also been the focus of research by scholars in recent times. Arbitration clauses are the contractual provisions that are associated with the lawsuit mandates which do not require any intervention of the courts and are generally resolved through the mediation of the third party with the both contractual parties (Alraja *et al.,* 2019). Yet there is a demand and the issues that are generally focussed by the experts that the arbitration clauses are mainly one-sided and thus the customers are forced to give assent to the arbitration clauses not by their choices. Apart from that there is another case of argument that the arbitration clauses are given assent due to the realistics issues of internet and ecommerce contracts. Generally the policies are drafted by the non-drafting committee into the contract and the party, while it comes to the term soft negotiation with the party of drafting committee it becomes impossible to argue and negotiate regarding the terms of arbitration (Alraja *et al.,* 2019).

Nonetheless, there has been exponential growth of the e-commerce sites and the e-commerce transactions have also been popular among the consumers due to the speed of the whole process and usability of the system in the recent paradigm of globalisation. Therefore, the business leaders, managers and the other stakeholders have taken essential steps for solving the issues of policies regarding the click wrap agreements through responding to the legislative terms that are formed by the nations or the international forums. As an instance, in recent times the legislative terms of Electronic signature Law (ESL) has been essential for managing the disputes regarding the terms of clickwrap agreements and the other e-commerce transaction related agreements. Apart from that, there are other laws and legislative contracts that are to be followed while maintaining the arbitration clauses of the disputes. US laws such as Electronic Signature in Global Commerce is also another essential legal factor that is managing the disputes and the other issues of e-commerce (Aluko and Mswaka, 2018). The purpose behind informing these legal steps are to improve the e-commerce transactions across the nations and validating the enforceability of arbitration and other alternative dispute resolution methods regarding the click wrap agreements. However the rise of ecommerce has also given rise to disputes in the e-commerce transactions and other agreements related factors that are associated with the online disputes between the consumers and the providers. Therefore countless systems of solution have emerged in the last decade to solve

the various issues. Among those internet specific resolution methods the mechanism of arbitration and online dispute management mechanisms has been popular among the consumers and companies.

Online Dispute Resolution (ODR) method is gaining interest among the internet users for its characteristics of seamless solution of the issues without any risks for the consumers, thus it is effective for maintaining the trust issues of the consumers. The ODR method is also helpful for solving the issues that relate to transnational commercial transactions in which the customers are located in different nations. It has become effective for gaining the business profit as well as to maximise the benefit for the both parties such as the claimant and the provider party. Since the past decade there have been several companies and agencies that are performing CPR effectively among the companies and the parties for managing the dispute regarding the commercial transactions. The Chinese government has also come up with their online dispute management agency such as China International and Economic Arbitration Agency (CIETAC) that has been recognised as the pivotal agency that is helping the cases of online transaction related disputes. This agency has also promulgated the transnational transactions through fostering the online arbitration system. CIETAC has been considered as the chief agency that is fostering the online dispute system and has been recognised by the companies for setting the first-hand rules for online dispute arbitration (Arai *e al.,* 2019).

The case of enforceability and validity for enforcement of the arbitration clauses in regard to transnational commercial transactions has been a matter of discussion in recent years. Yet the rising growth of the online dispute resolution methods has been adding a novel dimension in the arbitration clauses and those are also another level of safeguard for the arbitration clauses. Although there are certain methods and factors that are to be kept in mind for analysing and imposing the online dispute resolution, there are a number of agencies and institutions approved by the national government that ensure the standardisation of the approaches of arbitration clauses. As per the article 128, there are certain approaches that are necessary for mandating arbitration unders the enforceability of Chinese Arbitration Law. In this respect, there are certain clauses that are necessary for managing the arbitration agreements such as the clauses of the agreements must be in the written format that is required for managing the arbitration among the parties in the business action, aloof the claims and the details of the chances of the claims should be anticipated and shall be written in

the contract between the two parties, the claims and the agreements shall be enabled for any solution through the processes of arbitration. Apart from that, there is such a clause that is the most significant such as the agreement: the terms of the agreement must be verified and should be legally enforceable for managing the disputes between the parties in the contract (Astini, 2020).

The prerequisites that should be maintained by the parties of the contract are generally verified by the government and the government agencies for managing the disputes through the process of arbitration. Generally the arbitration agency such as the CIETAC is enforceable while the disputes are mainly based on the contracts between the companies and the Chinese citizens. Apart From that the arbitration is also enforceable while the Electronic Signature Law is enforced and verified in the terms of the agreement between the parties. Lastly it is also essential for both of the parties to ensure that they agree on the terms of managing the disputes with the help of the online arbitration process.

11. Enforcement of Mediation in PRC

The rise of the business and trade between the two parties such as the China and US has been the fossil point of the ratification of the disputes in business that have cause the global economic phenomena and gave rise to the cases of online mediation or online alternative dispute management for managing the issues between the parties of the trade and commerce. Therefore, it is essential that the negotiation factors and the psychological paradigms clashed several times in case of negotiation. In this respect the experiences that have been gathered by the Conflict Prevention and Resolution institutes (CPR) are essential for analysing the impact and the cause of online disputes in the field of trade and commerce. Since 2003 China Council for Promotion of International Trade (CCPIT) has been taking essential steps for promotion of the transnational trade and commercial relation between the countries. Apart from that, the steps of CIETAC are also essential for managing the disputes between the stakeholders in international trade and commerce.

The contrasting paradigm of Confucius and Fisher

The dispute resolution method that is followed in the western counties are mainly based on the standards that were found by Fisher. In his standards of the dispute management the mediator mainly focuses on the interests of the parties rather

than the standard resolution of the negotiator and the negotiation process (Bakhramova, 2022). Therefore, the standards and the procedures are essential for improvement of the process and it is also essential for creating new and unexpected values which are suitable for each kind of case. Otherwise the process is also helpful for managing the disputes between the stakeholders through crude adjudication and compromise for achieving success in the cases of mediation between the parties of interest. The underline Paradise and the fundamental values that are essential for managing the disputes through the process of mediation in business conflicts the parabound interest is given on the virtue of individual interest and self determination which is considered as the privacy of managing the dispute resolution among the parties in a contract that has face the issues of online disputes. The constant resolution and complete process is also an element that is affiliated with the injection and affirmation through the ascent of the parties as well as the consent of the contractors. It is also focused in the process of mediation that the claimant has not done any kind of harm from the side of the claimant process.

On the other hand the reconciliation process and the mediation is mainly focused on in Chinese culture through the concept of social harmony and interpersonal behaviour. The vindication through the mediation is not done by focusing on the parts of individual interest of the contract parties. The source of this model of mediation is particularly found in the moral teaching of Confucius. A primary value and the heart to that is taught by Confucius is the zinculture which is focused on benevolence, respect and goodness for the better improvement of social harmony. As per the moral teaching of Confucius the virtue of Zen is not expressed by the contemplation of the individual or through any kind of study yet it is expressed through the behaviour of the individual while conducting with others in any kind of social welfare services (Bali, 2018). The moral statement and the moral judgement of the person is the basic staff that is related to the practice of his social contacts and the mediation process in Chinese culture is essentially based on the moral teachings of maintaining harmony and social improvement rather than satisfaction of the individual interest amount of the contractors (Basedow, 2019).

In this regard, kindness and benevolence is also maintained through the process of mediation to check whether there is any kind of harm in the process of mediation. In recent years, the subject of the enforceability and legitimacy of arbitration agreements in transnational financial activities has been a topic of

dispute. However, the growing popularity of online dispute resolution procedures has added a new dimension to arbitration agreements, as well as another layer of protection for arbitration clauses. Although there are certain ways and aspects to consider when analysing and implementing online dispute resolution, the national government has approved a number of bodies and institutions to assure the standardisation of arbitration clause procedures. In this regard, certain clauses are required for managing arbitration agreements, such as the clauses of the agreements must be in the written format that is required for managing arbitration among the parties in the business action, aloof the claims and the details of the chances of the claims should be anticipated and written in the contract between the two parties, the claims and the agreements shall be enabled for any solution through arbitration, and the claims and the agreements shall be enabled for any solution through arbitration. Aside from that, there is a clause that is the most important, such as the agreement: the terms of the agreement must be checked and legally binding for resolving disputes between the contracting parties. The rise of business and trade between two parties such as China and the United States has been the fossil point of the ratification of business disputes that have caused global economic phenomena and given rise to cases of online mediation or online arbitration and mediation management for resolving issues between trade and commerce parties (Biard, 2018). As a result, it is critical that the negotiating variables and psychological paradigms collide multiple times during the negotiation process. In this regard, the Conflict Prevention and Resolution institutions' (CPR) experiences are crucial for analysing the impact and causes of online disagreements in the sector of trade and commerce.

12. Discussion of Online and Offline International B2C Commerce and e-commerce Market

In this segment the recent growth of e-commerce market and B2C market will be illustrated especially aligned with China cross-border market. The recent scenario of China cross-border market and its effective strategies will also be demonstrated in this chapter to analyse them for effective findings. Moreover, in this segment various conflicts and regulation affiliated in the global trade market of China will also be covered in order to make this research resourceful and effective. According to the views of Brand (2019) it has been accumulated that nearly 513 million people registered their name in the global format of *"World Wide Web"* in 2002. Since then the growth of utilising the online platform has been increased by a huge margin and it further influences to bring e-commerce

in the marketing segment. On the other hand, Łągiewska (2022) demonstrated that in the last year overall online spending has been accounted as $600 billion which is the highest in the last few years. Influences of Covid-19 is another essential factor that emphasises customers to change their purchase format.

Due to the impact of Covid-19 pandemic in the international trade market the entire business process has been shifted to e-commerce and B2C commerce process to maintain physical distraction. Moreover, this shifting of online marketing has produced fruitful results as well to prevent the rapid growth of pandmei in the last two years. The major damage has been found in China and its surrounding regions as the pandemic has started to spread from China. Application of B2C commerce strategy has been initialised in 2004 and its growth has been increased especially after 2010. Due to the affection of B2C commerce business tactics the transparency and possible disputes has been reduced by a huge margin as well. Moreover the conflicts among the consumers and online marketers have also been reduced by a huge margin through the application of Business-2-Consumer marketing strategy. Conflicts in international trading have also been reduced by a huge margin due to the influences of B2C strategy as well. Apart from B2C in the international trade market another effective operation has been initialised such as B2B marketing which is especially affiliated between two business parties and their business policies.

In order to operate the B2B trading several disputes and critical conflicts have been evaluated between both parties which is an effective barrier of this trading. China has been affiliated with several disputes in its international trade market due to its legislative policies aligned with in international trading. As per the illustration of Hong (2020) it has been evaluated that due to the influences of ***"Foreign Trade Law "*** *and* its policies the conflicts have been increasing in international trading. Due to the influences of trade law policies growth of foriegn trades has been reduced especially with the Asian region.

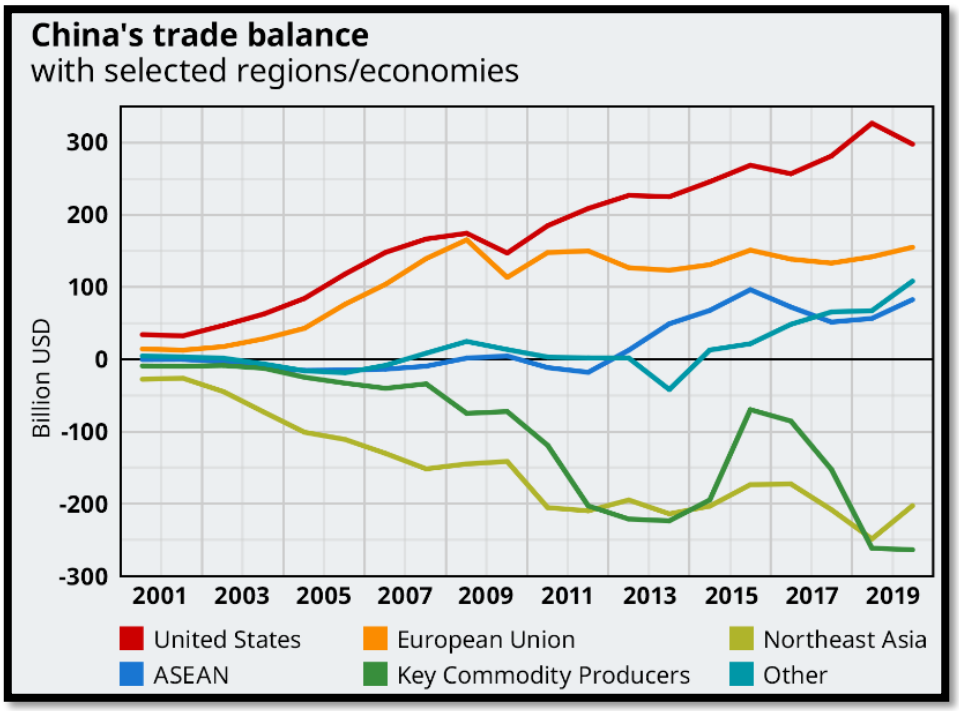

Figure 1: China and Other Countries Trade Balance Growth (Source: Thediplomat.com, 2021)

This figure highlights China's international trading growth in the last few years with foreigner countries. Moreover, this figure further covers the economic growth of China due to the application of international trading and its effective issues and its consequences on the financial development. According to this figure it has been accumulated that China's trading with Asian and North Asian region has been damaged by a huge margin due to the influences of its international trade policy. Due to the application of legislative guidelines the entire business practices has been damaged and it further damages customer retention rate as well. On the other hand, Dendorfer-Ditges & Wilhelm (2021) suggested that in order to prevent the disputes and critical conflicts among international China further incorporated the ***"China-ASEAN Free Trade Area"*.** Due to the application of this legal policy to make free trade with China it further influences the Asian countries to make international trading with this country. Moreover, the Chinese government put emphasis on the global development of international trading especially with the Asian countries and developing economic improvement in the future. On the other hand, online trading has also increased,

especially in recent times due to the influences of e-commerce and B2B commerce.

Due to the rapid growth of e-commerce and B2B commerce in the trading system, the Chinese government further implemented cyber security in their trading system. Through the application of "Artificial Intelligence" and "Block chain" technologies the cyber security progress has been increased for this country. Apart from this software negotiation stability has also been developed in this country to conduct international trading. Due to the involvement of *"**Arbitration**", and "**Mitigation**"* in both offline and online trading the disputes on the cross-border relationship have been enhanced. As per the illustration of Bakhramova (2022) it has been demonstrated that Arbitration is one of the most effective strategies for this country to remove online B2C conflicts. By evaluating policies and legislations of both parties in international trading it further provides an effective negotiation process in order to enhance performance development. The disputes have also been reduced through the utilisation of arbitration strategy in this programming as well.

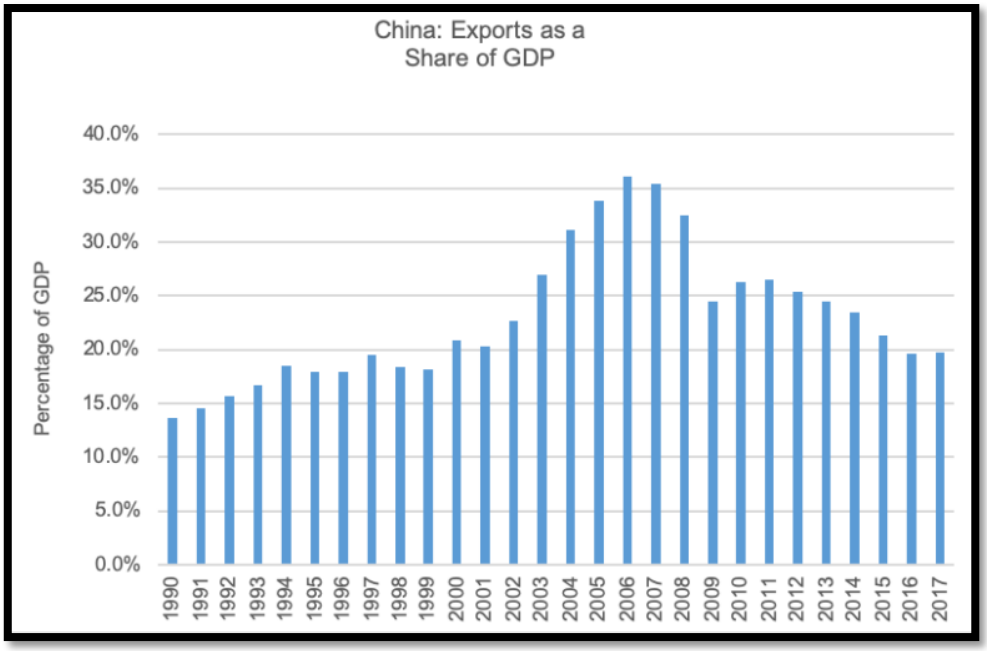

Figure 2: China Export Growth in last few years
(Source: Esg.gc.cuny.edu, 2019)

Figure 2 illustrates the GDP growth rate of China due to the influences of international exports and business trades. According to this figure it has been accumulated that in the last few years the exporting growth of China has been reduced by a huge margin due to the rapid growth of trade conflicts and disputes. 2006 is the most successful year as this year China has been able to generate above 35% export from its previous year. On the other hand, thuis figure further depicts that export growth has declined below 20% in 2017 due to the thief conflicts between China and US in the last few times. Moreover, by the application of trade policies and different formats of the international trading system China further started to develop its negotiation process to enrich the goals of future progress. According to Rizkiana (2021) it has been accumulated that China further expands its potential online platforms in order to implement ***"fair, effective, and predictable means of dispute resolution"***.

13. Key Factors that Increasing Trade Conflicts and Imbalanced Trade Arbitration of China

In this segment the major causes of trade conflicts and international trade disputes will be illustrated which further discussed over the context of China. Moreover, this part also covers the key consequences of the effects on the economic infrastructure of this country as well. Apart from this intervention strategies will also be interpreted in this segment in order to avoid trade disputes and develop a basic infrastructure for business development in China. Due to the influences of mitigation strategies the trade disputes will be mitigated and it helps to prevent critical trade conflicts among foregin countries. Effective negotiation process will also be affiliated between the concept of intervention strategies aligned with international trading with China. Finally, these intervention strategies also bring stability in the international trade market along with effective growth of business exports as well. Those key factors will be depicted as follows:

- ***Lack of Infrastructure and Framework for International B2B and B2C Commerce***

One of the most critical and essential barriers for China to expand its exports and international trade growth is the lack of infrastructure and framework for B2B and B2C commerce. As per the highlights of Yang & Niu (2020) due to the *"patchwork of National laws and domestic consumer protection law"* it increases the disputes of international trading. Moreover, due to the involvement of consumer protection

law in the legislative guidelines it increases expenses of the foreign parties in order to conduct an effective business trade with China. Effective taxation has also been changing with international trading goods which compels the second party to stop trading continuation with China. *"Value Added Tax (VAT)"* is the most familiar tax aligned with international trading which further changes additional costs in order to import them in this country. According to the suggestions of Osei, Adewale & Omoola (2018) it has been accumulated that due to the changes of VAT it further increases 13% to 17% added values to imported products.

Moreover, due to the changes of VAT on the imported products it further creates issues for the domestic business professional to operate its customer growth. Furthermore, the SME organisation of China has also been suffering from effective issues as well due to the lack of financial resources in order to operate the business activities as well. Due to the application of VAT on the domestic products, it also creates various sites to export them in foreign countries and generate a significant amount of GDP growth from this. Costs of domestic goods have been inclined by a huge margin which further effectively damages the trading ratio in the international trade market and it further damages the revenue growth in future as well. On the other hand, the main damage of international trading has been disrupted with the United States, which is the major damage of China in its supply chain management. Sun (2020) suggested that apart from VAT, *GST and CGST* are two viral aspects of the trading taxation system of China, which also added with the domestic products as well. Due to the involvement of these two taxation systems both import and export rate has been reduced and its further influences on the economic damages as well.

- ***"Inconsistent Attempts as Legislation Governing Online Commerce"***

Another effective barrier has been found from this international trading competencies such as inconsistent attempts of changing the government legislation over the trade poliovirus in China. Due to the lack of consistency in the changes of trade acts the major conflicts remained critical between both parties in the international trading. Due to the major conflicts between both parties the disputes further expand and it influences the business expanding companies to intervene trades with China. Inconsistent approaches further increase risks of security to complete a transparent trading through e-commerce platform. Due to the utilisation of B2B commerce platform for international trading cyber breaching

has been included by a huge margin which further disrupts the supply chain management of China. Malicious Cyber Attacks in international trading have been inclined up to 79% in the last few years which is the most dangerous factor aligned with trade business activities. Due to the lack of policy changes and security provided in the online business trades cyber attacks have been increased in China and which directly affects the customer retention rate as well.

Effective relationships in the international trade market have also been disrupted due to the intervention of effective and transparent business trades. Moreover, SME business practitioners are also suffering from lack of financial growth due to lack of resources and effective export of their domestic products in foreign markets. On the other hand, Qi *et al.,* (2020) stated that cyber breaching damages nearly $10.5 billion economic damages all over China which is the biggest failure of China. However, due to the rapid growth cyber breaching the trade relations with China and US have damaged by a huge margin which directly influences international trade growth. As per the shades of Gábriš (2018) it has been admitted that the trade growth of China has been reduced up to $396.58 billion in 2021 from $676.49 billion in the previous year. Due to the inconsistent practical changes of China government over international trade practices it damages revenue growth up to 29.9% to 31.1% in a single year with the US.
Despite having a huge damage in the foreign trading China further able to generate 30.9% more growth with other countries. The entire trading growth of China has been increased especially with Asian countries due to the application of B2B commerce business practices. During this pandemic period China develops its revenue growth with Asian foreign countries by increasing trading which helps this country to recover from its financial deficiencies. Finally the last effective factor aligned with these trading practices is the application of technological changes in order to improve data security and data protection which further embraces the entire practical business performance as well.

14. Literature Gap

The literature gap could be considered an unexplored area which could enrich the study with more information. In the case of any research, evaluation of the literature gap is one of the important aspects to consider the epitome of the study. As per the opinion of Lawn *et al.,* (2020), the literature gap specifies the study areas and that effectively influences researchers to get the outcome of the study

from that certain area of exploration. However, in this study to evaluate cross borders despite management practice in e-commerce business the last five years' data are considered as the most appropriate sources to evaluate the current situation. It is true that rules and regulations regarding any kind of dispute management are evolving day by day. Being the study constructed with recent information, the history and the evolution of rules and regulations have not gotten enough room to flourish in the study. This lack of history and evolution of regulation in despite management could be considered as the literature gap in this study. Meanwhile, the lack of availability of relevant case law ate also could be considered as the literature gap in this study.

15. Conceptual Framework

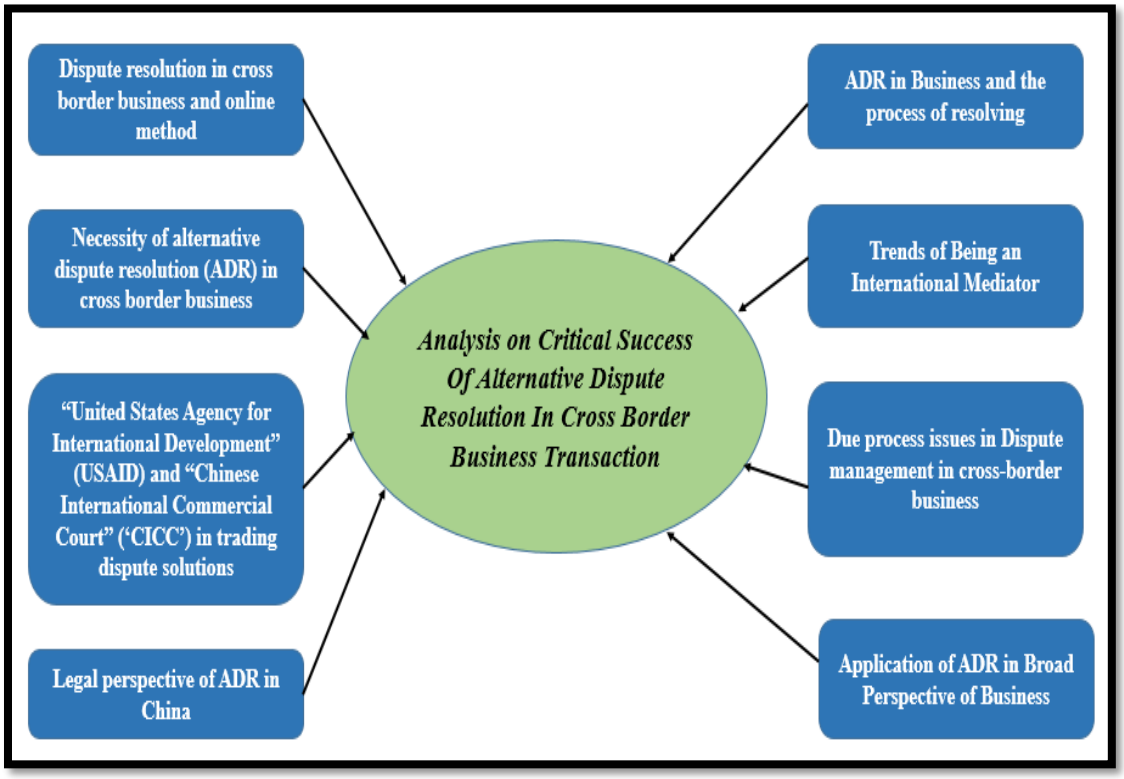

Figure 2.17: Conceptual Framework of the study
(Source: Created by Learner)

16. Summary

It could be summarized from the above discussion that dispute management in cross border countries becomes one of the most effective factors for successful business operational management. Dispute resolution in cross border business with the online methods has been discussed briefly in this study. The online settlement, arbitration, and online mediation process have drawn a significant impact on the cost-effectiveness and time-saving approach in despite management. Resolution of consumer complaints could also be resolved through online dispute management which effectively brought a significant contribution to the development of business. Maintaining cross-border consumer relations could significant approach to an online dispute management system in China. However online dispute management brought significant advantages in cross birder e-commerce businesses in China with international companies. Being the system online, it provides disputant companies with locational benefits not to expend on accommodation and transportation in cross-border areas to solve the business dispute. This system improves the communication between disputant parties with conciliatory, arbitrator, or mediator also. The productivity in dispute has also increased from the end of conciliation centers in China after the implementation of one dispute management system.

It has been seen that the ADR process is necessary to solve the cross border despite the most simplified way. Opportunity for party autonomy made this system more flexible by including and excluding a set of rules as per mutual consent of both disputant parties. ADR is the most neutral way to resolve disputes which effectively maintains justice for both disputant parties. It is one of the effective ways to maintain business confidentiality and privacy dispute management. It is the most cost-effective and time-saving factor to maintain cross border disputes. However, it could be summarized that the necessity of the ADR system is immense in the case of resolving cross-border despite management.
The role of USAID and CICC has also been summarized in this part. The payment system in cross border business has also been evaluated. In fact, the legal perspective of ADR in China has also brought a significant impact on the study by providing a depth analysis of the legal regulations and rules of despite management. In conciliation during court proceedings is evident that overall dispute management is the sole decision of the disputant bodies whether they are accepting the judgment of China court. Conciliation conducted by arbitration institutions along with conciliation institutions signifies that arbitrators or

conciliators are just suggested for the resolving solution but they are not the decision-maker. It could be stated that arbitration, mediation, or conciliation should be impartial, unbiased and neutral. No conciliator, arbitrator, or mediator should not be known to each of the disputant parties and there should be no connection within the last five years.

There are several issues in the Dispute management in cross-border business among which Trust and maintaining privacy are the most important. In fact, ADR maintains dispute management at a limited range. Being unknown to each other and due to maintaining cross-border e-business together, there is a lack of business relations forced and that often becomes effective for an impersonal solution. Without the internet and device, dispute management is not possible which a limitation of the ADR system is also. However, the application of ADR in several perspectives along with its objectives are maintained effectively which defines the responsibility and role of ADR to resolve cross border disputes with effective solutions. It could be stated from the above discussion that cross border disputes management maintains the most beneficial approach to Chinese e-commerce business globally.

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A Comparative Review on the Security of Payment Regimes: An Evaluation to the Construction Industry Payment and Adjudication Act (CIPAA) in light of the UK and NSW Frameworks

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Introduction

In Malaysia, adjudication and the act governing it, named Construction Industry Payment and Adjudication Act 2012 ("CIPAA"), came into force on 15th April 2014, with the primary purpose to resolve short-term cash flow problems in the Malaysian construction industry (Rajoo, 2021). Raji, Mahamed & Oseni (2015) and Mazani, Sahab & Ismail (2019) stated that the adjudication, as one of the methods to resolve the disputes, is widely applied in the construction industry. It can be found in the statistical report published by the Asian International Arbitration Centre ("AIAC"), (formerly known as Kuala Lumpur Regional Centre for Arbitration, KLRCA), where disputes referred to adjudication kept increasing from the year 2014 to 2019. However, it had dramatically decreased in the year 2020, due to the Coronavirus pandemic (COVID-19) and the movement restriction announced by the Malaysian government. This shows that adjudication has become a popular choice for the construction contractual parties to resolve disputes relating to issues of underpayment, late payment, and non-payment.

One of the major reasons the construction contractual parties adopt adjudication, in comparison to arbitration and litigation to solve payment disputes is due to the speedy and economic nature of the method (Mah, 2021; Tan, 2023). According to the Hon. Justice Dato' Mary Lim Thiam Suan in *Uda Holdings Bhd v Bisraya Construction Sdn Bhd & Anor and Another Case (2015)*, the adjudication award is deemed to be final and binding, thus providing a quick enforceable interim decision under the principle of 'pay now, argue later'. Additionally, CIPAA provides that the adjudication decision shall be awarded within 100 working days.

Generally, after the completion of payment claim and response exchange, an adjudicator is appointed. The claimant shall within 10 working days after receiving the acceptance of appointment, serve a written adjudication claim to the respondent. The respondent shall within 10 working days from the receipt of adjudication claim serve an adjudication response. The claimant then within five (5) days of the receipt of adjudication response, shall reply to the adjudication response to the respondent. All these steps require the parties to provide supporting documentation. Unlike arbitration and litigation which takes a longer time to file before the case is heard by an arbitrator or by court. Other than that, the cost of adjudication is found to be more economical compared to arbitration and litigation (Ali, 2016; Mazani, Sahab and Ismail, 2019).

From the above, it shows that adjudication is an advantageous alternative to resolve payment disputes in construction. CIPAA is now one of the additions to the family of statutory Security of Payment ("SOP") regime in the common law world. It provides parties of a construction contract with the rights to payment, adjudication, and further remedies by which these may be asserted, determined, and enforced. The SOP was first pioneered in the United Kingdom ("UK") and subsequently implemented in New South Wales ("NSW"), a state in Australia. In contrast with the UK which maintains a relatively uniform approach to the adjudication legislation (Roderick, 2022), each state of Australia has its own legislation regulating adjudication and procedures related to dispute resolution (Glover, 2007; Roderick, 2022). NSW is the first Australian jurisdiction to enact industry-specific legislation addressing 'security of payment' and adjudication within the building and construction industry (NSW Government, 2012). The adjudication jurisdiction in other states and territories of Australia, i.e. Victoria, Queensland, Northern Territory, and Western Australia, including the Isle of Man and Singapore, closely aligned with the UK or NSW model. However, New Zealand adopts the UK adjudication approach while following NSW's payment approach (Munaaim, 2010). CIPAA was implemented and referenced by the legislation published by both the UK and NSW. Despite the variability in terms of the procedures and the scope of application, each model has been followed with modifications in many other jurisdictions.

Although in general the SOP may be effective, some inherent problems have been recorded as critical lacunae impeding the effectiveness of the SOP (Security of Payment). Therefore, the purpose of this paper is to review Malaysia's own SOP regime i.e. the CIPAA and further to conduct a comparative analysis between the UK and NSW security of payment regime. The UK and NSW adjudication regimes were the first two that pioneered the implementations of statutory adjudication, thus were selected for comparison with Malaysia's adjudication regime. Moreover, Malaysia's adjudication regime is conceived as a hybrid model (Muhamed Nasir, Ismail & Muhd Fadhlullah Ng, 2018; Aminuddin, 2019), drawing inspiration from the UK and NSW statutory adjudication systems, among others (Muhamed Nasir, Ismail & Muhd Fadhlullah Ng, 2018).

The comparative analysis will include several aspects, such as historical and statutory background of the regime, scope and application of the regime, process and procedure of the regime, adjudicator's power, obligations and

jurisdiction, adjudicator's award and enforcement, and available remedies. The selection of these aspects for discussion in this paper is based on their significant relevance to the establishment of an adjudication regime within a country, as well as to the processes, procedures and outcome involved in addressing and resolving disputes. The chosen aspects are integral to the understanding of the operational mechanisms of adjudication systems. This paper starts by examining the historical background of the adjudication regimes in the three (3) countries, followed by an exploration of their statutory backgrounds. These aspects are crucial for the comprehension on the development of the adjudication regimes in each jurisdiction. Subsequently, the paper will delve into the aspects of the adjudication process, covering the scope and application of the adjudication regimes, the process and procedure of the adjudication, the powers, obligations, and jurisdiction of the adjudicator. Finally, the paper will address aspects concerning the adjudication award and remedies, as these components represent the culmination of dispute resolution procedure under the adjudication regime.

The Historical Background of Adjudication Regime in the UK, NSW and Malaysia

The history of the adjudication is rich, but is vague on its origin (Jones, 1958). Research showed that the implementation of adjudication can be traced to the medieval period in the UK, where the UK legal system was formed. The disputes were referred to a third party to resolve, and such party was the courts in the legal system, and the process is considered as litigation. The alternative dispute resolution ("ADR") was then implemented to resolve the dispute in non-judicial means, and the arbitration was the first ADR invented and applied to resolve the dispute. Adjudication in the UK was first implemented in mercantile dispute, then only applied in construction.

In construction, the adjudication had been implemented as an ad hoc procedure before the implementation becomes statutory. In an ad hoc adjudication, it was treated as an informal process to resolve disputes, and often regulated in a contractual provision within. Adjudication was a non-court-based ADR to resolve disputes, where an appointed neutral third party, often an expert or engineer, to investigate and resolve the dispute. The aim of the adjudication is, which is applicable to date, to provide a quick and practical solution to disputes. Timeline was given to the third party to investigate, hear, and make decision to resolve the dispute. Over time,

adjudication became formal and is sanctioned to be a statutory legislation. In 1996, Housing Grants, Construction and Regeneration Act 1996 ("the HGCRA") was introduced, and adjudication was formally implemented and governed under the law, officially in 1998. The detailed legislation background of the adjudication in UK regime will be discussed in later section.

The history of adjudication in NSW is similar with the UK, in a sense where it was an out of court method to resolve a dispute. Adjudication in NSW shares a similar aim with the UK regime to provide a measure to resolve disputes in a quick manner by a neutral third party. However, in contrast to the UK regime, adjudication in the NSW was extensively implemented in the gold mining industry (Smith and Baker, 2022). In the 19th century, there was a sudden onset of gold mining activities in the NSW and Victoria. Records showed that between 1851 to 1875, adjudication was most active in the gold mining industry. As highlighted earlier, each state of Australia has its own legislation regulating adjudication and the procedures related to dispute resolution (Glover, 2007; Roderick, 2022), and adjudication was to become statutory in Australia firstly in NSW (NSW Government, 2012).

Later, adjudication in NSW shares the same historical background with the UK regime, where the provisions of referring the disputes to adjudication was added in the construction contract. A neutral third party, normally the engineers or experts in charge to investigate and resolve the dispute between the disputing parties. Adjudication has proven its advantage as disputes were resolved promptly and efficiently, which then became more widespread. The success of adjudication as a timely method of resolving dispute have contributed to an increasing recognition of adjudication as a significant ADR tool. Therefore, in 1999, adjudication was enacted as a statutory legislation, and NSW was second in the world to implement the statutory adjudication, which focused on resolving payment disputes in construction.

Adjudication in Malaysia was introduced much later than the UK and NSW, where its history can be traced back to before 1999. The adjudication was first carried out by the Contract Administrator in pre-1999, where the default adjudicator was the Superintending Officer ("S.O") under the P.W.D. 203A Form of Contract, Architect under PAM Agreement and Condition and Contract, and Engineer under IEM Standard Form of Contract and FIDIC Contract. At that juncture, adjudication entailed the obligation of the Contract Administrator to resolve disputes between the Employer and the Contractor. In the post-1999, FIDIC Contract then introduced the Dispute Adjudication

Board ("DAB") to resolve disputes. It provides a three (3) or one (1) member from the DAB to resolve the disputes. The DAB members, known as adjudicators after the statutory adjudication was officially implemented, are independent experts who are not employees or agents of the disputing parties. This contrasts with other standard forms of contract where the S.O., as the key person, resolves the disputes. A timeframe of 84 days was provided to the DAB members to hear and resolve the disputes. This shows the primitive prototype of the statutory adjudication in Malaysia (Rajoo, 2014a).

Table 1: Comparison of Historical Background of Adjudication Regime in the UK, NSW, and Malaysia

	UK	**NSW**	**Malaysia**
Development Epochs	In medieval period	In the 19th century	Retrospect before 1999
Original Dispute Resolution Types	Mercantile disputes	Disputes in gold mining industry	Construction disputes
Pre-Adjudication Dispute Resolver	A neutral third party, either the engineers or experts from the construction industry	A neutral third party, either the engineers or experts from the construction industry	Contract administration in pre-1999; and DAB members in post 1999 under FIDIC Contract

The Statutory Background of Adjudication Regimes

The UK was the first country in the world to have introduced a statutory legislative intervention system to resolve problems and make improvements to cash flow issues in construction. In 1996, the UK first introduced statutory adjudication via the Housing Grants, Construction and Regeneration Act 1996 ("HGCRA"). It was then amended with the enactment of the Local Democracy, Economic Development and Construction Act 2009 ("LDEDCA"). The mechanism of adjudication for the expeditious resolution of construction disputes was introduced in Section 108 of LDEDCA (Munaaim, 2010). The sections include eight (8) major elements, where (1) the right to refer disputes

to adjudication at all times; (2) the right to give notice; (3) the appointment of adjudicator; (4) decision made by adjudicator shall be within 28 days unless agreed by the parties for further extension of time; (5) the adjudicator shall act impartially; (6) the adjudicator is expected to act inquisitorially, initiative in getting facts; (7) adjudicator's decision is binding and enforceable; and (8) the adjudicator is immune in discharging his function (Muhamed Nasir, Ismail & Muhd Fadhlullah Ng, 2018).

Ameer Ali and Wilkinson (2009) stated that adjudication was designated to resolve disputes in the construction industry, particularly in issues of payment. The court in the case of *Macob Civil Engineering Ltd v Morrison Construction Ltd (1999)* stated that adjudication is a speedy mechanism for settling dispute in the construction industry. HGCRA made adjudication a mandatory requirement in construction contract after adjudication was implemented (Dancaster, 2008). According to Munaaim (2010), the established requirements are basic, parties can further agree on whatever criteria if they are consistent with the compliance provisions. Failure to comply with the provisions in the HGCRA will result in the application of the Scheme for Construction Contracts (England and Wales) Regulations 1998 ("the English Scheme"). The consequences of employing this default technique are determined by non-compliance with payment or adjudication restrictions. If any payment provisions fail to meet the standards of HGCRA, it is replaced with the English Scheme's equivalent.

Adjudication in NSW was implemented in 1999, three (3) years after the implementation of HGCRA in the UK. The Building and Construction Industry Security of Payment Act 1999 ("BCISPA") was officially enacted in 2000, with the purpose of resolving construction disputes via adjudication. BCISPA established a statutory framework for the adjudication of payment dispute in construction with the aim for a rapid and accessible method to resolve the disputes relating to payment. Similar with HGCRA, BCISPA makes adjudication provisions mandatory in the construction contract, together with the consequences if the contract fails to comply with the requirement. However, the adjudication regime in NSW imposes the whole legislative framework for both payment and adjudication as part of the primary legislation. Therefore, there is no other default scheme to be introduced. If there is non-compliance to the provision to BCISPA, the default provisions will be replaced by the primary legislation, not the default scheme similar to the English Scheme in the UK regime. Other than that, in contrast with HGCRA, BCISPA restricts that the disputes referred to adjudication shall be

limited to payment claims' dispute; whereby the HGCRA stated that all disputes in the construction industry may be referred to the adjudication for the dispute resolution (Uher & Brand, 2007; Glover, 2007; Munaaim, 2010).

In the Malaysian context, the Construction Industry Development Board (CIDB) and Master Builders Association Malaysia (MBAM) first initiated the implementation of adjudication as an instrumental dispute resolution mechanism in the construction industry, primarily addressing cash flow issues. The statutory adjudication was officially enforced in 2014, after CIPAA was introduced in 2012 and published by the AIAC (Gould, 2014). According to Rajoo (2014a), references are taken from HGCRA and BCISPA to form the statutory adjudication in Malaysia. The eight (8) elements under s. 108 of HGCRA are implemented in CIPAA; however, Malaysia does not utilise adjudication as the ADR to resolve all construction disputes as seen in the UK regime. Instead, it focuses on addressing payment-related issues within the construction industry, similar to NSW regime. The provisions of statutory adjudication are similar with HGCRA and BCISPA, for example, the practice of conditional payment ("pay-when-paid" and "pay-if-paid") was prohibited under CIPAA. The construction contract, whether formed under standard forms governed and issued by professional bodies and/or organisations, or a customised contract agreed upon by the contracting parties, may be adjudicated under the Malaysian adjudication regime, provided it meets the definition of a 'construction contract' as outlined in Section 4 of CIPAA. Adjudication was at first implemented in a construction contract formed under FIDIC Contract. It reaches a landmark in 2018 where PAM Agreement and Conditions of Contract has recognised and included the adjudication model as one of the ADR to resolve payment disputes in construction contract.

Table 2: Comparison of Statutory Background of the Adjudication Regime in the UK, NSW, and Malaysia

	UK	**NSW**	**Malaysia**
Statutory Law	HGCRA	BCISPA	CIPAA
Year of Gazette Publication	1996	1999	2012
Year of Amendment Made to the Statutory Law	2009 (LDEDCA)	2010 & 2018	N/A
Year of Statutory	1998	2000	2014

Implementation			
Disputes Amenable to Resolution	Any disputes related to construction works	Limited to payment disputes in construction contract	Limited to payment disputes in construction contract

Scope and Application of Adjudication Regimes

Adjudication regime in the UK was governed by HGCRA, as amended to handle construction disputes in the UK regime (Russell, 2003). According to Hebbard (2021), the Supreme Court in UK acknowledged that it had become a mainstream to resolve disputes, especially in the construction industry. Pickavance (2016) mentioned that the Act provides statutory rights for the disputing parties to adjudicate the disputes in adjudication, whereby the disputes shall be within the construction industry. The statute clearly stated that any disputes arising within the construction contract may be referred to the adjudication process. Besides, HGCRA provides the scope and application for the parties to the construction contract to adjudicate the disputes which include payment issues, delay issues, extension of time, poor execution and defective works, and the clarification of the scope of works. Other than that, the complex contractual issues, such as negligence claim, may also be referred to the adjudication process; but it is suggested to refer complex contractual disputes to the arbitration or litigation, as the adjudication process are fast-track in nature, and the decision might not be accurately made as compared to the arbitration or litigation. Nonetheless, the scope for referring the disputes is still within the construction contract, and within the construction industry context. Unlike arbitration as another mechanism for ADR, parties not within the contract may arbitrate the disputes via arbitration, and any dispute may be referred to the arbitration to be arbitrated. Furthermore, the right for the parties to adjudicate the dispute is only applied to the construction contract that are in writing. HGCRA described and limited that disputes relating to construction operations may refer to adjudication.

In the position of NSW, the statutory adjudication regime is different with the UK regime. BCISPA provides that construction contracts are covered under the adjudication, and the contracts can be formed in writing, oral, or partly oral. In addition, NSW regime covers the supply of goods and services, which is in contrast to s. 105(2)(c) and (d) of HDGCA. It can be found in NSW Court of Appeal case of *Brodyn Pty Ltd t/as Time Cost and Quality v Davenport &*

Anor (2004), where the judge mentioned that the adjudication in NSW applies a more limited scope compared to the UK adjudication. Glover (2007) pointed out that the scope of adjudication in NSW or even Australia dealt with payment issues, which also includes the payment of professional fees, progress payment, variation orders, and any other payment issues. Unlike in the UK, all construction disputes may be adjudicated, NSW adjudication regime provides that the disputes brought to the adjudication shall be within the construction operation. The Employer has no right to bring claims to the contractor through the adjudication, on the sum due under the contract. Other than that, the adjudication in NSW put a heavy favour to the contractor over the employer, and the sub-contractor over the contractor, which contrasts with the UK regime where it remains neutral in the UK approach (Glover, 2007). Compared to the UK approach, BCISPA has limited the adjudicator's deliberations to contents of the payment claim, payment schedule, adjudication claim, and adjudication response. The adjudicator in the UK will be advised to deliberate all the documents and materials provided by the parties, and if he has intention of introducing new things, both disputing parties should be announced by the adjudicator.

The adjudication regime in Malaysia is similar to NSW adjudication regime, where the disputes to adjudicate are limited to payment issues (Munaaim, 2019). Other issues which are not related to payment disputes shall not be adjudicated in the adjudication. The scope of application of adjudication in Malaysia regime covers the construction contract, and applicable to the contract relating to the consultancy works and construction works, wholly or partly in Malaysia, which is outlined in s.2 of CIPAA. Judgement was made by the Federal Court in the case of *Martego Sdn Bhd v Arkitek Meor & Chew Sdn Bhd (2019)*, where the consultancy services in relation to the construction works may adjudicate disputes in the adjudication process under CIPAA, provided that there was a valid construction contract. S. 4 of CIPAA then stated disputes related to the construction works may be brought to the adjudication to be adjudicated. The High Court in the case of *MIR Valve Sdn Bhd v TH Heavy Engineering Sdn Bhd (2018)* mentioned that the disputes related supply and installation of construction materials is considered as construction works, and it can be referred to adjudication. Unlike the UK and NSW adjudication regime, the Malaysian adjudication regime does not clearly state in the CIPAA regarding "construction contract in writing". It was then filled by the AIAC in the CIPAA Circular 03, which clarifies that construction contract is made in writing whether it is signed or not or made by the exchange of communication in writing or evidenced in writing (Rajoo, 2014b;

Low, 2022; Chan 2023). In the context of scope and application related to the adjudicator, the Malaysian regime shows a similarity to the NSW regime, where the adjudicator will deal with the payment claim and schedule, and adjudication claim and response, will not deal much with other documents or materials.

Table 3: Comparison of Scope and Application of Adjudication Regime in the UK, NSW, and Malaysia

	UK	NSW	Malaysia
Scope of Application	United Kingdom	New South Wales, Australia	Malaysia
Adjudicable Dispute Areas	Any disputes related to construction works and operation	Payment disputes within the construction contract	Payment disputes within the construction contract
Types of Construction Contract	Disputes related to construction works and operation	Construction operation, including supply of goods and services	Construction works including consultancy works, wholly or partly in Malaysia
Forms of Construction Contract	Written	Written, oral, or partly oral	CIPAA does not explicitly mandate written construction contracts but detailed in CIPAA Circular 03 issued by the AIAC
Impartiality	Being neutral and without favour to either party	In favour to the contractor over the employer, and the sub-	No clear reference and information for the impartiality

		contractor over the contractor (Glover, 2007)	

The Process and Procedure of Adjudication Regime

In the UK regime, the procedure is initiated firstly when the requesting party (the Claimant), issues a Notice of Adjudication to the responding party (the Respondent). The Notice of Adjudication shall include (1) the description of the dispute and parties involved; (2) when the dispute arose; (3) the nature of the remedy being sought; and (4) the names and addresses of the parties to the contract. The appointment of adjudicator will come after the Notice of Adjudication. Such appointment shall be within seven (7) days of the issuance of Notice of Adjudication. The parties may self-appoint an adjudicator, provided that it is agreed by both parties. If the parties cannot reach to an agreement of the appointment of adjudicator, the Claimant may make an application to the Adjudicator Nominating Body for the appointment. The said body will communicate their selection of the adjudicator to the parties within five (5) days of the request. After the appointment of adjudicator, a Referral Notice shall be served within seven (7) days of receipt of the Notice of Adjudication. Such notice shall contain with all relevant supporting documentation, together with the expert reports (if any), statement of witnesses, and others. HGCRA does not provide any timeframe for the Respondent to submit any defence; however, the defence shall be submitted after the Referral Notice and within a 28-day period. In contrast with NSW and Malaysia adjudication regimes, where the BCISPA under NSW adjudication regime clearly stated that the Respondent shall reply a Payment Response within five (5) business days after receiving the adjudication application or two (2) business days upon receiving the Notice of Adjudicator Acceptance (refer to Chart 2); and s. 10 of CIPAA under Malaysia adjudication regime clearly provides that the Respondent shall respond within 10 working days to provide an Adjudication Response (refer to Chart 3). The Act provides a tight timetable for the adjudication, where the decision shall be made within 28 days upon receiving the Referral Notice. The 28-day period may be extended by a further 14 days, with the consent by both parties and adjudicator. The decision made shall be final and binding, if it is not challenged in the arbitration or litigation (Construction Industry Council, 2017; Hopkins, 2020). Chart 1 shows the process and procedure for adjudication in the UK regime.

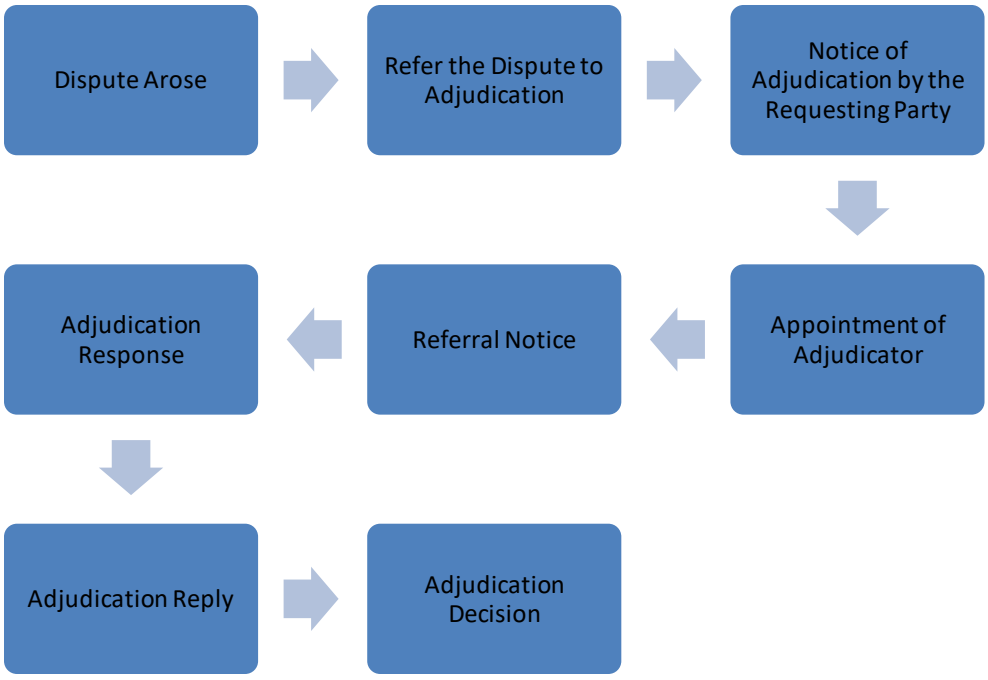

Chart 1: Process and procedure for adjudication in the UK regime (HGCRA, 1996)

In the NSW regime, the parties shall at first confirm that there was an existence of construction contract in writing, and the Claimant shall then issue the Payment Claim, and the Respondent shall within 10 business days after the receipt of Payment Claim to prepare and serve a Payment Schedule. If the Respondent did not serve a Payment Schedule within the stipulated period, the Claimant may within 20 days from the due date to issue a notice to the Respondent, and the Respondent shall within 5 business days after receiving the notice to provide Payment Schedule. Similar with the UK regime, the Claimant may at the period of Payment Claim to nominate an adjudicator to adjudicate the dispute. Failure to agree by the Respondent allows BCISPA to provide power to the relevant organisation to appoint an adjudicator to resolve the disputes. The Claimant then within 10-business days shall submit an Adjudication Application if the scheduled amount is less than the claim amount under s. 17(3)(c) of BCISPA; or 20-business days if there is no dispute on the schedule under s. 17(3)(d) of the Act. The Claimant then has 10-business days to prepare and serve the Adjudication Application from the date of receipt of the Payment Schedule, and the Respondent shall then lodge a response, which is the Adjudication Response within five (5)

business days from the receiving of application, or two (2) business days from the receiving of notice of adjudicator acceptance, whichever is later. The adjudicator will be appointed, and the determination (the decision) shall be made within 10-business days if the adjudicator accepts. Extension of time may be granted if it was agreed by both parties. Upon the determination is made, the parties shall pay the adjudication's fee before it released. The losing party shall then within five (5) business days from the release of the determination to pay the adjudicated amount (Uher & Brand, 2007; Henry, 2018).

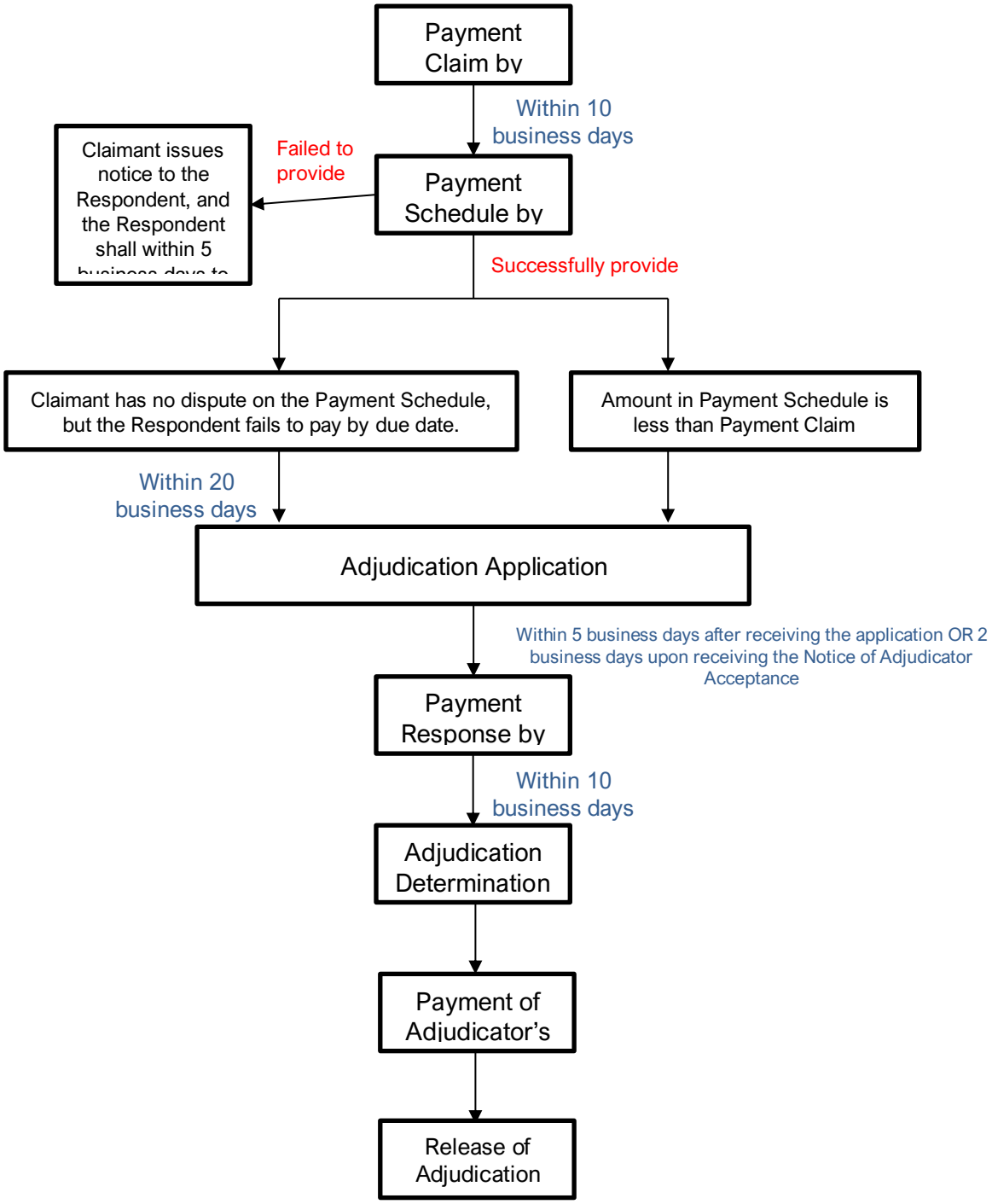

Chart 2: Process and procedure for adjudication in NSW regime (Resolution Institute, n.d.)

The process and procedure for adjudication in the Malaysian statutory adjudication regime is similar to the UK and NSW regime, where s. 5 of CIPAA provides that the unpaid party (the Claimant) shall provide a payment claim to the non-paying party (the Respondent) pursuant to the construction contract. The payment claim shall consist of: (1) the amount claimed and due date for the payment of amount claimed; (2) details to identify the cause of action; (3) description of the works or services related to the payment; and (4) a statement that is made under CIPAA. The non-paying party then shall in accordance with s. 6 of the Act to provide the payment response in writing to the unpaid party within 10 working days from the receipt of payment claim, by stating the amount disputed and the reason of dispute. The unpaid party shall then serve a written notice of adjudication under s. 8 of the Act. The adjudicator shall then be appointed by mutual agreement by the parties or appointed by the Director of AIAC if the parties failed to reach a consensus. Within 10-working days of the appointment of the adjudicator, the Claimant shall then serve an adjudication claim to the adjudicator and Respondent. The adjudication response will be within 10 working days from the receipt of the adjudication claim, prepared and replied by the Respondent. The Claimant shall then within five (5) working days from the receipt of adjudication reply, to provide an adjudication reply, and to reply to the adjudication response. The decision will be delivered by the adjudicator within 45 days from the service of adjudication response or adjudication reply, whichever is later. After receiving the adjudication decision, the winning party shall proceed to enforce such decision based on the available method under Part IV of the Act (Munaaim, 2019). Chart 3 shows the process and procedure for adjudication in the Malaysian regime.

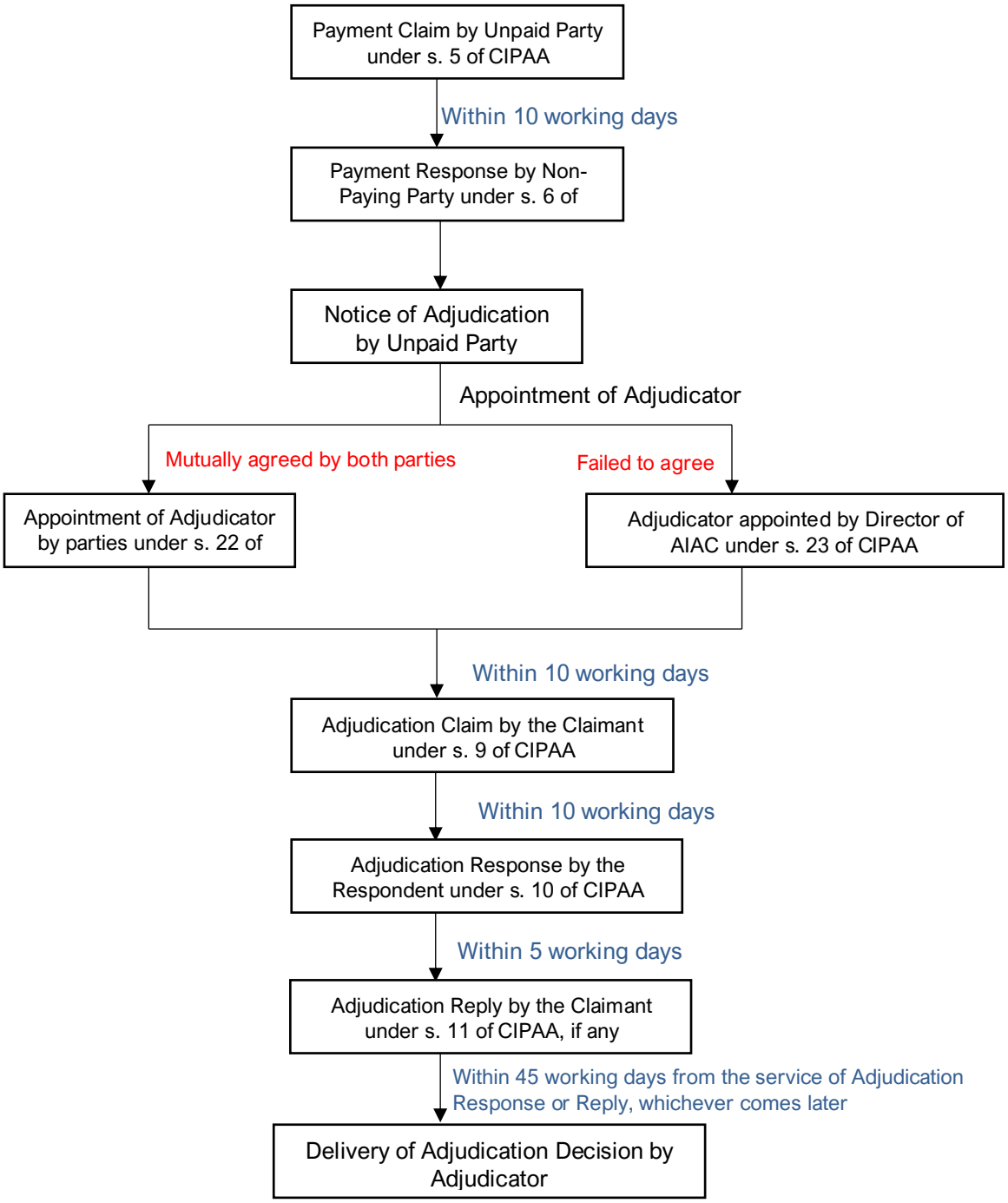

Chart 3: Process and procedure of adjudication in the Malaysian regime ("Statutory Adjudication", 2017)

Table 4: Comparison of Process and Procedures of the Adjudication Regime in UK, NSW and Malaysia

	UK	NSW	Malaysia
Claimant's Pre-Adjudication Documentation	Notice of Adjudication	Payment Claim	Payment Claim
Respondent's Pre-Adjudication Documentation	N/A	Payment Schedule	Payment Response
Respondent's Documentation Deadline	N/A	Within 10 business days upon the receipt of Payment Claim	Within 10 working days upon the receipt of Payment Claim
Claimant's Reply to Non-Reply of Pre-Adjudication Documentation	N/A	A notice be provided, and the Respondent shall provide the Payment Schedule within five (5) business days	Deemed that the Respondent have disputed the entire payment claim
The Appointment of Adjudicator	Self-appointment by the parties; or appointed by the Adjudicator Nominating Body	Self-appointment by the parties; or appointed by the relevant organisation	Self-appointment by the parties; or appointed by the Director of AIAC
Post-Adjudicator Appointment Documentation	Referral notice; within 7 days from the receipt of the Notice of Adjudication	Payment Response; within five (5) business days after receiving the	Adjudication Claim by the Claimant within 10 working days of

		adjudication application, or two (2) business days upon receiving the Notice of Adjudicator Acceptance	adjudicator appointment acceptance; Adjudication Response by the Respondent within 10 working days of receiving Adjudication Claim; and Adjudication Reply by the Claimant (optional) within five (5) working days of receiving Adjudication Response
Adjudication Decision Title	Adjudicator's Decision	Adjudicator's Determination	Adjudication Decision
Adjudication Decision Timeframe by the Adjudicator	Within 28 days upon the receiving of the Referral Notice	Within 10 business days upon receiving the Payment Response by the Respondent	Within 45 working days from the service of Adjudication Response or Reply (whichever comes later)

The Powers, Obligations and Jurisdictions of Adjudicator

In the UK regime, the English Scheme has provided the powers and duties of

the adjudicator. First and foremost, the court in the case of *ABB Ltd v BAM Nuttall Ltd (2013)* mentioned that an adjudicator has a duty to enforce the rules of natural justice when he/she adjudicates the disputes. The powers included to request any disputing party to supply him with documents that he reasonably requires, to meet and question any of the disputing parties, to make inspections or site visits if required, to appoint experts, legal advisors, accessors, provided that the disputing parties have been notified, to give direction to the adjudication timetable, including providing deadlines or limits to the written statement, and any other directions relating to the conduct of adjudication. However, the court in the case of *McAlpine PPS Pipeline Systems Joint Venture v Transco Plc (2004)* stated that the power of adjudicator to adjudicate is just within the boundaries of dispute. The adjudicator shall not resolve the issues between the parties which are not outlined in the process of adjudication. The court also mentioned that the adjudicator shall act considerably within the timeframe, and therefore, the decision shall be made from the basis of evidence presented, not launch an independent hearing or enquiry. Other than that, Charted Institute of Arbitrators (2013) stated that the English Scheme also provides the power to the adjudicator to rule on his own jurisdiction. If there is a challenge made to an adjudicator's jurisdiction, the adjudicator may investigate the challenge and may conclude either to resign himself from the adjudication where a challenge is found, or to proceed the adjudication and decide the decision if the challenge is not found.

In the NSW regime, BCISPA provides that the adjudicator has statutory power to perform his duties when deciding an adjudication, which included: (1) Power to request for further submission documents or evidence within stipulated time; (2) Power to request for an extension of time for the adjudication decision; (3) Power to call for a conference between the parties without the involvement of any legal representative; (4) Power to conduct an inspection or investigation or site visit; (5) Power to search for warrants; (6) Power to require owner or occupier to provide assistance; (7) Power that can be exercised on premises; and (8) Power to request for the involvement of experts, specialists, and legal associations, provided that the disputing parties having knowledge. Similar to the UK regime, the Act provides the adjudicator power to rule his own jurisdiction. The jurisdiction of the adjudicator can be utilised within the boundaries of the disputes raised by the disputing parties, but not the disputes outside the boundaries. The jurisdiction can be challenged by the jurisdictional error of law, where the adjudicator did not perform their statutory functions, which was found in the case *of Bauen*

Constructions v Westwood Interiors (2010); the adjudicator did not carry out or consider the task given to the him/her by the Act in the case of *St Hilliers Contracting Pty Limited v Dualcorp Civil Pty Ltd (2010)*; the decision made by the adjudicator had considered the issue of a third party, in the case of *Cockram Construction Limited v Fulton Hogan Contruction Pty Ltd (2018)*.

In the Malaysian regime, s. 24 of CIPAA outlined the duties and obligations of the adjudicator, which included no conflict of interest in respect of his appointment, the adjudicator shall act independently, impartially and in a timely manner, the adjudicator shall comply with the principles of natural justice, and no circumstances shall raise the doubt to the adjudicator's impartiality and independence. The Court of Appeal in the case of *JKP Sdn Bhd v Anas Construction Sdn Bhd & Another Appeal (2022)* stated that the adjudicator had breached the natural justice by unilaterally relying on the non-pleaded clause in the contract, in making out a case for the Respondent. S. 25 then outlined the powers of adjudication, which are the same as in the UK and NSW regime, where the adjudicator is to establish the adjudication procedure, discover the documents, provide deadlines for the parties to produce the documents, call for meetings, issue directions, extension of time with the mutual agreement by the parties, and the others. S. 27 of the Act provides the jurisdiction of the adjudicator, where s. 27(1) states that the adjudicator is limited to adjudicate the matter referred to the adjudication by the parties pursuant to s. 5 and s. 6. If the parties wish to extend the jurisdiction of the adjudicator, pursuant to s. 27(2) of the Act, the parties may by written agreement to extend his jurisdiction to decide on any other matters not referred under s. 5 and s. 6. If either party in his opinion that the adjudicator had acted in excess of his jurisdiction, he may pursuant to s. 15 of the Act apply to the High Court to set aside the decision. In the case of *Lion Pacific Sdn Bhd v Pestech Technology Sdn Bhd (2022)*, the Court of Appeal held found that the adjudicator had acted in excess of his jurisdiction by incorporating a new contractual term in the subcontract. Therefore, the adjudication decision shall be set aside.

Table 5: Comparison of Power, Obligation and Jurisdiction of Adjudicator of the Adjudication Regime in UK, NSW and Malaysia

	UK	**NSW**	**Malaysia**
Statutory Act Governing the Adjudicator's	The English Scheme	BCISPA	CIPAA

Powers and Obligations			
Statutory Provisions on Adjudicator's Powers and Obligations	Paragraph 12 to 19 of the English Scheme	S. 32F to S. 32N	S. 24 & S. 25
Jurisdiction of the Adjudicator	The adjudicator possesses the authority to determine his own jurisdiction	The adjudicator possesses the authority to determine his own jurisdiction	The adjudicator's jurisdiction is confined to the issues referred to adjudication by the parties within the Payment Claim and Payment Response

The Adjudication Award and Enforcement

In the UK regime, the adjudicator shall within 28 days to provide decision to the dispute(s) brought to the adjudication. Such decision is called adjudicator's decision, as known as adjudication award. According to Russell (2003), the adjudication award, is final and binding until dispute arose by either party and be determined by legal proceedings or arbitration, which stated in s. 108(3) of HGCRA and paragraph 23(2) of the English Scheme. Therefore, it is the right of the parties to compliance with the adjudication award. In the case of *Exyte Hargreaves Ltd v NG Bailey Ltd (2023)*, Her Honour Judge Kelly held that the adjudicators' decisions were final and binding, and enforceable by the law, until it was overturned by a court. In HGRCA, there is no clear provisions provided to set aside of the adjudicators' decision. However, the judge in *Exyte Hargreaves Ltd's* case also mentioned that the defence to the enforceability of the adjudicators' decision may be happened if the findings offended the principle or rules of natural justice or if the adjudicator lacked jurisdiction. The jurisdiction of been discussed in the

previous sub-topic in this paper, whereby in simple way, the 'power' given to the adjudicator to adjudicate the dispute is limited to the matter referred to the adjudication itself by the parties. The rule of natural justice is explained in twofold in the case of *AMEC Capital Projects Ltd v Whitefriars City Estates (2004)*, where "first, the person affected has the right to prior notice and the effective opportunity to make representations before a decision is made, and second, the person affected has the right to an unbiased tribunal". In the case of *Liverpool City Council v Vital Infrastructure Asset Management (Viam) Ltd (In Administration) (2022)*, the High Court Held that the adjudicator had breached the rules of natural justice by deciding the dispute on a difference basis and caused no opportunity was given to the party for the submission of evidence. With such, the adjudication decision was dismissed. In short, the adjudication award is final and binding, unless it has been challenged in the arbitration or litigation, with the reason of breach of natural justice or the adjudicator has acted in excess of his jurisdiction as determined by the court or arbitral tribunal.

In NSW regime, the adjudicator's decision or adjudication award is called as the adjudicator's determination. The adjudicator's determination is binding over the involved parties until the dispute is finally resolved, either through mutual agreement between the parties or by the decision of a court (NSW Government, 2016). The adjudicator may make the decision by way of either a conference (hearing) or an inspection or both, before finalising an adjudicator's determination. The determination shall be made from the documents submitted by the Claimant and Respondent, or the adjudicator may request either or both parties to provide more supporting documents or evidence during the adjudication process. However, it can be challenged and set aside the adjudication determination. Either disputing party may apply to the Supreme Court, to set aside the determination. The Supreme Court will hold to set aside the determination, if there is a jurisdictional error found when the adjudicator was making the determination, as stated in s. 32A of the Act. The Supreme Court in the case of *Acciona Infrastructure Australia Pty Ltd v Chess Engineering Pty Ltd (2020)* stated that the jurisdictional error needs to be formed under the concept of materiality, whereby an error results in the determination lacking the characteristics necessary for it to be given force and effect by the Act, and an error will materially affect the determination made by the adjudicator. It can be found in the case of *Parrwood Pty Ltd v Trinity Constructions (Aust) Pty Ltd (2020)*, where the court considered that the failure of the adjudicator to determine the amount of the progress payment to a conclusion that it shall be suspended under the contract was a

jurisdictional error in the adjudication determination. Therefore, the determination was set aside.

In the Malaysian regime, CIPAA provides that the adjudication decision is enforceable by the law as judgement, which is outlined in s. 28 of the Act. The winning party may apply to the High Court to enforce the adjudication decision, as it is a judgement or order from the court. The High Court then may make an order in accordance with the adjudication decision either wholly or partly and make an order in respect on the adjudicated amount payable. However, a party may by pursuant to s. 16 of the Act to apply to the High Court to stay application and set aside the adjudication decision with one or more grounds under s. 15 of CIPAA. S. 15 clearly outlined four (4) grounds that allow the High Court to set aside the adjudication decision, which included:

a) The decision was made through fraud or bribery:

   In the case of *Gumi Asli Electrikal Sdn Bhd v Dazzling Electrical (M) Sdn Bhd & Another Case (2020)*, the High Court held that the fraud had been detected in the case, however, the fraud brought no impact to the adjudication decision. With such, the decision will not be set aside. In the case of *KPF Niaga Sdn Bhd v Vigour Builders Sdn Bhd and another case* (2021), the court outlined that, firstly, the party must prove that fraud has been committed and, secondly, the party must prove that the adjudication decision has been 'improperly procured' through fraud, either directly or indirectly. The court found that fraudulent behaviour occurred as the correct amount of Claycrete was not used for the road, yet claims were submitted to KPF for the CIDB Levy, thus proving that fraud had been committed. The court then examined the findings and reasons of the adjudication decision and determined that the adjudicator would have reached a different conclusion if the evidence had been provided. Consequently, the court dismissed the adjudication decision pursuant to s. 15(a) of CIPAA.

b) There is a breach of natural justice:

   In the case of *WRP Asia Pacifics Sdn Bhd v NS Bluescope Lysaght Malaysia Sdn Bhd (2015)*, where the court held that the unilateral communication made between the adjudicator and one disputing party without the knowledge of another party is amounting to the breach of

natural justice. With such, the decision was then set aside. Other than that, the adjudicator in the case of *Cescon Engineers Sdn Bhd v Pesat Bumi Sdn Bhd & Another Case (2021)* had made an adjudication decision, where he referenced to a document that was not previously disclosed to parties. Such action has amounted to a breach of natural justice, thus the court held to set aside the decision under s. 15(b).

c) The adjudicator has not acted independently or impartially:

The adjudicator shall act independently or impartially, in fact or in perception, to adjudicate the dispute and made the adjudication decision. The "real possibility of bias" test will be tested to examine the fair-mindedness by an informed observer in the adjudication, to prove the adjudication has made the decision independently and impartially (*Itramas Technology Sdn Bhd v Savelite Engineering Sdn Bhd (2021)*).

d) The adjudicator has acted in excess of his jurisdiction:

In the case of *Hiform (M) Sdn Bhd v Pembinaan Bukit Timah Sdn Bhd and Another Case (2020)*, the court stated that the decision made by the adjudicator in deciding on a dispute which is not related to a construction work or construction contract was in excess of his jurisdiction. Therefore, the court held that the adjudication decision was set aside. Other than that, in the case of *MRCB Builders Sdn Bhd v SMM Resources Sdn Bhd and Another Case (2021)*, the court found that the adjudicator failed to deliver the adjudication decision within the 45 working days as stipulated in s. 12 of the Act, and therefore, he acted in excess of his jurisdiction.

The setting aside of adjudication decision under s. 15 of the Act is not an appeal (Phang and Patrick, 2023). It can be reflected in the judgement made by the Court of Appeal in the case of *ACFM Engineering & Construction Sdn Bhd v Esstar Vision Sdn Bhd and Another Appeal (2016)*, that the function of the court is not looking into or to review the merits of the case or the facts of the case. It is the responsibility of the adjudicator to assess and decide on the merits of the case. The court is only responsible to look into the manner in which the adjudicator conducted the hearing and whether he had committed an error of the law during the process.

Table 6: Comparison of Adjudication Award and Enforcement of the

Adjudication Regime in the UK, NSW, and Malaysia

	UK	NSW	Malaysia
Adjudicator's Decision Timeframe	Within 28 days	Within 10 business days	Within 45 working days
Finality of Adjudicator's Decision	Final and binding	Final and binding	Final and binding
Finality Provisions for Adjudicator's Decision	S. 108(3) of HGCRA; paragraph 23(2) of the English Scheme	N/A	S. 13 of CIPAA
Grounds to Setting Aside Adjudicator's Decision	Breach of natural justice; or the adjudicator has acted in excess of his jurisdiction	Jurisdictional error	The decision was made through fraud or bribery; a denial of natural justice; the adjudicator has not acted independently or impartially; or the adjudicator has acted in excess of his jurisdiction

Remedies Available

Remedy is the relief by which a person who has been wronged can seek justice and be compensated for their losses (Hofmann & Kurz, 2019). In the UK adjudication regime, the adjudication process starts with a Notice of Adjudication from the requesting party, which is the Claimant in the process. In the notice of adjudication, the requesting party shall provide a brief detail of the nature of the dispute and the remedies sought. Such Notice of Adjudication will be sent to the responding party (the Respondent in the

process), and the appointment of adjudicator will be afterwards, as discussed in the previous sub-topic. The remedies mentioned in the Notice of Adjudication shows the outcome wanted by the requesting party (Hiscock, 2016). The remedies under the adjudication regime will be narrower compared to the arbitration under the ADR system, whereby the remedies usually related to monetary, time related remedies or declaratory relief (Davies, 2019). It is not suitable for the parties to seek for creative or complex remedies, as the process of adjudication is quick and cost-effective (Smith, 2023). The aggrieved party after the adjudicator's decision has been made, may also seek for the remedies. Such remedies shall be formed with the foundation that the adjudicator has provided an adjudication decision which has breached the natural justice, or the adjudicator has acted in excess of his jurisdiction. The aggrieved party shall refer to the arbitration or litigation for the setting aside of the adjudication decision.

The NSW regime shares a similar concept with the UK regime, whereby the requesting party shall state the remedies sought by the aggrieved party in the Payment Claim. The responding party will then, based on the Payment Claim reply with a Payment Schedule, where it will answer the Payment Claim with an amount. Once the adjudication determination was made by the adjudicator, the winning party shall apply the determination to the Supreme Court for enforcement. The Act provides the power to the adjudicator, to review and determine the dispute with remedies. The aggrieved party, however, may base on the jurisdictional error to challenge the adjudication determination. Similar to the UK regime, the Supreme Court will not look into the adjudication process or determination in detail, however, the court will base on s. 32A BCISPA to confirm whether or not the jurisdictional error affects the adjudication determination. If that is the case, the court shall set aside adjudication determination, and this is sought as a remedy to the aggrieved party; if not the case, the adjudication determination shall be enforced under the law.

In the Malaysian adjudication regime, in contrast to the UK regime in the context of remedy sought is stated in the Notice of Adjudication, the Claimant in Malaysian context will mention his remedy in the Adjudication Claim together with all relevant supporting documents, in accordance with s. 9 of CIPAA. Other than that, similar with the NSW regime, s. 25(o) of the Act also provides that the adjudicator has the power to award financing costs and interest, whereby it sought remedy to the party in the adjudication. S. 31 also provides that unless application was made and a stay is granted under s.

16(1) of the Act, the party who obtained the adjudication decision may exercise any or all the remedies provided under the Act. S. 16(2) that the remedies provided under the Act shall without prejudice to other rights and the remedies shall be available in the construction contract or any law. Again, the position of court is not to look into the decision made by the adjudicator, however, it is to look into whether the adjudicator's decision was improperly procured, has been a denial of natural justice, if the adjudicator did not perform independently or impartially, or the adjudicator has acted in excess of his jurisdiction. If the court found either one of the grounds stated above, then the adjudication decision will be set aside.

Table 7: Comparison of Remedies Available of the Adjudication Regime in the UK, NSW, and Malaysia

	UK	NSW	Malaysia
Claimant's Remedies and Documentation	Outlined in Notice of Adjudication	Outlined in Payment Claim	Outlined in Adjudication Claim
Respondent's Remedies	An application may be made to the court to set aside the adjudicator's decision on grounds of breach of natural justice or the adjudicator exceeding his jurisdiction	An application may be made to the court to set aside the adjudicator's determination on the ground of jurisdictional error	An application may be made to the court to set aside the adjudication decision under s. 15 of CIPAA

Conclusion

This paper has identified, described, and compared the adjudication regimes in the UK, NSW, and Malaysia in several aspects. The UK regime was commonly used for resolving mercantile disputes in the past. The UK was the

first country to implement statutory adjudication, with HGRCA being published in 1996 and officially implemented in 1998. NSW was the second jurisdiction to implement statutory adjudication, with BCISPA published and implemented in 1999. The purpose was to resolve disputes in the gold mining industry in NSW and Victoria State; however, only NSW succeeded. CIPAA was enacted in 2012 and officially implemented in 2014 in Malaysia. The scope and application of statutory adjudication in the UK, NSW, and Malaysia are within construction disputes and within the construction contractual relationship. The UK regime states that any disputes may be adjudicated unless it is related to construction operation or works. In contrast, NSW and Malaysia regime state that the disputes to adjudicate are within payment issues only.

The process and procedure for the statutory adjudication in the three (3) regimes are different and outlined in Chart 1, 2 and 3 in this paper. The UK regime requests the requesting party to submit the Notice of Adjudication, followed by the Referral Notice. The appointment of adjudication can be done by the parties upon mutual agreement or as appointed by the Adjudicator Nominating Body. In the NSW regime, the requesting party shall at first provide the Payment Claim, followed by the Payment Schedule. The Adjudication Application shall come after the appointment of adjudicator, and the adjudication determination shall be provided within 10 days of the appointment of adjudicator. Payment Claim shall be provided by the unpaid party, followed by the Payment Response, under the Malaysian regime. After the appointment of the adjudicator, the Claimant shall provide the Adjudication Claim, followed by the Adjudication Response and Adjudication Reply, if any. The adjudicator shall then within 45 days give the adjudication decision. It is similar in all the three (3) adjudication regimes, where the adjudicator has the right to request for extension of time, provided that it is agreed by the parties.

All the three (3) regimes provide that the adjudicator has the power to decide his own jurisdiction. The jurisdiction of the adjudicator shall be within the disputes in the construction contract. The Malaysian adjudication regime provides that the jurisdiction of the adjudicator is limited to the issues outlined in the Payment Claim and Payment Response, which is in contrast with the UK and NSW adjudication regime, where they provide the power to the adjudicator to decide his own jurisdiction. Either party may apply to the court to set aside the adjudication decision if excess of jurisdiction had been found. All three (3) regimes provide that once the decision has been made by the

adjudicator, the winning party may apply such decision to the court for the enforcement. However, such decision can be challenged, if the ground has been identified and proved by the party under each statutory legislation.

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Extending the Mandate of the Arbitral Tribunal Post Its Expiry – Whether Permissible in Law?: The Indian Perspective

By: ***Himanshu Shembekar***

The Author is currently practicing as an advocate before the High Court of Delhi, Supreme Court of India, National Company Law Tribunal and National Company Law Appellate Tribunal. The Author has keen interest in Litigation and Arbitration practice. The Author is also fond of writing on arbitration laws has published articles/blogs on various arbitration topics. The author is also a founder and Editor of blog named LexDogma.

Introduction

Section 29A of the Arbitration and Conciliation Act,1996 [**"Arbitration Act"**][1] provides for the law regarding the time limit for the passing of an arbitral award. The section lays down the time limit within which an arbitral tribunal must complete the arbitral proceedings and pass an arbitral award. The section also lays down the procedure to be adopted by the parties to extend the mandate of the arbitral tribunal, in case the arbitral tribunal is not able to pass an arbitral award due to any justifiable/extraneous reasons. The Author in this article analyses whether under Section 29A of the Arbitration Act, the court can entertain an application for extension of mandate of the arbitral tribunal, when the mandate of the arbitral tribunal has already expired. Before going ahead with the analysis on the said issue, we shall first discuss about Section 29A of the Arbitration Act.

As per Section 29(A)(1) of the Arbitration Act,[2] the arbitral tribunal is mandated

[1] The Arbitration and Concilliation Act 1996, s 29A <https://www.indiacode.nic.in/bitstream/123456789/11799/1/the_arbitration_and_conciliation_act%2C_1996.pdf>.

[2] The Arbitration and Concilliation Act 1996, s 29A (1).

to complete the arbitral proceedings and pass an award within 12 months from the date of the completion of the pleadings. If the arbitral proceedings fail to conclude within the requisite time limit, then as per Section 29(A)(3) of the Arbitration Act,[3] the parties by consent may apply to the arbitral tribunal to extend its mandate by a period of 6 months. If within the extended time period provided under Section 29(A)(3) of the Arbitration Act,[4] the arbitral tribunal again fails to pass an award, then the party/parties will have to move an application before the court to extend the mandate of the arbitral tribunal. Though, there are several questions as to which "court" shall be the appropriate forum to decide regarding the application filed under Section 29A of the Arbitration Act, the author in this article shall be restricting himself to the question regarding the stages at which an application under Section 29A of Arbitration Act can be filed.

Recently, several High Courts in India have passed diverging judgments, wherein they have dealt with the question: whether an application under Section 29A of the Arbitration Act can be entertained by the court if the same has been filed after the mandate of the arbitral tribunal has expired. The author of this article intends to analyze whether the courts have the power to extend the mandate of the arbitral tribunal, even if an application under Section 29A of the Arbitration Act is filed after the mandate of the tribunal has expired. The intention and purpose behind the introduction of Section 29A of the Arbitration Act shall also be discussed by analysing the recommendations stated in the 176th Law Commission Report [5] and whether courts by allowing extension of arbitral tribunal's mandate post their termination end up defeating the very *ethos* behind enacting Section 29A of the Arbitration Act.

Recommendations of the 176th Law Commission Report and the insertion of Section 29A of the Arbitration Act *vide* Arbitration and Conciliation (Amendment) Act, 2015

The 176th Law Commission Report on The Arbitration and Conciliation (Amendment) Bill, 2001 ["Law Commission"][6] was set up, wherein the report was headed and prepared under the *aegis* of the then Chairman, Law Commission of

[3] The Arbitration and Concilliation Act 1996, s 29A (3).
[4] *Ibid.*
[5] Law Commission of India, *Report on The Arbitration and Conciliation (Amendment) Bill 2001*, (Law Comm No 176,2001)<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081036.pdf>.
[6] *Ibid.*

India, Mr. Justice B.P. Jeevan Reddy. The purpose of the Law Commission was to review the functioning of the Arbitration Act and identify its shortcomings. The Law Commission, after conducting an in-depth study and looking into the position of the law in foreign jurisdictions, made several recommendations for bringing amendments to the Arbitration Act. The Law Commission, in its report, had recommended the addition of Section 29A of the Arbitration Act to provide a time limit for the passing of the arbitral award. While recommending its insertion, the following observations were noted down:

"Next, for future arbitrations under the 1996 Act, the arbitrators will have one year and thereafter another period not exceeding one year as agreed by the parties, under the proposed section 29A, for passing the award. Thereafter, if the award is not passed, parties are to move the Court for extension and if the parties do not apply, the arbitrators can also apply for the same. Till the application is made, the arbitration proceedings are suspended, but once an application is made to the Court, the arbitration proceedings shall continue and are not to be stayed by the Court. On the other hand, the Court shall pass an order within one month fixing the time schedule or it may also pass orders as to costs taking into account various factors which have led to the delay and also the amount already spent towards fee etc. The Court will continue to pass such orders granting time and fixing the procedure, till the award is passed. The above procedure is also to be applied to arbitrations which are pending under the 1996 Act for more than three years as provided in sec. 33 of the amending Act."

"For the purpose of speeding up of pending arbitration proceedings under the 1940 Act, separate provisions are proposed to be made in sec. 34 of the Amending Act for granting one year for completion, failing which the procedure indicated in sec. 29A of the Court fixing the time schedule will apply, till the award is passed."

……

2.21.4 It is, therefore, proposed to implement the recommendation made in the 76th Report of the Law Commission with the modification that an award must be passed at least within one year of the arbitrators entering on the reference. The initial period will be one year. Thereafter, parties can, by consent, extend the period upto a maximum of another one year. Beyond the one year plus the period agreed to by mutual consent, the court will have to grant extension. Applications for extension are to be disposed of within one month. While granting extension, the court may impose costs and also indicate the future procedure to be followed

by the tribunal. There will, therefore, be a further proviso, that further extension beyond the period stated above should be granted by the Court. We are not inclined to suggest a cap on the power of extension as recommended by the Law Commission earlier. There may be cases where the court feels that more than 24 months is necessary. It can be left to the court to fix an upper limit. It must be provided that beyond 24 months, neither the parties by consent, nor the arbitral tribunal could extend the period. The court's order will be necessary in this regard. But in order to see that delay in disposal of extension applications does not hamper arbitration, we propose to allow arbitration to continue pending disposal of the application."

2.21.5 One other important aspect here is that if there is a delay beyond the initial one year and the period agreed to by the parties (with an upper of another one year) and also any period of extension granted by the Court, there is no point in terminating the arbitration proceedings. We propose it as they should be continued till award is passed. Such a termination may indeed result in waste of time and money for the parties after lot of evidence is led. In fact, if the proceedings were to terminate and the claimant is to file a separate suit, it will even become necessary to exclude the period spent in arbitration proceedings, if he was not at fault, by amending sec. 43(5) to cover such a situation. But the Commission is of the view that there is a better solution to the problem."

The Commission, therefore, proposes to see that an arbitral award is ultimately passed even if the above said delays have taken place. In order that there is no further delay, the Commission proposes that after the period of initial one year and the further period agreed to by the parties (subject to a maximum of one year) is over, the arbitration proceedings will nearly stand suspended and will get revived as soon as any party to the proceedings files an application in the Court for extension of time. In case none of the parties files an application, even then the arbitral tribunal may seek an extension from the Court. From the moment the application is filed, the arbitration proceedings can be continued. When the Court takes up the application for extension, it shall grant extension subject to any order as to costs and it shall fix up the time schedule for the future procedure before the arbitral tribunal. It will initially pass an order granting extension of time and fixing the time frame before the arbitral tribunal and will continue to pass further orders till time the award is passed. This procedure will ensure that ultimately an award is passed."

……

As already noticed, when an application for extension is filed in Court under sec. 29A, the arbitration proceedings shall continue and the Court shall not grant any stay of the arbitral proceedings."

(Relevant Paras)

The above recommendation of the Law Commission was considered and Section 29A was finally introduced *vide* the Arbitration and Conciliation (Amendment) Act, 2015 ["Amendment"].[7] The relevant paragraph and the purpose for introducing Section 29A of Arbitration Act is stated in Clause 15 of the Statement of Objects and Reasons of the Amendment,[8] which states the following:

"Clause 15 of the Bill seeks to insert new sections 29A and 29B in the principal Act to specify the time limit for making arbitral award. Section 29A provides that the award is to be made within a period of twelve months from the date the arbitral tribunal enters upon the reference. However, the parties may extend such period for a further period not exceeding six months. If the award is made within a period of six months, the arbitral tribunal shall be entitled to received additional fees as the parties agree. If the award is not made within specified period or extended period, the mandate of the arbitrator shall terminate unless the time is extended by the court in accordance with the provisions of sub-sections (4) to (9)."

(Relevant Para)

Before we analyse the judicial interpretation of several High Courts regarding the applicability of Section 29A of Arbitration Act,[9] the relevant portions of the Section are highlighted below for reference:

"29A. Time limit for arbitral award.— (1)The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23:

……

[7] The Arbitration and Concilliation (Amendment) Act, 2015 <https://lawmin.gov.in/sites/default/files/ArbitrationandConciliation.pdf>.
[8] *Ibid.*
[9] *Supra note* 1.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

……

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay.

Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application: Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court."

Judicial Interpretation Regarding Stage At Which An Application For Extension Of Arbitral Tribunal Mandate Can Be Entertained

In the case of South Bihar Power Distribution Company Limited v. Bhagalpur Electricity Distribution Company Private Limited, [10] a Division Bench of the Hon'ble Patna High Court held that a Court does not have jurisdiction to entertain an application for extension of the mandate of the arbitral tribunal after the expiry of its mandate. The Hon'ble High Court while affirming the above reasoning, analysed and interpreted the term 'extend' stated in section 29A of the Arbitration Act. The Hon'ble Court stated the following:

"88. First issue which comes into mind is as to whether once the mandate of the Arbitral Tribunal has expired, the court can be justified in extending the same.

[10] *South Bihar Power Distribution Company Limited v. Bhagalpur Electricity Distribution Company Private Limited,* 2023 SCC OnLine Pat 1658 <https://indiankanoon.org/doc/110538113/>.

We are of the view that submissions made on behalf of SPML or BEDCPL are misconceived. What Sub-section (4) talks about is the power of the court to extend the mandate of the Arbitrator (s) i.e. the said order could be passed during the existence of the mandate or after the expiry of the period so specified which means 12 months plus the period of extended time as per Section 29A (3) of the Act and not at the point of time when the mandate has already stood terminated even after grant of extension. As per Mitra's Legal and Commercial Dictionary, 6 Edition, the terms 'extend' means to enlarge, expand, lengthen, prolong, to carry out further than its original limit. Similarly, the word 'extension' has been stated to be an increase in length of time. This implies the word extension ordinarily meaning the existence of something to be extended and its term for the purpose of enlarging or giving further duration to any existing right, but does not import right. Similarly, the definition of the word 'extension' in Chambers 21 Century Dictionary is 'The process of extending something, or the state or being extended; an added part, that makes the original larger or longer; an extra period beyond an original time limit". If the mandate has already terminated and it has expired for the Arbitral Tribunal if the legislature so intended. It would have used the term revival or renewal and not the word extension which presupposed existence of something."

(Relevant Para)

However, the Hon'ble Delhi High Court in the case of Wadia Techno-Engineering Services Limited v. Director General of Married Accommodation Project & Anr.,[11] disagreed with the view taken in the case of *South Bihar* and ruled section 29A (3) and section 29A (4) of the Arbitration Act cannot be interpreted to understand that an application for the extension cannot be considered by the Court post the expiry of the mandate of the arbitral tribunal. The High Court observed that:

"23. Mr. Shukla advanced an equally untenable argument, when he suggested that the power under Section 29A(4) of the Act cannot be exercised on an application made after the expiry of the mandate of the arbitral tribunal. The provision clearly provides that the Court may extend the period even after its expiry. Indeed, the second proviso provides that the mandate of the tribunal would continue until the disposal of such a petition. I see no justification in the text of the statute, or on a purposive interpretation thereof, to hold that the power

[11] *Wadia Techno-Engineering Services Limited v. Director General of Married Accommodation Project & Anr.*, 2023 SCC Online Del 2990 <https://www.casemine.com/judgement/in/647084975ef7297f8230c675>.

can only be exercised on an application filed prior to the expiry of the mandate."

(Relevant Para)

The above reasoning was also followed by the Hon'ble Delhi High Court in the case of Reliance Infrastructure Ltd. v. Madhyanchal Vidyut Vitran Nigam Ltd.,[12] wherein it was observed that:

"39. In any event, in terms of Section 29A (4) and (5) of the Act, the mandate of the Arbitrator can be extended by the Court even after expiry of the time for making of the arbitral award on sufficient cause being shown by the party making the application."

(Relevant Para)

The Hon'ble Kerala High Court in the case of Hiran Valiiyakkil Lal v. Vineeth M.V., [***2023 SCC Online Ker 5151***],[13] made a similar observation as in the cases of *Wadia-Techno* and *Reliance Infrastructure,*[14] and ruled that the court is empowered to entertain an application for extension of mandate of arbitral tribunal even post the expiry of the mandate of arbitral tribunal. The High Court observed the following:

"12. ….. The said sub-section with the use of the conjunction 'or' also applies in cases where the award is not made within the extended period not exceeding six months specified in sub-section (3). It is not as if it applies only to cases where the period is extended under sub-section (3). In the case at hand, the period of twelve months from the date of the completion of the pleadings within which time the Arbitrator has to make an award is not extended by the parties, by consent. Therefore, the mandate of the Arbitrator stands terminated on expiry of the period of twelve months from the date of completion of pleadings. However, the sub-section (4) provides that the Court is empowered to extend the period for making the award either prior to or after the expiry of the said period. Sub-section (5) provides that such extension of period may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and

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[12] *Reliance Infrastructure Ltd. v. Madhyanchal Vidyut Vitran Nigam Ltd.*, 2023 SCC OnLine Del 4894 <https://dhccaseinfo.nic.in/jupload/dhc/587/judgement/14-08 2023/58714082023OMPMISCCOMM1612020_172634.pdf>.

[13] *Hiran Valiiyakkil Lal v. Vineeth M.V.*,2023 SCC Online Ker 5151 <https://www.livelaw.in/pdf_upload/hiran-valiiyakkil-lal-v-vineeth-mv-481614.pdf>.

[14] *Supra note* 11.

conditions as may be imposed by the Court. Subject to the above, the time limit specified for arbitral award can be extended by Court."

(Relevant Para)

The Hon'ble Calcutta High Court subsequently dealt with this issue in the case of *Rohan Builders (India) (P) Ltd. v. Berger Paints India Ltd.*[15] ***[2023 SCC OnLine Cal 2645]***. In this case, the Hon'ble Court went through the deliberations/proposals made in the Law Commission Report to understand the aspect and intent behind incorporating Section 29A of the Arbitration Act. The Hon'ble High Court of Calcutta, like in the case of *South Bihar Power Distribution,* also analyzed the use of the words 'extend' and 'extension' and observed that as per the construction of the Sections, the word 'extend' would entail that the application for extension of the mandate of arbitral tribunal must be filed *before* its mandate terminates. The High Court further stated that the word 'extends' must be interpreted by giving a literal meaning and with due regard to its contextual and legislative intent. The High Court in its reasoning has stated the following:

"34. A plain construction of the sections set out above together with the conscious use of the word "extend" in its various forms, significantly in 29-A(4) means that the mandate of the arbitral tribunal must be in existence or subsisting at the time of making the application for extension of the mandate under section 29-A(4). The words used in a statute must be given their literal meaning with due regard to the contextual placement and the legislative intent to use the particular word/s to the exclusion of others.

35. The words "extended period" read with "……. the mandate of the arbitrator(s) shall terminate…." in section 29-A(4) unerringly presumes that the mandate is a continuing one at the time of making the application for extension. If the application is not made within a continuing mandate, the mandate shall simply terminate.

36. Significantly, section 29-A(4) only speaks of the power of the Court to extend the "period so specified" either prior to or after expiry of the period, that is the period mentioned in section 29-A(1) or section 29-A(3). There are two notable features in section 29-A(4).

[15] *Rohan Builders (India) (P) Ltd. v. Berger Paints India Ltd.*, 2023 SCC OnLine Cal 2645.

37. First, the words "… unless the Court has, either prior to or after the expiry… extended the period" is not with regard to any application made for extending the arbitrator's mandate.

38. Second, the Court can extend the period where the application for extension has been made while the mandate of the arbitrator is subsisting. This interpretation is taken forward by the second proviso to section 29-A(4) which reads as:

"29-A. (4)…. Provided further that where an application under sub-section (5) is pending the mandate of the arbitrator shall continue till the disposal of the said application:"

(Relevant Paras)

In the end, based on the judicial interpretation of the word 'extension' in the cases of Provash Chandra Dalui v. Biswanath Banerjee[16] and The National Industrial Corporation Ltd. v. The Registrar of Companies,[17] the Hon'ble Court held that the word 'extension' means continuation of an existing thing. Whereas the word 'revive' means to "bring back to life what has become moribund". Therefore, 'revival' means to start something which had ceased to exist, and 'extend' means to continue something which is already existing. The High Court then further went ahead to explain the second proviso to section 29A (4) of the Arbitration Act[18] and observed that:

"43. The second proviso to section 29-A(4) hence envisages pendency of an application for extension of the arbitrator's mandate as opposed to filing of an application. Therefore, the mandate can only continue if the application is filed prior to expiry of the mandate and not thereafter. The words in section 29-A(4) "…either prior to or after the expiry of the period so specified…" is a deeming fiction which takes shape to ensure that the application is made during the continuation of the mandate.

44. Section 29-A(4) uses the word "extension" for the period specified under section 29-A(1) or (3) of the arbitrator's mandate to make the award. There is a

[16] *Provash Chandra Dalui v. Biswanath Banerjee*, 1989 Supp (1) SCC 487 <https://indiankanoon.org/doc/762747/>.
[17] *The National Industrial Corporation Ltd. v. The Registrar of Companies, AIR 1963 Punj 239* <https://indiankanoon.org/doc/389119/>.
[18] The Arbitration and Conciliation Act 1996, s 29A (4).

conscious omission of the word "renewal" or "revival". This would mean that the continuing mandate of the arbitrator must form the substratum for an application to be made for extension of that mandate. If the framers intended that the application for extension could be made at any time after expiry of the mandate, section 29-A(4) would not have used "terminate" but "revive" or "renew"."

(Relevant Paras)

The Hon'ble Court eventually focused on the object of Section 29A (4) of the Arbitration Act[19] and stated that the said section is not only applicable to the arbitral tribunal, but it is also applicable to the stakeholders/parties. It was stated that the stakeholders/parties are also expected to be vigilant through the arbitration process and therefore expected to commit to expediting the arbitral proceedings within the time frame specified under Section 29A (3) of the Arbitration Act. The Hon'ble Court finally concluded that if an application for extension of the mandate of the arbitral is entertained after its expiry, then it shall inevitably lead to defeating the objective and purpose for which the timelines for making an award under section 29A of the Arbitration Act was introduced. Therefore, it was eventually held that an application for extending the arbitrator's mandate must be made during the subsistence of the mandate.

The Court in its reasoning further dealt with the issue of *'rogue litigants', who* might delay in expediting the process of arbitration proceedings or might deny its consent to extend the period under section 29A (3) of the Arbitration Act.[20] The court stated the following on the same:

"57. Section 29-A(6) deals with such situations by empowering the Court to substitute one or all of the arbitrators and ensure that the arbitration continues from the stage already reached by the erstwhile arbitrator. Further, nothing prevents a party faced with a difficult opponent to make the application for extension before the mandate expires. The Court under section 29-A(4) and (5) will only see whether the application is made during the subsistence of the mandate and pass suitable orders for extension or otherwise on the sufficiency of cause shown to the Court.

58. It should also be mentioned that recalcitrant litigants with or without a counter-claim stalling the arbitration for random reasons is much less probable than

[19] *Ibid.*
[20] *Supra note* 3.

relaxed litigants who apply for extension long after expiry of the mandate by taking the timelines for granted. The number of cases filed in the latter category stand testimony to this view."

(Relevant Paras)

It is also pertinent to mention that the Hon'ble Court also distinguished the judgment of *Wadia Techno-Engineering*,[21] citing in Para 60 that the Hon'ble Delhi High Court had not dealt with the interpretation/significance of the words extend/extension/extending as used in Section 29A. However, the judgment passed by the Hon'ble Calcutta High Court in the case of *Rohan Builders* has been stayed by the Hon'ble Supreme Court *vide* its Order dated 06.11.2023 in the case of *Vrindavan Advisory Services LLP v. Deep Shambhulal Bhanushali*.[22]

On the very same day, the Hon'ble Delhi High Court passed the judgement in the case of ATC Telecom Infrastructure Private Limited v. Bharat Sanchar Nigam Limited [23] wherein it analysed the judgements passed in the cases of *Wadia Techno-Engineering,* [24] *Hiran Valiiyakkil Lal,* [25] *Reliance Infrastructure* [26] and *Rohan Builders.*[27] The Hon'ble Delhi High Court expressed its disagreement with the conclusion and reasoning passed in the case of *Rohan Builders.* The Hon'ble Court stated that though Section 29A was incorporated to regulate timelines but the same was not inflexible in its nature. Had there been any intent of the legislature to terminate the of the arbitral tribunal post the expiry of the tribunal's mandate, the same would proceedings have been stated within Section 29A. The relevant part dealing with the same is replicated below:

"16. No doubt, the purpose of Section 29A of the A&C Act is to prescribe and regulate the timelines for completion of the arbitral proceedings; however, a perusal of Section 29A of the A&C Act itself makes it clear that it does not contemplate any inflexible outer deadline for completion of arbitral proceedings, and affords flexibility to the contracting parties, and also to the Court for extension

[21] *Supra note* 11.
[22] *Vrindavan Advisory Services LLP v. Deep Shambhulal Bhanushali*, 2023 SCC OnLine SC 1466. Not available
[23] *ATC Telecom Infrastructure Private Limited v. Bharat Sanchar Nigam Limited,* [O.M.P.(MISC.)(COMM.) 466/2023] <https://indiankanoon.org/doc/117088280/?type=print>.
[24] *Supra note* 11.
[25] *Supra note* 13.
[26] *Supra note* 14.
[27] *Supra note* 15.

of the time period in appropriate cases. The purport of Section 29A of the A&C Act was clearly not to tie the hands of the parties or the court, and prevent extension of time even where warranted, simply because the petition under Section 29A(4) of the A&C Act came to be filed a few days after expiration of the deadline contemplated under Section 29A(1) or Section 29A(3) of the A&C Act. Had it been intended by the legislature to provide for a blanket prohibition on extension of time after the expiration of the period contemplated under Section 29A(1) or Section 29A(3) of the A&C Act (unless a petition under Section 29A(4) of the A&C Act was filed prior to expiry of the said period), nothing would have been easier than to say so."

(Relevant Para)

It was further stated that, Section 29A of the Arbitration Act does not mention the 'suspension' of the arbitration proceedings but is only regarding its 'termination'. Therefore, such an interpretation shall result in defeating the very purpose for which the Arbitration Act was framed. The relevant observations are as follows:

"22. Unlike the recommendation in the 176th report of the Law Commission, the statutory provision, as actually engrafted, specifically provides that "the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period.

23. Thus, under Section 29A(4) of the A&C Act, the termination of the mandate of the arbitrator(s) is subject to the decision of the Court which may be "either prior or after the expiry" of the specified period. The Court would take a suitable decision upon a petition under Section 29A(4) of the A&C Act being filed. Such a petition can be filed either before expiry of the period referred to under Section 29A(1) or Section 29A(3) of the A&C Act or even thereafter. When the Court has been specifically empowered to grant the requisite extension even after expiry of the specified period, it would not be apposite to read a proscription in the statutory provision to the effect that a petition under Section 29A(4) of the A&C Act [seeking extension of time] must be filed before expiry of the specified period and not thereafter. Such a proscription simply does not exist in the statute. On the contrary, as already noticed, the court has been empowered to grant an extension even after expiry of the specified period.

……

25. The facts of the present case also illustrate that the dictum laid down in Rohan

Builders (supra) can potentially thwart, rather than subserve the legislative intent."

(Relevant Paras)

The Hon'ble Bombay High Court in the case of Nikhil H Malkhan & Ors. v. Standard Chartered Investment and Loans (India) Limited,[28] has followed the same reasoning as laid down in the case of *ATC Telecom*,[29] and has analyzed the above-mentioned cases. The Hon'ble Court has strongly objected to the reasoning in the cases of *South Bihar* and *Rohan Builders* as it felt that the judgments were not passed in consonance with the purpose for which Section 29A of the Arbitration Act was incorporated. The relevant observations made by the Courts are as follows:

"11. A bare reading of sub-section 4 of Section 29A of the said Act, quoted hereinabove, would show that upon expiry of the extended period specified in sub-section 3 of Section 29A of the said Act, the mandate of the Arbitrator terminates, unless the Court extends the said period. In the opinion of this Court, the words "either prior to or after the expiry of the period so specified" are crucial. The aforesaid words do indicate that the Court retains the power to extend the mandate even after the period so specified has expired.

……

14. Thereupon, the Delhi High Court took into consideration reports of the Law Commission and judgments of the Supreme Court to eventually observe that the view adopted by the learned Single Judge of the Calcutta High Court in the case of Rohan Builders (India) Private Limited vs. Berger Paints India Limited (supra) could potentially thwart, rather than sub-serve the Legislative intent.

……

15. Having perused Section 29A(4) of the said Act, particularly in the light of use of the words "either prior to or after the expiry of the period so specified", this Court finds that the purpose for which Section 29A was introduced in the

[28] *Nikhil H Malkhan & Ors. v. Standard Chartered Investment and Loans (India) Limited*, Arbitration Petition (Lodging) No. 28255 of 2023 < https://www.livelaw.in/pdf_upload/ordjud-62-508611.pdf>.
[29] *Supra Note* 23.

aforesaid Act would be defeated, if it is to be held that the Court could exercise power to extend the mandate of the learned Arbitrator even after expiry of the extended period only if the application or petition for extension of mandate is filed prior to expiry of such mandate. There is nothing in the provision to indicate that if such an application or petition is not filed before the expiry of the mandate of the learned Arbitrator, the Court would be rendered powerless to exercise its authority. The aforesaid provision i.e. Section 29A of the aforesaid Act, is a provision that enables the Court to pass appropriate orders in order to ensure that the arbitral proceeding reaches its logical conclusion. No purpose would be served in holding that if such an application or petition for extension of mandate of the learned Arbitrator is filed after the expiry of the mandate, the Court would be in no position to entertain the same. Any apprehension regarding inordinate and unexplained delay on the part of the party approaching the Court can be addressed by holding that the Court would extend the mandate only when it is satisfied that sufficient grounds are made out for granting extension of mandate of the learned Arbitrator."

(Relevant Paras)

Conclusion

It is the opinion of the author that as per the Law Commission's Report and the purpose behind the intention of the Amenment, time limit under Section 29A of the Arbitration Act was incorporated with the intent to make arbitral proceedings a time-efficient and cost-effective process to resolve disputes between the parties. It is also worth noting that the time limit prescribed under Section 29A of the Arbitration Act was *'directory'* in nature and was not to be strictly complied with by the arbitral tribunal. The Law Commission in its Report has specifically recommended that if there is a delay beyond the initial one-year period or the period agreed to by the parties or under any period of extension granted by the Court, the arbitration proceedings should not be terminated and proceedings should continue till award is passed as it shall result in wastage of time and money of the parties after a lot of evidence has already been filed.

Further, the author disagrees with the reasoning given in the case of *South Bihar* and *Rohan Builders* as not only do these judgments undermine the objectives and purpose behind the enactment of Section 29A of the Arbitration Act but shall also result in catastrophic consequences in the future as rogue litigants may get the chance in delaying the rights/reliefs of the claimants by negating/terminating the arbitral proceedings through unfair means in the future. The author believes

that the Hon'ble Courts in these judgments have overlooked the aspect that under Section 29A of the Arbitration Act, there is no mention regarding the 'suspension' or 'stay' of arbitration proceedings if an application for extension is not filed before its expiry. The author believes that the judgments have given too much importance to the term 'extension' and what it means rather than focusing on section 29A (4) of the Arbitration Act as a whole. Rather, the judgments are against the settled position of law that a provision is required to be read in whole and not in part or in isolation from the other parts of the provision. The entire provision is required to be read harmoniously.[30] It is important to note that a simple perusal of Section 29A (4) of the Arbitration Act shows that there is no prohibition on applying for extending the mandate of the arbitral tribunal post expiry of its mandate.

The author would also like to shed light on the recent recommendations made by the Expert Committee on Arbitration Law,[31] which was set up on 12.06.2023, to examine the workings of the Arbitration Law in the country and recommend reforms to the Arbitration & Conciliation Act, 1996. In this report, the Committee has recommended the insertion of a proviso to Section 29A (4) of the Arbitration Act, which allows the filing of an application for extension of the mandate of the arbitral tribunal even after the period specified in sub-section (1) or the extended period specified under sub-section (3), subject to the condition that it has been filed without undue delay and with sufficient cause. However, the legislature must consider stipulating a specified time period within which the application of extension can be filed by a party. This shall not only help in uniformity but shall also help in avoiding varied interpretations of the terms 'undue delay' and 'sufficient cause' by different courts of India. Therefore, the author believes that implementation of the above-mentioned recommendation shall help in deciding the future course of arbitration proceedings and shall provide much-needed clarity on the law regarding the extension of the mandate of the arbitral tribunal.

Even though the matter is *sub judice* before the Hon'ble Supreme Court in the *Vrindavan Advisory* case,[32] the author strongly believes that the Hon'ble Supreme Court should adopt a pro-arbitration approach towards this issue and should permit that an application for extension be allowed to be entertained by the Hon'ble Court even post expiry of the mandate of the arbitral tribunal. The

[30] *Shripal Bhati v. State of U.P.*, (2020) 12 SCC 87. [can be accessed at :https://indiankanoon.org/doc/63797424/]
[31] Shri Dr. T.K. Vishwanathan, '*Report of the Expert Committee to Examine the Working of the Arbitration Law and Recommend Reforms in the Arbitration and Conciliation Act 1996'*, Para 3.21.
[32] *Supra note* 22.

author states that if the same is not considered, then there shall be far reaching adverse consequences which shall affect India's position as an arbitration hub in the global forum.

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