

# WELCOME

## Contract Management

**MCR HRDI - 8.4.21**

M C Panda  
Former Addl Secretary, Govt of India  
Presently, consultant to Unicef and  
Member of Expert Committees of ONGC, NTPC, IOC and GAIL  
Mob- 9999008545

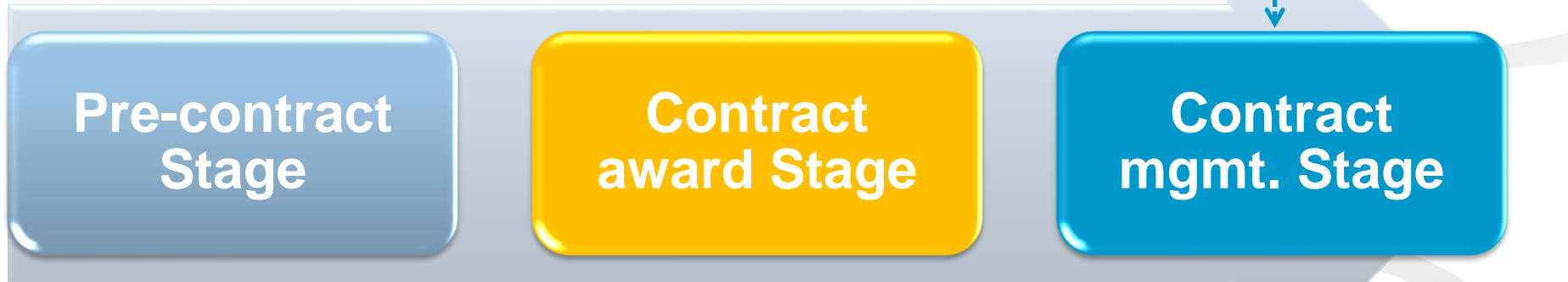
# Public Procurement & Contract Management

Contract drafting  
Contract mgmt  
Dispute resolution

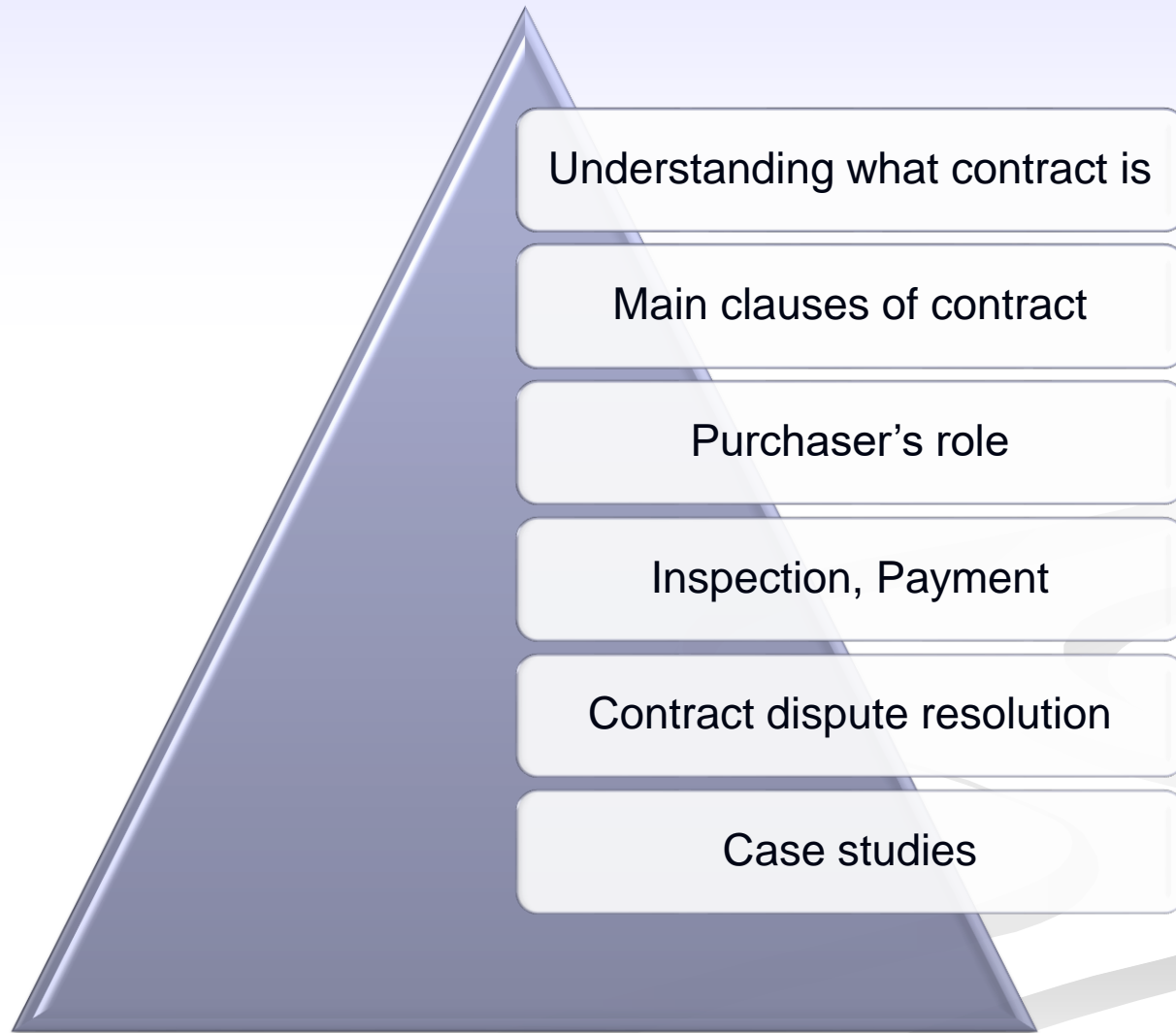
Pre-contract  
Stage

Contract  
award Stage

Contract  
mgmt. Stage



# What to expect today



# Project management field

- Project integration management
  - Project scope management
  - Project schedule management
  - Project cost management
  - Project quality management
  - Project human resource management
  - Project communication management
  - **Project risk management**
  - **Project procurement & contracts management**
- 
- The bottom right portion of the slide features several thick, light gray wavy lines that curve and flow across the page, adding a dynamic, abstract background element.

# Procurement- impacts critical aspects of a Project

**Time critical** -When deadline immovable; event-related projects.

**Quality critical**-When outcome must be of certain standard even if it involves more time & cost; engg, medical projects.

**Cost critical** -When profit is the purpose, keeping cost low becomes high priority; comm projects




**All three need to be kept under control for project to be successful**

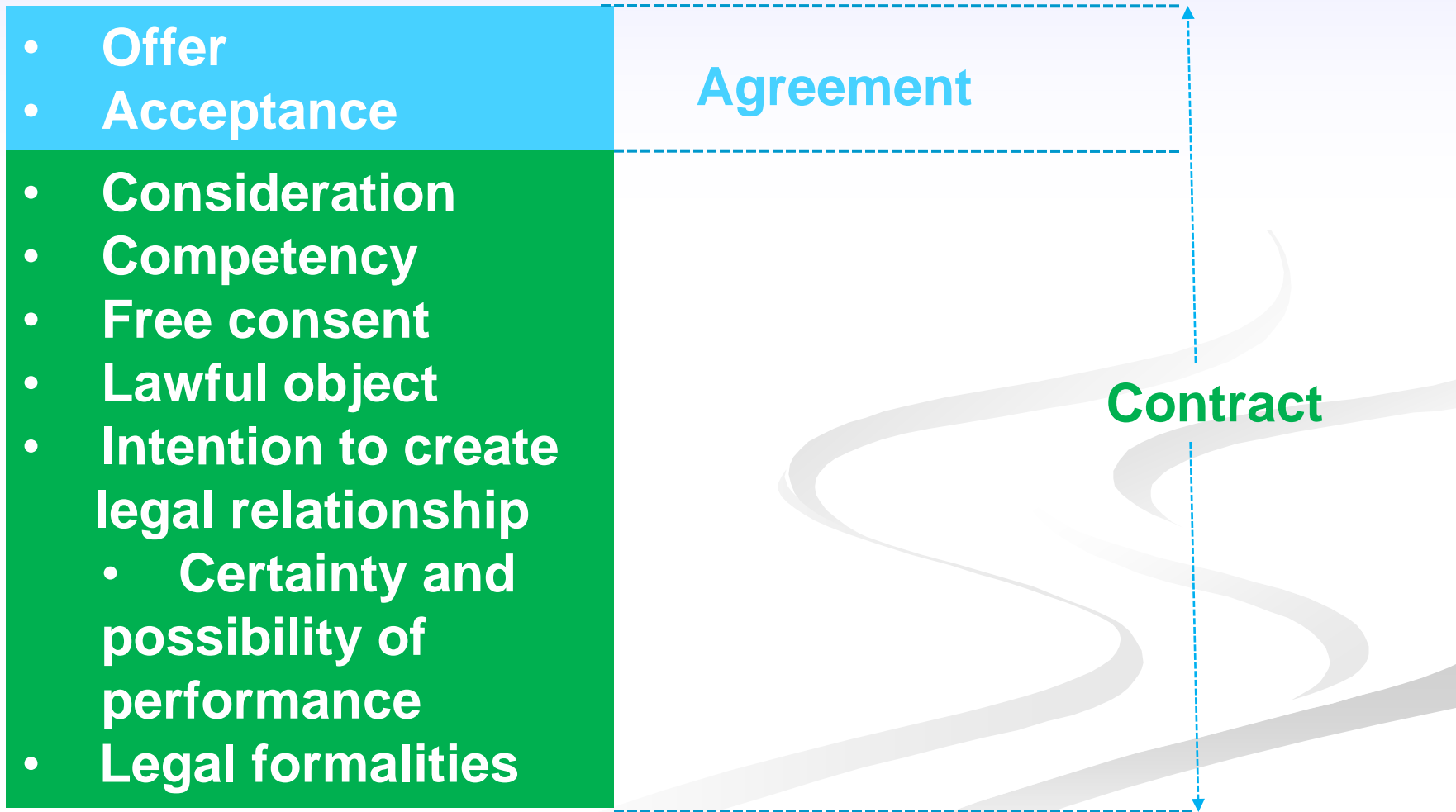
# What is a contract?

- An agreement is a set of promises
- A contract is a promise or set of promises between the parties which the law will enforce.
- Offer + Acceptance = Agreement
- Agreement + Legal Comp = Contract
- **All contracts are agreements, but all agreements are not contracts**

## Trinity of contract

- A deal without consideration is called 'nudum pactum'- naked contract- and is **not valid**
  - **Offer, acceptance and consideration are called TRINITY of contract**
- 
- The bottom right portion of the slide features several thick, light gray, wavy lines that curve and flow across the page, serving as a decorative background element.

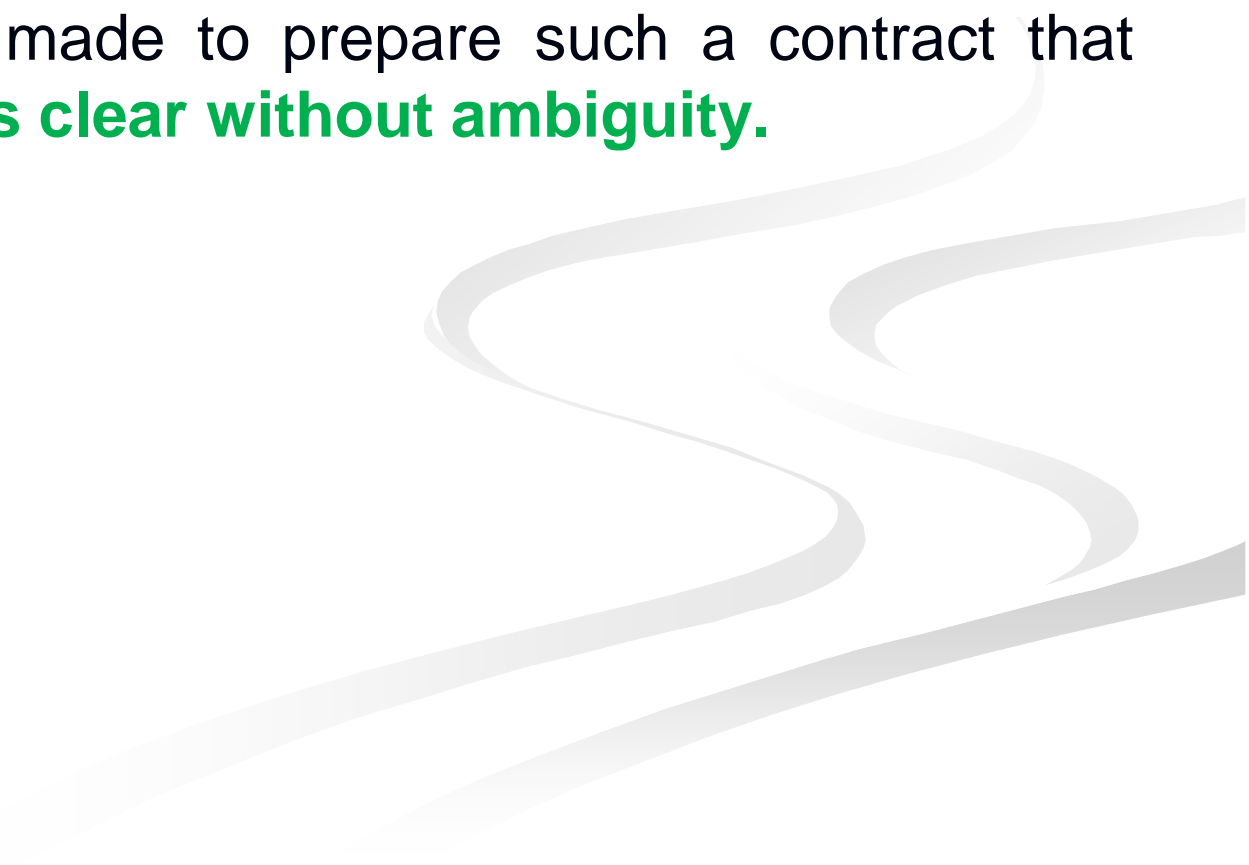
# Agreement and contract





# Contracts

## How to draft a good one?

- This requires that **legal aspects contract must be kept in view** and
  - Efforts must be made to prepare such a contract that makes the **things clear without ambiguity.**
- 
- The bottom right portion of the slide features several thick, light gray wavy lines that curve and flow across the page, serving as a decorative background element.

# Key clauses

Clauses

?

Scope of contract  
Price, Taxes, duties, PV  
DP, Terms of delivery

Inspection  
Documentation  
Payment

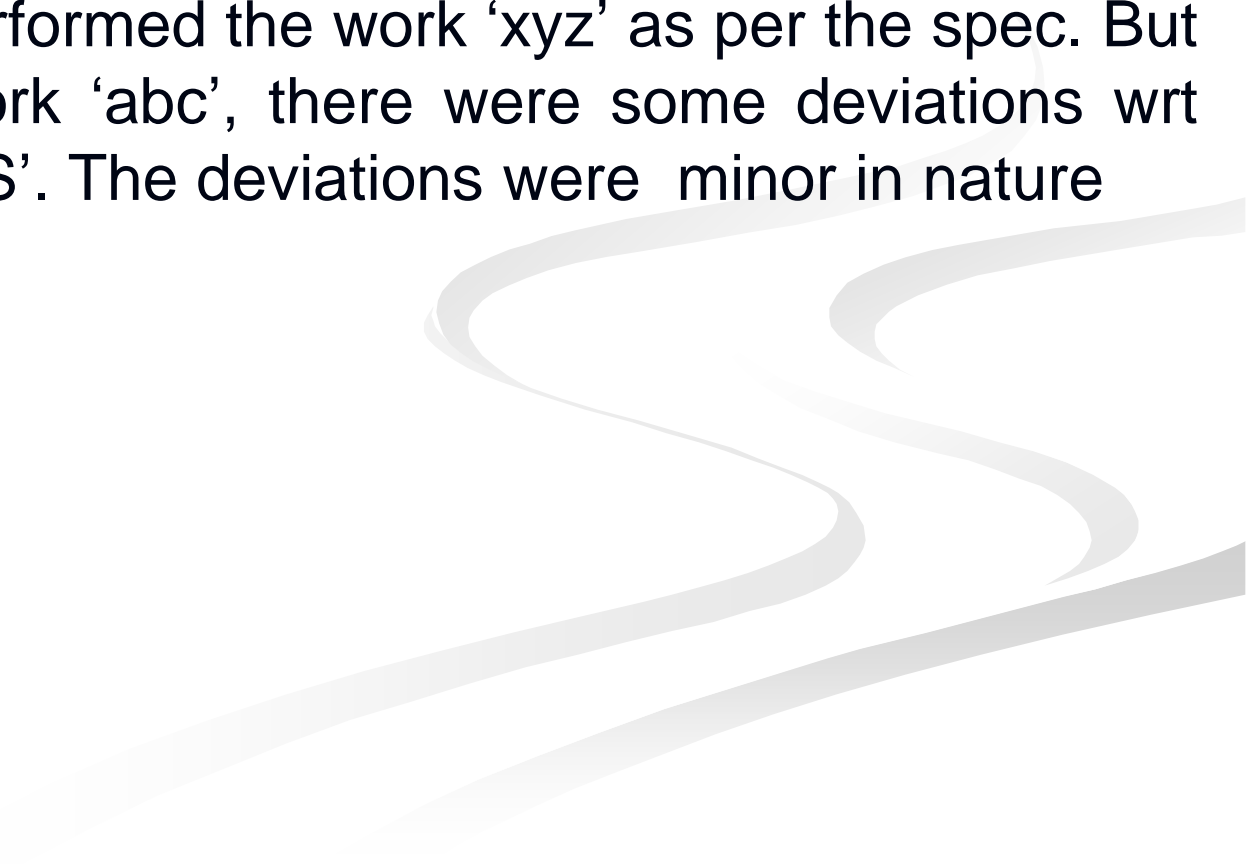
Liquidated Damages  
Force Majeure  
Termination

Indemnity  
Warranty  
Dispute resolution

Governing laws  
and  
Jurisdiction

# Case Study

## Drafting of Contract

- A Project Contract specified that
  - “The contractor will perform the work ‘abc’ and the work ‘xyz’ in accordance with the specification S”.
  - The contractor performed the work ‘xyz’ as per the spec. But in the case of work ‘abc’, there were some deviations wrt the specification ‘S’. The deviations were minor in nature
- 

# Case Study

## Drafting of Contract

- The Purchaser needed to open its office in the buildings urgently. While accepting the deviations, purchaser imposed a price reduction, which was not accepted by contractor.
- The contractor contended that unilateral imposition of price reduction was not justified. This resulted in a dispute. The contractor approached the **Court**.
- **You be the judge**
- **Thank YOU** for actively participating.

# Case Study

## Contract price

- In a Project, the three acceptable tenderers offered their prices as follows:
- **L1**- Total civil works- Rs700 crs, Total electrical works- Rs300 crs, Grand total Rs**1000** crs. Discount **+2%**
- **L 2** - Total price-Rs **1025** crs
- **L 3** - Total price-Rs **1028** crs
- The purchaser placed the contract on L1 at Rs1020 crs (  $1000+2\%$  ie 20 =1020).

# Case Study

## Contract DP

- In a high value tender (Rs 100 crs approx), the supplier had offered a firm delivery period as per tender invitation (Global Tender).
- In the delivery clause of the contract , it was stipulated that “Supplies will be completed by May 31(year).” It was incorporated in the delivery clause itself that in case the supplier fails to adhere to this date, liquidated damages will be levied at the rate of 2% per month or part thereof of delayed period subject to a maximum of 10% of contract value.

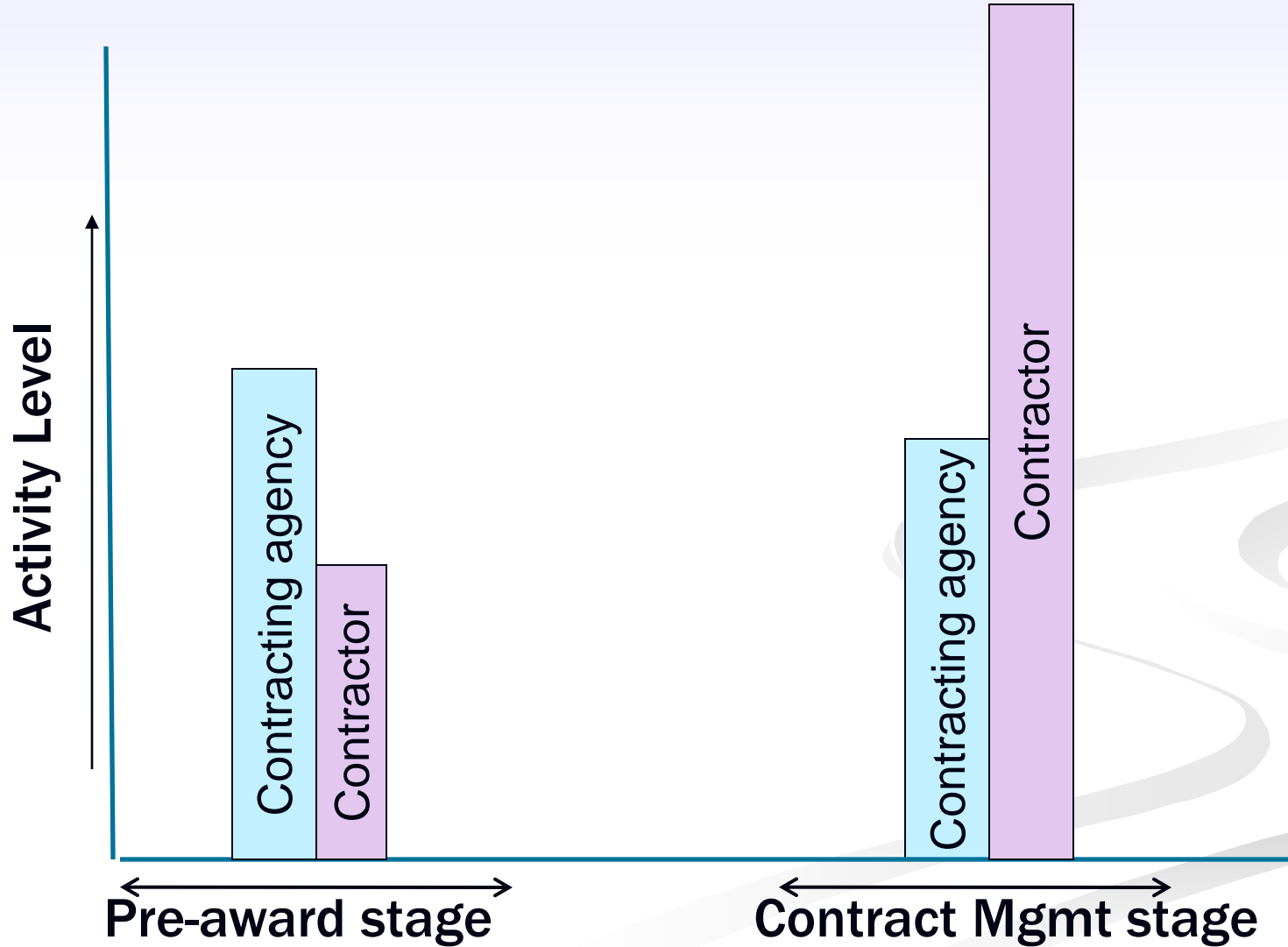
# Case Study

## Contract DP

- The supplier failed to make any supply by May 31 (year). They did not make any request for extension to deliver period.
- The purchaser cancelled the contract in Aug (year) and claimed damages alleging breach of contract by the supplier.
- The matter was referred to arbitration.
- **Decide the matter as a Ld Arbitrator.**
- **Thank YOU** for actively participating.

# Level of Activities

Performed by the parties during procurement process

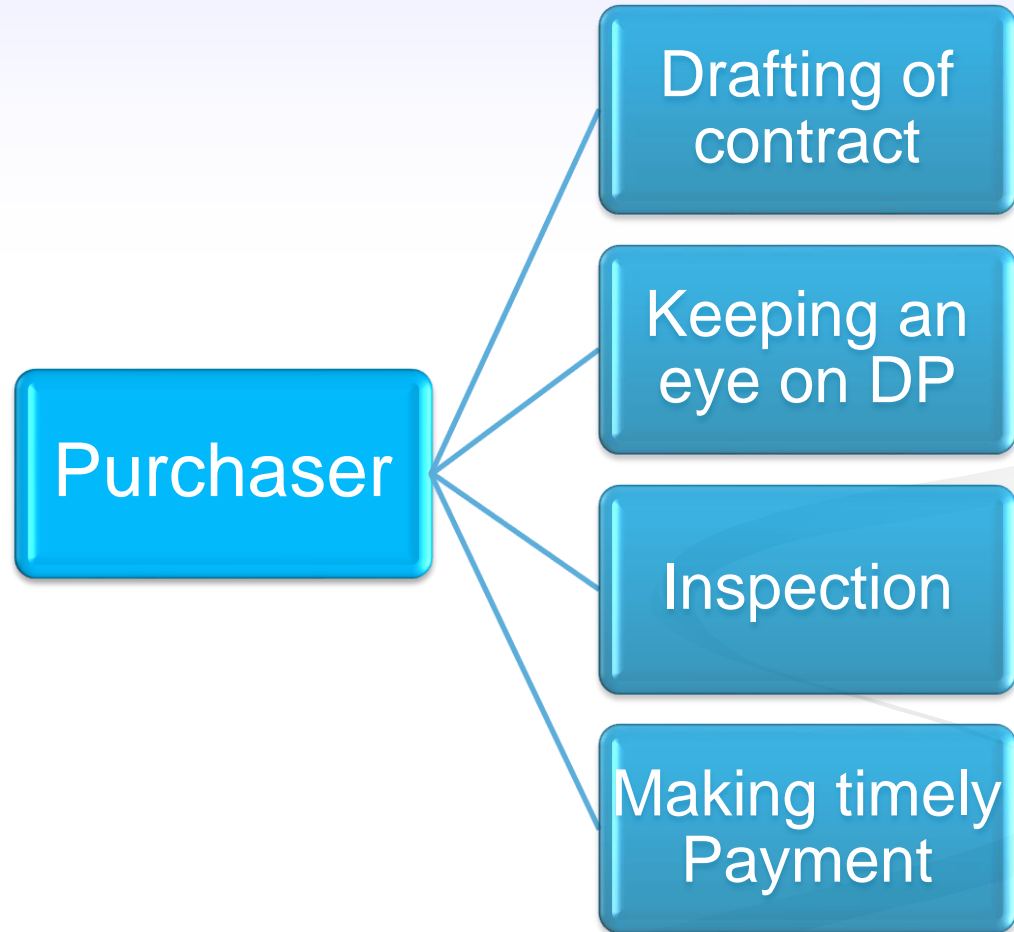




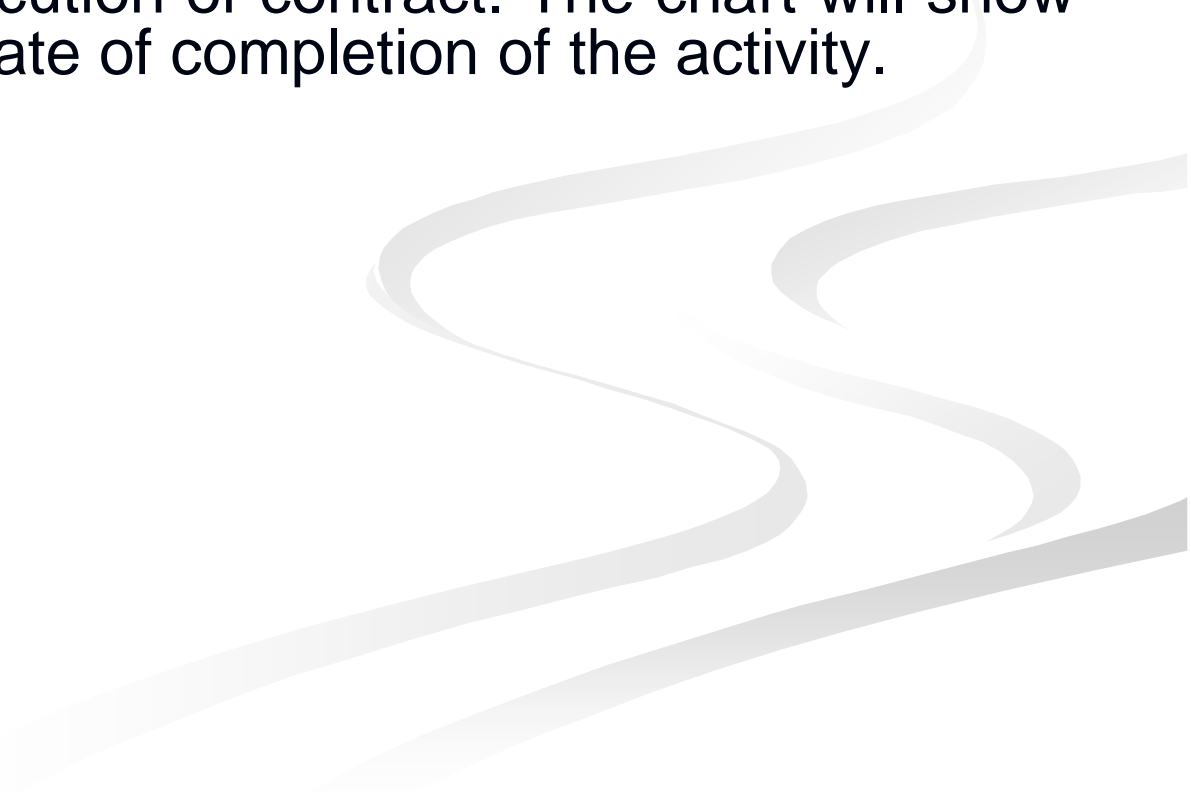
## Purchaser's obligations include...

- Provide data
- Approve plans, drgs, design, advance sample
- Provide access to site for works contracts
- Arrange clearances
- Timely release of advance payment
- Provide materials, equipment, utilities
- Opening L/C
- Inspect goods / works
- Provide facilities for erection, commissioning, training
- Timely payment of contractor's invoices

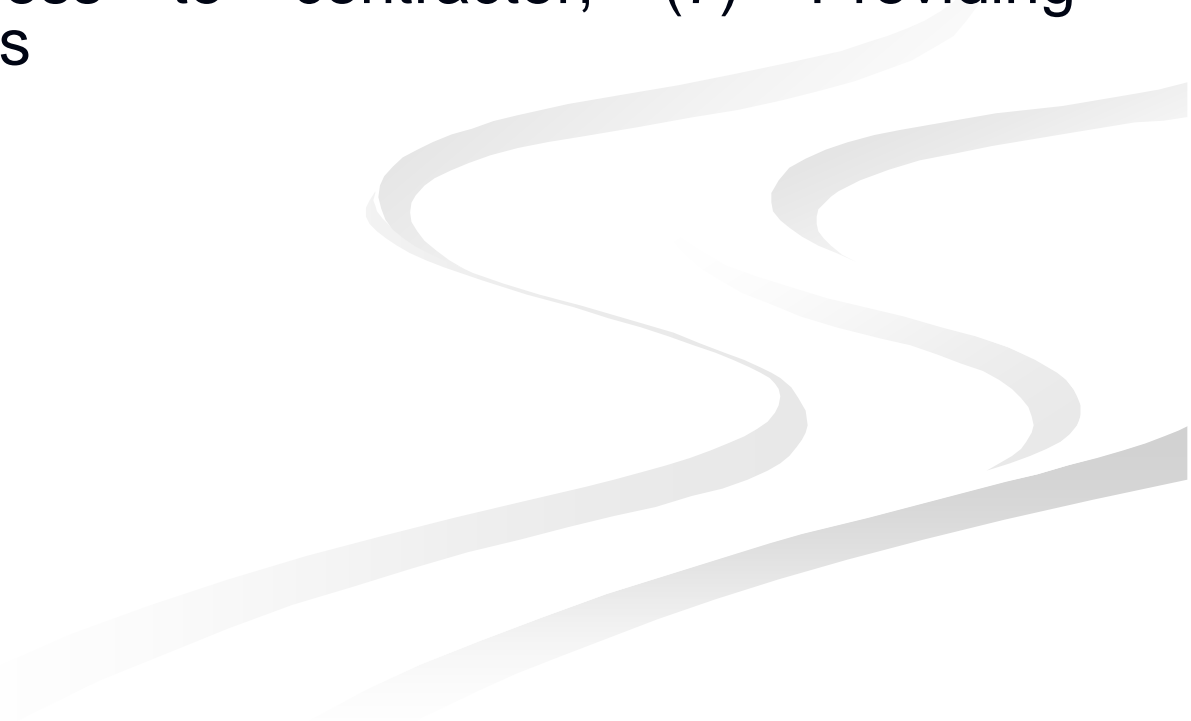
# Where to focus attention during contract management stage



## Contract Mgmt- Master Schedule

- Draw a Master Schedule of all the activities in their chronological sequence that have to be performed during the course of implementation of the contract.
  - This can be in the form of a chart to facilitate monitoring of activities for execution of contract. The chart will show the due date and date of completion of the activity.
- 
- The bottom right portion of the slide features several thick, light gray wavy lines that curve and flow across the page, serving as a decorative background element.

# Contract Mgmt- Master Schedule

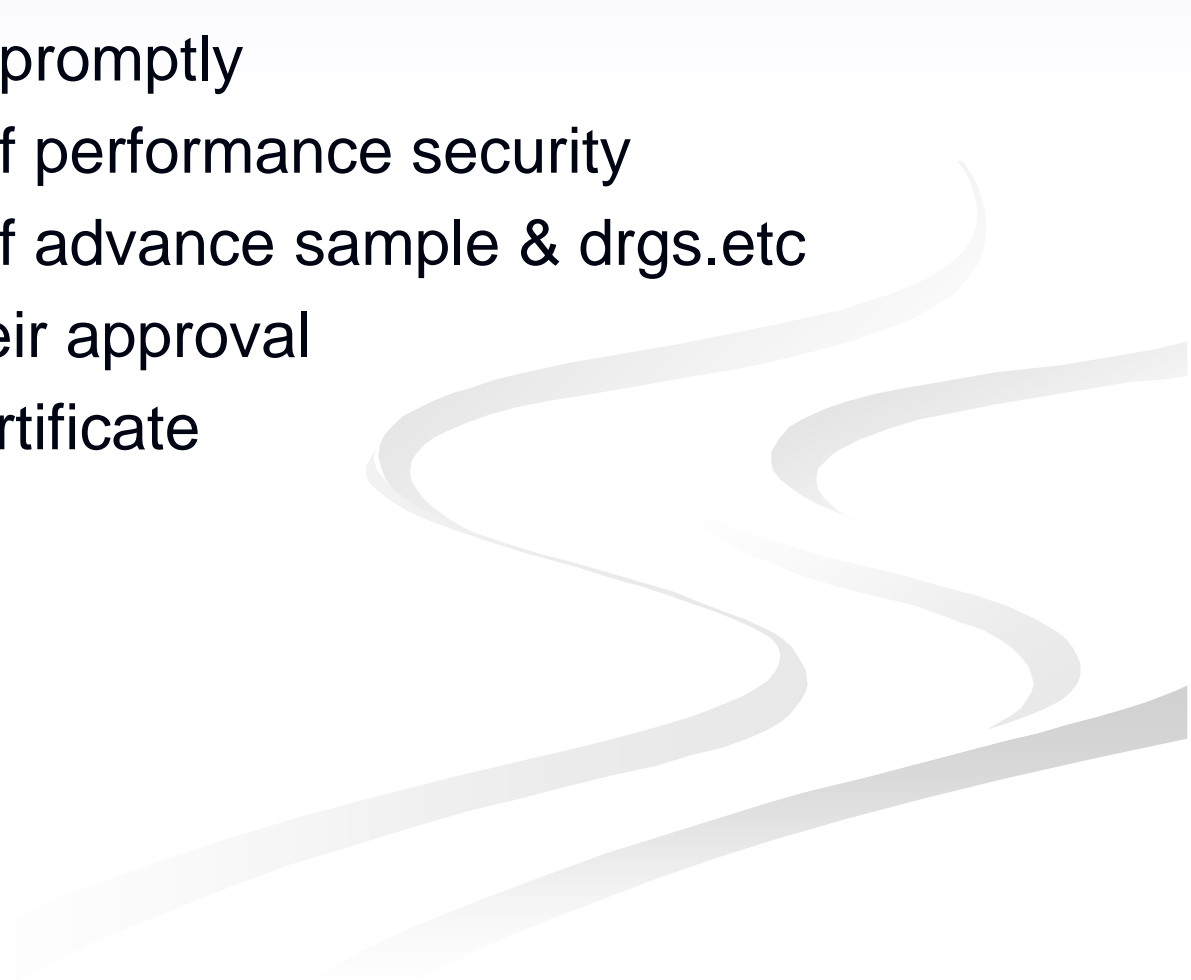
- The right hand side of the chart may be used to denote the time taken by purchaser
  - Some of the activities are: (1) Acknowledgment, (2) Issue of A/L, (3) Arranging clearances/ CDE, (4) Furnishing of PBG, (5) Acceptance of PBG, (6) Providing data/ site access to contractor, (7) Providing equipments/ Utilities
- 

## Contract Mgmt- Master Schedule

- (8) Furnishing BG for advance payment, (9) Release of Adv Payment, (10) Submission of Drgs, (11) Approval of Drgs, (12) Letter of credit, (13) Providing technical training, (14) Readiness for inspection, (15) Inspection, (16) Readiness for shipment, (17) nomination of Carrier, (18) Shipment, (19) Shipping docs (20) Port clearance
- This could be supplemented by subsidiary schedules

# Contract Management

## Acknowledgment

- Obtain acknowledgment
  - Issue required A / L promptly
  - Watch submission of performance security
  - Watch submission of advance sample & drgs.etc
  - Accord priority to their approval
  - Obtain C .D . E. certificate
- 
- A decorative graphic consisting of several thick, wavy, light gray lines that flow from the bottom right towards the center of the slide, creating a sense of movement and depth.

# Contract Management

## L. C.

- Arrange prompt opening of L . C.
- Ensure timely completion of civil works
- Request for monthly supply plan
- Initiate steps for TOT
- Monitor progress in compliance of provisions of offsets (plough back into India)

# Contract Management

## Inspection, Delivery, Installation

- Monitor progress in supply /performance
- Keep watch on DP
- Take prompt decision on request for DP extn.
- Extend DP with LD and denial clauses
- Inspect stores at mfr's works within DP
- Arrange prompt clearance at Port of entry
- Inspect stores / works at site
- Installation, testing, commissioning at site



# Contract Management

## LD, Payment, PV

- Issue CRC promptly to supplier
- Settle P V & LD claim quickly
- Ensure timely payments
- Release performance security in time
- Advise parties not to keep contract alive beyond DP/  
extended DP
- Issue performance notice if contract is kept alive

# Contract Management

## Dealing with changes

- Ideally, no changes are permissible
- However in some cases changes in specs can be considered in the interest of expeditious supply / better performance of the equipment
- User should be consulted regarding any change in specification.
- Financial impact of the changes should be assessed and suitable price reduction should be obtained


## Extension of delivery date

- Ideally, no extension of scheduled delivery or completion date should be granted
- Whenever such extension becomes unavoidable, approval of competent authority should be obtained and extension granted with reservation of right to levy **liquidated damages** for delay-Rule:204

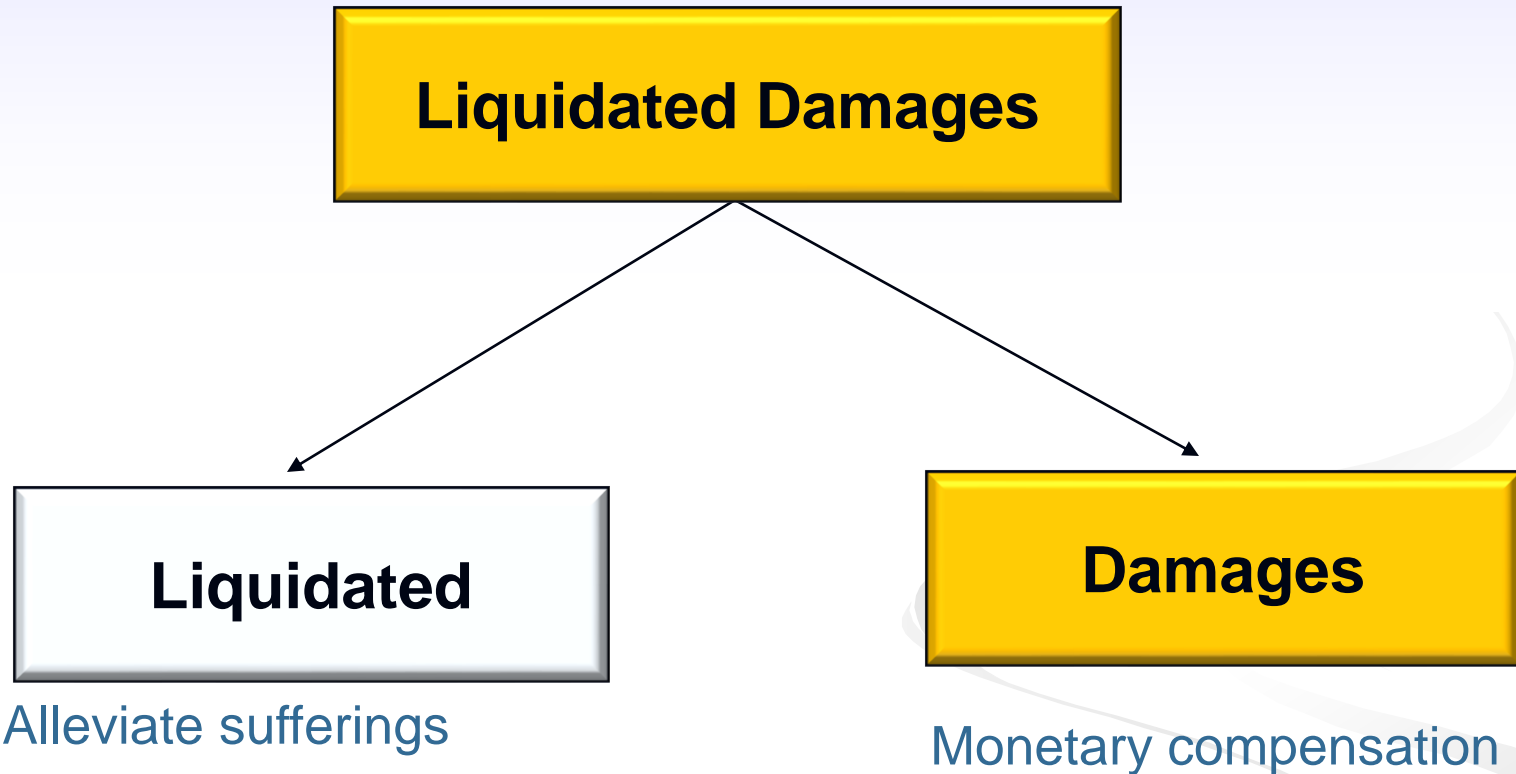
# Installation, Testing and Commissioning

- The responsibility for installation, testing and commissioning is usually entrusted to the contractor. The details of work to be done, the type of tests to be conducted and the performance parameters are specified in the contract
- The Testing and Commissioning is witnessed by the User and also by the Inspector concerned.
- Upon (i) Satisfactory completion of all the required tests, (ii) Demonstration performance and (iii) Satisfactory Trial Run, the equipment is taken over by the User

## Periodic review of contract

- Check whether supplier's performance is as per contract schedule
  - Arrange site visit by your officers located nearer to the supplier's Plant
  - Hold meetings in your office/ at site to monitor progress
  - **Communicate with top management of supplier**
- 

# What are Liquidated Damages (L/D)



- Where a party suffers due to breach of contract it has a right to claim damages thereof. S-73

# Calculation of Liquidated Damages

- Calculation of leviable L/D in the following cases, (a) Clause specifying the rate as  $\frac{1}{2}$  % per week or part thereof of delay subject to a ceiling of 10%, (b) Clause specifying the rate as 2 % per month or part thereof of delay subject to a ceiling of 10% :
  - The contract price is Rs 1 Cr
  - The due date of delivery specified is 31.10. 2020
  - The above date was extended upto 31.12 2020
  - The actual date of delivery is 12.12.2020

## What is 'Force Majeure'

- Force Majeure is a situation in which either of the parties is prevented, temporarily or permanently from performing its obligations under the contract due to circumstances beyond its control.
- The F M events can be classified into:
  - Acts of God/ Nature- Earth quake
  - Acts of Sovereign Governments- Banning export
  - Acts individuals/ Groups- Acts of terrorism



# The effect of incidence of F M events

**Force Majeure**

```
graph TD; A[Force Majeure] --> B[Refixation of DP]; A --> C[Termination of contract];
```

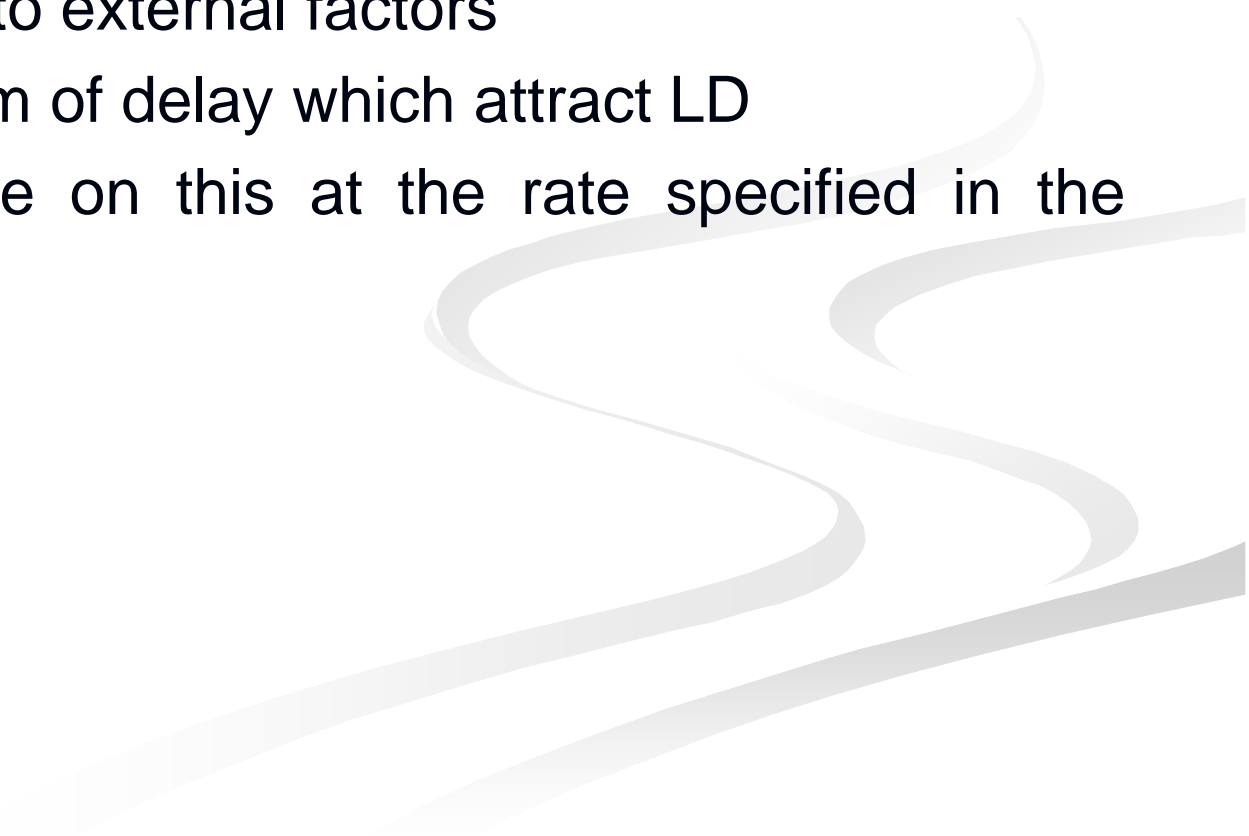
**Refixation of DP**

- Duration of Event plus set-up time

**Termination of contract**


- Termination without financial repercussions

# Delay analysis and levy of L/D

- Ascertain the extent of delay :
    - Attributable to the contractor
    - Attributable to the Project owner/ CA
    - Attributable to external factors
  - Estimate quantum of delay which attract LD
  - Calculate leviable on this at the rate specified in the contract
- 

# Excusable delay

## Delay attributable to Purchaser

- Extra works
  - Changes in User's requirements
  - Differing site conditions
  - Delay in providing site access
  - Delay in providing data, facilities, utilities
  - Delay in approving design etc
  - Hindrances due to other contractors engaged by you
- 

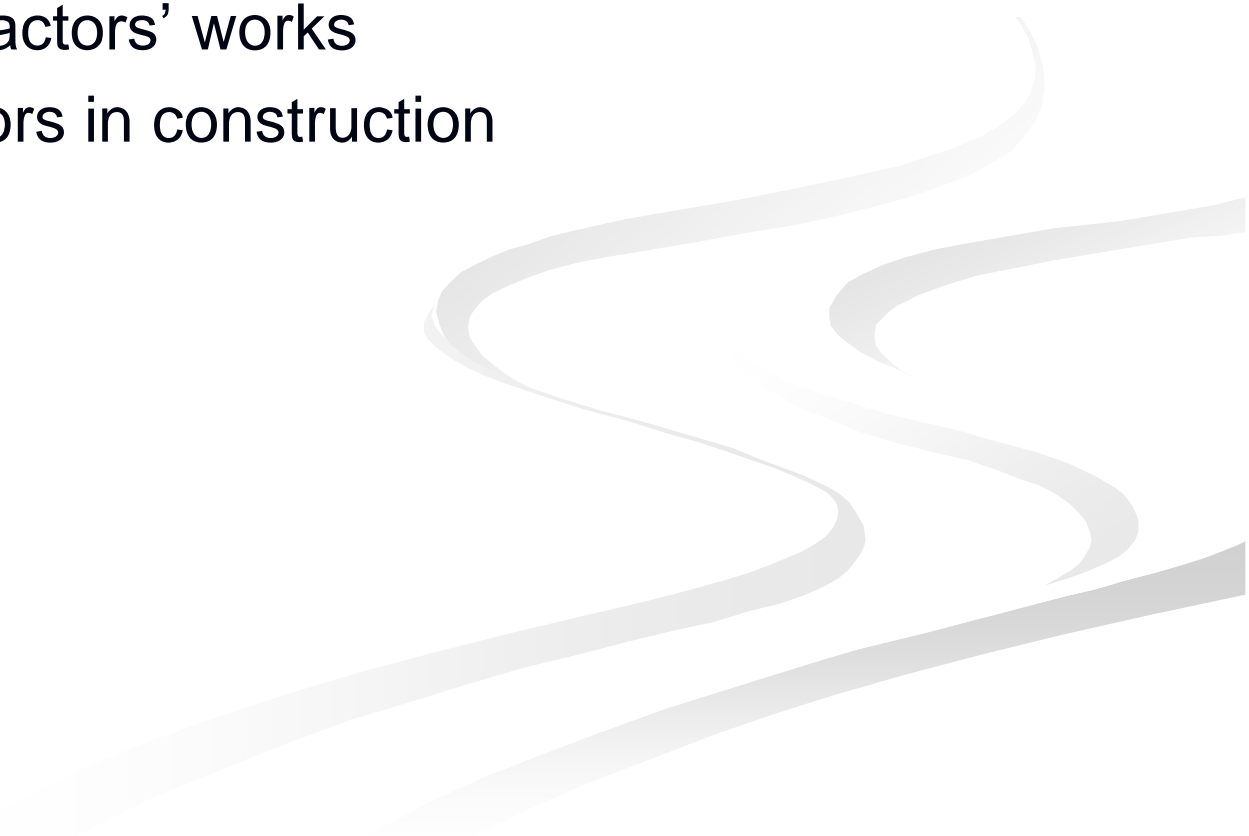
# Excusable delay

## Delay attributable to External Factors

- Force Majeure events
- Unusually severe weather
- Archaeological finds
- Third party issues – e.g. GAIL pipe line
- Suspension of work due to environmental restrictions etc-  
e.g. To contain pollution in Delhi

# **Non-excusable delay**

## **Delay attributable to contractor**

- Delay in site mobilization
  - Contractor's inability to organize resources-The 3Ms
  - Delay in sub-contractors' works
  - Rework due to errors in construction
- 
- The bottom right portion of the slide features several thick, light gray, wavy lines that curve and flow across the page, serving as a decorative background element.

## Price Variation clause

$$P_1 = P_0 \left( F + a \frac{M_1}{M_0} + b \frac{L_1}{L_0} \right) - P_0$$

- Where  $P_1$  is the adjustment amount payable
- $P_0$  is the Contract Price at the base level
- $F$  is the Fixed element
- $a$  is the assigned percentage to the material element
- $b$  is the assigned percentage to the labour element
- $L_0$  and  $L_1$  are the wage indices at the base month and year and at the month and year as stipulated in the contract
- $M_0$  and  $M_1$  are the material indices at the base month and year and at the month and year as stipulated in the contract

## Price variation as per PVC

- The PVC incorporates a fixed component-'F' which is usually 15%. No price variation is applicable to this.
- Now come to Labour and Material components.
- The base indices of Labour and Material are shown in the contract itself.
- Data regarding final indices of Labour and Material are usually provided by Contractor with documentary evidence. This is checked by the Purchaser, who determines the amount of price variation.

# Calculation of Price variation as per PVC

- Calculation Price Variation in the following cases:
  - The contract price is Rs 1 Cr
  - The Fixed component 'F' is 0.15
  - The base indices of Labour and Material shown in the contract are 100 for both
  - The final indices of Labour and Material are 110 and 120 respectively
  - The factor for Labour ie 'b' is 0.30 and the factor for material ie 'a' is 0.55

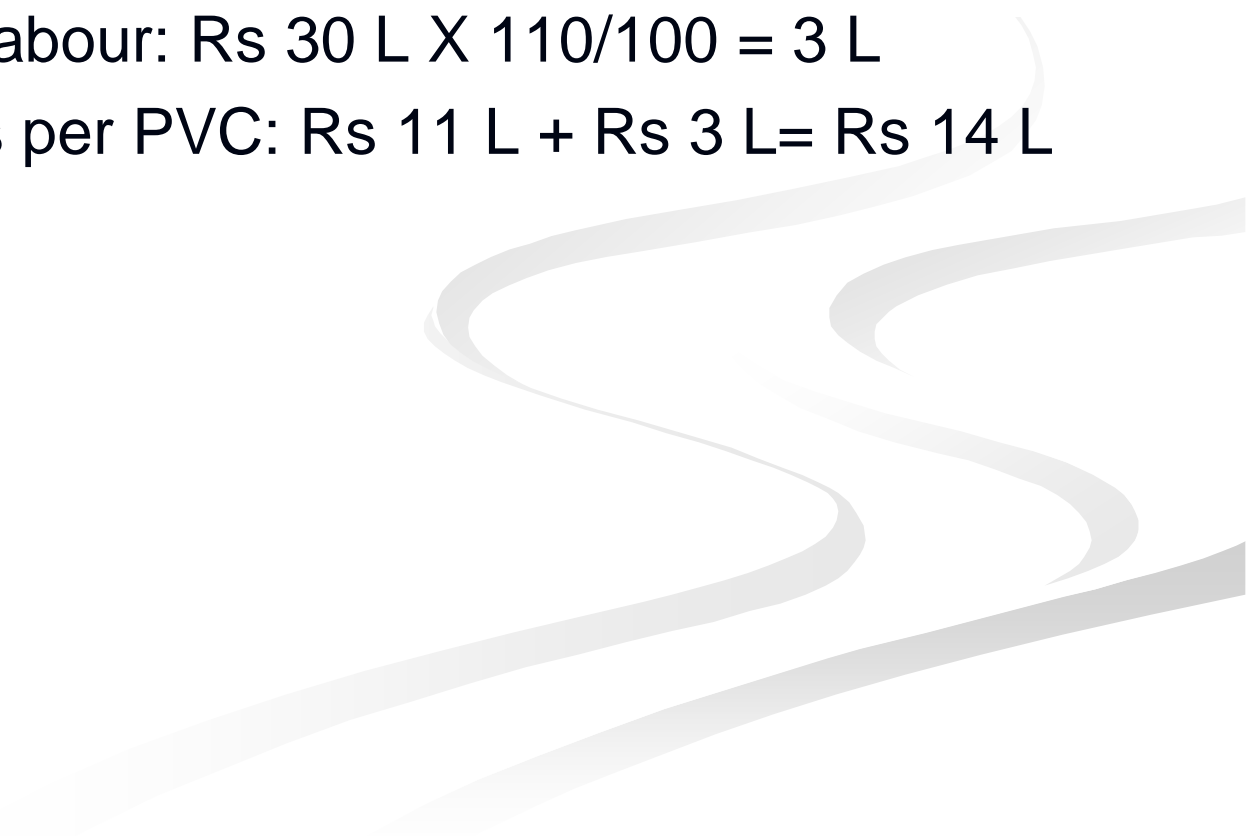


# Calculation of Price Variation

$$P_1 = P_0 \left( F + a \frac{M_1}{M_0} + b \frac{L_1}{L_0} \right) - P_0$$

- $P_1$  is the adjustment amount payable to be calculated
- $P_0 = \text{Rs } 1 \text{ Cr}$
- Fixed component,  $F = 0.15$
- Materials factor,  $a = 0.55$
- Labour factor,  $b = 0.30$
- Labour indices,  $L_0 = 100$ ;  $L_1 = 110$
- Material indices,  $M_0 = 100$ ;  $M_1 = 120$

## Calculation of Price variation

- The Materials: Rs 1 Cr x 0.55 = Rs 55 Lakhs
  - Increase due to materials: Rs 55 L X 120/100 = 11 L
  - The Labour: Rs 1 Cr x 0.30 = Rs 30 Lakhs
  - Increase due to labour: Rs 30 L X 110/100 = 3 L
  - Total increase as per PVC: Rs 11 L + Rs 3 L = Rs 14 L
- 

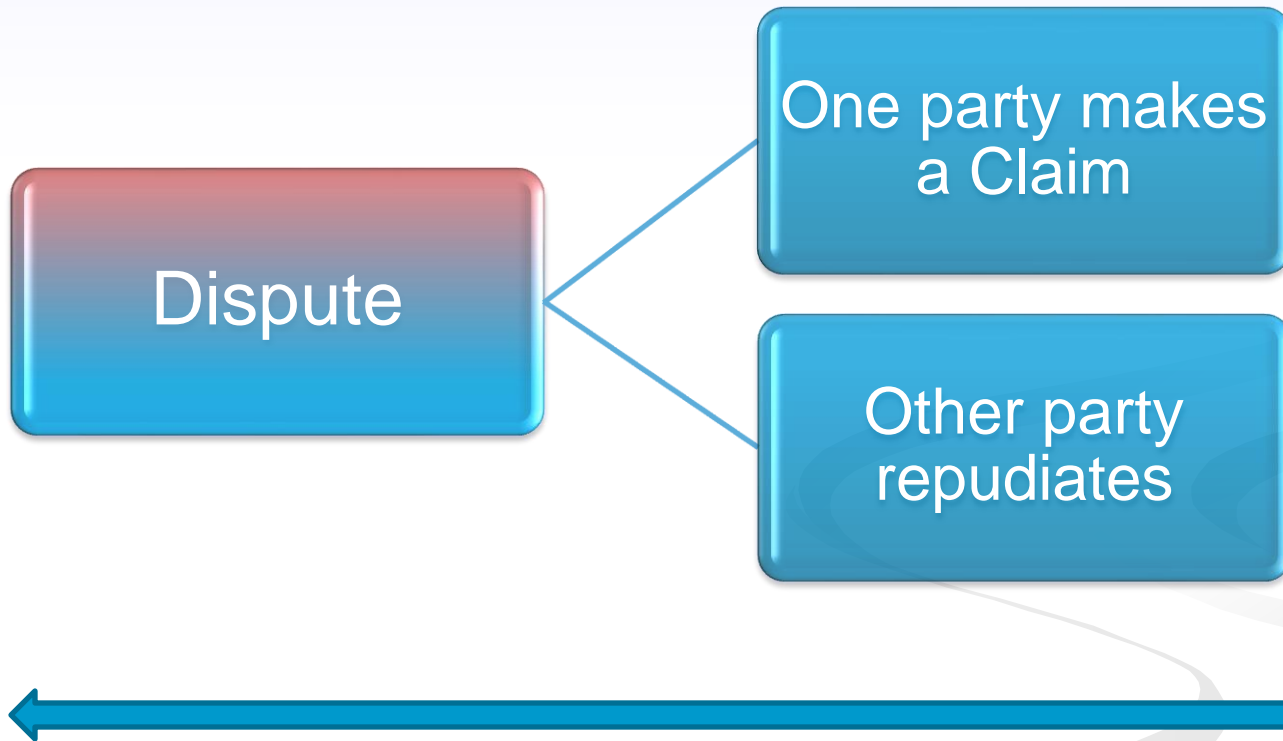
# Requirements for valid Risk Purchase

- Specs must be same as was adopted initially
- Mode of procurement same or Adv.Tender Enquiry
- Risk purchase contract must be concluded within a reasonable time which is usually 6 months from the date of breach
- Lowest acceptable offer should not be ignored while placing the risk purchase contract. **If it is ignored, risk purchase loss will not be legally recoverable**

## Analysis of operation of contract

- This is an exercise for continual improvement of our contract clauses and contract management.
- At the close of the contract, a review is undertaken to identify the contract clauses that need refinement in the light of problems faced and experience gained
- During the life of the contract, the world is not standing still. The trade and commerce is progressing. Technology is moving forward. This may demand some changes in your contract clauses also.
- The required changes are incorporated with the approval of Competent Authority in consultation with L. A

# How does a dispute arise



# “Arbitration Claims stump NHAI”

as it stares at Rs 18000 crs payout (740)

Name of Project	Road Dev	Proj cost	Claim
Madurai-Tuticorin	Madhucon	629	<b>8199</b>
Trichi-Thanjavar	Madhucon	280	<b>2991</b>
Bareilly-Sitapur	Era	1046	3721
Haridwar-Dehradun	Era	478	2288
Muzaffarnagar-Haridwar	Era	754	2206
Panipat-Jalandhar	Soma-Isolux	2747	<b>7036</b>
Guj/MH Border-Surat-Hazira	Soma-Isolux	1509	3357
Piprakothe-Raxaul	Tantia	375	986

# Contract Dispute resolution

**Strategy for dealing with disputes**

```
graph TD; A[Strategy for dealing with disputes] --> B[Prevention of disputes]; A --> C[Settlement of disputes];
```

**Prevention of disputes**

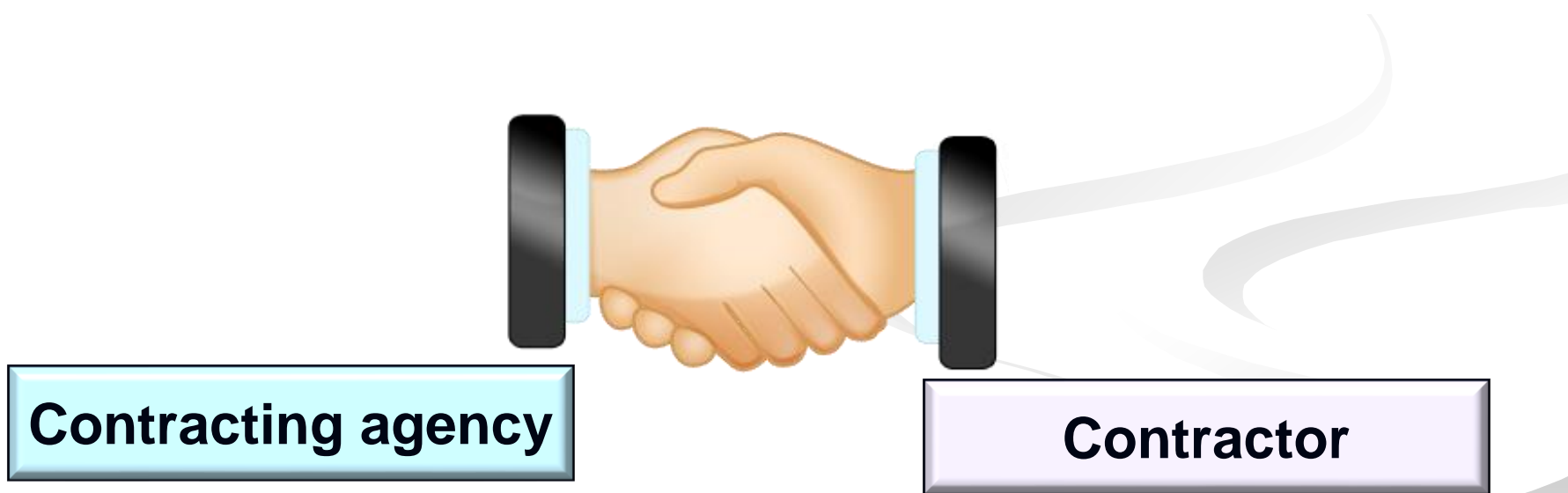
- Drafting of contract
- Contract Mgmt

**Settlement of disputes**

- ADR
- Court

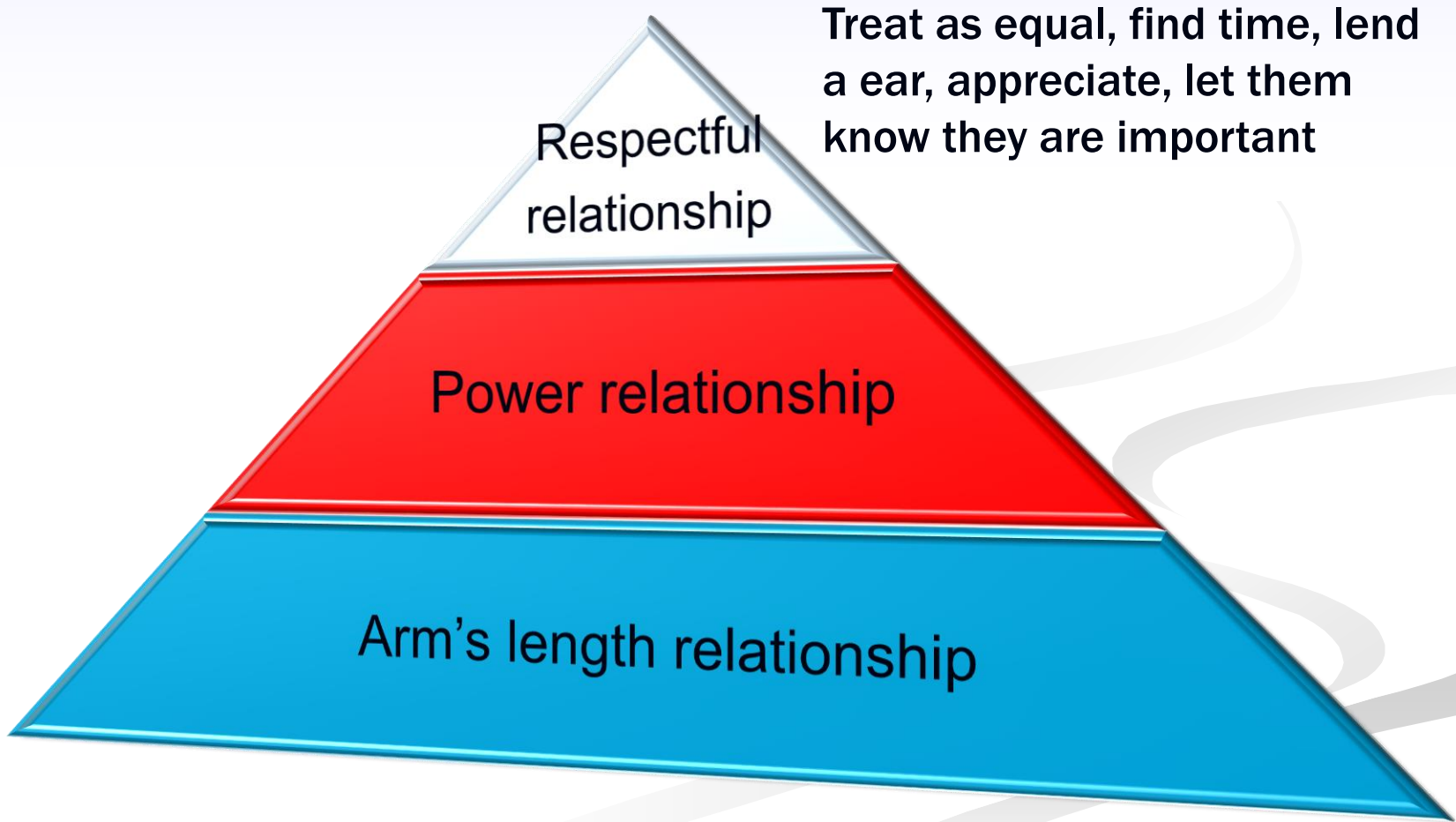
## A collaborative approach

- It will be desirable to establish harmonious relationship with the contractor in long-term contracts, especially with service element.

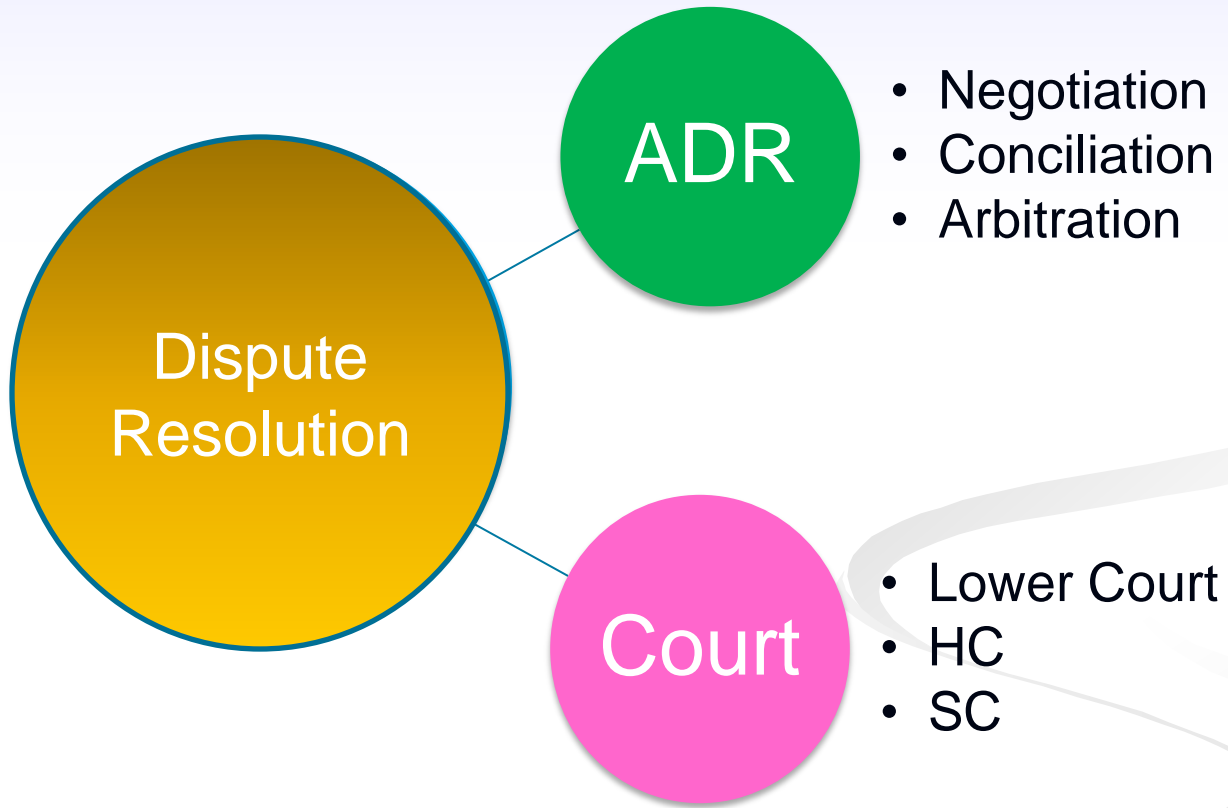




# Purchaser-Supplier relationship

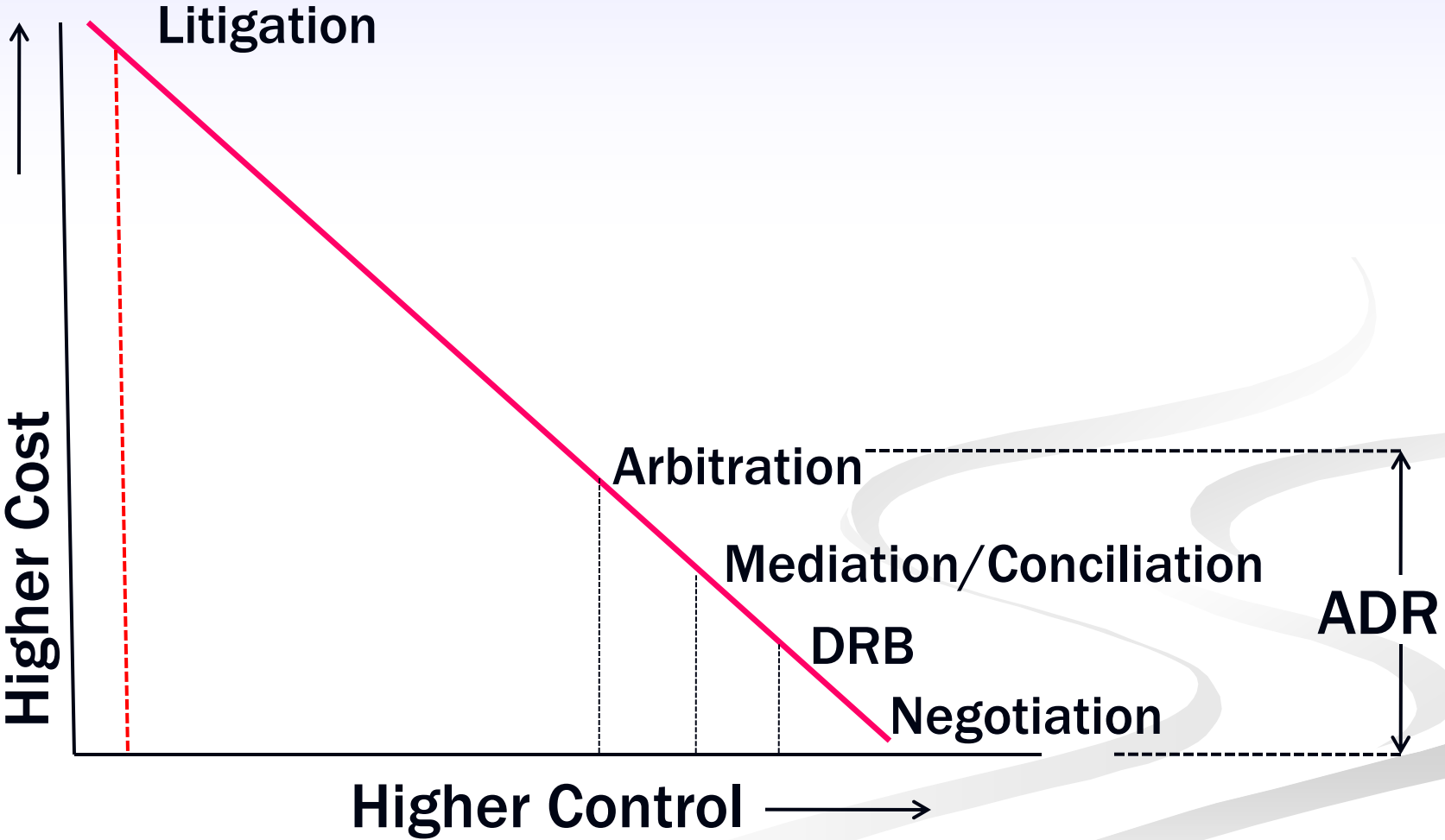


# Dispute resolution

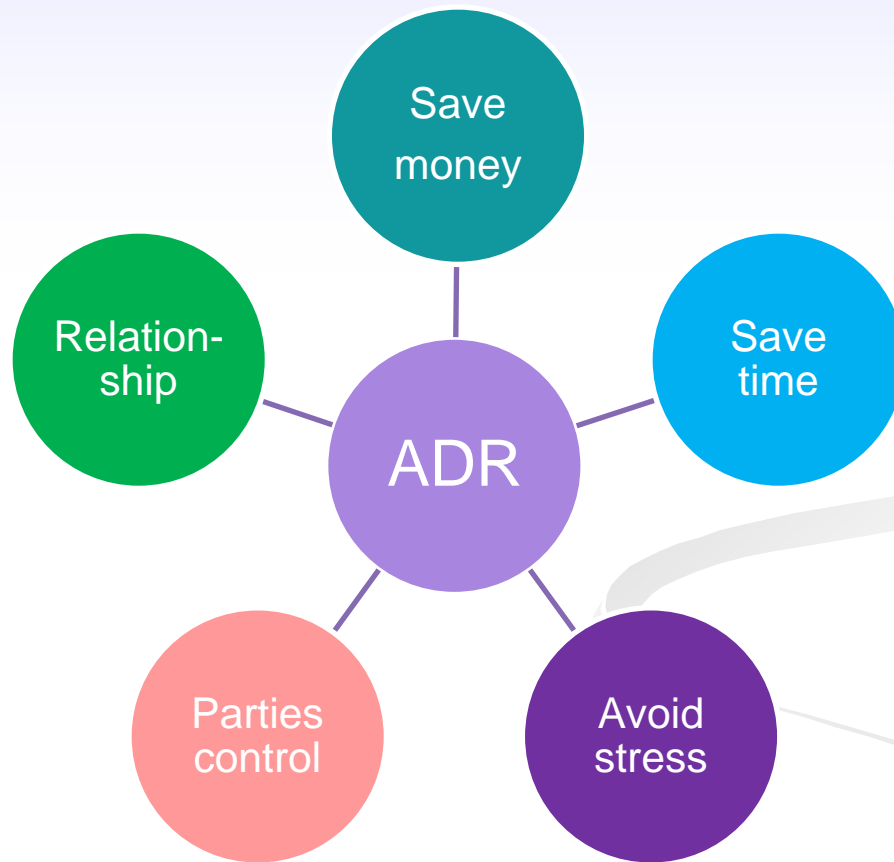


ADR- Alternative Dispute Resolution

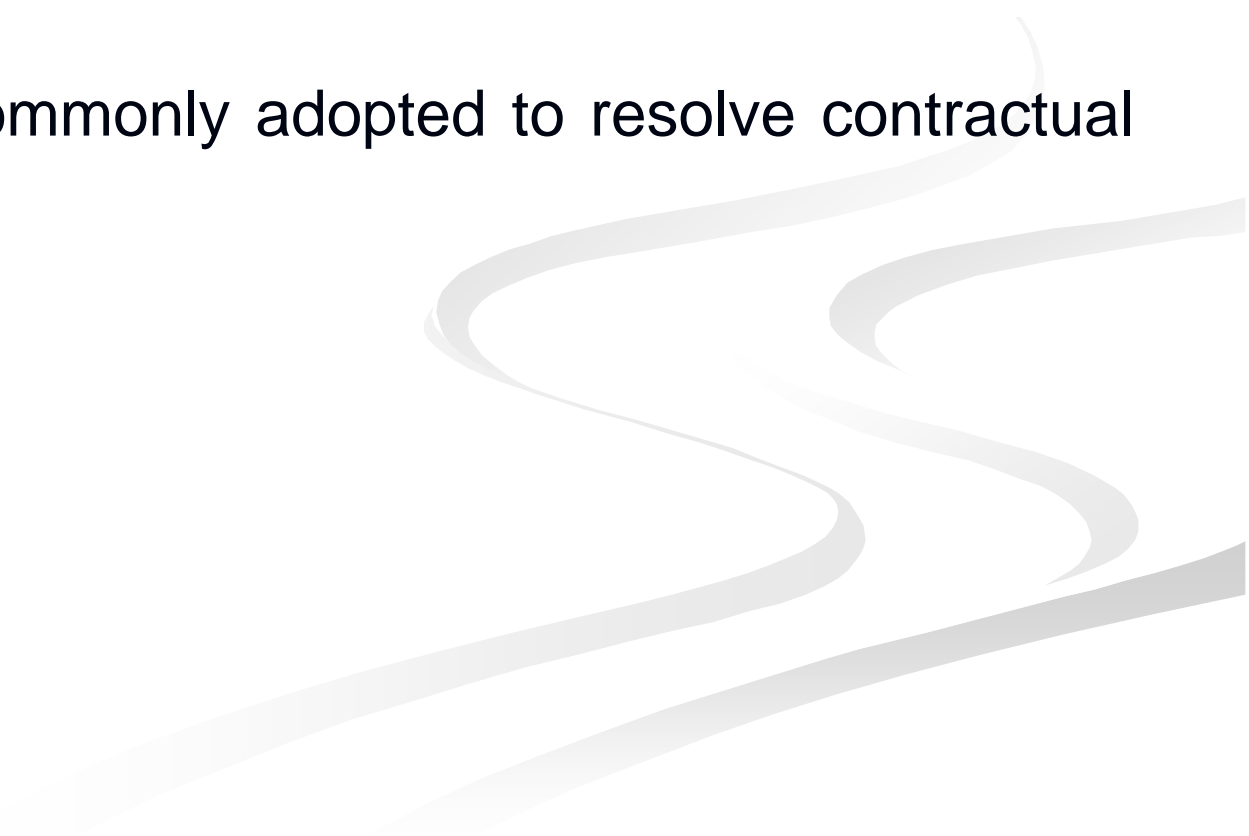
# DRS-Cost and Control



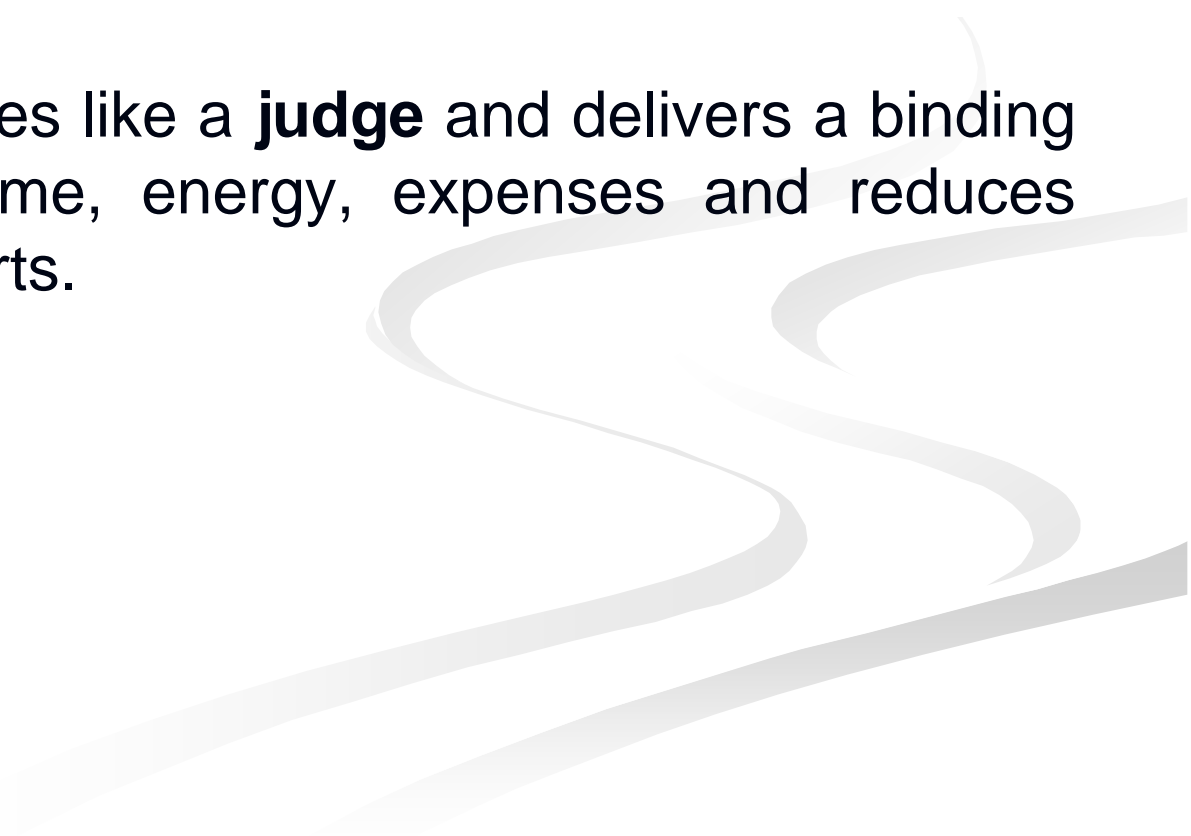
# Advantages of ADR



# Conciliation

- There is a neutral third party who helps the disputants to resolve the dispute. However, the conciliator plays a **more active role**.
  - **He suggests ways in which a compromise could be reached**
  - Conciliation is commonly adopted to resolve contractual disputes
- 

# What is Arbitration

- Arbitration is a method of settling civil disputes between two or more parties by reference of the dispute to independent and impartial person(s), called arbitrator(s) instead of litigating the matter in the usual way through courts
  - The Arbitrator serves like a **judge** and delivers a binding award. It saves time, energy, expenses and reduces burden on the Courts.
- 

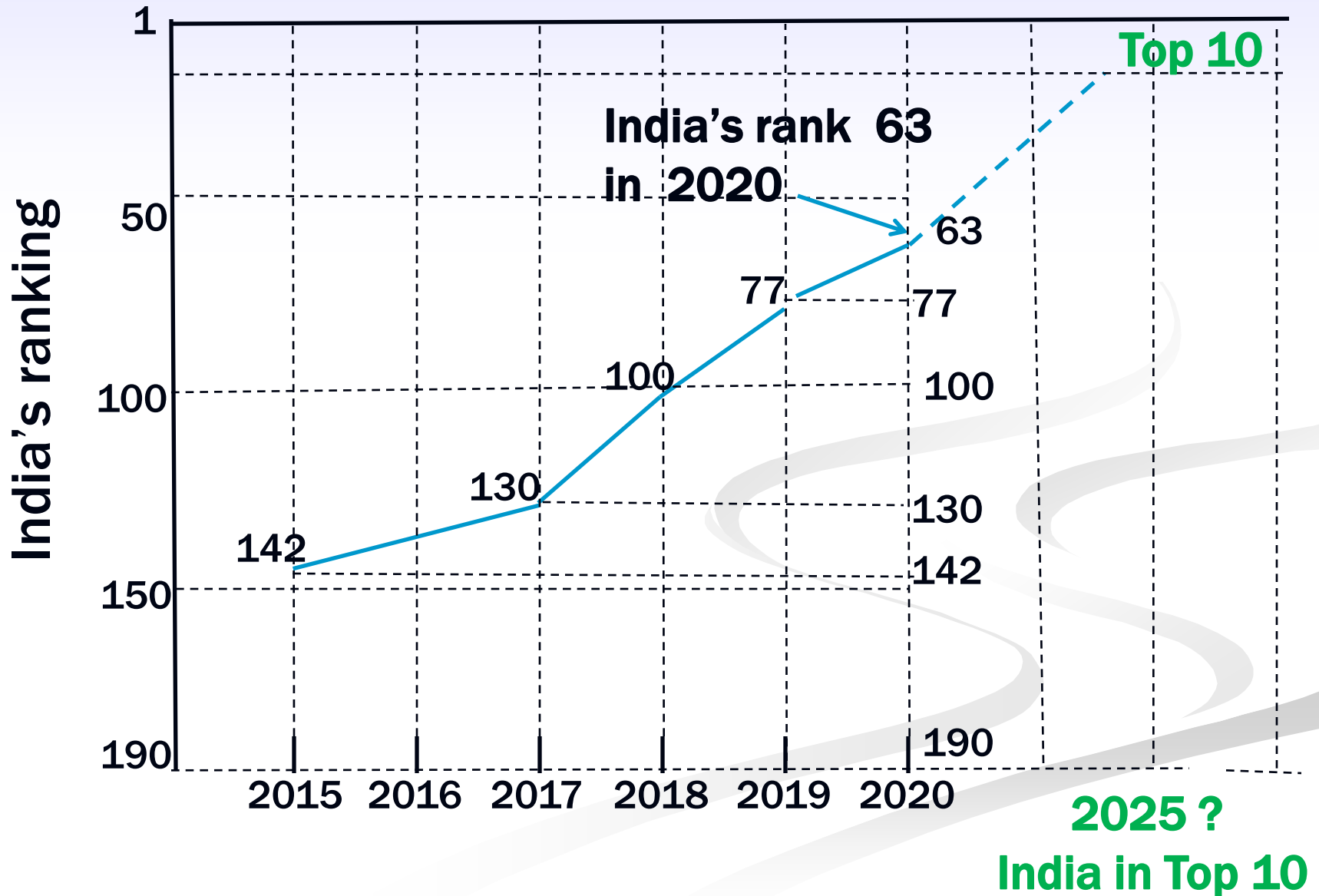


## Where India stands

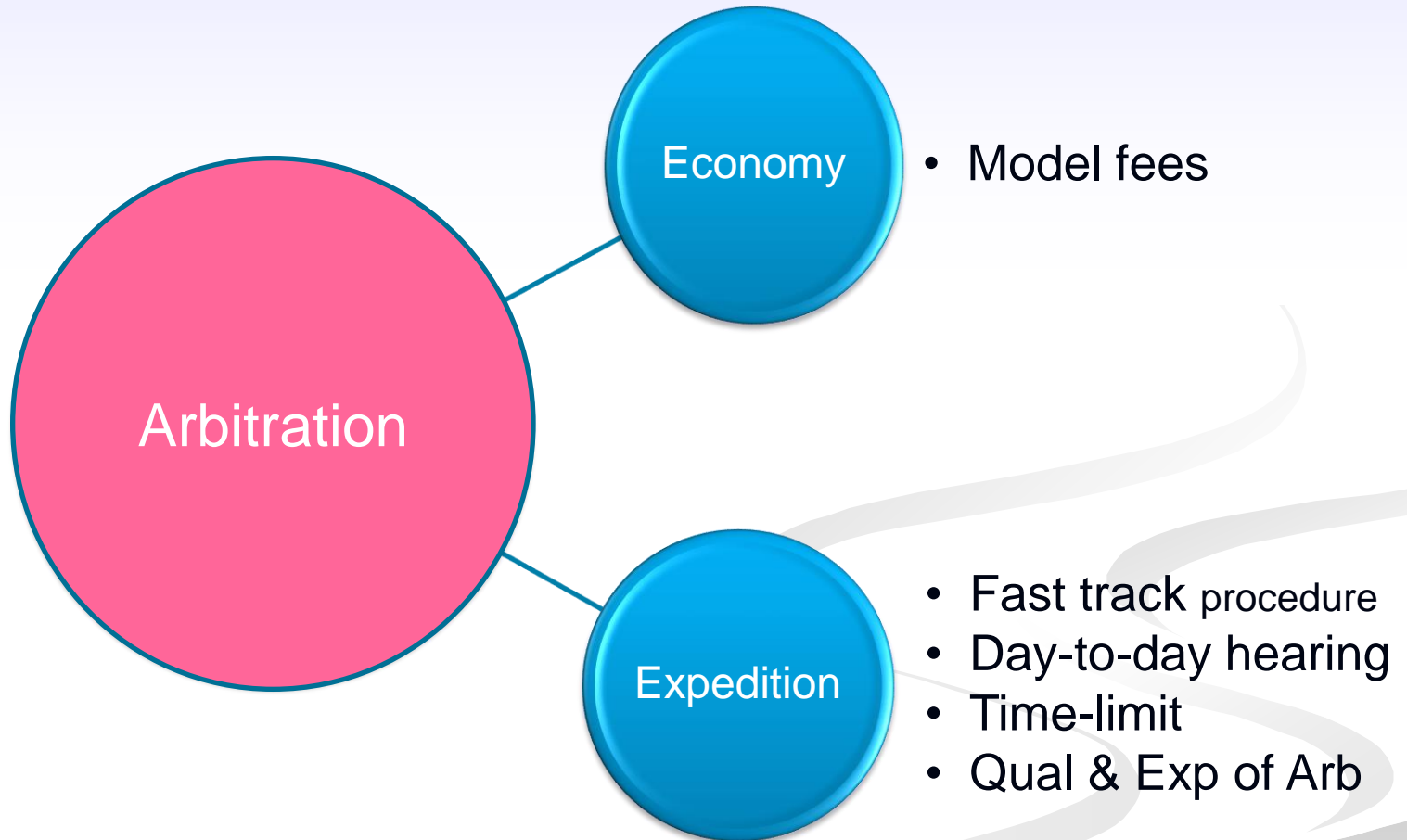
Indicator	2019	2018
Starting business	137	156
Construction permits	<b>52</b>	181
Getting electricity	24	29
Registering property	166	154
Getting credit	22	29
Protecting minority investors	7	4
Paying taxes	121	119
Cross-border trade	<b>80</b>	146
Enforcing contracts	<b>163</b>	<b>164</b>
Resolving insolvency	108	103
<b>Overall rank</b>	<b>77</b>	<b>100</b>



# Ease of doing business (EODB)



# Steps for improvement in Arbitration



## Case Study: Drilling of oil well

- M/S ABC Co was awarded a contract by a CPSU for drilling of oil wells and other auxiliary operations.
- During the currency of the contract, there was price rise in an essential commodity [High Speed Diesel 'HSD'] for carrying out the drilling operations.
- So M/S ABC Co raised a claim under Clause 23 of the contract on the ground that increase in the price of an essential material for carrying out drilling under the contract had triggered the "change in law" clause under the contract and the CPSU became liable to reimburse the same. As the CPSU rejected the claim, M/S ABC Co invoked the arbitration clause

## Case Study: Drilling of oil well

- Clause 23 of contract read as follows: “**Subsequent Enacted Laws:** Subsequent to the date of price Bid Opening if there is a change in or enactment of any law or interpretation of existing law, which results in additional cost/reduction in cost to Contractor on account of the operation under the Contract, the Company/Contractor shall reimburse/pay Contractor/Company for such additional/reduced cost actually incurred”
- Please give your views as an arbitrator

## Case Study

- In an Oil drilling project, a PSU placed LOA on 24.2 .2015 on M/S ABC Ltd for Charter Hire of 1 No of 1400 HP (Minimum) Rig package for a period of 3 years for drilling of oil wells.
- The LOA and the contract laid down, among others, a time limit of 210 days for Mobilization of the Rig from the date of issue of LOA.
- On receipt of the LOA, ABC Ltd, with the approval of the Project authorities, placed an order on M/S RG Petro Machinery (Group) Co Ltd, China on 31.03.2015 for delivery of a 2000 HP Rig Package by 31.05.2015.

## Case Study

- Unfortunately, when the Rig Package was almost ready for shipment, the API certification of M/S RG Petro was suspended. **Since the API certification was a critical requirement** for the Rig Package as per tender T & C, ABC Ltd cancelled the order on M/S RG Petro.
- ABC Ltd informed the Project authorities of the suspension of the API certification and cancellation of order on M/S RG Petro. Thereafter, ABC Ltd placed another order for a Rig Package on M/S Shandong Kerui Petroleum Equipment Co Ltd, China with the approval of the Project authorities.

## Case Study

- M/S Shandong Kerui delivered the Rig, which was mobilized into operation and the project work started. However, this process of alternative sourcing resulted in loss of time which ultimately lead to delay in mobilization. This Rig Package was one of the Rig Package offered in the tender of ABC Ltd.
- In addition to the above, there was further loss of time due to delay in the shipment of Mitsubishi-Make Generators. This delay occurred due to Cyclone in China. These Generators are a part of the Rig Package.

## Case Study

- At the top of all this, there was further loss of time during inland transportation of the Rig Package from Kolkota Port to the Project site at Dibrugarh. This delay was due to severe flood situation in Assam. Thus, there was loss of time at three stages. As a result, the mobilization of the Rig Package was delayed by 73 days.
- In view of this delay in Mobilization of the Rig Package, the Project authorities imposed USD. 5,22,361 as Liquidated Damages. This was not acceptable to ABC Ltd, who contended that the entire delay was due to occurrence of Force Majeure events. This lead to a dispute



## Case Study

- At the top of all this, there was further loss of time during inland transportation of the Rig Package from Kolkota Port to the Project site at Dibrugarh. This delay was due to severe flood situation in Assam. Thus, there was loss of time at three stages. As a result, the **mobilization of the Rig Package was delayed by 73 days.**
- In view of this delay in Mobilization of the Rig Package, the Project authorities imposed USD.5,22,361 (this amount has been calculated at the rate specified in the contract) as Liquidated Damages. This is not acceptable to ABC Ltd, who contend that the entire delay was due to occurrence of Force Majeure events. This has lead to a dispute

## Case Study

- The Force Majeure Clause of the contract reads as follows:  
“....The word Force Majeure as employed herein shall mean acts of God, war , revolt, agitation, strikes, riot, fire, **flood**, sabotage, civil commotion, road barricade (but not due to interference of employment problem of the contractor )and **any other cause whether of kind herein enumerated or otherwise**, which are not within the control of the party to the contract and which renders performance of the contract by the said party impossible....”

## Case Study

- The delay analysis shows that the process of change of Source for the Rig Package due to suspension of API certification resulted in a loss of 76 days
- The shipment of the Mitsubishi-Make Generators from Vietnam to China got delayed due to Cyclone CHAN-HOM, which was a Force Majeure event. This resulted in a loss of 9 days.

## Case Study

- The in-land transportation of the Rig Package from Kolkata Port to the Project site at Dibrugarh was delayed by 17 days, because it required extra-large trailer, which could not move smoothly due to **severe flood situation in Assam**. In fact, 3 Trailers carrying the Rig package got stranded on the way, as flood water was flowing over NH-37, the only highway link between Kolkata and Dibrugarh.

## Case Study

- ABC Ltd contends that the these three Force Majeure events contributed to a delay of 102 days (76+9+17) to the Mobilization period. However, by working over-time, organizing multiple activities in parallel and incurring additional expenses, ABC Ltd could restrict the delay in mobilization of the Rig to 73 days.
- Whereas ABC Ltd maintains that no liquidated damages is leviable, the Project authorities hold the opposite view. The Project authorities say that their decision to levy liquidated damages is in order. This has resulted in a dispute which is affecting the project work.
- What advice will you give as an expert

# Case Study

## Drilling of oil well

- M/S XYZ Co was awarded a contract by a CPSU for drilling of oil wells and for other auxiliary operations.
- During the currency of the contract, there was price rise in an essential commodity [High Speed Diesel 'HSD'] for carrying out the drilling operations.
- So M/S XYZ Co raised a claim under Clause 23 of the contract on the ground that increase in the price of an essential material for carrying out drilling under the contract had triggered the “change in law” clause under the contract and the CPSU became liable to reimburse the same. As the CPSU rejected the claim, M/S XYZ Co invoked the arbitration clause

# Case Study

## Drilling of oil well

- Clause 23 of contract read as follows: “Subsequent Enacted Laws: Subsequent to the date of price Bid Opening if there is a change in or enactment of any law or interpretation of existing law, which results in additional cost/reduction in cost to Contractor on account of the operation under the Contract, the Company/Contractor shall reimburse/pay Contractor/Company for such additional/reduced cost actually incurred”
- Please give your views: whether M/S XYZ Co is entitled to claim increase in price?

## Case Study: Hiring of Rig package

- In an Oil drilling project, a PSU placed LOA on 24.2 .2015 on M/S ABC Ltd for Charter Hire of 1 No of 1400 HP (Minimum) Rig package for a period of 3 years for drilling of oil wells.
- The LOA and the contract laid down, among others, a time limit of 210 days for Mobilization of the Rig from the date of issue of LOA.
- On receipt of the LOA, ABC Ltd, with the approval of the Project authorities, placed an order on M/S RG Petro Machinery (Group) Co Ltd, China on 31.03.2015 for delivery of a 2000 HP Rig Package by 31.05.2015.



## Case Study: Hiring of Rig package

- Unfortunately, when the Rig Package was almost ready for shipment, the API certification of M/S RG Petro was suspended. **Since the API certification was a critical requirement** for the Rig Package as per tender T & C, ABC Ltd cancelled the order on M/S RG Petro.
- ABC Ltd informed the Project authorities of the suspension of the API certification and cancellation of order on M/S RG Petro. Thereafter, ABC Ltd placed another order for a Rig Package on M/S Shandong Kerui Petroleum Equipment Co Ltd, China with the approval of the Project authorities.

## Case Study: Hiring of Rig package

- M/S Shandong Kerui delivered the Rig, which was mobilized into operation and the project work started. However, this process of alternative sourcing resulted in loss of time which ultimately lead to delay in mobilization. This Rig Package was one of the Rig Package offered in the tender of ABC Ltd.
- In addition to the above, there was further loss of time due to delay in the shipment of Mitsubishi-Make Generators. This delay occurred due to Cyclone in China. These Generators are a part of the Rig Package.

## Case Study: Hiring of Rig package

- At the top of all this, there was further loss of time during inland transportation of the Rig Package from Kolkota Port to the Project site at Dibrugarh. This delay was due to severe flood situation in Assam. Thus, there was loss of time at three stages. As a result, the mobilization of the Rig Package was delayed by 73 days.
- In view of this delay in Mobilization of the Rig Package, the Project authorities imposed USD. 5,22,361 as Liquidated Damages. This was not acceptable to ABC Ltd, who contended that the entire delay was due to occurrence of Force Majeure events. This lead to a dispute

## Case Study: Hiring of Rig package

- At the top of all this, there was further loss of time during in-land transportation of the Rig Package from Kolkota Port to the Project site at Dibrugarh. This delay was due to severe flood situation in Assam. Thus, there was loss of time at three stages. As a result, the **mobilization of the Rig Package was delayed by 73 days.**
- In view of this delay in Mobilization of the Rig Package, the Project authorities imposed USD.5,22,361 (this amount has been calculated at the rate specified in the contract) as Liquidated Damages. This is not acceptable to ABC Ltd, who contend that the entire delay was due to occurrence of Force Majeure events. This has lead to a dispute

## Case Study: Hiring of Rig package

- The Force Majeure Clause of the contract reads as follows:  
“....The word Force Majeure as employed herein shall mean acts of God, war , revolt, agitation, strikes, riot, fire, flood, sabotage, civil commotion, road barricade (but not due to interference of employment problem of the contractor )and any other cause whether of kind herein enumerated or otherwise, which are not within the control of the party to the contract and which renders performance of the contract by the said party impossible....”

## Case Study: Hiring of Rig package

- The delay analysis shows that the process of change of Source for the Rig Package due to suspension of API certification resulted in a loss of 76 days
- The shipment of the Mitsubishi-Make Generators from Vietnam to China got delayed due to Cyclone CHAN-HOM, which was a Force Majeure event. This resulted in a loss of 9 days.

## Case Study: Hiring of Rig package

- The in-land transportation of the Rig Package from Kolkata Port to the Project site at Dibrugarh was delayed by 17 days, because it required extra-large trailer, which could not move smoothly due to **severe flood situation in Assam**. In fact, 3 Trailers carrying the Rig package got stranded on the way, as flood water was flowing over NH-37, the only highway link between Kolkata and Dibrugarh.

## Case Study: Hiring of Rig package

- ABC Ltd contends that the these three Force Majeure events contributed to a delay of 102 days (76+9+17) to the Mobilization period. However, by working over-time, organizing multiple activities in parallel and incurring additional expenses, ABC Ltd could restrict the delay in mobilization of the Rig to 73 days.
- Whereas ABC Ltd maintains that no liquidated damages is leviable, the Project authorities hold the opposite view. The Project authorities say that their decision to levy liquidated damages is in order. This has resulted in a dispute which is affecting the project work.
- What advice will you give to the Project authorities?



**Thank you so much  
for active participation**

