

## **Dispute Resolution in Energy sector: International and National Aspect.**

This article is written Nupur Sharma on 01 November 2020

### **ABSTRACT**

This blog gives us the exhaustive and succinct analysis on the ways to deal with the disputes encountered in the Energy Sector at International and National level. The energy sector is the one of the emerging sector and there occurs the dispute on both renewable and non-renewable source of energy, such as oil and gas, electricity and gas etc. It starts with the meaning of energy law, Types of dispute that can occur in energy law and Types of Dispute Resolution mechanism that are available and used at International and National level.

### **ENERGY LAW-**

Energy law was acknowledged in the late 1970s,<sup>i</sup> it basically refers as the production, distribution, conservation, and development of energy resources like coal, oil, natural gas, Nuclear Power, and hydroelectric power. These are the Laws that govern the use, application, and conservation of energy, Energy laws are designed to ensure the safety of energy consumers as well as to provide for increasingly efficient electronics and appliances. As in 21<sup>st</sup> century society advances technologically, its energy also needs increase.<sup>ii</sup> As an outcome, energy laws are becoming more important and effective. Same as, new energy sources emerge, like nuclear and fusion, the laws that are applicable to energy must fight the issues and dangers inherent within the production and distribution of energy and their undiscovered technology.<sup>iii</sup>

### **TYPES OF DISPUTE IN ENERGY SECTOR:-**

There are specially four types of dispute that occurs-

#### **1. State versus state disputes –**

It concerns with the cross international boundary disputes mostly in the maritime region. Oil and gas company are indirectly indulged in these disputes when they are allotted allowance that straddle disputed boundary lines, sometimes these companies are asked by developing nations to pay the dispute cost and to provide the legal expertise with legal data to help in resolving the boundary dispute.

#### **2. Company versus state disputes-**

These disputes are also known as state investment dispute and investor state dispute. It happens when government changes the terms and condition of the real contract or seize or nationalise the investment that has already been decided previously. If investor (the oil and gas company) wants to claim then they can base their claim on its investment treaty or investment contract (e.g. production sharing contract (PSA) and risk service agreement (RSA)) or possibly both. These kinds of dispute do not happen often but when it happens it requires a large amount of money which have a significant effect on the company's bottom line, therefore company should have

a best legal expertise on how to maintain their investment and draft the dispute resolution clause in their government contracts.

### 3. Company versus company disputes-

These disputes are known as international commercial dispute, in energy companies these disputes occur in two subcategories. First belongs to the joint venture participants in contract like- Joint Operating Agreements, Unitization Agreements, Farmout Agreements, Area of Mutual Interest Agreements, Study and Bid Agreements, Sale and Purchase Agreements, Confidentiality Agreements.

Second subcategory occurs between operator and service contractor like-

Drilling and Well Service Agreements, Seismic Contracts, Construction Contracts, Equipment and Facilities Contracts, Transportation and Processing Contracts.

### 4. Individual versus company disputes-

Many times, an individual commences the claim against the oil and gas company. First when the individual experience the personal injury and claim tort against a company, it's very normal in U.S jurisdiction and with the time it is increasing in other countries to, sometimes the foreign claim is filed in U.S courts using the Alien Tort Statue.<sup>iv</sup> The second series of claims occurs when promoters of oil and gas deals assert that they are interested in hosting government contract and going with joint operating agreement and sometimes in the regard of a claim of tortious interference by a third party.

## ➤ DISPUTE RESOLUTION IN ENERGY SECTOR AT INTERNATIONAL LEVEL-

Energy Disputes are quite expensive in nature and it effects the public at large and cross-border relations, it's important that these matters are handled carefully and resolved fast. There is various form of dispute resolution methods in international Energy sector, it depends on the party that which method they choose for resolving the dispute although they can use one or several of them together. The various type of dispute resolution method includes- Negotiation, Mediation, Dispute review boards, litigation and Arbitration.

### 1. Negotiation:-

It usually occurs between the parties when disputes happen as a matter of facts, its not important that there is a provision of negotiation in the agreement, if there is then it should be very clear in all the terms. If both the party are ready and show full cooperation to opt Negotiation as the method to resolve the dispute, they can go for it. This method is known as least expensive method and most commercially viable solution than any other dispute resolution method.

### Mediation:-

2. Mediation is said to be less expensive and than arbitration<sup>v</sup>. It has been proven very successful method<sup>vi</sup> all over the world. Mediation is not a legally binding process if the parties are not satisfied with the final decision, they can file a complaint in higher jurisdiction, but it can happen only when they have not signed a settlement agreement if they did then it will be a binding settlement. Mediation is a very emerging and growing concept.<sup>vii</sup>

### 3. Arbitration-:

This is one of the most used efficient and popular method for dispute resolution in international energy sector. It is a legally binding process which provides the parties to resolve the dispute in the way they want because it's a flexible process it allows parties to decide their arbitrators, deciding the venue of meeting and selecting the kind of extent to their arbitration process. Whatever the decision is it will be fair and clear.

### 4. Litigation-:

This is the longest process for resolving a dispute where the case is taken in a court by a lawyer, this process is famous in domestic energy business with parties that are in a same jurisdiction. The problem with litigation is that it is a time-consuming process and as a result, it is barely chosen as a dispute resolution mechanism in international oil and gas agreements.<sup>viii</sup> It is chosen when both the parties are from the same jurisdiction and ready to handle the delay in decision.

### 5. Dispute review board-:

This idea was originated by the US construction company, slowly it became famous and international construction company also started to take this method into consideration. It has a three-member board who are appointed for the duration of constructive project. This method is still not famous in the energy sector still there are number of institutions provide assistance and services in this area.<sup>ix</sup>

## **DISPUTE RESOLUTION IN ENERGY SECTOR AT NATIONAL LEVEL-**

India is a country which has great opportunities in all the upcoming sectors for the country development. Talking about energy sector, India has made a quite impressive image in the field of energy sector with a large number of projects and initiatives which are being operated at different parts of the country.

The ways that are preferred in India for resolving the dispute in energy sector are same as in other countries but the government is trying to choose a method which results in the fast redressal of disputes in energy sector so in July 2019, Indian government decided to make a committee the Ministry of New and Renewable Energy (MNRE) issued an order for setting up a Dispute Resolution Mechanism (DRM) to handle unforeseen disputes between solar or wind power developers and Solar Energy Corporation of India (SECI) and state-run power giant NTPC beyond contractual agreements.<sup>x</sup>

The other methods that are used for dispute resolution in India are -: Arbitration, mediation, negotiation, litigation, expert determination these all are proven effective and successful in India.

## **CONCLUSION**

Just like any other field Energy Sector is also an emerging sector with great opportunities in it, it also helps the country to grow and achieve new success. Disputes is a very common word it always occurs in all the field but what is important is that how fast we resolve these disputes

and for that which method we choose, it's wise to choose the most suitable method which is fine by both the parties.

**ABOUT THE AUTHOR:** *This blog is written by Nupur Sharma from Indore, India. She is a legal intern of TILA law firm in New Delhi and is a third-year law student from Indore Institute of Law, Indore. Her core areas of interest include energy law, constitutional law, arbitration and conciliation framework.*

**DISCLAIMER:** *This Blog is authored by interns and employees of the TILA law firm for educational purposes only as well as to give you general information and a general understanding of the law and not to provide specific legal advice. By using this blog site, you understand that there is no attorney client relationship between you and the Blog/Web Site publisher. The Blog/Web Site should not be used as a substitute for competent legal advice from a licensed professional attorney in your state.*

## REFERENCE

<sup>i</sup> <https://legal-dictionary.thefreedictionary.com/Energy>

<sup>ii</sup> Journal of World Energy Law and Business, 2011, Vol. 4, No. 4

<sup>iii</sup> <https://www.hg.org/energy.html>

<sup>iv</sup> J Drimmer, 'Human Rights and the Extractive Industries: Litigation and Compliance Trends' (2010) 3 Journal of World Energy Law & Business.

<sup>v</sup> A. Timothy Martin, 'International mediation: an evolving market' in A Rovine (ed) Contemporary Issues in International Arbitration and Mediation, The Fordham Papers, 2010.

<sup>vi</sup> Centre for Effective Dispute Resolution (CEDR), The Fourth Mediation Audit: A Survey of Commercial Mediator Attitudes and Experience (London, 2010) 8

<sup>vii</sup> See the International Mediation Institute at <http://imimediation.org> for more resources in this area.

<sup>viii</sup> An example is the development of the AIPN Model JOA. The first two versions included the alternative of court litigation. That was eliminated in the third version of the AIPN Model JOA, and was continued in the most recent fourth version. The only binding process now provided is international arbitration.

<sup>ix</sup> This includes the ICC, the International Centre for Dispute Resolution (ICDR) at <http://www.adr.org/sp.asp?id/4288194> and the Dispute Review Federation at <http://dbfederation.org>.

<sup>x</sup> [economictimes.indiatimes.com/industry/energy/power/dispute-resolution-panel-for-renewable-energy-projects-to-give-decisions-in-3-weeks-mnre/articleshow/71244151.cms?from=mdr](http://economictimes.indiatimes.com/industry/energy/power/dispute-resolution-panel-for-renewable-energy-projects-to-give-decisions-in-3-weeks-mnre/articleshow/71244151.cms?from=mdr)