

● ● ● | *Advani & Co.*

Managing Legal Risks in Dredging

Advani & Co. Articles **June 30, 2010**

dredging ?

Though not a popular word outside the maritime trade, the expansion of port projects in India is making bureaucrats, financial analysts, environmental activists and lawyers say, dredging more often.

Dredging is a process of an excavation activity usually carried out partially underwater and is an integral activity in developing ports and inland water management sys-

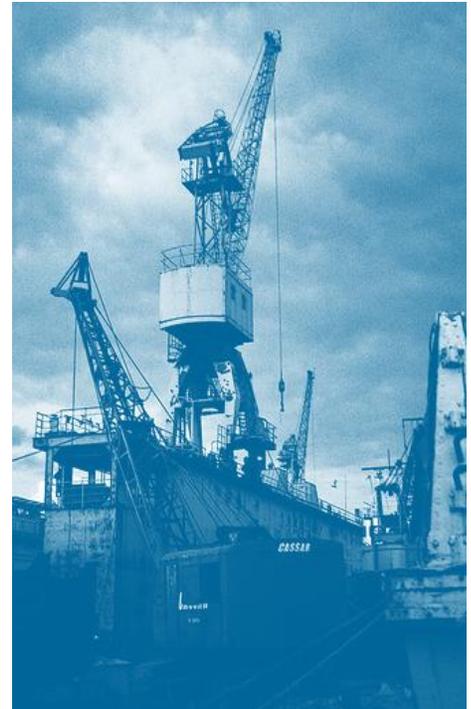
tems. Dredging is a highly lucrative business activity with companies such as Van Oord Dredging & Marine Contractors having an annual turnover of Euro 1,424 million in 2009.

The thirst for profits is fast catching up in India, recently evidenced by the declared annual profits of the Dredging Corporation of India. Which stand at a colossal financial Rs. 70 crores for the year ending

2009-2010. We can safely assume these profits to balloon in the near future.

India presently offers huge dredging potential to International Dredging Companies with planned investments of over \$1000 Million in various port expansion projects in the next 5 years.

With so much at stake many complicated legal issues arise out of this industry.



legal risks

Delay in completing projects, lack of requisite clearances often leads to huge costs and losses both to the Government and to the Companies.

Disputes may also arise regarding Jurisdiction and the application of laws.

With such huge costs and time constraints most dredging contracts today have an arbitration clause where parties agree to submit the matter to arbitration in case of disputes.

Environmental clearances are also an appreciable risk to dredging projects.

Various case studies in India reveal that Dredging has had a harmful effect on coral reefs, wetlands, rivers, marine life, local population.

This has also led to various amendments in the Environment Protection Laws in India. Dredging companies today also adhere to International Dredging Standards such

as the ISO 9001, ISO 14001 and the London Convention.

With such increasing environmental concerns a new concept of “green dredging” has also come in the picture.

contents

In India	2
Managing Legal Risks	2



dredging in India

The size of dredging industry in India is presently estimated at \$ 133.33 Million. What is more fascinating is the anticipated growth in the Dredging industry. It is expected to grow by two or three times in the next few years as existing main ports are expanded, new private ports and additional terminals are built to serve larger and more vessels.

The next couple of years would see implementation of dredging projects worth \$ 444.44 Million at various ports across India. To undertake these monolithic

projects strategic alliances are being entered with global players as Indian Companies are moving towards collaborations to acquire technology and training.

Broadly there are three types of dredging being done in India. These are, firstly capital dredging which is done for the purposes of make water routes navigational by enlarging or deepening existing channels and ports. This also includes making trenches for pipes, cables, immersed tube tunnels, removal

of material unsuitable for foundations, removal of overburden for aggregate extraction. The second popular form of the activity is maintenance dredging and is done to ensure that channels, berths or construction works, etc., are maintained at their designed dimensions.

The last and final form of the activity is clean up dredging and is the deliberate removal of contaminated material for human health and environmental protection.

managing legal risks

Safety standards

Though a profitable activity, the increase in dredging activities have led to an increased concern for maintenance of safety standards to prevent accidents and for the benefit of the environment in general.

In the United States of America, from 1993 through 2002 there have been thirteen fatal accidents associated with dredging in the mining industry.

The cause of death in twelve of these accidents was drowning. As in all other professional areas of expertise, the members of the International Association of Dredging Companies (IADC) follow the safety standards.

All ships, operations and offices must comply with the strictest of international standards regarding quality, health, safety and environment, such as, for instance:

1. ISO 9001 for the execution of quality assurance.
2. ISO 14001 for the execution of environmental protection;
3. VCA & OHSAS for the execution of occupational health and safety.

4. ISM for the execution of safety at sea and marine-environmental protection;
5. ISPS for the execution of security on vessels.

Impact on Coral Reefs

The environmental impact on dredging includes the impact of this activity on coral reefs.

To tackle this issue, the Government of India by Notification under Section 3 (1) and Section 3(2)(v) of The Environment (Protection) ACT, 1986 and Rule 5(3)(d) of the Environment (Protection) Rules, 1986, has declared coastal stretches as "Coastal Regulation Zone (s)" (CRZ).

Dredging activities in the CRZ has banned and underwater blasting in and around coral formations in Andaman and Nicobar Islands and Lakshadweep and other small islands.

Also the Government of India Wetlands (Conservation and Management) Rules, 2009 has imposed limitations on dredging in Wetlands and allows dredging only if the wetland is impacted by siltation;

Arbitration

Since most dredging contracts involve high costs, both economically and environmentally, dredging companies in case of disputes prefer arbitration instead of litigation.

Hence most of the dredging contracts incorporate an arbitration clause in case of disputes. Moreover, the parties mutually decide the seat of arbitration and the application of laws to suit the convenience of both the parties.

With a view to provide an institutional mechanism for resolution of construction and infrastructure related disputes, the Construction Industry Development Council, India (CIDC) in cooperation with the Singapore International Arbitration Centre (SIAC) has set up an Arbitration Centre in India called the Construction Industry Arbitration Council (CIAC).

CIAC is a Registered Society with its headquarters in New Delhi and is often spelt as the institutional body for arbitration in Dredging Contracts.

Advani & Co.

Delhi | Mumbai | Pune



With a knack for International legal and transactional cases and out of courts dispute resolutions - we ensure that our presence is minimal and impact, maximum.

This is Arbitration.

It is what we do best, without exaggeration.

And we've got evidence to back it up too.

Advani & Co. is listed as the Best law firm in Mumbai for commercial dispute resolution in the "Asia Pacific Legal 500".

Delhi Office

268 GF Masjid Moth,

Udai Park, New Delhi 110049

Tel: 011-40582732 | Fax: 011-40582745

Email: delhi@advaniandco.com

Partner Contact

Monica Sharma

monica.sharma@advaniandco.com

Mumbai Office

10, Thakur Niwas, Level 2173,

Jamshedji Tata Road, Mumbai-400020.

Tel: 00 91 22 22818380 | Fax: 00 91 2222865040

Email: mumbai@advaniandco.com

Partner Contact

Hiroo Advani

hiroo.advani@advaniandco.com

Pune Office

Metro House, Office No. 404/405,

4th Floor Mangaldas Road, Pune

Tel: 020-2612 2940 | Fax: 020-26122948

Email: pune@advaniandco.com

Partner Contact

Aradhana Prabhakar

aradhana.prabhakar@advaniandco.com

We take great care in preparation of material which is presented here, however we cannot guarantee the accuracy of the contents due to the changing legal environment as well as the individualized nature of most legal queries and disputes. The present publication is form of discussion of current and recent legal developments in India. Here we would like to caution the reader that the contents here though informative do not constitute legal advice. Hence readers are requested to seek legal counsel for their queries and desist from relying on the information presented herein. Finally we would like to thank you for reading the our publications and in case of any questions, queries or comments kindly mail us at mumbai@advaniandco.com