EXAMINATION OF EXPERT AND FACT WITNESS IN INTERNATIONAL ARBITRATION

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Arbitration is the private dispute resolution mechanism which is proved to be an effective alternate to the regular National Court dispute resolution through litigations in India. To become an arbitrator, there is no requirement of a legal or technical qualification. To prove certain technical issues including legal questions either the party or arbitrator may resort to examination of expert witnesses. Expert witness may be an expert in a specific technical matter or an expert in a specific law or an expert in a business practice. Sometimes even Senior lawyers are invited to be an expert witness when the arbitrator panel consists of persons from other jurisdictions or not with legal knowledge. International Arbitration community is consistently making its efforts to develop and bench mark arbitration practices that can be accepted and implemented by both the Civil and Common law jurisdictions. The biggest success in bringing a global uniformity was substantially achieved by UNCITRAL Model law on Arbitration, which was adopted by many countries without much changes to the original draft created by UNCITRAL. One of the areas of concern of international Arbitration Arbitrators and Practitioners till today has been the different methodologies followed in the examination of Expert and Fact witnesses in International Arbitration. The concern is also because of different practices applied in different parts of the world and the impact of the national laws on these procedures. Parties till today, believe even in International Commercial Arbitrations where large volumes of documents are involved, they essentially require examination of fact and Expert witnesses for determination of complex technical and factual disputed issues. Witness examination is considered as one of the effective tools to prove the case of the parties.

International Guidelines for Examination of Witnesses: As stated above even though there is no specific globally recognized model or procedure, various institutions like IBA[2] and arbitral institutions like SIAC, ICC, LCIA and ICSID have taken efforts to create acceptable and effective guideline for examination of witnesses. The recently updated Rules of IBA is of 2010[3] and the said Rules provides guidelines for the arbitrators and parties regarding having a consultation on evidentiary issues, documents production, witnesses of fact, documents production, party appointed expert witnesses, tribunal appointed expert witnesses, Inspection, evidentiary hearing, admissibility and assessment of evidence. Even though these Rules are optional and parties require to adopt the same, the spirit of these rules ensure effective and cost effective examination of witnesses in International Arbitration. Even Though IBA Rules does not provide a complete frame work & mechanism for international arbitration like ICC, SIAC, AAA, LCIA, UNCITRAL or ICSID, IBA rules of evidence fill in the gaps intentionally left in those procedural frame work with respect to taking of evidence. Let us examine the practices, observed internationally in examination of witnesses.

Fact Witnesses: Fact witness examination practice is normal in international arbitration, to prove the disputed facts or to explain the case of a party. Even though, the said tool must be used only where disputed facts are there, now it has become a usual part of the arbitration process. Normally fact

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[2] International Bar association

[3] IBA Rules on the taking of evidence in International Arbitration 2010

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witnesses can be those who are having personal knowledge about the facts of the case or who are deposing based on certain records maintained by them in their capacity. Many of the Companies may not always have the same officers who were there at the time of at the time of arbitration hence they may examine the person in charge for the same department. International Arbitration community is continuously endeavoring to find a common frame work acceptable to both Civil Law and common law Jurisdictions. But still there are some distinct differences in examination of witnesses also. For example, in common law jurisdictions, the cross-examination questions are asked by party representatives but in Civil Law jurisdictions the cross-examination questions are asked by the Court. But the parties can suggest questions to the Court. Hence, Civil Law International Arbitrations also follow the same. In common law system, it is standard to call as a factual witness, whereas the civil law tradition shows considerable reluctance to accept testimony from a party or a person who is affiliated with a party[4]. Most of the procedures are the same for fact & Expert witnesses and hence those are dealt with the paragraphs below along with the Expert witness.

Expert Witnesses: An expert witness is to give evidence on a relevant issue in the dispute[5].In international Arbitrations having complex issues involving technology, Engineering, Unusual laws with complex legal questions, multinational financial transactions, transactions involving legislations of multiple countries, complex legal questions etc., essentially require Expert witnesses. Even if the experts are party appointed their duty is to arbitrators and not to parties. Hence Experts are not expected to conduct themselves like Counsels or Party representatives. There are certain distinct differences between jurisdictions in their approach to expert witnesses. For example, matters of Foreign law are treated in English Courts as matters of fact which must generally be proved by expert evidence[6]. Expert witnesses are the domain experts who can throw light on the disputes questions of the above said aspects unrelated to facts. That does not mean that the court is bound by the opinion of the expert witness and the court/arbitrator requires to apply the witness statement to the facts of the case and conclude. For Example, in a recent Judgment[7] of Chancery Division of UK Court in a matter involving cross border Insolvency it held that it would have given weightage to the legal expert opinion on Croatian law, but the issue before the court was the view to be taken as per English law and hence court held that the view of the expert on Croatian law has no relevance. It is also well settled law that even after examination of expert witness, if the Judge/Arbitrator is left with a doubt then it is better rely on its own interpretation in the light of the will of the parties[8]. Moreover, it is globally settled law that even if the expert witness is not resulting in any doubt still the arbitration tribunal can take its own view on the acceptability of the opinion of the expert witness. In a recent Judgement Queens Bench reconfirmed the same legal position of the acceptability expert witness by the courts[9]. In International Arbitration, the Expert witnesses appointed by the parties as well as expert witnesses

[4] David D Caron and Lee M Caplan, The UNCITRAL Arbitration Rules: A commentary (2nd Edition)
[5] See Ma and Brock (n101)at 15.197
[6] (2018)2WLR95 Queen's bench Division UK Alseran and Others Ministry of Defense
[7] (2017)EWHC 2791 (Ch) UK In Re Agrokor dd
[8] (2018)4WLR14 Court of Appeal UK PJSC (2017)EWCA Civ 1581
[9](2018)Bus LR 650 UK Queens Bench Division UMS Holding Ltd and others Vs Great Station properties SA and another

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appointed by tribunal are in practice. Globally there has been a debate among the arbitrating community regarding the positive and negative aspects of Party appointed and tribunal appointed arbitrators.

Party appointed and Tribunal Appointed Experts: There is a common impression that Tribunal appointed Experts are neutral and hence that is better for the arbitrator to reply upon and the party appointed experts are not neutral and hence not reliable. In the debate about the appointment of expert witness in international arbitrations, some believe “neutral” tribunal-appointed experts are preferable over party-appointed experts who try to support the party which engaged their services. But in reality it can be understood in many cases, such tribunal appointed arbitrators do not prove to be competent and effectively assist the arbitrator to reach the correct decision . It is because one expert can be perfectly “neutral” but also he can be equally, perfectly wrong in his opinion or not competent to handle the disputed subject. Moreover, because two experts having diverging views need not necessarily imply that one expert is wrong and therefore unhelpful to the tribunal. It may also be possible for different, but equally respectable, expert views or methodologies leading to different results. Some arbitrators would argue that listening to different views on a complicated topic, may further complicate the arbitrators and do not lead them to a conclusion. But it is also true that if the arbitrator is competent after hearing two or more views he will get clarity in the subject and surely he can arrive at the correct decision. Additionally, if reputable neutral experts with different opinions can be found, it is fair to say reasonable people’s opinions may differ and the arbitrators should know about that.

Accordingly, equating the choice between party-appointed or tribunal-appointed experts with the tribunal’s ability to better find truth is a fallacy. To use an analogy, there is no logic in thinking one can more easily find out who is the better cricket player by asking one of the players, rather than by letting the players play cricket. That said, the choice influences many important factors, not the least of which may be time and costs. It is also not correct to generalise the party-appointed experts as the unscrupulous “hired gun” expert witness. No expert with credentials worth presenting to an international arbitration tribunal will risk his reputation by providing false or intentionally misleading testimony. Counsels also should not pretend as if the party-appointed expert can come out in a way that supports her client’s argument. No counsel worth her salt would present an expert witness who does not support her case. Equally, attacking the opposing expert simply because he holds a contrary opinion is not an acceptable or sustainable contention. The fact is, the questions presented to experts cover complicated subject matter about which one can hold varying opinions. If these were not the case, there would be no point in asking for expert testimony to begin with because the duty of the expert witness is to bring in a view effectively.

Tribunal appointment is mistakenly considered cost and time effective because it involves one expert rather than two. This is because whichever party’s point of view is not supported by the expert, the party will need to engage its own expert to inform the party as to what questions to ask to test the reliability of the tribunal appointed expert’s qualifications, technical view and methodology applied by him. As neither party knows how the testimony will come out, both are likely to engage their own expert, thus necessitating costs associated with three experts.

Tribunal Appointed Expert: In some Jurisdictions, the appointment of independent experts by the

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arbitral tribunal is preferred. But substantial involvement of the parties in the process of such appointment is necessary, even though the expert is being appointed by the arbitral tribunal itself. The Arbitral tribunal has the power to appoint an expert to prepare a written report on specific issues, as determined by the tribunal[10]. Even Article 6.1 of IBA Rules makes it clear that the arbitral tribunal is to consult with the parties before appointing such an expert and with respect to the terms of reference for such an expert. The consultation with the parties prior to such an appointment shall help the arbitration tribunal to choose the correct expert because parties will be able to explain the disputes better than arbitrators themselves understanding the same. The parties also should have an opportunity to identify the potential conflicts of interest and to state any objections about the arbitrators (*e.g.*, lack of independence, insufficient qualification, lack of availability, cost) on such basis. Most importantly, parties have an opportunity to be involved in the information-gathering process by the tribunal-appointed expert and to respond to any report by that expert. However, to avoid delays, the rules provides that later objections may be made only if they relate to reasons of which the party becomes aware after the appointment has been made. It is also important that the parties and their representatives with the right to receive any information obtained by the tribunal-appointed expert and to attend any inspection conducted by the expert.

The tribunal-appointed expert shall have access to whatever information he or she needs to respond to the issues posed in his or her terms of reference. The tribunal-appointed expert may request the party to provide any relevant and material information, which includes relevant documents, goods, samples, property, machinery, systems, processes or access to a site for inspection. Parties have the right to object to such requests, if the requirements are not within the scope of the issues referred. If such an objection is raised, the arbitral tribunal shall make a determination as to the materiality and the appropriateness of the tribunal-appointed expert's request, which concern requests to produce. The parties are allowed to examine all the documents that the tribunal-appointed expert has examined and any correspondence between the arbitral tribunal and the tribunal-appointed expert. Any party is empowered with the opportunity to respond to a report by a tribunal-appointed expert, within the time ordered by the arbitral tribunal. It is also well settled that parties should know what the arbitral tribunal is being told by a tribunal-appointed expert and should have an opportunity to rebut his or her conclusions. A party may respond either by making its own submission or by submitting a witness statement or an expert report by its party-appointed expert.

Pre-hearing Conference among Experts: The arbitral tribunal has powers to order the party-appointed experts to meet and to discuss the issues considered or to be considered in their expert reports either in advance of their preparation or in advance of the hearing. In arbitrations held as per IBA rules, it provides for conferencing of experts or fact witnesses during an evidentiary hearing to discuss about the critical issues covered in their witness statements. If both the experts can reach some agreement on certain issues, they shall record that agreement in writing with reasons as well as any remaining areas of disagreement and the reasons therefor. This process reduces the hearing time substantially and helps parties to focus only on issues where there are disagreements. There are instances where the experts filed joint statement after such meeting. In UK also such practices are

[10] Article 25.1 of HKIAC Rules

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followed even by the Courts. In a recent case[11], two witnesses tendered evidence on the law of Crostia in which both the experts were directed to file a joint report identifying the areas of agreement and disagreement between them.

The above said best practices suggested above, when deemed appropriate by the arbitral tribunal be applied by the tribunal. Such measures, can make the proceeding more economical in terms of time and costs. Experts from the same discipline, who are likely to know the key points, can identify relatively quickly the reasons for their diverging conclusions and work towards finding of points of agreement that are critical to the arbitration. The revised Rules provide additionally for consultation before the reports are drafted, which may be an effective means to produce reports that identify the areas where the experts agree and are narrowly focused on the remaining areas of disagreement. Where the experts succeed in reaching agreement on their findings, the parties and the arbitral tribunal will likely accept those findings, so that the hearing may focus on the truly disputed aspects of the case.

Appearance of Experts at Evidentiary Hearings: As per the practice, the experts and fact witnesses must appear for testimony at an evidentiary hearing, namely on the request of any party or the arbitral tribunal. As with fact witnesses, the expert report of a non-appearing party-appointed expert may nevertheless be accepted "in exceptional circumstances" if the arbitral tribunal so determines and agreement not to require attendance of an expert witness at hearing does not reflect agreement on the content of the expert report. In all other cases, the witnesses require to subject themselves to cross examination to validate their report/ Statement[12].

Finally, it is worth noting that the IBA Rules of Evidence do not address how to deal with the testimony of an expert called upon to testify when such expert had previously been appointed by a national court in connection with the same issues. European parties frequently apply to their local courts, immediately upon the occurrence of an injury and long before arbitration is commenced, for the appointment of an expert to determine the cause of the damage and possible remedies or to preserve evidence. It is often difficult for an Anglo-American lawyer to be convinced that such a judicially appointed expert is by definition independent, as such an appointment has first been sought by the other party. In such circumstances, an arbitral tribunal will therefore have to determine how such an expert should be considered—as a party-appointed expert, a tribunal-appointed expert, or otherwise—and to issue directions with respect to the production in evidence of his or her report or with respect to his or her appearance at an evidentiary hearing.

Witness Hearing*:* The power to manage the evidentiary hearing rests with the arbitral tribunal, not the parties, an idea which originally came from civil law procedure but which has been widely adopted.[13] The arbitral tribunal may limit or exclude questioning, or even the appearance of a witness,

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[11] Chancery Division (2017)EWHC 2791(ch) In Re Agrokor dd

[12] LCIA Rules Article 20(4)

[13] *See, e.g.*, ICC Rules, Article 21(3); ICDR Arbitration Rules, Article 16.1; LCIA Arbitration Rules, Article 14.2 (to the extent no party agreement to the contrary); SCC Rules, Article 19; UNCITRAL Arbitration Rules, Article 15.1.

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if it is irrelevant, immaterial, unreasonably burdensome, duplicative or otherwise. While some counsels are accustomed to raising objections, the arbitral tribunal may also apply standards on their own but without affecting equal opportunity to all. The procedure also should find and eliminate objectionable unreasonably leading questions, which may render direct and re-direct testimony worthless. These provisions are all designed to give the arbitral tribunal the ability to focus the hearing on issues material to the outcome of the case and thereby make hearings more efficient.

The arbitral tribunal requires to follow a sequence in the examination of witness by which both the parties get equal opportunities to examine and cross-examine their witnesses. claimant's witnesses, followed by respondent's witnesses, and experts. For each witness, testimony is first presented by the party offering that witness, followed by examination by the opposing party and then an opportunity for re-examination by the presenting party. Usually, any re-examination is limited to new matters raised in the previous oral testimony. Many arbitral tribunals ask their questions only towards the end, except for questions designed to help the process along or to make a witness feel comfortable.

However, arbitral tribunals, particularly in more complex cases, are increasingly adapting these procedures to provide for better examination of the issues in dispute. The arbitral tribunal is fully empowered to pose questions at any time. Arbitral tribunals often hear oral argument by counsel for the parties, which may be a part of, or may be separate from, the evidentiary hearing. Therefore, Article 8.3(f) confirms the discretion of arbitral tribunals to vary this order of proceeding in the manner best suited for the circumstances of that case. For example, if the procedure allows the arrangement of testimony by particular issues or that witnesses be questioned at the same time and in confrontation with each other about particular issues. Such techniques may enable arbitral tribunals better to understand the contradictions in testimony and to be able to determine the weight and credibility to be given to the testimony. Ultimately, all rules of Evidence leave it to the arbitral tribunal and the parties to determine how best to proceed.

The affirmation by a witness that he or she commits to telling the truth, is widely observed. Often, the arbitral tribunal will also simply admonish the witness to tell the truth, and sometimes it will additionally advise the witness of criminal sanctions applying at the seat of the arbitration or at the physical place of the hearing. Arbitral tribunals, at least in some countries, rarely swear in the witness themselves. For Example, the United Arab Emirates law[14] brings arbitrators, Expert witnesses and even translators under criminal liability punishable for 3-15 years if they are found to be not following the principles of neutrality and integrity.

Where witnesses and experts have provided written witness statements or expert reports, they are first confirmed at the beginning of the testimony. The witness testimonies are an alternate method for chief examination of witness. In many international arbitrations where witness statements are used, that such statements may serve in lieu of the witness's direct testimony. Having the witness statement stand entirely in lieu of direct testimony provides an incentive for witness statements to be comprehensive. This witness statement method helps to cut down the time and allows the opposite party to effectively cross examine the witness based on the witness statements. The Experts produce

[14] Article 257 of Penal Code of United Arab Emirates

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an Expert report and the fact witnesses file a witness statement. Nothing in any of the rules, however, prevents an arbitral tribunal from hearing witnesses in another manner, such as the traditional method in certain civil law countries where witnesses are initially questioned by the arbitral tribunal, followed by questioning by the parties. This is a technique which presupposes a thorough knowledge of the case and a full study of the law by the arbitral tribunal.

Cross Examination: The cross examination has two chief functions. First, cross examination tests the credibility of the witness and more broadly of the case of the party proffering the witness[15]. One of the chief functions of cross examination thus is the impeachment of the witness. Such impeachment can take several forms. Most typically, impeachment proceeds on the basis of prior inconsistent statements made by the witness. Such inconsistent statements can be elicited by pointing to a contradiction between the testimony and documentary evidence[16]. Alternatively, the witness can be impeached by pointing to the implausible gaps in the witness's memory with regard to the witness testimony[17]. The tribunal-appointed expert shall be present at an evidentiary hearing and available for questioning at that hearing, so long as any party or the arbitral tribunal requests such presence[18]. The parties or their party-appointed experts are allowed to question the tribunal-appointed expert at the hearing. However, the scope of this questioning is limited to the issues covered in his or her expert report and the responses namely, a party's submission, witness statement or an expert report by a party-appointed expert that is provided in response to the tribunal-appointed expert's report. This provision is included to assure that the tribunal-appointed expert knows in advance the subjects on which he or she might be questioned, to prepare his or her responses. Cross Examination need not be oral questioning always, now some tribunals and parties prefer cross examination by interrogatories. Although occasionally encountered in international practice, interrogatories are infrequently used outside common law settings[19]. These practices differ from country to country. For example, a common feature of US Arbitration is the "Deposition by oral Examination"[20].As per HKIAC Rules arbitral tribunal may meet any tribunal appointed expert privately. Any such report prepared by the expert shall be sent to parties[21]. Parties will be allowed to cross examine the expert[22].

Decision Making: It is globally settled law that it is the arbitral tribunal, not the tribunal-appointed expert, who is to determine the issues in the case. In some cases, Arbitral tribunals have totally rejected the view of the tribunal appointed experts. It is important to note that a tribunal-appointed expert's report "and its conclusions shall be assessed by the Arbitral Tribunal with due regard to all circumstances of the case" but the decision- making authority is only the Tribunal. That means, even

[15] Soufraki Vs UAE, ICSID Case No.AR/02/07
[16] Libanaco Holdings Co Limited Vs Republic of Turkey ICSID Case No.ARB/06/8.
[17] Tradex Hellas SA Vs Republic of Albania ICSID Case No.ARB/94/2.
[18] Article 17 of CIETAC Guidelines of Evidence, LCIA Rules, Article 20(7)
[19] Elsing &Townsend, Bridging the Common law – Civil Law Divide in Arbitration, 18 Arb Intl 59(2002)
[20] C.Wright & A Miller, Federal Prace Procedure
[21] Article 26(2) of the UNCITRAL Model Law (2006), 54(1) of Arbitration Ordinance of Hong Kong, Article 25.3 of HKIAC Rules
[22] HKIAC Rules Article 25.3

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if the tribunal agrees with the opinion of the expert, it requires to deal with them while finalising the award[23].

Indian Perspective: India also follows the above said best practices of evidence, till now the usage of expert witnesses is not much. Most of the arbitrations that have technical disputed questions also are decided without any involvement of experts. Even though Arbitration & Conciliation Act,1996 expressly excludes the applicability of Evidence Act,1872 the concept of expert witness is not far from the description made in S.45 to S.51 of the Act. But, the parties have the liberty to produce expert witness in support of their contentions. Arbitral tribunals also have unlimited power to invite any expert as a witness. If there are any third-party witnesses, they can be summoned through courts after getting the permission of the tribunal under S.27 of the Act[24] to produce the evidences and depose also.

In India also witness examination is one of the legally permissible tools available to the arbitrating parties to prove their case, which includes examination of fact witnesses, expert witnesses and neutral witnesses. But the said tool must be used effectively to avoid excessive time to complete the arbitration and the corresponding costs. Whether to appoint experts can be a complex question requiring consideration of several factors, including the nature of the issues, the legal or professional back ground of the tribunal can be either be party appointed or tribunal appointed witnesses. The Courts in India have clearly articulated the role of the experts and have held that the duty of the experts is to objective findings and it is for the Court/tribunal to conclude whether Expert's views are correct[25].

Party appointed expert can be either from outside or from the in-house team of one party. Both the above said options are in practice. The in-house technical experts may be very knowledgeable in their field and have hands-on knowledge of the specific technical matters at issue. The only issue is the impression of the tribunal about the in-house people relating to impartiality of the witness. But appointing an outside expert as witness may expose the party to more cost and time.

In India, Tribunal appointed arbitrators can in normal circumstances command a better stature relating to impartiality of the witness. Tribunal can make such an appointment of an expert either on the application of parties or on its own, if required to decide the issues in the case. In such situations, an important question arises, whether the arbitrator is bound by the opinion of the expert witness appointed by him. The Hon'ble Supreme Court of India in Malay Kumar Ganguly case[26] , held that the arbitral tribunal is not bound by the opinion of the expert witnesses since the opinion of experts are advisory in nature. In a recent Judgment[27] Delhi High Court held that a party is also not bound by the

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[23] See Margret L Moses, The Principles and Practice of International Commercial Arbitration (2nd Edition)
[24] S.27 of the Arbitration and Conciliation Act,1996
[25] Murarilal Vs Madhya Pradesh Vs Regency Hospital Limited 1980 (1) SCC 704 & 2017 SCC Online Delhi 7997 Thyssen Krupp Materials AG Vs The steel Authority of India
[26] Malay Kumar Ganguly v/s Dr. Sukumar Mukherjee (2006) 6 SCC 269
[27] Zuari Maroc Phosphate Ltd Vs Union of India (2017) SCC Online Delhi 768

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Expert report not only when it is based on a fraud but also when the report is premised on a mistake.

To get the benefit of examining an expert witness, the witness should demonstrate his expertise over the subject matter and to the issues where technical expert opinion is necessary for the arbitration tribunal to decide the disputes properly. Such an expertise of an expert witness can be understood from his educational qualifications, work experience etc., In State of HP Vs Jailal (1999) 7 SCC 280 Supreme Court of India held "*in order to bring the evidence of a witness as that of an expert, it has to be shown that he has made a special study of the subject or acquired special experience there in, in other words that he is skilled and has adequate knowledge in the subject*". More over the expert witness also should give his reasoning along with the basis for his opinion, a mere assertion is not sufficient. In **State of Maharashtra v/s Damus/o Gopinath Shinde and others, (2009)9 SCC 221** it was held that mere assertion by the expert is not sufficient to make the report reasonable and reliable. It is worth bearing in mind the words of Kierans J. cited with approval by Iacobucci J. in *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748 at 780:

Experts, in our society are called that precisely because they can arrive at well-formed and rational conclusions. If that is so, they should be able to explain, to a fair minded but less well informed observer the reasons for their conclusions. If they cannot, they are not very expert. If something is worth knowing and relying upon, it is worth telling. Expertise commands deference only when the expert is coherent. Expertise loses the right to deference when it is not defensible. That said, it seems obvious that [Appellate Courts] manifestly must give great weight to cogent views thus articulated [emphasis added].

In India, in addition to the right of the opposite party to cross examine an expert witness appointed by the party, the arbitrator also has the powers to ask questions and get clarified. It is also settled law that if the Expert witness is not subjecting to cross examination the said witness can be ignored by the Arbitral tribunal. But if the party ignores an opportunity to cross examine an expert witness, it amounts to admitting the opinion of the expert witness. In a recent Judgment[28] Delhi High Court held that the party seems to have no dispute about the Coal cost given by an Expert since the said expert was not cross examined during the arbitration. The most important use of an expert witness is the opportunity for the arbitrator to ask questions and understand the business process, business practices and the technical details. Even though everyone knows that the party appointed expert witnesses are paid by parties and hence most of them try to support the case of the party paying their fees. But as held by Supreme Court, change of stand by an expert in his oral evidence from that taken in his written opinion, if deliberate, can amount to perjury by such expert witness (Prem Sagar case[29] .Hence the biggest challenge faced by arbitrators is to find out the truth from the expert report of the expert, the cross examination of the parties and formulate their own view to ensure justice.

[28] Glencore International AG Vs Dalmia Cement (Bharat) Limited (2017) SCC Online Del 8932
[29] Prem Sagar Vs State 2012(8) SCC21

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