

Dossier

JUNE - AUGUST 2018

CONSTRUCTION

An
OER
Presentation

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Facilitating Progress



ROHIT SINGHAL,
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GIVES AN INSIGHT
TO THE ROLES OF
AN INDEPENDENT
EXPERT IN
CONSTRUCTION
DISPUTES AND
ARBITRATION

The construction industry is regarded worldwide, as one of the most conflict and dispute ridden business sectors. The issues typically in a construction dispute are those related to delays in project, prolongation costs and changes in scope; resulting into time and cost overruns.

Globally, in complex construction disputes under arbitration, the independent experts are frequently appointed to provide evidence and to assist the tribunal in its decision-making. A thorough and convincing expert testimony can help in easy resolution of host of issues, related to delays and disruptions, claim quantum and technical disputes.

The expert is usually appointed by the respective parties and in some cases; the arbitration tribunal would make the appointment on its own. Irrespective of the mode of appointment, the primary duty of the expert is towards the tribunal. An expert has to be an independent professional and should carry out proper due diligence to ensure that

he/she, or the firm represented does not have any kind of relationship with the parties involved in the dispute as this may impair objectivity and independence.

Experts in construction matters are often used to decipher engineering standards, undertake root cause analysis, analyze schedule delays/ perform forensic delay analysis and undertake quantum assessment i.e. valuation of the claims. Forensic delay analysis is one of the most widely used tool to quantify excusable and compensable delays in a construction dispute and majority of construction arbitrations rely on delay experts for the assessment of the delay disputes.

Key benefits in engaging Experts:

- Root cause of disputes becomes more comprehensible for the tribunal
- Cost effective as it reduces the arbitration time
- Reduces the truck load data into sizable documents

- Unbiased & impartial analysis makes the decision more factual

The International Bar Association (IBA) rules provide that the arbitrators may require party's experts opining on the same issue to meet, confer and report on the areas on which they agree and disagree. This is one best tool that arbitrators may employ to bring efficiency and clarity to what can be a mess of expert opinion. It is not uncommon for arbitrators to ask parties to have the experts on the same issues testify together in a panel in front of the arbitrators at the hearing. This practice, which is sometimes referred to as witness conferencing or 'hot tubbing', can also help the arbitrators to make efficient use of the experts in a matter by cutting through posturing and building a degree of consensus.

ABOUT THE AUTHOR

Rohit Singhal is an expert in construction arbitrations/disputes and is Managing Director of MASIN. MASIN is a global construction claim management firm, which provides expert services for construction and engineering disputes and arbitration. ■