

Warm Wishes for a Successful Future.

DEFAULT IN LEASING INDUSTRY AND ITS MANAGEMENT BY THE COMPANIES

On September 19th in a Seminar of Asian Leasing Association held in Taipei, Taiwan, the writer of this article posed a query to Dr. Pachih Chen, Chairman of Council for Economic Planning and Development hows that there is no default provision in Taiwanese lending system as also in their monetary policy. In reply the Speaker of the forum informed the house "The Taiwanese strongly feel that once they have borrowed money they have to pay it back be it an individual or an institution".

Similar was the reply of an Indian representative of Sundaram Finance Limited who visited Dhaka some time in 1999 and submitted a paper to Bangladesh Bank on the Urban Transportation Scheme based on their experiences of financing vehicles in India. Mr. G. C. Rangan was also of the strong opinion that default percentage is just negligible. Of all the factors existing in India the most important one is the mental framework of their borrowers. According to him the mind set of the people at large is such that they are by and large shy of borrowing. Even if they need to borrow they remain on their toes as to how soon they may get out of the shackles of loan etc.

The social climate of this part of India, now an independent sovereign state of Bangladesh, was also having the same flavor and fervor as existed in other areas. An old man at his mid 50s was asked as to why he was not borrowing from Agricultural Bank to mitigate his sufferings his family was then acutely facing. In reply he said, "Loan is a poisonous snake which goes on biting for three generations".

From the above instances we may assume that a strong psychic factor plays a vital role in lending business. If one once becomes devoid of this strong feeling of remaining pure and perfect moving respectfully in the society raising one's head high, then it is possible on one's part to get away comfortably with huge loan money on his shoulder pretending that in no time he would pay off the bank dues. They not only talk tall, they also keep on maintaining liaison with the top brass in such a manner that they never be ashamed of not being able to pay off the dues. This is how the social value that one has to pay back the loan money right on time once nourished so carefully has been ruptured resulting in loss of morals and truthfulness. Once the social values have been lost the social vultures begin to pounce upon the wealth of others.

The first casualty was the moral conscience of the nation, resulting in the absence of good governance followed by moral degradation in all sectors in general and financial institutions in particular.

At the backdrop of above socio-political economic scenario leasing emerged as a PANACEA in mid 80s. Compared to its age and period of growth leasing industry in Bangladesh is in its nascent stage. But there is enormous scope for this industry to grow as an alternative source of finance. Leasing can play a very important role in the economic life of Bangladesh as in Japan where it is serving as a catalyst of economic growth.

But the industry needs all logistic support from the competent authorities. They could do and can still do better if they are nurtured with due care.

Control mechanism in leasing

At a time when default is very much rampant in Banking Sector, there is some built-in control mechanism in leasing operation for which default is committed less in number in this sector.

Default in leasing operation has been interpreted and explained in the lease agreement as any of the following events that shall occur and/or shall not have been remedied to the satisfaction of the Lessor, the Lessee shall be in default.

- a) The Lessee defaulting in the performance of observation of any clause of the lease agreement including the rider clause.
- b) The cheque (s) issued by the Lessee has been dishonoured.
- c) The Lessee has suspended or closed its business or resolved to dissolve itself.
- d) Procedures for any levy, compulsory execution, preservative action or compulsory execution based on tax obligation or to other obligations as commenced against the Lessee.

e) An application has been filed for provisional attachment, provisional execution, attachment for public sale, bankruptcy, commencement of composition or reorganization, liquidation of the Lessee, or if the Lessor determines in its sole discretion that the Lessee is in a situation where it will be difficult to continue its business activities.

Remedies of the Lessor in case of default

- If any above default occurs the following remedies are available for the Lessor:
 - a) Criminal case for breach of trust against the drawer of the cheque for its being dishonoured may be filed as per relevant law inflicting due punishment and or penalties as embodied in the case.
 - b) Simultaneously case may be filed with the Court of Law to repossess the Lease Equipment and sell it on terms as agreed with the buyer(s). The sale proceeds so received shall be appropriated towards repayment of the total payable. In case of shortfall, the Lessee must pay the balance amount from his other sources and Lessee shall also be liable for all expenses incurred in-connection with repossession of the Lease Equipment.
 - c) Declare all unpaid rentals under the Lease Agreement to be due for immediate payment all at a time.
 - d) Terminate the Lease Agreement.
 - a) Prohibit the Lessee from using the Lease Equipment without terminating the Lease Agreement and may depute guard to ensure the suspension of operation to which effect all expenses incurred are to be borne by the Lessee.
 - f) Repossess the Lease Equipment and for this purpose enter into any premises of the Lessee and remove the Lease Equipment and the Lessee shall be liable for all expenses incurred for removal of the Lease Equipment.

In another clause of the agreement Lessee confirms that, "In the event that this Agreement is terminated, the Lessee shall forthwith return the Equipment (Lease Asset) to the Lessor in accordance with the terms of the agreement and simultaneously shall pay to the Lessor the following:

- a) If the Agreement is terminated after the execution date, the Lessee shall pay to the Lessor damages in accordance with the provisions of the agreement where in it is stated that damages shall be made up of the aggregate amount of the stipulated loss value, all sums of the Lessee's debts to the Lessor relating to this Agreement, unpaid rentals and delinquent charges.
- b) If the Agreement is terminated before the execution date, the Lessee shall pay to the Lessor that initial stipulated loss value of the first year of the lease calculated on the basis of acquisition cost of the equipment which is aggregate cost of the equipment already paid or payable by the Lessor and all financial expenses as determined by the Lessor for sums advanced by the Lessor."

Penalty for delayed payment

As per different provisions of the agreement executed by the Lessee it is stated that in the event the Lessee fails to make payment when due to the Lessor, of all or any portion of any Rental or any other payment including any expenses paid by Lessor on behalf of Lessee, the Lessee shall pay delinquent charges as a penalty on such unpaid from such due date until fully paid at the rate set forth in the schedule(s).

From the above, it is crystal clear that a Lessee is fully aware of the obligations he has to undergo by executing the Lease Agreement along-with some other documents. He is also aware that any violation / deviation from the terms of the Agreement will fetch him lot of miseries.

As for example two instances may be cited one relating to return of any rental cheque unpaid and the other relating to repossession of the leasehold asset. As for the former the law is very precise and stringent. Accordingly, upon the event of cheque dishonoured the Lessor may take recourse to legal action in the Magistrate court who on hearing the prosecution may issue either of the two-Court Summons on the defaulter-lessee to appear in person before the court and explain his position or warrant of arrest with an instruction to the police to produce the signatory of the cheque before the court.

In any case the defaulter Lessee has to admit before the Magistrate that he has committed default in paying the monthly rentals and, therefore, he has to promise before the honourable court as to how soon he would repay the same. Once the Lessee has thus been hooked up in the legal tangle he can not get out of it without paying the dues along-with the cost and delinquent charges as claimed by the Lessee.

In case of latter, i.e., the repossession of the equipment, the process is two-fold depending on the nature of equipment. If it is a vehicle, which is registered 100% in the name of the Lessor Company with the BRTA the court on hearing the case normally gives order for arresting the vehicle and handing over the same to its Registered Owner. By the time police action is initiated or activated the vehicle may also be arrested and repossessed by the Lessor Company by its own efforts to which legal protection is provided if need be.

In case of machineries etc. the process of repossession is slightly different. In that case also court order is necessary. In such case the court on being satisfied gives order for attachment before judgment. On settlement of the case the machineries are taken over by the Lessor Company. But instances are there that before such situation arrives the defaulter lessee makes some repayment arrangement with the Lessor Company. All these exercises would have been more effective and recovery drive strengthened in case the Leasing Companies could proceed independently under Leasing Company's Act of their own without courts intervention.

Rules and regulations are there for every organization as to how it will operate. But the basic point is that how efficiently the organization will run depends on how efficiently things are governed and rules are applied.

In case of Leasing Industry as against banking operation application of law is more stringent and unfettered. While recovering the dues a Leasing Company is equipped with built in advantages over a banking company to go to any length from personal harassment by way of obtaining a body warrant from the court against the defaulter lessee down to repossession of the leasehold equipment and getting the lease dues recovered from the proceeds thereof.

Instances are there that Commercially Important Person(s), Dignified Officials and the Social Pillars could not get away from the rigor of the legal as well as professional pressure and eventually all of them paid off their dues along-with the delinquent charges.

All these point to the fact of good governance. For the harmonious growth of the leasing as an industry the importance of good management can hardly be over emphasized. It is not the gun but the man behind the gun, which matters most in winning the battle. The success or failure of the leasing company similarly depends on how best the managers can manage the affairs of the company and lead the head and heart cohesively towards its destinations.

In doing so, leasing personnel are to see the unseen and expect the unexpected. They are in fact Jurors in matters of judging the overall management of financial affairs. They must, therefore, guard themselves against intrusion of ominous proximity while they are to be mobile and social so that it may not mar the sense of judgment and proportion. Leasing managers are to be dynamic but not demoralized, accurate not acrimonious, skillful, not skeptical and discreet but not daunted. Above all they are not only financiers of their clientele, they are their counselors and credit supervisors as well. They must act within their domain free from any prejudice and external barriers.

Success story of a leasing company as against a commercial bank lies in the fact that a defaulter client is not as scared of a bank as he is about a leasing company. In other words, the psychic factor, which is at the root of the "default culture", is nipped in the bud at the very rigorous approach of the leasing process.

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Sayeed Husain Jamali

PRIVATE SECTOR HOUSING FINANCE : Rules & Challenges

Next to food and clothing, housing is a basic need of the people. A house is a symbol of a family's identity, the most important possession a person could ever have and one of the most effective guarantees of social stability. The acute demand for such basic necessity for an affordable and quality housing has greatly characterized the real estate sector of Bangladesh.

The role of the housing sector in the social and economic development of the country can never be overemphasized. For millions of people in the country striving to add value to their lives, owning a house has come to symbolise the realization of the dream. Through building decent houses or dwelling units, we can take the opportunity to build a better life for our people. With the rapid proliferation of urbanisation the need for constructing more dwelling units for different cross-section of people in the city areas should increasingly become one of the key priorities in the Government's agenda.

A robust housing sector boosts the economy of the country. The housing sector can work as the saviour of the economy by increasing savings and capital formation, creating huge employment and other economic multiplier benefits, through its backward and forward linkages.

For example, housing sector contributes positively towards the growth of the cement industry, brick manufacturing, iron and rod market, wood and other materials used in the backward linkage. The forward linkage growth includes points, interior fittings and fixtures, consumer durable, utilities and social welfare sectors where housing sector has a direct and positive impact.

At the same time, this sector works as one of the single largest providers for the employment to the urban poor, thereby catering for the economic emancipation of a huge section of people engaged in struggle for subsistence through physical labour in the populous urban areas.

The primary objectives of the private sector housing finance companies are to channel resources into providing finance for people's basic need for shelter, enhance housing stock of the country, promote affordable home ownership and pioneer the concept of a viable private sector housing finance system in Bangladesh.

Objective of DBH

As the premier and leading housing finance organisation in the private sector of Bangladesh, Delta Brac Housing Finance Corporation Ltd. is fully committed towards achieving the aforementioned objectives.

DBH is an International Institutional and Joint Venture Organisation, which is promoted and sponsored by five institutions: Bangladesh Rural Advancement Committee (BRAC), Delta Life Insurance Co. Ltd. (DLIC), Green Delta Insurance Co. Ltd. (GDIC), International Finance Corporation (IFC), The private sector affiliate of the World Bank and Housing Development Finance Corporation Ltd. (HDFC; the largest housing finance institution in India).

DBH is incorporated under 'The Companies Act 1994' and licensed by Bangladesh Bank to work as a Non Bank Financial Institution. Its operational matters are governed by 'The Financial Institutions Act 1993', under the supervision of Bangladesh Bank.

Its authorised capital is Tk. 500 millions and initial paid up capital is Tk. 200 millions.

In its move for helping out the eligible clients by providing long-term housing loans, DBH has so far made a small contribution in this sector by sanctioning more than Tk. 1900 millions to more than 2600 discerning clients. Together with their own equity, this has enabled the clients of DBH in creating assets worth more than Tk. 300 crores in the real estate sector. DBH is working with the commitment of increasing the home ownership among different cross-section of people in the urban areas, and at the same time, increasing the total number of housing stock through long term housing loans to the consumers. There are also a few other institutions engaged in housing finance in the private sector, namely, 'National Housing Finance & Investments Ltd.' and 'DLC' along with a few commercial banks.

The total number of urban dwellings is now estimated to be around 4.0 million units, compared to the ever increasing urban population estimated at 25 million, which is roughly 20 per cent of the total population in the country. The economic factors are compelling more and more of the rural population to migrate to the urban centers for obtaining employment and a better living.

The ratio of urban population in the country is expected to register a staggering increase to almost 45 per cent of the total population in the next twenty years. Certainly there will be a huge influx of people into the urban areas in pursuit of employment, unless there was a significant turnaround in the agro-based rural economy of the country. In order to accommodate the influx of people into the urban areas, the annual requirement of urban dwelling units is estimated in the range of 350,000 - 550,000 units per annum over the next twenty years.

But the current infrastructures in the real estate sector doesn't provide the scope to

meet the increasing need for urban housing in the country. The situation has exacerbated due to the high land cost and the lack of accessible housing finance arrangements in the urban areas.

On the one hand, acute shortage of land compared to the population growth has resulted in high land prices, making it increasingly difficult for many families to make the dream of a house a reality. On the other hand, due to the lack of an enabling environment and availability of cheaper funds, the formal housing finance sector in the country is yet to become affordable and accessible to the middle and lower middle-income segments of the urban population.

The private sector is playing a vital role in mitigating the severe shortage of urban dwelling units. Firstly, the developers are continuing their efforts to supply more and more of flats / apartments to their customers over the last several years. Their land and apartment projects have resulted in larger number of people becoming the owners of flats by occupying relatively less land area than the previous single unit constructions.

Besides, the private sector housing finance institutions have also contributed to the purchasing power of people in owning their dwelling units particularly in the city areas. After more than four decades of existence by the state-owned House Building Finance Corporation (HBFC), the era of private sector mortgage lenders began only three to four years back.

At present, the housing sector needs to take into consideration the following three factors:

- a) Government initiatives to create an enabling environment in the real estate sector,
- b) The initiatives by the developers to build smaller sized apartments targeting the middle and lower middle income groups of people, and
- c) The availability of long-term affordable housing loans from the financial institutions.

Our experience suggests that the government needs to do much more to mobilise adequate investment in the real estate sector. One key deterrent factor for growth in this sector is the availability of serviced land in the urban areas for the builders to build more multi-family housing units, which would ease the shortage of housing stock in the urban areas.

Presently, the developers are compelled to build on high-priced land often under the joint venture with the landowners, resulting in high costs of the apartments. In this connection, the government should come forward to allocate serviced land to the developers for building multi-family houses, where the housing finance institutions can also come forward and lend.

Besides, the government should also create a legal environment, which would help the builders and the financial institutions to target bigger segments of people. In this regard, two issues should be urgently addressed: First, the related formalities of obtaining necessary permissions and approvals from the concerned government agencies at present are very time consuming and bureaucratic. These should be rationalised so as to allow the clients and builders to complete these formalities more promptly and comfortably. Also, the transaction costs related to registration and transfers are very high, which appear as stumbling blocks for investment in this sector. At the end of the day, such constraints significantly add to the cost of the development.

Secondly, the housing finance institutions should be allowed to target greater number of people at lower risk. The laws relating to property realisation are very feeble, and there is no adequate 'Foreclosure Law' against the defaulters of the housing loans extended by the housing finance companies. If the government takes the initiative to provide a 'Foreclosure Law', the housing finance companies will get more confidence in targeting those who would have otherwise remained out of the purview of their strict credit norms and thereby larger number of people would be able to avail housing loans.

The developers have so far been building apartments mainly for the upper-income groups. The recent trend shows that there is saturation for large-sized high-price apartments, which remained way beyond the reach of the middle income groups of people. As a matter of fact, the focus should now be shifted towards making lower cost, smaller, affordable housing units. If the price-levels of the apartment projects come down within the reach of the middle-income people, the developers would ultimately be benefited from attaining the economies of scale in their projects through higher volumes and spreading the franchise to larger customer segments.

The role of long-term private sector housing finance would be a catalytic force in boosting home ownership in the country. As far as DBH is concerned, we are looking at long-term funds at low cost to make our housing loans more accessible and affordable to the middle and lower middle-income groups.

DBH Lending Programme

Currently DBH is lending for maximum period of 15 years @ 15.75 per cent p.a., whereas our cost of funds is approaching more than 13.5 per cent. Under the present circumstances, we operate in a very tight situation with such a thin margin. On top of that, we are currently receiving funds from the commercial banks for a maximum of five years only, whereas we lend for long 15 years. Clearly, there is a big mismatch between our borrowings and lending. This particular aspect increases the inherent risk of any housing finance institution to go for long-term lending.

Under the circumstances, the private sector housing finance institutions need government support in terms of availing long-term funds at a reduced interest rate from both international agencies and the government. All concerned will appreciate the very fact that one of the key determinants of housing affordability is the cost and availability of long-term housing finance.

Another way the Government can help is by providing tax relief on interest paid on housing loans thereby reducing the effective cost of borrowing. Certainly, reduction of interest rates on housing loans would bring salutary changes to the investment planning of a large sector of our clients, who are not yet exposed to the formal housing finance due to affordability.

The future growth possibilities in the real estate sector, we believe, also lies in the public-private partnerships, where the government can initiate large-scale projects, particularly for the middle and lower middle-income sections of society, involving the private developers and the housing finance institutions. In this connection, we would like to recall the initiative taken by DBH with the concerned govt. authorities and controlling bodies on the possibility of implementing such public-private partnerships. DBH would be proud to actively contribute in any such endeavour taken for the benefits of the larger sections of people in the society.

Under such an arrangement, the government would provide serviced land to eligible developers possibly through competitive bidding for building apartments for the middle and lower middle-income groups of people, and the housing finance institutions can finance both the construction and individual loans to the projects, either through single financing window or through syndicated approach. As the leading housing finance institution in the private sector, DBH would always be willing to participate in it all through the initiatives.

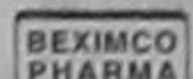
We would like to recall the prominent role of the real estate sector as to the point that housing is a commitment to the community, a commitment to the economic growth of the country. Expanding home ownership will strengthen our communities, and in turn would work as the cornerstone to revitalize the economy of Bangladesh.

We strongly believe that through fruitful interactions, all of the concerned parties related with the real estate sector can stand on a common platform, where we can work together to make the dream of home ownership a reality for millions of hard-working families, particularly in the backdrop of today's sprawling growth in urbanisation.

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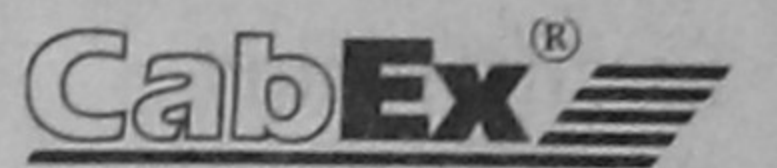


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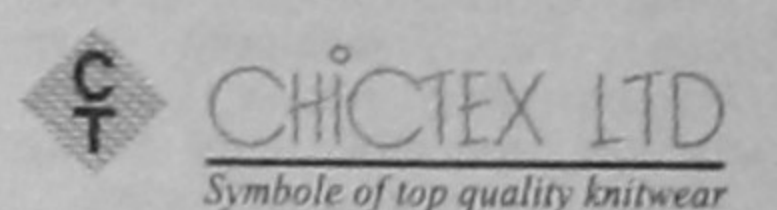


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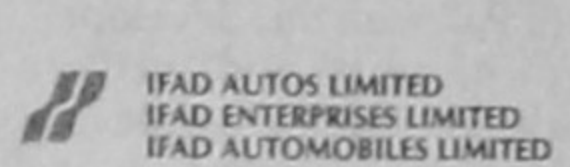
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