

Out of court settlement for business disputes

MD FAZLUR RAHMAN

The Bangladesh International Arbitration Centre (BIAC) will start its journey in the country from Saturday in efforts to settle commercial disputes quickly, transparently and in a cost-effective way to give relief to businesspeople.

The International Chamber of Commerce -- Bangladesh (ICC-B), Dhaka Chamber of Commerce and Industry (DCCI) and Metropolitan Chamber of Commerce and Industry (MCCI), Dhaka have joined efforts to set up the centre for alternative dispute resolution (ADR), with support from Bangladesh Investment Climate Fund that is managed by International Finance Corporation.

BIAC, situated in Suvastu Tower in Dhaka, is a registered, not-for-profit organisation. It was established with approval from the ministries of commerce, and law and parliamentary affairs. It aims to provide an environment where clients can meet their arbitration needs effectively and efficiently.

Its work is central to the question of how best to adapt arbitration to the fundamental changes in the economy, said Mahbubur Rahman, chairman of the centre's board.

He said business communities around the world are increasingly adopting alternative means to resolving conflict, as conventional routes are blamed to be costlier and time-consuming.

He said there is no institutionalised arbitration in Bangladesh. Individual lawyers and retired judges do arbitration from time to time, depending on the necessity of individual clientele.

"Arbitration in institutionalised form has not developed in Bangladesh for two reasons -- our arbitration act was not much supportive of arbitration in our system and anyone losing the arbitration immediately goes to court and posts an injunction," he said.

"As a result, people feel there is no use of spending money and time in the name of arbitration. Let us better go to the court, even it is delayed."

He said ICC-B, DCCI and MCCI have come forward to popularise the arbitration process, in order to expedite the dispute settlement process and build people's confidence on the system.

Rahman, also the president of ICC-B, said foreign investors would like to see whether Bangladesh has any legal system that can dispense and settle



Toufiq Ali

disputes quicker, instead of going through court procedures, which are sometimes lengthy.

"It is not only for the overseas investors, it is more applicable for us," he recently told The Daily Star in an interview.

The successful business leader said there are many grey areas in the Arbitration Act 2001, which was replaced Arbitration Act 1940, that does not encourage people to come to arbitration.

He said the government is also trying to make necessary legal arrangements for ADR, as the court is overburdened with cases.

"The BIAC is being set up as the government is trying to emphasise alternative dispute resolution, as thousands of cases are pending with the courts for years due to lengthy processes. Besides, commercial cases are absolutely difficult to settle quickly."

Arbitration practices are nothing new in Bangladesh. Arthorin Adalat (money loan court) has been set up to settle bank disputes with their clients in Bangladesh.

But Rahman said: "Although the Arthorin Adalat is a good move by the government as it helps the banks a lot, it is inadequate -- there are 10 times more cases than it can handle."

"It is also time-consuming. The law says that it should be settled within six months, but sometimes it takes two years or more."

Rahman, who was president of the

Federation of Bangladesh Chambers of Commerce and Industry (FBCCI) between 1992 and 1994, said BIAC would start operations in a limited way initially, as the extent of its success remains to be seen.

"If we find that it is accepted by the stakeholders, then we will go for expansion. The centre's area of operations will expand as we move on."

He said Bangladesh lacks trade related lawyers. "If we can create demand, we will see expert lawyers in this area. Our young barristers are tuned to this kind of a system."

He said the BIAC arbitrators' panel would include retired judges from High Court, Supreme Court and districts courts. There will be a panel of lawyers. The conflicting parties will however be free to choose their own lawyers and arbitrators.

"As centres, such as BIAC, know the best arbitrators and lawyers in a field, conflicting parties sometimes approach them for suggestions in appointing arbitrators. The centre will do that, as it will not be biased towards any party."

"But if they do not want to follow our rules, they will still be able to use our facilities," he said. "We will rent out rooms and facilities for arbitration, arbitrators, consultation and full secretariat services."

After the verdict is awarded by BIAC, parties will have to take it to the designated court for legal approval. If the court is convinced that the process has



Mahbubur Rahman

been done within the laws of Bangladesh, then it will give approval, making it an order of the court.

District courts in the country now give approval to arbitration awards. But Rahman said there are long queues in these courts. "So, we are trying to have a bench of High Court. If any bench is designated for this in High Court, then it will be quite helpful for us."

BIAC Chief Executive Toufiq Ali said arbitration practices are not that professional and transparent in Bangladesh.

"For example, arbitration is conducted in lawyers' chambers, justices' homes or in a small room at Institute of Engineers. It is not being done in a structured way. The sanctity and value of arbitration is not there."

"At the centre, it will be conducted professionally and in a transparent manner," he said.

Ali said specialisation among Bangladeshi lawyers in arbitration of trade disputes is not commonplace. Only a few names are there but the number of cases is huge, he added.

He said awareness is important, as people are still not clear on arbitration processes as a legal system. But it has been around the world for ages. "We have to market it."

Ali, a former ambassador to Geneva, said BIAC would also talk to small and medium enterprises to learn about their problems, as these low capital organisations would not be able to pay

high fees to settle disputes through arbitration.

"We will also conduct a survey to find out the number of trade related cases in Bangladesh. The number, we can assume, is huge."

Rahman thanked IFC and BICF for coming forward with technical assistance for three years. "In the next three years, we hope we will be able to run it on our own. But their initial support has been crucial."

He said they are planning to give memberships to some institutions to promote the system. "We will ensure that they do not have any direct or indirect interference in arbitration."

Rahman said BIAC would arrange training events and workshops for judges, lawyers, law students and all other stakeholders. It will also organise workshops and awareness programmes.

"We hope this system, if properly implemented and accepted, will not only bring good to the country's business community but also to the government."

BIAC has two arbitration rooms, and exclusive chambers for arbitrators and involving parties. It also offers services like photocopy, printing, fax, multimedia projection, computer with internet connection (free of cost), audio visual aid, tele and video conferencing and secretarial services for the conflicting parties.

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Ghost city symbolises cost of nuclear disaster

AFP, Pripyat

"Careful -- do not touch anything with your bare hands!" warned the guide as we entered the kindergarten and our Geiger counter hissed like an angry rattlesnake.

On the floor and shelves were plastic cubes and teddy bears and kiddies' books, just the things you would expect to find in a children's playgroup.

But these toys were coated in a thick leprous white dust, for they had lain undisturbed for almost a quarter of a century.

And scattered among them were infant-sized gas masks.

Something terrifying had made the toddlers flee their innocent corner of the world. Their home, Pripyat, once a model city, had become the set for a true-life apocalypse movie.

Cursed by the winds that blow from Chernobyl a few kilometres (couple of miles) away, Pripyat is a snapshot of the astronomical cost of the world's worst nuclear disaster. And its fate stirs chilling thoughts for Japan, grappling with its own nuclear crisis in Fukushima.

Pripyat's entire population of nearly 50,000 fled after Chernobyl's No. 4 reactor exploded in a devil's brew of caesium, strontium, iodine and plutonium on April 26, 1986.

"Pripyat was considered to be one of the best places to live in the Soviet Union," said Nikolai Fomin, a young Ukrainian who escorts visitors into the 30-kilometre (18-kilometre) exclusion zone around Chernobyl.

"It was considered a very happy place. It had good housing and schools, lots of young families, and the shops were filled with things you couldn't get elsewhere."

Today, trees thrust through the tar-



A graffiti is pictured on a wall in the ghost city of Pripyat near the fourth nuclear reactor (background) at the former Chernobyl Nuclear power plant, site of the world's worst nuclear disaster, on April 4, 2011.

mac of the long-untended roads. Grass grows between cracks in pavements, where dry leaves click metallicly in the sour wind. Apartment windows stare down on the streets like dark, lidless eyes.

"Everything here was new, everything was modern," said Fomin. "Pripyat was only 16 when it died."

Occasional visitors come by bus for a lightning tour, equipped with radiation dosimeters, hand wipes and water with which to decontaminate boots and clothing when they leave. But

other than that, there is not a soul.

"Animals come, but they are not afraid of humans," said Fomin.

The city's swimming pool echoes to the crunch of broken glass and tile underfoot. In a fairground, the yellow gondolas of a Ferris wheel -- due to have been inaugurated on May Day in 1986 but never used -- creak in the wind. Dodgem cars rust at the spot where they stopped after their last ride.

In the main square, a rusting Soviet hammer and sickle overlook the Hall of

Culture. In a back room of what seems to be a community hall are stacked placards of Lenin and Soviet leaders that had been prepared for the May 1 parade but were never used.

Resettling the people of Pripyat and other villages in the exclusion zone, sealing the crippled reactor, cleaning up the power plant, monitoring regions contaminated by fallout... the bill for Ukraine has been almost incalculable.

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Chernobyl-related benefits, including payment of a small sum, known darkly as "funeral money", to help people in contaminated regions buy clean food.

Belarus and Russia have also been badly hit. Together the three countries had relocated more than 330,000 people.

Up till 2005, the direct and indirect costs were "hundreds of billions of dollars", according to a 2005 report by the Chernobyl Forum, gathering those three countries, seven UN agencies and the World Bank.

In terms of the human toll and radioactive pollution, Fukushima is so far not remotely comparable with Chernobyl, said Malcolm Grimston, a nuclear specialist at Britain's Chatham House think tank.

But the duration of the evacuation zone around Fukushima remains unknown and the cleanup of the plant will surely last decades, he said.

The financial bill for Japan could eventually be comparable to Chernobyl, given the greater expense, disruption to business and higher cleanup standards compared to the former Soviet Union, he said.

"As a rule of thumb, the more developed the country, the higher the cleanup costs will be," said Grimston.

"However, it will be hard to separate out responsibility and costs between the earthquake, the tsunami and specific responsibility by TEPCO," the Tokyo Electric Power Co. (TEPCO), which operates the Fukushima No. 1 plant, he said.

In Tokyo, shares in TEPCO, have lost more than four-fifths of their value since the March 11 earthquake. On Tuesday, the price fell to a record low amid analysts' concerns it would face claims of more than 10 trillion yen (118 billion dollars/83 billion euros).

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