

LAW EVENT



Arbitration to resolve emerging commercial disputes

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At present, the entity of a country is often flourished through the growing emergence of economy. To make our economy stronger and sustainable, foreign investment is playing a vital role particularly in trade and commercial arena. In this context, the atmosphere which will attract the investor to make more investment is to be ensured. Further, the complexities of trade and industrial system should be managed considering legal principles. The emerging disputes in the trade and industrial area demand speedy and effective remedy going beyond the curse of overburdened court system. It is a well known fact that, our court system is overburdened with millions of cases depriving the fortune of lots of people which ultimately threats to deliver justice as well as to establish rule of law. Considering this, Alternative Dispute Resolution (ADR) plays a crucial role in resolving disputes. In countries that are rapidly developing like our country, it is vital to develop mechanisms to resolve commercial disputes fairly and quickly. To facilitate the acceptance and adoption of ADR in a larger context, Bangladesh International Arbitration Centre (BIAC) is working enormously. On part of this, Dialogue on 'Arbitration as an out of court dispute settlement tool: Global experience and implications for Bangladesh' was organized by BIAC on 20th September

at Ruposhi Bangla Hotel, Dhaka. Distinguished panelists from the legal and business community, former justices, and law commission, Ministry of law, senior lawyers and different stakeholders have made their comment on the subject.

The Key note speaker Nina Pavlova Mocheva, Private Sector Development Specialist, World Bank

Dr. Arif Hyder Ali, chairman of Crowel & Morning's International arbitration practice, while presenting via video conference critically analysed the arbitration laws, process and practices along with specific dynamic of arbitral process.

In terms of Bangladesh perspective one of the distinguished panelists from Chamber of commerce informed that arbitration is not a new concept in our legal system. We have arbitration Act 2001 and to popularize the arbitration proceeding considering the emerging issues the government of Bangladesh is contemplating to amend this law.

The existing arbitration law has not covered the effective concept of mediation and reconciliation largely and another important thing that is, the law did not incorporate any provision relating to pre-action measures which might have necessary to access by the parties to the dispute, he added.

Former Justice Awlad Ali recommended for simplification of arbitration procedure discarding going to the court.

Former Attorney General for Bangladesh and former advisor to the Caretaker Government, A. F. Hassan Arif said that to ensure the main purpose of arbitration law minimum intervention of Judiciary is to be maintained by creating the panel of impartial arbitrator.

The chairman of BIAC Mr. Mahbubur Rahman who also chaired the dialogue concluded by saying that BIAC can be an example to facilitate and to create the environment by building capacity measures on arbitration.

The writer is working with Law Desk, The Daily Star.



Group presented her view on the importance of arbitration from an investment perspective, global arbitration practices and arbitration in Bangladesh taking on the best international practices. For an effective arbitration regime, she referred for comprehensive up to date law, strong local ADR institution, supportive local courts which can create trust in the legal system.

LAW WEEK

DB appeals for dropping arms charge

Detective police have appealed to a Dhaka court to acquit Dhaka University student Abdul Kadar in an arms case, citing the charges against him are false. Detective Branch of Police Inspector Mohammad Shahjahan, also the investigation officer of the case, submitted the probe report on September 17 before the Chief Metropolitan Magistrate's Court, Dhaka. "No evidence was found to prove the charge of possessing weapons against Kadar," the report said. However, the three other accused -- Mamun Hossain, Babu and Zafar -- will have to face trial. A student of biochemistry and molecular biology, Kadar was picked up by Khilgaon police from capital's Segunbagicha on his way to dormitory around 1:30am on July 16. After the arrest, police filed three cases against him -- one for robbery, one for carjacking and the other for possessing sharp weapons. Now on bail, Kadar appeared before a court in connection with the two cases on September 21. - The Daily Star September 22 2011.

Hearing on charge framing Sept 27

A Dhaka court September 21 adjourned until September 27 the hearing on charge framing against BNP Senior Vice-chairman Tarique Rahman and 29 others accused in August 21 grenade attack cases. The Speedy Trial Tribunal-1 passed the order after the lawyers of 11 accused including three former inspectors general of police (IGPs) submitted separate petitions seeking time to prepare for the hearing. The lawyers pleaded for time saying they had not yet received the necessary documents of the cases. The prosecution argued no lawyer has the right to file a petition on behalf of a fugitive accused. The court will give decision on the issue once the charges are framed. - The Daily Star September 22 2011.

Defence lawyer claims charges not specific

The lawyer of detained Jamaat-e-Islami leader Delwar Hossain Sayedee on September 21 argued before the International Crimes Tribunal (ICT) that the prosecutors have brought "vague and hypothetical" allegations against his client. Defence lawyer Tajul Islam told the tribunal that the charges brought against Sayedee are not specific as these are not defined in the ICT Act of 1973. So trying him under this act would be unjustified. The defence also pleaded for not issuing order to frame charge against the Jamaat leader who is accused of committing crimes against humanity during the 1971 Liberation War of Bangladesh. The judges also rejected the defence prayer to recall the tribunal's July 14 order, which took Sayedee's crimes against humanity into cognisance. Arrested on July 30 last year, Sayedee is accused of killing, torching houses and other war crimes in 1971 war. - The Daily Star September 22 2011.

Two lawyers get bail

The High Court on September 21 granted anticipatory bail for eight weeks to two pro-BNP lawyers in a case filed on charge of assaulting a police in the Supreme Court Bar Association (SCBA) building last month. Golam Mohammad Chowdhury Alal and ABM Waliur Rahman, who were also deputy attorney general during the BNP-Jamaat led alliance government, got bail after they appeared before the HC in connection with the case. Some lawyers assaulted MA Jalil, sub-inspector of Shabbagh Police Station in the SCBA building on August 4 when he went there in plainclothes to investigate another case filed on August 2. - The Daily Star September 22 2011.

SC asks NU not to recruit till Oct 16

The Supreme Court on September 19 directed the National University (NU) authorities not to recruit any staff for the university till October 16. The order was passed following two separate petitions filed against a High Court verdict that declared illegal the appointment of the university's 807 officials and employees. Among the 807 staff sacked, 279 recently filed the leave to appeal petitions with the SC challenging the HC verdict and seeking stay on the verdict. Justice Syed Mahmud Hossain, chamber judge of the Appellate Division, also fixed October 16 for holding hearing on the petitions before a full bench of the Appellate Division. Earlier, The HC on August 23 ruled that appointment of the 807 staff recruited between November 17, 2003 and August 31, 2004 in the university illegal. - The Daily Star September 20 2011.

Victims were not robbers

A police enquiry on September 18 concluded that the six students killed by a mob in Aminbazar in July were not robbers, 10 days after a judicial probe also found them innocent. A four-member committee formed by the Police Headquarters to probe the incident submitted its report yesterday. It found no evidence that the victims were robbers. The probe, on the contrary, found negligence of duty on the part of Savar police, Additional Inspector General of Police Amir Uddin, also the chief of the committee, told a press briefing at the police HQ. "During our investigation, nobody said that the six students killed and the other injured were robbers. Nor did we find any evidence to prove that. "We recommended departmental actions against some personnel of Savar Police Station for their negligence of duty," Amir Uddin

LAW NEWS



Medical waste becoming an increasing problem, UN rights expert says

MEDICAL waste is posing a growing problem worldwide, jeopardizing the health of staff, patients, disposal workers and anyone else coming into contact with the often hazardous materials discarded by hospitals and other health-care sites, a United Nations human rights expert said on September 14.

Calin Georgescu, the UN Special Rapporteur on human rights and toxic waste, issued a report in which he warned that the world is not paying enough attention to the problems caused by medical waste.

"Some 20 to 25 per cent of the total waste generated by health-care establishments is regarded as hazardous and may create a variety of health and environmental risks if not managed and disposed of in an appropriate manner," he said. Medical waste can include a wide range of hazardous materials, such as infectious waste, anatomical and pathological waste, obsolete or expired chemical products and pharmaceuticals, radioactive materials and so-called "sharps," medical instruments or devices that are no longer used. The problem is rising particularly quickly in developing countries, where the amount of waste being generated is rising rapidly as health-care services in those States are expanded, and the technological and financial tools to ensure the waste is managed responsibly may not exist. "In health-care establishments where hazardous medical waste is incinerated, open burning and widespread deficiencies in the operation and management of small-scale medical waste incinerators result in incomplete waste destruction, inappropriate ash disposal and dioxins emissions, which can be even 40,000 times higher than emission limits set forth in international conventions," Mr. Georgescu said. The Special Rapporteur noted that contaminated sharps attract the most attention, with needle-stick injuries exposing people to blood-borne pathogens such as the hepatitis B virus, the hepatitis C virus and the human immunodeficiency virus (HIV). "However, each type of hazardous medical waste presents hazards that jeopardize the enjoyment of human rights." Mr. Georgescu has made a series of recommendations to reduce the threat posed by medical waste, including proposing the development of an international legal regime to manage and dispose such waste and replacing incineration as a disposal method with more environmentally-friendly methods.

Source: UN News Service.



YOUR ADVOCATE

This week Your Advocate is Barrister Tanjib-ul Alam Advocate, Supreme Court of Bangladesh. He is the head of the chamber of a renowned law firm, namely, 'Tanjib-ul Alam and Associates', which has expertise mainly in commercial law, corporate law, admiralty, employment and labor law, land law, banking law, constitutional law, telecom law, energy law, Alternative Dispute Resolution, Intellectual Property Rights and in conducting litigations before courts of different hierarchies.

Query

A youth forum has been established few months ago and it was registered under the Companies Act. Now the executive body has decided to terminate its registration from Joint Stock Companies and turn into a welfare organization mainly for charitable purpose under Youth and Social Welfare Department. What would be the proper procedure in this regard?

Tanim, Bananai Dhaka.

Response

Thank you for your question. In order to advise you on the procedure to be adopted for converting the organisation incorporated under the Companies Act into an organisation incorporated under the Voluntary Social Welfare Agencies (Registration and Control) Ordinance 1961, (a registration by the Youth and Social Welfare Department ("the Department") will be given under this Ordinance) you should consult a lawyer as the procedure is quite cumbersome and would require preparation of number of documents which a person without legal background may not be competent to prepare.

Before your Board of Directors decides to get registration under the Department, you should consult a lawyer and take advice if such a decision would at all be beneficial for the organisation. You should be aware of the regulatory regime and the control over your organisation by the regulatory regime before taking such a decision. Under section 9 of the 1961 Ordinance, the Department has the power and authority to suspend and dissolve the Governing Body of an agency registered under the 1961 Ordinance. On the other hand the Registrar, RJSC has no such authority. You should consider if you would like to such a risk or not.

If you are convinced that you should get a registration with the Department by "terminating" your registration with the Registrar of Joint Stock Companies, then you will have to observe the following procedure:

1. You will have to wind up the charitable company that you have incorporated under section 28 of the

Companies Act, 1994. The procedure for winding up a charitable company incorporated under section 28 is similar to that of winding up a company limited by shares unless otherwise stated in the constitution of the charitable company. Since I have not seen the constitution of your organisation, I am unable to advise you on the specific procedure that you should follow. However, as a matter of general procedure prescribed in the Companies Act you will have to take the following steps:

- (a) Call a Board Meeting and take a decision for winding up the company with a declaration of solvency as per the provisions of section 290 of the Companies Act;
- (b) Call an Extraordinary General Meeting of the Members with an agenda for winding up;
- (c) Pass a Special Resolution with the consent of at least 75% of the members of the organisation;
- (d) Submit a copy of the Special Resolution within 10 days of passing the same to the Registrar, RJSC;
- (e) Publish Notice of Special Resolution in the Official Gazette and in some news papers as per the provisions of section 289 of the Companies Act, 1994;
- (f) Appoint a Liquidator for the liquidation of the assets of the charitable company;
- (g) Carry out an audit of the charitable company by an Auditor and submit the report to the Liquidator;
- (h) The Liquidator is under an obligation to follow the procedure prescribed in the Companies Act in distributing the assets of the charitable company in accordance with the Companies Act.

2. After settling the creditors, if there is any surplus assets, the Liquidator shall transfer the assets to the new organisation.

3. In order to obtain registration under the 1961 Ordinance, you will have to submit an application in the prescribed form under section 4 of the 1961 Ordinance to the Registration Authority accompanied by a copy of the constitution of the agency. The Registration Authority, on receipt of the application, make such enquiries as it considers necessary, and either grant the application, or, for reasons to be recorded in writing, reject it.

Thank you.
For detailed query contact: info@tanjibalam.com

