



THE RESIGNATION OF CHIEF JUSTICE

Why a dispassionate & thorough investigation is required

MD. RIZWANUL ISLAM

ANY may say that the way the out-going Chief Justice Sinha has resigned from his office may have saved our highest court from a protracted, complex, and unpleasant saga. In other words, this has been a graceful solution to a very uncomfortable situation. However, that departure from the office has also raised many questions and posed very grave challenges to meet. The allegations against Justice Sinha are not in the public domain, but it has been reported in our media that they include matters as serious as anomalies in his tax return and corruption. Media reports have indicated that there have been 11 specific allegations against Justice Sinha. It is critical to note that Justice Sinha's then colleagues, Honourable Justices of the Appellate Division, expressed their unwillingness to sit with him in the Bench which would imply that according to them, the allegations have been credible.



There is a very alarming tendency in our culture to be too sacrosanct about some offices of high esteem and those office bearers. For sure, Justices being bound by the code of conduct, have certain limitations in expressing their version of matters in public and hence, criticising them for actions they perform in the course of their official role can often be disproportionate or an unfair attack against which they can hardly defend themselves in public. However, from what is so far in the public domain, the allegations against Justice Sinha are a different proposition altogether. Thus, it is not a matter of something in relation to the professional functions of Justice Sinha or uncalled for personal attack on

him. This is a matter of alleged corruption amounting to crimes. Our High Court Division, in a recent verdict relating to an investigation on an allegation against another retired Justice has very appositely observed that apart from the sitting President of the Republic, none has any immunity from legal proceedings. And no degree of respect for an office or the office-bearer should make her/him immune from the reach of the law. Official immunities are in relation to actions done in good faith and they do not and cannot extend to actions amounting to crimes.

A parallel may be drawn between the way the former Chief Justice had

resigned and a former Judge of High Court of Australia (which is the highest court of Australia), Lionel Murphy was subjected to trial in criminal cases while being in the office. There were many allegations against Justice Murphy which included matters such as trying to bribe a senior police officer and influence a Magistrate of New South Wales in an ongoing criminal case involving one of his friends. Remarkably, the origin of the allegations was unauthorised wiretapped materials collected by some members of Australian Police force. Justice Murphy being a former political leader of the Australian Labour party, many in the government

initially sought to be dismissive about the allegations and reluctant to launch investigations. His colleagues in the Australian High Court were also alarmed and expressed their reservations (rumoured to be expressed privately) in sitting on the Bench with him. Finally, to mollify the public outcry, the Federal Parliament of Australia formed a parliamentary commission to investigate the allegations. The inquiry was then halted following revelations of Justice Murphy suffering from terminal cancer and he died within a couple of months. Only recently the Australian commission's declassified reports have been classified. While the inquiry

reports may not have yielded tangible outcomes, it for sure has helped fostering a culture of accountability for all irrespective of their official status.

It would be very unfortunate if the investigation is swept under the carpet or gets too protracted or does not get its full attention. For the sake of justice, it is imperative that the allegations are investigated very dispassionately and rigorously. Since Justice Sinha has always maintained his innocence, even from the viewpoint of Justice Sinha, such an investigation should be welcomed. Now that Justice Sinha is no longer in office, there is no way to form a Supreme Judicial Council and investigate the matter.

However, in addition to the investigations by the Anti-Corruption Commission (ACC), there seems to be a case for more thorough inquiry with much broader terms of reference by something like a parliamentary or judicial inquiry committee. This is because ACC would essentially investigate whether or not there is credible evidence of criminal offences being committed. However, there may be dishonest practices which would fall short of criminal offences but would be a breach of a code of conduct or behaviour expected of Justices. Thus, a wide-ranging investigation may unearth more than a technically narrower investigation by ACC. This type of inquiry would set a good example in our culture and may put many conspiracy-theories to rest or at least lose bites. Even if no concrete outcome may be achieved, a precedent of accountability would be set.

THE WRITER IS AN ASSOCIATE PROFESSOR AT DEPARTMENT OF LAW, NORTH SOUTH UNIVERSITY.

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MERGER OF BANKS

A rescue mechanism



MD. SAMEER SATTAR

REJECTING the proposals for the formation of 2 (two) new commercial banks in Bangladesh, the Bangladesh Bank has indicated that the banking sector's asset quality is not at a satisfactory level. Until recently, the total defaulted loans and the capital adequacy ratio in the banking sector had been deteriorating. It is clear that the deteriorating performance of Bangladeshi banks needs to be addressed immediately given that Bangladesh Bank has directed all scheduled banks to implement BASEL III by 2019. BASEL III reforms are aimed to strengthen the bank's capital requirements by increasing bank liquidity and decreasing bank leverage. Its main aim is to make banks more resilient against

Bangladesh Shilpa Bank and the Bangladesh Shilpa Rin Sangstha, merged to form Bangladesh Development Bank Limited in 2009. However, it must be noted that the practice of bank mergers is still at its nascent stage in Bangladesh. A guideline titled "Guidelines for Merger/Amalgamation of Banks/Financial Institutions" (the "Guidelines") has been issued by the Bangladesh Bank in a bid to provide guidance to banks on this important issue.

At the outset, it is important to note that, in order to determine the transaction price, the financial (and also legal) due diligence of the transferor bank is key to a bank merger in Bangladesh. Prior approval is needed in this regard from the Bangladesh Bank. The valuation of the assets of the banks as well as the transaction price of the merger must be mutually agreed on by the banks. However, the Bangladesh Bank must be satisfied that the mutually agreed transaction price is fair and

meetings in accordance with the Companies Act 1994. The banks, intending to merge, are then required to submit their scheme of merger, approved by their respective Board of Directors, along with a financial and legal due diligence report to the Bangladesh Bank. The Bangladesh Bank will then examine the draft scheme of merger in light of various factors such as the impact of merger on the market share, capital of the merged entity, share pattern of the merged entity etc. If the Bangladesh Bank is satisfied with the draft scheme, it will then issue its approval with or without any modification(s). In order for a bank merger to take place, the Bangladesh Bank must be satisfied that the merger is not detrimental to the interest of its depositors or the financial system of Bangladesh.

The transferee bank must then seek to comply with the requisite formalities of the Companies Act 1994 and file an application before the concerned Court and submit the scheme of merger for legal sanction. It is important to note that the approval of the Bangladesh Bank is important as the relevant Court in Bangladesh will not approve any such arrangement between a bank and its members unless the same is certified by the Bangladesh Bank. After hearing the application for merger and after considering objections (if any) raised by any of the stakeholders, the Court may approve the scheme of merger. The transferee company is then required to file a certified copy of the Court's order with the Registrar of Joint Stock Companies and, on such filing, the scheme will become effective and bind all creditors, shareholders and the banks itself. A copy of the approved scheme should then be forwarded to the Securities and Exchange Commission by the transferee bank for its consent for issue of capital, if required. As regards the transferee company, if no change of name is proposed, the transferee bank will continue to carry on its business under the existing name and license. However, if there is a change of name of the transferee bank, the said bank will have to seek approval of the Bangladesh Bank.

The role of the banking sector in facilitating growth is solely dependent on the strength and profundity of the sector. As mentioned above, many Bangladeshi banks would need to bring in significant changes if it wishes to stay compliant with the Basel III requirements. Banks with financial deficiencies may need to merge with healthier banks in order to stay afloat and maintain an adequate capital ratio. Otherwise, it may lack the ability to absorb any shocks from economic stress.

THE WRITER IS AN ADVOCATE OF THE BANGLADESH SUPREME COURT AND FOUNDER OF SATTAR & CO.



risks by maintaining a stable capital adequacy ratio, improving risk management and strengthening governance.

Against the above background and as a result of the introduction of BASEL III requirements, it is felt that there may be an increase in the merger of banks in Bangladesh in the future. This is because some banks may find their business model unsustainable from a capital or liquidity perspective and it will be easier for them to fulfill the capital requirements of BASEL III if they merge. Alongside fulfilling the BASEL III requirements, the merged bank will also enjoy the benefit of a greater market share.

Mergers between banks in Bangladesh is not a common phenomenon but the concept is not entirely new. In the past, 2 (two) banks, namely

reasonable in the circumstances. This gives the Bangladesh Bank sufficient discretion to keep a check on the transaction price. The Bangladesh Bank may also play the role of a mediator if there is any disagreement with regards to the valuation of the banks' assets. The Bangladesh Bank even has the authority to decide the value of the assets if the mediation fails, and the decision of the Bangladesh Bank shall be final and binding in this regard. It follows that the Bangladesh Bank has an active and pivotal role with respect to merger of banks in Bangladesh.

The scheme of merger that is required to be submitted must be prepared on the basis of the findings of the due-diligence report. The scheme of merger should be approved by the Board of Directors by holding respective



Environment and industrialisation



Bangladesh is a densely populated country and generally most of the industries of this country are situated in the midst of residential area of different locality. Almost all of these industries are established without taking environment into consideration. Unplanned industrialisation in Bangladesh over the years has caused severe environmental degradation. At present Bangladesh is in the grip of all types of pollution i.e. water pollution, air pollution, sound pollution, soil pollution, etc. It is thought that massive industrialisation is the key to the development of a country and for the rapid growth of industrialisation, almost every industrial establishment exploits natural resources in many ways. And in that way industrial establishment accelerate environment pollution.

However, we cannot ignore the contribution of industry for the development of Bangladesh. But we should keep in mind that unplanned industrialisation cause great harm for environment and its ultimate result is hindrance of sustainable development.

Bangladesh enacted several environmental laws such as The Bangladesh Environment Conservation Act 1995, The Environment Court Act 2010, The Environment Conservation Rules 1997, etc. The country is also party to different international instruments on environment protection and sustainable development to control indiscriminate industrialisation to maintain sustainable development. However, in Bangladesh, environmental laws apparently seem to be unsuccessful in restricting the establishment of industry in the areas where it should not be. Also environment controlling authority, i.e. Department of Environment under the Ministry of Environment and Forests requires to do much with the issues of surface and ground water management, poisonous and harmful waste management, land management, etc. It is a common problem in our country that we cannot address our problems before they take place. In fact, it is a

familiar tendency of our policy makers that they usually get conscious about a matter when it goes bad to worse. For example, it took more than a decade in relocating tannery industry from Hazaribagh to Savar and in the meantime the industry destroyed the aquatic of Buriganga River which is the main source of surface water for Dhaka city.

No good can laws bring unless its executing authorities execute the laws competently. In this respect renowned environmental lawyer Syeda Rizwana Hasan rightly remarks that making new laws and having the old traditional institutions responsible for enforcement, would not bring in the desired change in the environmental order. The failure of the existing law is overwhelmingly attributable to the negligence of the implementing agencies. On the contrary, authorities cannot run their duty smoothly unless they have well defined, balanced and effective laws. Hence, it can be said that to ensure a good result in a particular sector it needs both effective laws and a competent executing authority.

The ultimate goal of the industrialisation is for the development of human civilisation and their standard of living. When reckless industrialisation causes great harm to environment and destroys the balance of ecology in that case industrialisation cannot serve its goal, rather it hampers the interest of the people. Unplanned and reckless industrialisation only creates opportunity for a fraction of the country while it causes harm for the whole country and in extreme cases it becomes a global concern.

Mansura Khanam
Assistant Professor of Law
Bangabandhu Sheikh Mujibur Rahman
Science & Technology University
(BSMRSTU)
and
Shahnewaj
Research Officer (Law), Bangladesh
Institute of Law and International Affairs
(BILIA)