



LAW VISION

The need for institutional ADR to uplift country’s dispute resolution system

ADR is a tested mechanism and its role in building up an efficient dispute resolution system is undisputed. Thus, the presence of independent ADR centers in Bangladesh with right support and personnel can guarantee the taking place of a meaningful ADR mandated by different statutes as well as the Arbitration Act, 2001.

KAMAL HOSSAIN MEAHZI

The legal framework for dispute resolution through alternative methods has reached a level of maturity in Bangladesh. In the last three decades, the government has introduced many legislative reforms for the progress of Alternative Dispute Resolution (ADR) system in the country. The enactment of the Arbitration Act, 2001 may be cited as one of the examples. It is a comprehensive legislation in the field, which recognisesd mediation during arbitration and consolidated the laws to govern domestic and international commercial arbitration.

In addition to the above law, ADR provisions have also been inserted in two significant pieces of legislation, namely the Code of Civil Procedure, 1908 (section 89A) and the Money Loan Courts Act, 2003. Since 2001, Bangladesh has also enacted and/or amended some laws to promote dispute resolutions through ADR mechanism in the fields of energy, labour, taxation, insurance, real estate and so on.

However, this article attempts to argue that a mere legal framework is not enough to improve the justice system through ADR. With the enactment and amendment of laws, Bangladesh needs to establish accredited ADR centers to progress the ADR regime in the country and encourage people to adopt the alternative methods for resolution of their disputes.

The main advantages of ADR under an institutional set-up are that it provides for a framework based on the institutional rules. It has trained staff and a pool of both arbitrators and mediators ready to offer services using their expertise in the relevant fields. It ensures transparency and brings

predictability to the entire process. The disputing parties know it with certainty as to how their dispute will be dealt with, how long it will take to complete the proceedings and how much expenses will be required for the purpose, etc.

Since the use of ADR under institutional framework is useful, the private institutions have been established and promoted with government supports in many countries where ADR is a success story.

For instance, the Australian Centre for International Commercial Arbitration (ACICA) is Australia’s international arbitration institution. The ACICA has been prescribed under Sections 18(1) and (2) of the International Arbitration Act, 1974 (Cth) (Australia) as the authority competent to perform the arbitrator appointment functions under the Act.

In Switzerland, there are two sets of arbitration laws, namely (i) Chapter 12 of the Swiss Private International Law Act (PILA) which deals with international arbitration, and (ii) Part 3 of the Civil Procedure Code which regulates domestic arbitration. The Swiss Arbitration Center, as an independent institution, provides for ADR services to satisfy the need of ADR users. Similar institutions have been established in many parts of the world including Singapore, UK and Hongkong. These institutions offer ADR services and administer the entire process based on their own rules which provide for faster and more efficient resolution of disputes.

In the UK a number of successful bodies supporting and promoting the use of ADR have been established. The Civil Mediation Council is one such, set up in 2003, which sets standards for training and practice.

There also exists a standard guideline for fees to avail ADR services.

Similar ADR centers or institutions should have been established in Bangladesh to promote and encourage ADR practice. It may be mentioned that an ADR institution is currently providing for ADR services with facilities based in Dhaka. Bangladesh International Arbitration Center (BIAC), which was launched in Bangladesh on April 9, 2011 as a private institute for ADR. It started functioning with the main objective of facilitating ADR, more precisely arbitration and mediation, for resolution of domestic and international commercial disputes. The other objective is to promote Bangladesh as an attractive venue for both arbitration and mediation. BIAC has its own institutional mediation and arbitration rules, known as the BIAC Mediation Rules and BIAC Arbitration Rules. It offers ADR services and functions as an administrating body under those rules.

However, if compared, in terms of its power and legal status, BIAC is not similar to ACICA in Australia. BIAC has not received any legal recognition to function as a default appointing authority to offer ADR services to the users.

ADR is a tested mechanism and its role in building up an efficient dispute resolution system is undisputed. Thus, the presence of independent ADR centers in Bangladesh with right support and personnel can guarantee the taking place of a meaningful ADR mandated by different statutes as well as the Arbitration Act, 2001.

The writer is a Student of Advanced Masters in Compliance, University of Fribourg, Switzerland, and an Advocate, Supreme Court of Bangladesh.

PEOPLE’S VOICE

On the efficacy of the competition law

KAIUM AHMED

The government of Bangladesh passed the Competition Act in 2012. The primary purpose of enacting this law is to promote, ensure, and sustain a congenial atmosphere for the competition in trade and prevent, control, and eradicate collusion, monopoly, oligopoly, combination or abuse of powerful positions or activities adverse to the competition.

We have recently witnessed the artificial crisis of edible oil in the market. It is not something new. Some business houses frequently orchestrate such crises. Last year’s crisis of onion is a prime example. For the first time, the Bangladesh Competition Commission (BCC) has recently filed a case against eight companies importing edible oil to control the market price by creating cartel and oligopoly under section 15 of the 2012 Act.

According to section 8 of the Act, the BCC may, either on its motion or any allegation, inquire into any complaint made under this Act and issue summon to any person to present before the BCC. In this regard, the Code of Civil Procedure, 1908 will be applied. After sending a notice to any persons or associations, the BCC may, after giving a reasonable opportunity to be heard to the concerned parties, dispose of or settle the issue with necessary directions before conducting an inquiry under this Act (section 17). Section 18 states that if this is not disposed of, the BCC may inquire about any agreement or misuse of powerful/dominant position which is harmful



to the relevant market. The BCC may inquire about this matter by *suo motu* or by taking any complaint from anyone. Section 19 states that the BCC, if it is satisfied after conducting an inquiry, shall take proper interim action to restrain such person from carrying on such activities which violate the provision of sections 15-16. After inquiry under section 18, if the BCC finds the legality of the complaint, it may impose a financial penalty which may not exceed 10% of the average of his turnover for the last three preceding years. If any cartels occur then up to 3 times of its profit for each year of the continuance of such agreement or 10% of the average of his turnover for the last three preceding financial years, whichever is higher. Section 21 states that if any anti-competition agreement is entered into outside of Bangladesh by any person or enterprise, the BCC may inquire into the matter by laws of both countries. The BCC’s judgment has the same effect as any judgment given by the trial court. If anyone violates this, he/she shall be punished with imprisonment for a term not exceeding one year with fine of one lac taka.

However, our present legislation relating to competition law is not complete. Unlike India, there is no separate court to try the offences under this Act. Another shortcoming is that the BCC lacks enough experts by whom such trial may be properly conducted. An appeal against the judgment given by the BCC has to be filed before the government. We know that the businesses have a strong influence over the government. This is also a ground which raises concerns about the efficacy of the BCC.

The BCC has started its journey with limited resource but having mountainous burden. Our government should update the existing laws relating to competition and appoint enough officials so that the Commission can perform its duties skillfully.

The writer is an Advocate, Supreme Court of Bangladesh.

LAW EVENT

National Moot Court Competition held at BUP

Department of Law at Bangladesh University of Professionals (BUP) and BUP Law and Moot Court Club (BUPLMCC) jointly organised a National Moot Court Competition on 26-29 May 2022. A total of 12 universities, namely American International University Bangladesh (AIUB), Bangladesh University of Professionals (BUP), BGC Trust University Bangladesh, BRAC University, Comilla University, East West University, Jahangirnagar University, North South University, State University of Bangladesh, University of Chittagong, University of Information Technology and Sciences, and University of Asia Pacific, participated in the competition.

In the semi-final rounds, Jahangirnagar University, BRAC University, East West University, and BUP competed against one-another. The semi-final rounds were adjudicated by Mr. Justice Farid Ahmed, the Hon’ble Judge at the High Court Division, Supreme Court of Bangladesh; Mr. Justice Ashraful

Kamal, the Hon’ble Judge at the High Court Division, Supreme Court of Bangladesh; Professor Christine Richardson, Former Dean, Faculty of Law, Jagannath University; Professor, Dr. Md Rizwanul Islam, Chairman, Department of Law, North South University; Nasreen Begum, Member (Law), Bangladesh Competition Commission; and Barrister Karishma Jahan, Advocate, Supreme Court of Bangladesh. From among the four universities, BRAC University and BUP qualified to the final rounds of the competition which was adjudicated by Mr. Justice Md. Abdul Matin, Former Judge at the Appellate Division, Supreme Court of Bangladesh, and Dr. Muhammad Ekramul Haque, Professor of Law, University of Dhaka. At the end, BUP emerged as the Champion of the competition, while BRAC University became the runner-up.

The Best Memorial Award went to Jahangirnagar University. The Best Researcher Award was given to Meghomala Meghosree Rahma from

Jahangirnagar University. Nafiz Absar Mahmood from State University of Bangladesh won the Best Mooter Award (Overall), while Tanjila Akter Mim from BUP was awarded with the Best Mooter Award based on her performance in the Final Rounds.

Mr. Justice Hasan Foez Siddique, the Hon’ble Chief Justice of Bangladesh, graced the closing ceremony of the competition as the Chief Guest and handed over the awards and prizes to the participants. In his speech, he said that a career in law often provides situations in which professionals are required to use their research and advocacy skills to navigate complexities of the legal challenges they face. A moot court competition sets the groundwork for that process from the beginning. Therefore, the law students are entitled to this unique experience, i.e. learning how courtroom proceedings do play out in real life.

By BUP Law and Moot Court Club (BUPLMCC).

