BIAC
Bangladesh International Arbitration Centre (BIAC)
The Institution for Alternative Dispute Resolution

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Hon'ble Anisul Huq MP, Minister of Law, Justice & Parliamentary Affairs speaking at the BIAC ToT in Arbitration as Chief Guest.

Training of Trainers in Arbitration, held at Dhaka from 7-11 December 2014

With increase in domestic and international trade and investment, there will be an increasing demand for use of ADR, particularly arbitration. Trained arbitrators are a critical component of the whole framework – they will be required for the drafting of the contracts as well as handling of arbitral proceedings as arbitrators or counsels. In order to create a pool of trained arbitration professionals, BIAC has organised a series of arbitration training since 2013 including Training of Trainers (ToT) in Arbitration.

BIAC began with a foundation course in arbitration in January last year (2013), followed by advanced courses throughout 2013 and 2014. The curriculum to train Trainers in Arbitration was designed so that the successful participants can train others in future.

The second ToT in Arbitration in this series was held from 7-11 December 2014, jointly with International Law Institute (ILI), Washington DC, USA at Pan Pacific Sonargaon (Meghna Room). Forty participants took part at the training programme. Certificates were issued to participants who have successfully completed the course.

While inaugurating the programme as Chief Guest, Hon'ble Anisul Huq, Minister for Law, Justice & Parliamentary Affairs stated, "Training in Arbitration will enhance our capacity and generate confidence among businessmen and investors in ADR". With over 2.7 million cases pending in our courts, foreign companies and investors feel discouraged to enter into commercial deals in Bangladesh, he observed. Government has already made substantive amendments in some of our major acts like Civil Procedure Code, Artha Rin Adalat Ain, Customs, VAT and Income Tax laws making ADR mandatory. He lauded the role of the Bangladesh International Arbitration Centre (BIAC) for promoting the cause of ADR in the country.

Mr. Mahbubur Rahman, Chairman, BIAC Council and President, ICC-B chaired the function. He appealed to the business community to adopt BIAC's Model Dispute Resolution Clause in their commercial contracts and urged upon government, through Hon'ble Law Minister, to consider using BIAC Arbitration Rules and BIAC Mediation Rules in governmental contracts wherever possible.

Among other who spoke at the event were Dr. Toufiq Ali Chief Executive of BIAC, Rokia Afzal Rahman President MCCI, Masrur M. Reaz Programme Manager of IFC, David Branson- one of the trainers from International Law Institute (ILI), Washington DC - and two former trainees of BIAC, Abdul Muyeed Chowdhury and Shireen Scheik Mainuddin.

Training of Master Trainers in Mediation held at BIAC from 22-25 October 2015

Several forward-looking laws in Bangladesh provide for mediation to resolve disputes. However, they have not had the desired impact, generally due to lack of skilled mediators. BIAC has been providing training in mediation, to fill this vacuum and to enable disputes to be settled outside of courts. With trainers from a world-renowned institution, Centre for Effective Dispute Resolution (CEDR), UK, BIAC has conducted a course for Master Trainers in Mediation. Participants who have successfully completed the CEDR Accredited Mediation Training were invited to take part in this Course. It is hoped that the participants would themselves be able to provide training in mediation, to enlarge the pool of mediators in the country.

This first-ever training of Master Trainers in the country was held at BIAC between 22-25 October 2014, with support from International Finance Corporation (IFC). The training was conducted by Mr. Andrzej (Andy) Grossman and Mr. John Quilter from CEDR UK, at the BIAC Office. Certificates were awarded to participants upon successful completion of the course.

BIAC signs MOU with ICDDR, B for Cooperation in Dispute Resolution

The Bangladesh International Arbitration Centre (BIAC) signed a Memorandum of Understanding (MOU) for cooperation in dispute resolution, using ADR methods, with the International Centre for Diarrheal Disease Research, Bangladesh (icddr,b) on 4 November, 2014. Dr. Toufiq Ali, Chief Executive, BIAC and Ms. Ingrid Renaud, Chief Operating Officer, icddr,b signed the MOU on behalf of their respective organizations.

Mediation can play a vital role in resolution of cases in our courts- said Chief Justice Md. Muzammel Hossain

On Saturday, 8 November 2014, at a seminar on "Case On Saturday, 8 November 2014, at a seminar on "Case Management Committee" at Supreme Court Auditorium the

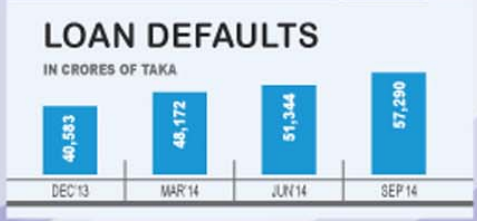
then Chief Justice Md. Muzammel Hossain stated that number of cases in our courts is increasing abnormally. This situation is posing hindrance in delivery of justice. Lack of coordination and exchange of experiences, inadequate superintendence, deficiency in time management and improper evaluation of the work of the judges and employees of courts have joined together to create such a situation. In addition, explosion of population and rise in the awareness of citizens about their rights have resulted in proliferation of cases in the country.

He further said that mediation can play a vital role in reducing log jam of cases in our courts. In many countries, including USA, Canada, New Zealand, Australia, Malaysia and the Philippines, 80 (eighty) to 90 (ninety) percent cases are being resolved through court referred mediation. (Source: Prothom Alo, Sunday, 9 November 2014)

Banks bulging with defaults while mandatory mediation provisions in our law are seldom used

An English-language daily reports, on 16 December 2014, that loan defaults have swelled by Tk 16,708 crore in the first nine months of the year. "It is a matter of concern," said Atiur Rahman, Bangladesh Bank Governor, at a meeting with chief executives of banks yesterday (15th December 2014).

At the end of September, the total defaults stood at Tk 57,290 crore, which is 11.60 percent of the total outstanding loans, according to central bank statistics. On December 31, 2013, it was Tk 40,583 crore, which was 8.93 percent of the total outstanding loans at the time. Though the macroeconomic indicators were positive this year, the banking sector's classified loans still increased steadily from quarter to quarter. The BB Governor advised the banks to bring down the loan defaults.



According to the report, at the meeting, the CEOs said that many of the precarious loans are those extended to commodity traders, who are defaulting after being struck by the vicissitudes of price fluctuations and demand.

And, with the rising bad loans, the banks' capital adequacy ratios are shrinking. This comes at a time when the central bank is preparing to implement BASEL-III, the global regulatory standard on banks' capital adequacy, stress testing and market liquidity risk. In December last year (2013), the banks' capital adequacy ratio stood at 11.52 percent of their risk-weighted assets. At the end of September, that ratio slipped to 10.57 percent.

BIAC notes that the Money Loan Court Act 2003 envisaged expeditious realization of money loans and disposal of money loan cases. Since the amendment of the Act in 2010, it is mandatory for all money loan cases filed to attempt resolution of the disputes through mediation. Thereafter, if the parties fail to reach agreement in mediation, the court processes resume. From an examination of the court statistics, it appears that the banks and parties are failing to take advantage of this progressive provision in the law. Now that there is a pool of qualified mediators, trained under BIAC auspices, the banks and other parties are in a position to utilize the opportunity provided by the law. It is expected that a significant number of the loan default cases could be settled through mediation, which would reduce the burden on the courts and help the banks to realize their default loan as well.

Training on "Labor Mediation: Techniques and Approaches" held on 17 December 2014

In cooperation with the Federal Mediation & Conciliation Service (FMCS), USA, BIAC organized a one-day training programme on Labour Mediation and Problem-Solving Techniques for Workplace Disputes, on Wednesday, 17th December 2014.

The Federal Mediation & Conciliation Service (FMCS) was established by US Congress in 1947 to help employers and unions avoid costly work stoppages and minimize their potentially devastating effects on regional or national commerce. The FMCS, headquartered in Washington, D.C., is best known for its history of successful and innovative advances in labor-management collaboration, joint problem-solving and the resolution of major collective bargaining disputes.

Two trainers Eileen Barkas Hoffman and Matt Cockroft from FMCS conducted the day-long training at Sonargaon Hotel. Thirty trainees participated in the training programme. At the end of the training, certificates were distributed.

An arbitration clause in an agreement between the parties cannot ipso facto render a writ petition "not maintainable" – ruled Supreme Court of India

It has been ruled in the case of M/s. Ram Baral Singh & Co.-v- State of Bihar & Ors. (CIVIL APPEAL NO. 11465 OF 2014), that a constitutional remedy by way of writ petition is always available to an aggrieved party and an arbitration clause in an agreement between the parties cannot ipso facto render a writ petition "not maintainable".

It is a well known principle of arbitration that an arbitration clause in a contract is the shield that protects parties from invoking litigation when disputes arise. Therefore, courts accepting jurisdiction despite existence of an arbitration clause can be said to be fundamentally flawed and one that disrespects parties' agreement to arbitrate. However, a closer analysis of the judgment reveals that the decision given by the Supreme Court of India is indeed consistent with the essence of arbitration and one that gives effect to the actual agreement of the parties.

Following a dispute, the appellant preferred a writ petition bearing C.W.J.C.No.3686 of 2005 to claim the interest on undue delay in refunding the security deposit and against the direction for recovery of certain labour cost. The respondent did not raise the plea of arbitration clause at the writ petition of 2005 or at any of the following proceedings thereafter. Taking this into consideration, the Supreme Court of India ruled that a constitutional remedy by way of writ petition is always available to an aggrieved party and an arbitration clause in an agreement between the parties cannot ipso facto render a writ petition "not maintainable". Availability of alternative remedy is definitely a permissible ground for refusal by a writ court to exercise its jurisdiction in appropriate cases **But once the respondents had not objected to entertainment of the writ petition on ground of availability of alternative remedy, the final judgment rendered on merits cannot be faulted and set aside only on noticing by the Division Bench that an alternative remedy by way of arbitration clause could have been resorted to.** Therefore, although arbitration clause in a contract acts as a shield against a contracting party from invoking litigation

when dispute arises, the shield may turn out to be ineffective if the parties have already agreed to go to court. Once the parties have agreed to go to court to settle the dispute, the presence of a dispute settlement clause in the contract requiring arbitration would not be a bar to court proceedings. It is assumed that the parties have subsequently agreed to another mode of dispute resolution - that is, through litigation.

Law Commission of India Recommends to Revamp Arbitration Law

India has never been a favoured destination for international arbitration. The Law Commission of India has recently issued a report proposing a radical overhaul of the Arbitration & Conciliation Act, 1996 (the '1996 Act').

Even though courts play a pivotal role in giving finality to certain issues that arises before, after and even during arbitration, there exists a serious threat of arbitration related litigation getting caught up in the huge list of pending cases before the courts. For example, after the award, a challenge under the 1996 Act makes the award inexecutable and such petitions remain pending for several years. The objective of quick alternative disputes resolution frequently stands frustrated due to these legal requirements. Law Commission of India made a few recommendations to address these issues, some of which are discussed below.

Institutional Arbitration in India Commission recommended that the High Courts and the Supreme Court of India, while acting in the exercise of their jurisdiction under the Act, will take steps to encourage the parties to refer their disputes to institutionalized arbitration.

Conduct of Arbitral Proceedings The Commission recommended that counsel for parties must refrain from seeking frivolous adjournments or insisting upon frivolous hearings or leading long-winded and irrelevant evidence. The Commission notes that a conscious use of technology, like teleconferencing, video-conferencing etc., should be encouraged to allow a more efficient conduct of arbitral proceedings.

Power of Court to Appoint Arbitrators The Commission has proposed changing the existing scheme of the power of appointment of arbitrator being vested in the "Chief Justice" of the "High Court" and the "Supreme Court" and has expressly clarified that the 'appointment' of arbitrators is not to be regarded as a judicial act, allowing courts to delegate the power of appointment (being a non-judicial act) to specialized, external persons or institutions.

Scope and Nature of Pre-Arbitral Judicial Intervention The Commission has recommended that the scope of the judicial intervention is to be restricted to situations where the Court/Judicial Authority finds that the arbitration agreement does not exist or is null and void. In so far as the nature of intervention is concerned, it is recommended that in the event the Court/Judicial Authority is prima facie satisfied against the argument challenging the arbitration agreement, it shall appoint the arbitrator and/or refer the parties to arbitration, as the case may be.

Powers of Tribunal to Order Interim Measures Under section 17 of the 1996 Act, the parties can approach the arbitral tribunal for interim measure rather than await orders from a Court. The efficacy of section 17 is however, seriously compromised given the lack of any suitable statutory mechanism for the enforcement of such interim orders of the arbitral tribunal. The Commission has, recommended amendments to section 17 of the 1996 Act which would give teeth to the orders of the Arbitral Tribunal and the same would be statutorily enforceable in the same manner as the orders of a Court.

His Excellency Mr. Zigmund Bertok, Ambassador of the Slovak Republic visited BIAC on 29 December 2014.

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