

BIAC



# Quarterly Bulletin

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Bangladesh International Arbitration Centre  
*The Institution for Alternative Dispute Resolution*

International Chamber of Commerce Bangladesh (ICC-B), the world business organisation and two prominent business chambers of Bangladesh namely, Metropolitan Chamber of Commerce & Industry (MCCI), Dhaka and Dhaka Chamber of Commerce & Industry (DCCI) obtained a licence from the Government in 2004 to establish the Bangladesh International Arbitration Centre (BIAC) as a not-for-profit organisation.

BIAC formally started its operation on 9th April 2011. It is an ADR service-provider organisation, facilitating resolution of domestic and international commercial disputes in an expeditious and amicable manner, through Arbitration and Mediation. BIAC has its own Arbitration and Mediation Rules. BIAC's Panel of Arbitrators consists of 11 eminent jurists among them 4 are former Chief Justices of Bangladesh. 48 experts and trained Mediators are in BIAC's list of Mediators. BIAC has developed all the facilities required for systematic and comfortable Arbitration and Mediation and has handled 304 ADR hearings till date.

BIAC offers excellent facilities for Arbitration hearings and Mediation meetings, including two state-of-the-art meeting rooms with audio-aids and recording facilities, arbitrators' chambers, private consultation rooms, transcription and interpreter services. BIAC provides all necessary business facilities like video conferencing, powerful multimedia projection, computer and internet access, printing and photocopying. Full-fledged secretarial services and catering service are also available on request.

As the only Alternative Dispute Resolution (ADR) institution in the country, apart from facilitating Arbitration and Mediation, BIAC also provides training courses on ADR, especially Arbitration, Mediation and Negotiation.

BIAC has taken initiative of providing specialised ADR training courses for different sectors, for instance, ADR in Money Loan Court Act, ADR in Procurement Disputes, ADR in Human Resource Management and others. BIAC also organises training programmes abroad jointly with those ADR centres which BIAC has signed collaboration agreements with. Till date, BIAC has organised 10 ADR courses, 27 arbitration training courses, 21 mediation training courses, 10 negotiation training courses, 1 Risk Management training Course and trained 1618 participants.

From the very beginning, BIAC has been working hard to create awareness about ADR facilities by conducting several outreach programmes, seminars, workshops and dialogues. BIAC has arranged 129 workshop/seminar/webinar/dialogues as of September 2020. BIAC has received recognition by signing cooperation agreements with 17 International ADR Centres, namely, The Permanent Court of Arbitration (PCA), SAARC Arbitration Council (SARCO), Asian International Arbitration Center (AIAC), Vietnam International Arbitration Centre (VIAC), Malaysia Arbitration Tribunal Establishment (MATE), Thailand Arbitration Center (THAC), Singapore International Arbitration Centre (SIAC), Indian Institute of Arbitration and Mediation (IIAM), Hong Kong Mediation Center (HKMC), Mainland-Hong Kong Joint Mediation Center (MHJMC), Hong Kong International Arbitration Centre (HKIAC), Institute for the Development of Commercial Law and Practice (ICLP), Sri Lanka, Bombay Chamber of Commerce & Industry (BCCI), India, Bridge Mediation and Consulting Pvt. Ltd., India, International

Commercial Arbitration Service Center of Kunming (KICASC), China, Badan Arbitrase Nasional Indonesia (BANI) and The Philippine Institute of Arbitrators (PIArb).

Moreover, 26 leading corporate companies, banks, real estate companies, NGOs, Insurance companies, universities, law firms and financial institutions have signed Memoranda of Understanding (MoU) to seek BIAC's assistance in matters related to ADR, namely, Green Delta Insurance Company Limited, Building Technologies and Ideas Ltd. (bti), Friendship Bangladesh, The City Bank Limited (CBL), First Security Islami Bank Limited (FSIBL), Dhaka Bank Limited (DBL), Eastern Bank Limited (EBL), Islami Bank Bangladesh

## STATISTICS SINCE INCEPTION



## MISSION

BIAC aims to embed the use of ADR as a commercial best practice to help/assist/facilitate creation of an ecosystem that fosters investment and is conducive to business

## VISION

BIAC is committed to be a credible and a sustainable national institution that aims to offer international commercial best practices on ADR service to individual and institutions seeking to resolve commercial dispute

Ltd. (IBBL), Mutual Trust Bank Ltd (MTB), IFIC Bank Limited, Mars Financial And Legal Consultancy Limited (MARS), Anwar Group of Industries (AGI), Apex Group of Companies, International Centre for Diarrhoeal Disease Research, Bangladesh (icddr'b), RANGS Group, Skayef Bangladesh Limited (SK+F), Summit Alliance Port Ltd., TRANSCOM LIMITED, University of Liberal Arts Bangladesh (ULAB), Prime Bank Limited, London College of Legal Studies (South), Rahman & Rabbi Legal, London College of Legal Studies (North), AB Bank Ltd., One Bank Ltd. and Accord Chambers.



**Bangladesh International Arbitration Centre**  
*The Institution for Alternative Dispute Resolution*

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## From the Editor

Bangladesh International Arbitration Centre (BIAC) started operation back in 2011 on 9th of April. We take this opportunity to express our heartiest gratitude to all our patrons, supporters, clients, well wishers, friends and compatriots for staying by our side over the years as well as when we strive to reach new heights.

We understand that the devastation being caused since the last day of 2019 around the globe owing to outbreak of the dreadful novel Corona virus called COVID-19 was unforeseen. It has already cost over 1 million human lives across the world. Painfully of course, it was the insouciance at the outset that caused the irreparable loss of human life and economic catastrophe even among the wealthiest nations. As the situation intensified, it became a grave concern for all of us as to how we can navigate this crisis. We are a nation that fought a glorious war of liberation 49 years ago and we are confident that with national commitment and spirit of the war we won, we will surely overcome the current war too in defeating the pandemic.

BIAC is concerned about the well being of the community and ensuring all measures for the safety of our patrons, stakeholders and users of our facilities. As the only registered Alternative Dispute Resolution (ADR) institution in the country we understand how important access to justice is, given the backlog of nearly 3.7 million pending cases in all types of courts in the country and BIAC has a crucial role to play in delivering the same, especially during the current hard time. We at BIAC pledge to serve our patrons to the best of our abilities and we will continue to do so as we are steadily getting attuned to the new normal world.

Happy reading, we look forward to your valuable suggestions towards improvement of this humble publication.

## BIAC Quarterly Bulletin

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## BIAC News

### The Supreme Court Special Committee proposes video/audio conferencing

20 April 2020

The Supreme Court Special Committee for Judicial Reforms has proposed that the court operations be continued through video/audio conferencing. The Supreme Court of Bangladesh has agreed to adopt the same gradually. This is indeed a commendable initiative taken by our legal fraternity and a very timely one at that. Extraordinary circumstances call for extraordinary measures! The third organ of the State, the guardians of the Constitution, the Bangladeshi Judiciary is rising to the occasion. The Supreme Court Special Committee for Judicial Reforms had its first Virtual Meeting on 20 April, 2020 under the dynamic leadership of Mr. Justice Mohammad Imman Ali to explore the possibility of virtual operation of the judiciary. The Supreme Court Child Rights Committee had its first virtual meeting earlier this month for early release of children from CDC (jail).

On the possibility of virtual operation of the judiciary, Dr. Justice Syed Reefat Ahmed, a member of the SC Special Committee for Judicial Reforms stated that, "This is a glimpse into the future. We must be 'seen to serve' our natural constituents, i.e., litigants. As for the Bar, as a preeminent stakeholder, its learned members must stay in a constant and immediate state of preparedness for a future joint enterprise." He further informed that "a pragmatic and holistic approach is

being taken, balancing all factors and engaging all stakeholders. The Bar is definitely on board as are technical experts and infrastructure providers. The Committee, you will note, is proceeding on comprehensive evaluations and studies already done and assessments of sustainable innovation carefully scrutinised. The temporal, phased-in approach bearing relevance to (a) the pandemic and epidemiologically uncertain initial phase & (b) 'post-pandemic'/'COVID-19 retreat' period of greater epidemiological certainty but socioeconomic and political fluidity is significantly meriting our concern. Further, interventions are being studied at three crucial points- (a) access to justice, (b) nature and scope of deliverables & (c) substantive value/quality of service deliverable. This is not a one-off initiative nor a half-hearted exercise but one as has crucially been ongoing through intensive behind-the-scenes efforts."

Mr. Justice Moeenul Islam Chowdhury, a former Judge of the High Court Division and a former member of the SC Special Committee for Judicial Reforms commented that "Dynamic and forward-looking judicial leadership is the need of the hour with a view to starting virtual courts during lockdown."

<https://www.facebook.com/akhtarimamassociates/posts/1137799053225284>

### Bangladesh wins international arbitration against Niko

2 May 2020

Bangladesh has won an arbitration law suit against Niko Resources (Niko) as an international court has found the Canadian company responsible for the blowout incidents in Chattak gas field in Sunamganj more than 15 years ago. State Minister for power and energy Nasrul Hamid disclosed the information. The state minister will brief the media about the verdict delivered by the International Centre for Settlement of Investment Disputes (ICSID).

On 28 February this year, the Tribunal formed under the ICSID found that Niko was liable for the blowout as the drilling was being carried out under its arrangements and supervision. The Tribunal concluded that Niko must compensate BAPEX for direct loss and damage caused by the blowout. The

verdict will pave the way for the government to realise compensation from Niko for the damages caused by the blowout accident in Chattak Gas Field, said Barrister Moin Ghoni, the counsel of state-run Petrobangla. He told the Daily Sun, "We are assessing the volume of damage and the assessment will be submitted to the court before the next hearing."

The next hearing was scheduled for September-October this year, but this might be deferred amid the COVID-19 crisis, Barrister Moin added. "I am hopeful that we will get the full compensation early next year after the hearing," he added. Nasrul Hamid said the compensation would be over \$1 billion due to the damages caused to properties and gas reserves in and around the Chattak

gas field known as Tengratilla Gas Field. He added that the government will not pay the outstanding gas bills to the Niko as well.

On June 15, 2008 Petrobangla and the government instituted a Money Suit to seek compensation from Niko on the order of Tk 7.47 billion for its negligent acts. Niko had filed the arbitration case with ICSID in 2010 seeking a declaration that it was not liable for the blowout at Chattak in 2005. After ten years of complex and prolonged proceedings, the Tribunal has now concluded that the blowout was caused by Niko's breaches of its obligations as an Operator under the Joint Venture Agreement (JVA) between Niko and BAPEX, said Ghoni. "The Tribunal found that Niko was liable because of its failure to conduct operations diligently and in conformity with the standards of the international petroleum industry."

The company recently reported it was owed \$37 million as of June 30 in withheld payments from its 60 per cent interest in the Bangladesh gas fields. Niko was awarded the right to develop the Chattak gas field in 2003. "While drilling its first well, it caused a major blowout that resulted in damage to the gas field, the environment and the surrounding area, including the town of Tengratilla," a Petrobangla official said. A second blowout occurred as Niko attempted to drill a relief well to plug the blowout. The government

immediately formed a commission to investigate and determine who was responsible for the blowouts, which ultimately determined that Niko was responsible.

The compensation owed by Niko to BAPEX includes the gas that escaped from Chattak 2 Well. The identification of other loss and damage that Niko must compensate and the quantum of such compensation are to be determined at the next phase of the pending arbitration case. In 2011, Niko was found guilty in a Calgary courtroom, Canada to bribing then BNP government-backed minister AKM Mosarraf Hoosain with a luxury SUV and trips to New York and Calgary in the wake of the 2005 blowout. The company agreed to pay a \$9.5-million fine. Article-3 of the agreement between Niko and Bapex says the development and production of petroleum from the marginal gas fields at Chattak and Feni is at the sole risk, responsibility and expense of Niko which is the exclusive operator of these fields. As per the article 27.2 of the agreement, Niko is obliged to conduct all operations in a "diligent, conscientious and workmanlike manner and bear responsibility in accordance with the laws applicable for any loss or damage to third parties caused by the wrongful or negligent acts or omissions of the Operator".

[https://www.daily-sun.com/post/479564/Bangladesh-wins-in-arbitration-against-Niko-?fbclid=IwAR0MP3uyaToBpmeaUXGeTChLUVKsih8n\\_0DLxrZdRZ4ZkcCdLdVDtKSkvp8](https://www.daily-sun.com/post/479564/Bangladesh-wins-in-arbitration-against-Niko-?fbclid=IwAR0MP3uyaToBpmeaUXGeTChLUVKsih8n_0DLxrZdRZ4ZkcCdLdVDtKSkvp8)

## BIAC Remembers Mrs. Niloufer Manzur

29 May 2020



We are deeply saddened at the sudden demise of Mrs. Niloufer Manzur, wife of Syed Manzur Elahi and mother of Syed Nasim Manzur. Messrs. Manzur Elahi and Nasim Manzur are well-wishers of

BIAC and have been supporting our cause since inception. Mrs. Manzur's passing away is a great loss

for the country, particularly for those who know her contributions to the community and the nation. She was an enlightened human being and an educationist who set up the Sunbeams School, one of the finest schools in the country. She lives on through the diasporas of her students all over the world.

## BIAC organised first ever online learning session on "Arbitration and Mediation" in the country.

25 June 2020



Due to the COVID-19 catastrophe invading all over the globe, the whole world is on full or partial lockdown; as such the Governments around the world are encouraging people, especially students to stay home. In this situation, students are home quarantined and are facing less pressure of studies. This is a great time to enrich our students' knowledge, and perhaps even to prepare them for professional advancement.

Recently, BIAC organised an Online Learning Session on Arbitration and Mediation via Zoom keeping the future of students in mind. This course was available for the students of Law and Business. In

the beginning of the programme, Mr. Muhammad A. (Rume) Ali, Chief Executive Officer of BIAC welcomed all participants and resource persons. He started by addressing BIAC as the first and only licensed ADR institution in the country that provides physical facilities for Arbitration and Mediation and organises professional trainings in Arbitration and mediation which will help a long way in creating a pool of ADR professionals in the country. He also added that BIAC introduced its Arbitration Rules in 2011 and Mediation Rules in 2014 both of which have been updated in 2019 making them more user friendly. BIAC has its experienced panel of

independent arbitrators, list of mediators and excellence in serving its clients said Mr. Ali. Later a brief presentation on emergence and activities of BIAC was delivered by Mr. M A Akmal Hossain Azad, Director of BIAC.

Dr. Khaled Hamid Chowdhury, Head of Laws, London College of Legal Studies (South) and Senior Partner, Chowdhury and Ullah and Mr. Shahriar Sadat, Academic Coordinator of BRAC University conducted the session. 65 participants from different public and private universities of Bangladesh participated in the programme. The session was moderated and hosted by Ms. Mahbuba Rahman Runa, General Manager of BIAC.

## BIAC and Accord Chambers sign Cooperation Agreement to promote institutional Alternative Dispute Resolution

28 June 2020



Accord Chambers is a dynamic and reformist law firm based in Bangladesh that offers full service “complete legal solutions” to its domestic and international clients. The firm’s core ethos is not to confine itself within the tenets of conventional law firms in the region but to take a step beyond: advance a one-stop complete package for its clients. The firm advises not only on mainstream legal affairs, including litigation and dispute resolution, but also on investments, transactions, business strategies and operations from the perspective of Bangladeshi laws and regulations.

BIAC and Accord have agreed to enter into a cooperation in order to promote institutional ADR in the country and internationally. Pursuant to this, the parties will promote use of institutional ADR clause in all commercial contracts, organise joint outreach and advocacy programmes, work with different stakeholders, encourage capacity building, etc. The teams had a video conference to discuss the



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parameters of the cooperation in June 2020 and were very enthusiastic about working together. In

view of the ongoing pandemic the parties have electronically signed the cooperation agreements and intend to have a celebration later on. However, the parties are keen on announcing their cooperation and start working on projects to take ADR forward immediately.

The cooperation agreement was signed by Mr. Suhan Khan, Managing Partner and Lead Counsel, International Arbitration Practice at Accord Chambers and Mr. Muhammad A. (Rume) Ali, CEO of BIAC. During the team discussion Mr. Mamun Chowdhury, Senior Partner and Head of Dispute Resolution Practice, Mr. Rafiul Habib, Senior Associate and Head of Project Finance Practice and Mr. Sayedul Munim, Associate and Co-Counsel, Dispute Resolution Practice from Accord Chambers and Mr. M A Akmal Hossain Azad, Director, Ms. Mahbuba Rahman, General Manager and Ms. Rubaiya Ehsan, Counsel from BIAC were also present.

## Experts favour forging unity among RMG sector

29 June 2020



Experts in a Webinar on Problems in Trade and Supply Chain organised by Bangladesh International Arbitration Centre (BIAC) held on 29 June 2020 urged upon garments owners and entrepreneurs in the RMG sector to forge unity among them at this hard time of growing spread of COVID-19 pandemic throughout the globe. The Webinar aimed to discuss on the possible impacts of COVID-19 on the ongoing





Alternative Dispute Resolution (ADR) proceedings, risk factors and how to manage risks in Trade and Supply Chain.

The purpose of the Webinar was also to explore available ADR mechanisms to avoid and resolve disputes arising from the impacts of the COVID 19 crisis in a most efficient way.

Speaking on the occasion BIAC Chairman Mahbubur Rahman opined that formal contracts between the buyers and exporters must be enforced to save our RMG industry. He emphasised the need of Government intervention in this regard.



CEO of BIAC Muhammad A. (Rume) Ali in his welcome address said that BIAC as the country's only licensed ADR institution which is also recognised by the Permanent

Court of Arbitration, the Hague, has been relentlessly trying to resolve business disputes through Arbitration, Mediation and other methods of ADR. In the wake of COVID-19, international trade is suffering a lot with the disruption of supply chain he said and added that in Bangladesh RMG sector is the worst hit area during the ongoing pandemic, none knows when it will be over. Ali said that as power imbalance between the parties arises, contracts between them become un-implementable hence mediation is needed for fairer outcome for the Bangladeshi exporters. As moderator of the event he summed up the discussion after a question answer session.

Six outstanding Panellist Discussants took part in the discussion and viewed the issues of problems in trade and supply chain from their own perspectives.



Anwar-Ul Alam Chowdhury (Parvez), Managing Director, Evince Group and a former President of Bangladesh Garment Manufacturers and Exporters Association (BGMEA) in his deliberation said that

though we have 'civilised rule of law', we cannot abide by those during this COVID catastrophe. He stressed the need of adhering to a more comprehensive Letter of Credit which should be supported by a mutual contractual Pro Forma Invoice.



Taking part in the discussion Md. Fazlul Hoque, Managing Director, Plummy Fashions Ltd. and a former President of Bangladesh Knitwear Manufacturers and Exporters Association (BKMEA)

emphasised forging unity among the exporters and owners of the garments industry especially at this critical juncture when the existence of the industry is already at stake where an order of 3 billion USD has been cancelled

by the buyers. We must be organised and ensure enforcement of minimum standard of rules, Hoque said and opined that BIAC may come up to guide all the parties to arrive at a consensus to effectuate contracts.



Dr. Khaled Hamid Chowdhury, Senior Partner, Chowdhury and Ullah, law firm and Head of Laws, London College of Legal Studies (South) said that in the next 5

years global economy is projected to sustain a loss of over 82 trillion USD. We have huge supply chain disruption and we are set to suffer colossal loss in garments, manpower and education sectors, among others, Dr. Chowdhury opined and said that the 'force majeure' issue an event which is outside the reasonable control of a party and which prevents that party from performing its obligations under a contract, has surfaced as a specific consequence of COVID. He urged upon businesses, bankers and lawyers to be united to combat the crisis and help regain boost of the RMG sector of the country which earns 80% of the foreign exchange. He said that BIAC has time tested Rules of Arbitration and Mediation and mandatory insertion of ADR clause in all business contracts will help implement rational performance to the benefit of our garments industry.



Shafayat Ullah, EVP and Head of Group Legal Affairs, Mutual Trust Bank Ltd. took part in the discussion and said that

with our courts being overburdened with case dockets, let us divert to institutional dispute resolution mechanism where BIAC can play a pivotal role. He stressed the need of heralding a wakeup call to be united to save our garments industry giving lawyers a scope to renegotiate disputing issues between the parties. He also favoured change in our mindset to bargain with the mighty buyers and overcome the current crisis our industry is facing with mammoth disruption in the supply chain.



Mohammed Forrukh Rahman, Head of Chamber, Rahman's Chambers, law firm, in his deliberation cited cases arising out of the ongoing COVID pandemic and emphasised on arriving at

mutual understanding between the contracting parties and a synchronised mechanism of rights and liabilities of parties in terms of Letter of Credit and contractual obligations under Pro Forma Invoice. He stressed the need of training for creating awareness and appreciating the importance of contracts by bankers. BGMEA and BIAC may take the lead in this regard, Rahman opined.



Ahmed Shaheen, Deputy Managing Director and Head of Corporate Banking, Eastern Bank Ltd. took part in the discussion and said that in the RMG sector bankers are sandwiched between faulty

contracts and irregular LCs. He urged upon leaders of the garments industry to concentrate more on fighting back with the buyers in a concerted manner than competing with one another. We must restructure and enforce contracts at this hard time of pandemic, Shaheen said.

## BIAC mourns sudden demise of our Founder Board Member Mr. Latifur Rahman

1 July 2020



We are deeply saddened at the demise of one of our founding Board Members Mr. Latifur Rahman. Mr. Rahman was Chairman and CEO of Transcom Group and Vice President of International Chamber of Commerce-Bangladesh (ICC-B). He was one of the members who founded BIAC with our Chairman Mr. Mahbubur Rahman and had been a

constant support to BIAC since 2004. He was instrumental in guiding and framing most of the policy documents of BIAC. As a new institutional concept in Bangladesh, his role was critical in BIAC's formative years. BIAC joins the entire nation in expressing our deepest condolences to the bereaved family and pray to the Almighty for his eternal peace.

## BIAC Remembers Mr. Naren Das, Secretary of Legislative and Parliamentary Affairs Division

23 July 2020



We are deeply saddened at the sudden demise of Mr. Naren Das, Secretary, Legislative and Parliamentary Affairs Division. Our condolences are to his family on this bereavement. Mr. Das was a well wisher of BIAC. His passing is an irreparable loss to the nation. Our prayers are to the

Almighty to bless him and grant him eternal peace. Late Mr. Das distributed certificates among trainee officers including Senior Assistant Secretaries of the L&PA Division on completion of a daylong training course on Arbitration and Mediation organised by BIAC on 25 January 2020.

## Experts in favour of prudent invocation of Force Majeure Clause in commercial contracts during COVID-19

27 July 2020



Experts in a webinar on "Application of Force Majeure Clause: Should COVID-19 Be Included?"-organised by Bangladesh International Arbitration Centre (BIAC) held on 27 July 2020 emphasised prudent invocation of Force Majeure Clause in commercial contracts at this hard time of growing spread of COVID-19 pandemic throughout the globe. They also urged upon entrepreneurs to forge unity among themselves. The webinar aimed to discuss on

the possible impacts of COVID-19 on the ongoing ADR proceedings, applicability of Force Majeure clause, risk factors and how to manage risks arising out of commercial contracts.

Six outstanding Panellist Discussants took part in the discussion and viewed the issues of Application of Force Majeure clause in the current COVID-19 scenario from their own perspectives.



Justice Md. Rezaul Hasan (M R Hasan), Judge of the High Court Division, Supreme Court of Bangladesh in his deliberation said that only unforeseeable circumstances that prevent someone from fulfilling a contract or irresistible compulsion come under the purview of Force Majeure, but proximate cause of non performance of contract is government order, not Force Majeure itself. In existing laws there are remedies of non performance of contract and Force Majeure clause is not applicable as a proximate cause,



except in shutdown, lockdown, stoppage of traffic which are followed pursuant to government orders, he said. Justice Hasan emphasised prudent invocation of Force Majeure Clause in commercial contracts only under unforeseeable circumstances during COVID-19.



Speaking on the occasion BIAC Chairman Mahbubur Rahman opined that commercial contracts chiefly base on mutual trust between the parties; unless there is any comprehensive contract, Force Majeure clause cannot be enforced. During the spread of COVID-19, in some cases Force Majeure may be applicable where flights and movement of sea going vessels and surface transport have been shut down or restricted by governments, he said. Mahbubur Rahman, also President of International Chamber of Commerce-Bangladesh stressed the need of fixing favourable terms for our exporters in the Pro Forma Invoices, so that Force Majeure issues cannot be misinterpreted by the buyers for their own interest.



The Webinar conducted through Zoom transmission was moderated by Barrister Sameer Sattar, Advocate of Bangladesh Supreme Court and Head of Firm, Sattar & Co. A Question Answer session followed the discussions and Moderator of the webinar Barrister Sameer Sattar summed up the deliberations hoping that recommendations from this webinar will help our exporters to negotiate with foreign buyers more efficiently and create more awareness among them for inserting appropriate dispute resolution clause in commercial contracts. He also emphasised out of court settlement of disputes through institutional arbitration and mediation in which BIAC can contribute enormously.



Chief Executive Officer of BIAC Muhammad A. (Rumee) Ali in his opening remarks said that BIAC as the country's only licenced ADR institution and also recognised by the Permanent Court of Arbitration, the Hague, has been relentlessly trying to resolve business disputes through Arbitration, Mediation and other methods of ADR. In the wake of COVID-19, international trade is suffering a lot where performance of contract has become difficult in many cases, he said and added that in Bangladesh garments and textiles sectors are the worst hit areas during the ongoing pandemic. He opined that applicability of Force Majeure clause will largely depend upon awareness of business concerns, bankers and lawyers as well as coordinated response from the central bank and the concerned Ministries. BIAC is ready to offer training programmes for

creating such awareness among officials and leaders of businesses, the legal community and the banking industry, Ali affirmed. He offered BIAC's facilities under its virtual rules of arbitration and mediation to explore how contracts between the parties can be dealt with given the current crisis lasts long.



Taking part in the discussion, Miran Ali, Director, Bangladesh Garment Manufacturers and Exporters Association (BGMEA) said that contracts are not always negotiated with the foreign buyers properly which are based on trust and we have lack of negotiation skills. Buyers seek confidence in the market despite all untoward situations and an underlined contract cannot be undermined, Ali opined. It is high time for Bangladesh, especially the banking sector to consider and determine that no contract should be without a logical dispute resolution clause, he maintained.



Rahel Ahmed, Managing Director and CEO of Prime bank Ltd. in course of his deliberations said that invocation of Force Majeure clause is very rare and banks are bound to go by terms and conditions of the Letter of Credit; either of the contracting parties can only enforce Force Majeure clause. He said that the central bank gave some regulatory relaxations to support banks. But COVID-19 should be covered under a Force Majeure clause, has not been seen so far, Ahmed observed.



Dr. Md. Anowar Zahid, Dean, Faculty of Laws, Eastern University saw the issue from an academic point of view and explained implications and possible application of Force Majeure clause in COVID-19 situation. Taking part in the discussion Dr. Zahid opined that Force Majeure clause in commercial contracts on a COVID-19 plea is not applicable clause, it will only depend on special circumstances to be determined by courts of law considering prevailing contracts.



Barrister Margub Kabir, Advocate of the Supreme Court of Bangladesh in his deliberations categorised that Force Majeure is something which stops or hampers performance of contracts and no contract can be terminated invoking Force Majeure clause due to economic hardship of a party. Kabir stressed the need of codifying the trust between the parties into a comprehensive contract.

Iram Majid, Director, Indian Institute of Arbitration and Mediation (IIAM) took part in the webinar as



one of the panelists and opined that applicability of Force Majeure clause is case specific and courts are to determine whether either of the contracting parties can enjoy the benefit of such clause in COVID-19 situation. She said that losing a job cannot be protected by Force Majeure clause. Iram insisted

that for applicability of Force Majeure clause during COVID-19, it should be carefully drafted considering hardship of both the parties and how the COVID-19 factors can be covered under such clause.

Also present in the webinar Director of BIAC M A Akmal Hossain Azad made introductory remarks.

## BIAC CEO joins international webinar on 'The Future of Dispute Resolution: A Post Pandemic World in Focus' as Guest Speaker

30 July 2020

The Chief Executive Officer of Bangladesh International Arbitration Centre (BIAC) Muhammad A. (Rumee) Ali talked as the Guest Speaker at a webinar on "The Future of Dispute Resolution: A Post Pandemic World in Focus" organised by Rahman & Rabbi Legal Law Chambers, Dhaka, on 30 July 2020. He gave a critical analysis of our court proceedings and advantages of Alternative Dispute Resolution (ADR) methods to mitigate commercial disputes. He said that before emergence of BIAC in 2011 the scope of institutional ADR was totally absent in Bangladesh. Ali emphasised on Arbitration and mediation to resolve business and commercial disputes expeditiously and offered BIAC's services in this regard. He said that BIAC has its own updated Rules



of Arbitration and Mediation. The CEO of BIAC insisted on wider access to justice through best use of institutional ADR which can help further democratise our justice system and establish Rule of Law.

## Alternative Dispute Resolution mechanism can save banking industry from risk profile and protect garment sector, speakers suggest in a webinar

13 August 2020



Speakers in a webinar on "Risk Management during COVID-19: How an Alternative Dispute Resolution Clause can strengthen and protect Banks and the RMG Sector?"- organised by Bangladesh International Arbitration Centre (BIAC) held on 13 August 2020 emphasised application of Alternative Dispute Resolution (ADR) mechanism in order to save the country's banking industry from risk profile and protect the Ready Made Garment (RMG) sector during the present difficult time of COVID-19.

The webinar aimed to focus on the possible impacts of COVID-19 on the ongoing ADR proceedings, risk factors and how to manage risks arising out of commercial transactions. Business leaders, bankers, lawyers, economists and ADR experts from home and abroad, academicians, corporate representatives and students participated in the webinar.

Addressing the webinar Chairman of BIAC Mahbubur Rahman said that we are already suffering heavily due to Non Performing Loans (NPLs) and outbreak of the pandemic may increase the level of NPLs in the coming days; we need to appreciate the situation more judiciously. For the economic sustainability of Bangladesh, RMG, the key trading sector, needs due support through adequate, smooth and effective trade services by banks which must ensure proper risk identification, management and compliance issues in the process of offering the required trade services, Rahman maintained.



Asif Ibrahim, Director, Bangladesh Garment Manufacturers and Exporters Association (BGMEA)





in his deliberations said that ADR can be a suitable tool to mitigate power imbalance between our exporters and foreign buyers. He opined that popularisation of the concept and practice of ADR is very important at this crucial turning point of the country's economy.



The Webinar through Zoom was moderated by CEO of BIAC Muhammad A. (Rume) Ali, who in his introductory remarks said that our RMG sector is the largest foreign exchange earner which has been playing a pivotal role in empowering women having over 3 million women workers employed in the sector. Our garment industry is widely acclaimed throughout the globe for its safety measures, he said. Ali maintained that during the current global crisis of COVID-19 our RMG industry is at stake where buyers walked away and banks are facing mammoth risk mitigation issues. For the greater interest of the national economy it is high time to protect the interests of both the garment sector and the banking industry, which can only be done through resorting to best practices of ADR, for which BIAC is prepared to offer its services in terms of arbitration and mediation, CEO of BIAC determined. He insisted on mandatory insertion of an ADR Clause in all commercial contracts which can help resolve business disputes expeditiously.



Taking part in the discussion Sohail R.K. Hussain, M D & CEO of Meghna Bank Ltd. said that in the wake of COVID-19 both courts and banks are facing extra ordinary challenges. He stressed the need of practicing ADR to reduce pressure on the courts, save the banking industry from risks and help the RMG sector overcome all odds and flourish in a new normal world.



Faisal Samad, Senior Vice President, Bangladesh Garment Manufacturers and Exporters Association (BGMEA) saw the issue from a legal perspective and sought protection of the RMG industry by strict legal mandate. He opined that ADR is required for survival of not only the garment sector, but also the banking industry.



Tarique Afzal, President & M D of AB Bank Ltd. in his deliberations categorised that discrepancies in Letters of Credit eventually compel banks to run risks at higher scale which can be mitigated by



provision of ADR clauses in all commercial contracts. A well structured ADR clause can protect multiple interests of banks and RMGs, Afzal maintained.

Barrister Rashna Imam, Managing Partner, Akhtar Imam & Associates said that COVID-19 has contributed to higher NPLs and added to the colossal backlog in the courts and it has become difficult to address disputes between exporters and buyers in the RMG sector, where some buyers tend to take advantage of Force Majeure issues on flimsy grounds, not tenable in law. She favoured ADR clause in all contracts for efficient risk management by banks and sustainability of the RMG sector.



Barrister Md. Monzur Rabbi, Head of Chambers, Rahman & Rabbi Legal taking part in the discussion opined that existing laws relating to arbitration and mediation should be reviewed to incorporate provisions so that adversely affected parties may choose between procedural and summary processes. BIAC's own institutional Rules for arbitration are unique and the BIAC clause can help both banks and RMGs to address their risk factors arising out of commercial contracts, Rabbi insisted.



Dr. M. Masrur Reaz, Chairman, Policy Exchange of Bangladesh in his deliberations said that in Bangladesh, COVID-19 has disrupted the supply chain leading to negative impact in overall international trade of the country. With long suspension of courts' proceedings and banks becoming insolvent, ADR has come to limelight with renewed force, Reaz maintained and preferred ADR clause in all commercial contracts for the greater interest of the banking and RMG industries.



Barrister Ho Meng Hee, Director, ADR of Financial Industry Disputes Resolution Centre (FIDReC), Singapore took part in the webinar as one of the Panellists and emphasised promotion of ADR practices in Bangladesh. He said that skepticism about inclusion of an ADR clause for mutual benefit of the adversaries should be done away with through training and research for which BIAC can be an ideal platform. Director of BIAC M A Akmal Hossain Azad closed the session.



## BIAC team visits Bangladesh Infrastructure Finance Fund Limited (BIFFL)

24 August 2020

BIFFL is the biggest Non-Banking Financial Institution in Bangladesh owned by the Government having authorised capital and paid up capital of BDT 100 billion and BDT 20.10 billion respectively. Addressing the importance of infrastructure development vis-à-vis insufficient investment in that particular sector, with a view to promote an attractive environment for sustainable private investment, it was established in 2011 as a special purpose vehicle to mobilise the PPP budget through financing infrastructure projects building partnership with private sector investors.

BIFFL was represented by Messrs. S. M. Anisuzzaman, Chief Executive Officer, Asif Ahmed Khan, Senior Officer (Technical) and Mokabbir Sarkar, Unit Head (Legal) while BIAC was represented by Mr. M A Akmal Hossain Azad, Director and Ms. Rubaiya Ehsan Karishma, Counsel. During the discussion Mr. Anisuzzaman mentioned that BIFFL contracts include an arbitration clause on a regular basis given the contracts involve various projects and international counterparts. More often than not, the seat of the arbitration in such contracts is in Singapore and Hong Kong as preferred by the international parties.



However, Mr. Sarkar pointed out that in some of the local BIFFL contracts, involving local parties, the arbitration clause specifically states BIAC as the place of arbitration and the seat shall be in Dhaka. BIAC team pointed out the benefits of having the seat of arbitration in Bangladesh and agreeing to specific Rules for Arbitration beforehand. Especially during this pandemic, the RMG sector has realised the same the hard way. BIAC pointed out that we are equipped to handle mediation and arbitration either physically at our premises or virtually considering the well-being of the parties.

## Institutional Alternative Dispute Resolution framework emphasised by experts in a webinar

31 August 2020



Speakers in a webinar on “Ad hoc versus Institutional Alternative Dispute Resolution” organised by Bangladesh International Arbitration Centre (BIAC) held on 31 August 2020 emphasised the need of fostering Alternative Dispute Resolution (ADR) through institutional framework in order to settle commercial disputes more efficiently in a cost effective and expeditious manner. They also opined in favour of integrating ADR mechanism with court proceedings with a view to quick dispensation of justice given the huge backlog of as many as 3.7 million cases pending in all courts across the country.

The webinar aimed to focus on advantages and disadvantages of ad hoc and institutional ADR, the

possible impacts of COVID-19 on the ongoing ADR proceedings and how to address risks arising out of commercial transactions. Business leaders, bankers, lawyers and ADR experts from home and abroad, academicians, corporate representatives and students participated in the webinar.

Addressing the webinar Chief Executive Officer of BIAC Muhammad A. (Rumee) Ali said that for the sake of good governance in the realm of dispute resolution, resorting to institutional ADR mechanism is a must which provides with specific rules, is open for public viewing and institutions like BIAC can always change rules to cater to the need of users, especially during a COVID-19 situation where propensity of non performance of contractual obligations has been on the rise.



Osama Taseer, a garment sector leader, Chairman of Four Wings Limited, and former President of Dhaka Chamber of Commerce & Industry in his deliberations said that institutional arbitration is most suitable in the context of international business disputes

which can be held in many places having set rules and procedures, established format and expert arbitrators.



The webinar through Zoom transmission was moderated by Barrister Saqeb Mahbub, Advocate, Supreme Court of Bangladesh and Partner, Mahbub & Co., who in course of the discussion preferred institutional arbitration to an ad hoc process and opined that insertion of the BIAC arbitration clause in all business contracts can be the best way to settle disputes between adversaries amicably.



Dr. Jamila A. Chowdhury, Professor of Law, university of Dhaka explained the theme of the webinar and stressed more on adhering to institutional form of mediation as she maintained that arbitration is a win-loss adversarial approach. She argued in favour of mediation to settle newly emerged disputes during the COVID-19 crisis period.



Md. Abdul Wadud, Deputy Managing Director of the City Bank Limited viewed the issue from both pre COVID-19 and post COVID-19 situations and maintained that institutional ADR can bring adversarial parties together and do away with their reluctance to resolve disputes amicably. In this regard BIAC's Rules of Arbitration and Mediation can help all concerned to arrive at a mutually acceptable agreement either by arbitration or by mediation, during the ongoing COVID-19 scenario where existing contracts are being frustrated by non performance on flimsy grounds.



Barrister Suhan Khan, Advocate, Supreme Court of Bangladesh and Managing Partner, Accord Chambers in his deliberations opined that taking the advantages of institutional arbitration

with no uncertainty in set rules and having prescribed cost effectiveness Bangladesh can well step up to the modern world's dispute resolution mechanism.



Kritika Krishnamurthy, Director, Bridge Policy Think Tank, India took part in the webinar as one of the Panellists and emphasised promotion of Institutional arbitration and mediation. She said that given the option to choose between ad hoc and institutional ADR, none would prefer ad hoc procedures in India. Neither in India nor in Bangladesh ad hoc ADR is feasible to resolve commercial disputes, she opined and stressed the need of more practicable legislation in order to strengthen institutional framework of ADR.



On a different note, Barrister Imtiaz Farooq, Advocate, Supreme Court of Bangladesh and Head of Farooq & Associates said that empirically he is in favour of ad hoc arbitration. He argued that if there is a breach of existing contract there is no mandatory obligation by the parties to go by any new rules framed under changed circumstances including in a COVID-19 state of affairs.



Director of BIAC M A Akmal Hossain Azad in his opening remarks said that BIAC has reacted to the current global crisis of COVID-19 pandemic and the future new norms for handling commercial dispute resolution. He emphasised practice of institutional arbitration under BIAC Rules in order to ensure quick dispensation of justice and thereby increasing the country's position in Doing Business Global Index and be able to invite more Foreign Direct Investment and contribute towards overall economic development of the country.

## Experts in a virtual webinar organised by BIAC and ICADR, India prefer mediation as a tool of commercial dispute resolution

17 September 2020



A webinar held on virtual platform on 17 September 2020 on "Mediation before Arbitration or Litigation?"

was organised jointly by Bangladesh International Arbitration Centre (BIAC), the first registered Alternative Dispute Resolution (ADR) institution of Bangladesh and International Centre for Alternative Dispute Resolution (ICADR), India, an autonomous organisation under the aegis of the Supreme Court of India. Participating in the webinar experts stressed on the advantages of Mediation over Arbitration and Litigation as a dispute resolution tool. The webinar focused on how Mediation at this difficult time can help resolve commercial disputes in the most pragmatic, expeditious and cost effective manner and why Mediation should be preferred as a dispute resolution tool before resorting to a lengthy Arbitration procedure



or a judicial process given the colossal backlog of pending cases in the courts of Bangladesh and India.



Abdul Mueyed Chowdhury, former Adviser to the Government of Bangladesh and an Accredited Mediator spoke on the occasion and emphasised promotion of mediation as a dispute resolution mechanism both in Bangladesh and India as Bangladesh has the maximum volume of trade relationship with India. He articulated advantages of mediation over arbitration and formal court procedure and opined that unless a party is absolutely adamant, it is possible to resolve any business dispute through mediation.



Addressing the webinar Chairman of BIAC Mahbubur Rahman stressed on the need of resorting to mediation as the most successful tool of Alternative Dispute Resolution (ADR) to handle commercial disputes and arrive at amicable settlements by the disputant parties in a minimum span of time. He reiterated that BIAC as country's first and only registered ADR facilitating organisation, will continue to work for institutionalising ADR mechanism in Bangladesh and the region.



The webinar was moderated by Professor Dr. Farhana Helal Mehtab, Head of the Department of Law and Associate Dean of the Faculty of Humanities and Social Science, Daffodil International University, Dhaka, who in course of the discussion preferred Mediation to Arbitration and Litigation with a view to arriving at a consensual settlement of dispute. The webinar was held through Zoom.



Shams Mahmud, President, Dhaka Chamber of Commerce & Industry (DCCI) and Managing Director, Shasha Denim Ltd. & Shasha Garments Ltd. spoke on the occasion and maintained that mediation can help the garments and textile sectors as well as the SMEs to a great extent in settling business disputes and expressed willingness to work with BIAC to mitigate disputes between parties arising out of contracts.



J L N Murthy, Regional Centre in Charge and Secretary, International Centre for Alternative Dispute Resolution (ICADR), India and Member, Governing Council, ICADR narrated his Indian experience of mediation and ongoing legislative reforms with a view to creating a firm platform of mediation. He said that mediation in India is now becoming part and parcel of the judiciary.

Barrister Rizwana Yusuf, Advocate, Supreme Court of Bangladesh and Associate, Dr. M. Zahir &



viewed the issue from a lawyer's perspective and shared her experience of resolving scores of business disputes during the COVID-19 period which remained unresolved for 5 to 7 years. She said that mediation is the only pragmatic method for quick and least expensive resolution of business disputes.



Kiran Bhardwaj, Advocate-on-Record & Mediator, Supreme Court of India and Member, Governing Council, ICADR opined that mediation being the most flexible method of business dispute resolution must be adhered to before resorting to the rigid procedure of arbitration and the time consuming, structured judicial proceedings.



Christabel Randolph, Director, Legal & Corporate Affairs, Marico Bangladesh Ltd. gave an insight on the methodical and less expensive procedure of mediation which can play a vital role in resolving disputes before opting for arbitration or adjudication. She insisted on arranging more awareness campaigns by BIAC with a view to motivating stakeholders to use mediation at the first instance to solve disputes between the parties.



Dr. Deepak Jindal, Advocate, Punjab and Haryana High Court, India and Member, Governing Council, ICADR took part in the discussion and opined that law involves adjudication and arbitration is also a kind of expert proceedings, but mediation takes place between the parties through a third party facilitator which reduces use of unnecessary time. He said that mediation is the most effective match between the parties to resolve issues in commercial contracts.



In his welcome address CEO of BIAC Muhammad A. (Rume) Ali said that BIAC, as the only licensed ADR centre of Bangladesh, has mediation and other methods of ADR in their agenda and he emphasised further cooperation with Indian ADR institutions to help resolve commercial disputes through mediation. He urged upon business leaders, lawyers, mediators and exponents of ADR to come forward and join BIAC's efforts in quick and cost effective dispensation of business disputes for the greater interest of the country.

L. Vengkateswar Rao, Additional Judge of the Odisha High Court, India and M A Akmal Hossain Azad, Director, BIAC also participated in the webinar. The Daily Bonik Barta was the media partner of the event.



## University students' mock arbitration trial emphasises practice of ADR

19 September 2020



Bangladesh International Arbitration Centre (BIAC) organised the first ever BIAC Inter University Arbitration Contest 2020. BIAC hosted this Arbitration Contest to provide students a practical knowledge of Alternative Dispute Resolution (ADR) and to give them the opportunity to arbitrate a real case acting as Claimant and Respondent in a real-life scenario. Moreover, one of the main objectives of the Contest was to involve Law students with BIAC's endeavours in the dispute resolution realm in the country towards easing doing business and accelerate overall economic development of Bangladesh.

This year four leading universities of Bangladesh took part in this Contest, which are: University of Dhaka, London College of Legal Studies (LCLS) South, Independent University Bangladesh (IUB) and Bhuiyan Academy. This year due to the COVID-19 pandemic, Bangladesh International Arbitration Centre (BIAC) conducted the Contest via Zoom virtual platform. The First and Second Round of first ever "BIAC Inter University Arbitration Contest 2020" were held on 12 September 2020 and 19 September 2020 respectively.

In the First round, Mr. Justice Abdus Salam Mamun, former Judge of Supreme Court of Bangladesh was present as the Tribunal Chairman. Along with him there were Barrister Ali Asif Khan, Advocate, Supreme Court of Bangladesh and Head of Chambers of Hossain and Khan Associates and Barrister Md. Monzur Rabbi, Advocate, Supreme Court of Bangladesh and Head of Chambers, Rahman and Rabbi Legal as Members of the Tribunal.

On the other hand, in the Second Round, Mr. Muhammad Forrukh Rahman, Barrister at law, Advocate, Supreme Court of Bangladesh and Head of Chamber, Rahman's Chambers, a leading law firm in Bangladesh was the Tribunal Chairman. Along with him there were Mr. Md. Imam Hossain Tareq,

Advocate, Supreme Court of Bangladesh and Barrister Ahmad Naquib Karim, Advocate, Supreme Court of Bangladesh and Associate, Huq and Company as Members of the Tribunal.

In the First Round, University of Dhaka won its place by competing against LCLS (south) and in the Second Round Bhuiyan Academy won against IUB. The University of Dhaka and Bhuiyan academy will compete against each other in the Final which will be held on 17 October 2020.

Mr. M A Akmal Hossain Azad, Director of BIAC while speaking on the occasion gave a background of the emergence of BIAC as the first licensed ADR institution to resolve commercial dispute. He hoped that integrating ADR mechanism with our judicial system will help raise the country's rank in the World Bank's Doing Business Global Index and affirmed that BIAC, now widely considered as the ADR hub of the country will continue its best efforts to help develop practice of ADR among stakeholders in a more concerted way. He also explained why students need to be motivated to the methods and procedure of ADR and emphasised creating their mindset as future careerists in favour of ADR to help resolve business disputes.

Ms. Mahbuba Rahman Runa, General Manager, BIAC, the Coordinator of Contest highlighted BIAC's recent initiatives for University level students for popularising ADR by acclimatising them with the norms, practices and benefits of ADR in resolving commercial disputes.

Mr. Muhammad A. (Rumee) Ali, Chief Executive Officer, BIAC was also present in the event.

The Daily Bonik Barta was the media partner of this event. The event was telecast live on BIAC's Facebook page and linkedIn.

## International News

### Protection of foreign investments in Indonesia

23 April 2020

Should a foreign investor have its assets expropriated (whether directly, or through creeping expropriation or regulatory encroachment), the investor may have access to claims under any applicable investment treaties. While judicial protection for foreign investors exists in Indonesia, it has varying degrees of consistency and predictability. This has made international arbitration an obvious choice for many foreign investors.

Indonesia has terminated approximately 30 BITs in recent years. However, it is party to the ASEAN Comprehensive Investment Agreement and ASEAN free trade agreements that include investment chapters. This means that many foreign investors retain the ability to invoke investment treaty protections (for example unlawful expropriation or fair and equitable treatment (FET) in the face of government interference in their investment.

Notably, some of the investment protections are more restrictive, particularly those negotiated recently. For example, investment protections are denied to investors who do not have a substantial business operation. FET is limited to the minimum standard of treatment recognised in public international law. In some treaties, claims must be brought within three years. At the same time, the exceptions to investment protections have been broadened. For example, the ASEAN Hong Kong China SAR Investment Agreement extends exceptions to measures relating to the conservation of natural resources.

In addition, investors may have access to claims in the domestic courts. In Indonesia, various forms of judicial protection are available to foreign investors. These protections are aimed not only at attracting and facilitating foreign investments, but also at providing investors with recourse in case of violation of their rights. The country's prevailing statute on investment is Act No. 25 of 2007 on Investment ("Investment Act"). This legislation is supplemented by various presidential, ministerial, and local governments' regulations, as well as regulations of the Investment Coordinating Board ("BKPM"), the country's single-window agency for investment matters.

Article 32 of the Investment Act provides broad options to investors to settle their disputes with the government, namely good offices, arbitration, and/or court proceedings. In practice, while most disputes involving

foreign investors are submitted to international arbitration, foreign investors may also submit claims to the State Administrative Courts ("PTUN") and General Courts. Further, judicial protection for foreign investors is also available in non-contentious cases; the Supreme Court and Constitutional Court have the power to conduct judicial reviews to ensure constitutional and regulatory consistency.

PTUN hear claims of violations of good governance principles by public officials submitted by individuals or private corporations, including ad hoc governmental decisions. As such, many of the cases heard by PTUN involving investors relate to their licenses. For example, in late November 2019, the Indonesian subsidiary of a multinational mining company filed a lawsuit with PTUN against the Ministry of Energy and Mineral Resources ("MEMR"). It alleged that MEMR had asked it to pay a royalty for its sales of cobalt, in contravention with its license called Contract of Work, which the company said only obliged it to pay a royalty for nickel matte sales.

In another case, an Indonesian-South Korean joint venture filed a lawsuit in 2018 with PTUN against BKPM, alleging that BKPM had unilaterally revoked its existing Agreement on Forest Utilization (PPPKH) by issuing a License on Forest Utilization (IPPKH). PTUN is an option available to foreign investors not only to challenge governmental decisions in respect of their business licenses, but also to reaffirm those decisions. For instance, in April 2019, the Jakarta PTUN decided in favour of BKPM, which had issued an approval to upgrade the gold mining license at exploration level of an Australian company's subsidiary, to a mining license at operation and production level.

The court rendered this decision after examining a lawsuit by two environmental NGOs that had sought to annul the BKPM decision on the ground of environmental damage. The court opined that the allegation was premature, since the company had not even commenced operation and production. There have been instances in which citizens filed lawsuits with PTUN to request the revocation of investors' licenses on the ground of environmental concerns. For example, upon receiving its mining license from the MEMR in 2014, the Indonesian subsidiary of a Hong Kong group was sued by local residents of Bangka Island, who petitioned the Jakarta PTUN to revoke that

mining license. The court granted such a request, and the decision was reaffirmed by the PTUN Appellate Court, which was subsequently upheld by the Supreme Court. The lawsuit alleged that the company had caused environmental damage, including coastal excavation and land reclamation near coral reefs.

Besides PTUN, investors have also, at times, submitted their claims to General Courts, consisting of District Courts, which are courts of first instance, and High Courts, which are appellate courts. The Supreme Court is the court of final appeal.

For example, in July 2019, a South Korean company's subsidiary filed a lawsuit with the District Court of Kuningan, West Java against the Local Government of Kuningan. The company alleged, among other things, that the lengthy process of the issuance of licenses for its textile business in Kuningan had caused uncertainty to the company. Consequently, it demanded nearly USD 2 million as compensation.

The judiciary has the power to conduct judicial review to ensure constitutional and regulatory consistency. The Constitutional Court also has the power to decide upon disputes over competence between governmental institutions.

For example, in 2008, the Supreme Court decided to strike down a 2004 decision by the Ministry of

Forestry, which designated a 108,000-hectare land as a national park that overlapped with the land for which an Australian-Indonesian joint venture had obtained a mining license. The court found that the ministerial decision had violated the 1999 Forestry Act, as amended in 2004, which stipulates that all licenses for mining activities in the forest that had been granted before the enactment of the Forestry Act are still valid until the expiry of those licenses.

In 2012, the Constitutional Court heard a dispute between the President, the House of Representatives, and the Supreme Audit Board over who had the competence to buy minority shares of a multinational corporation's Indonesian subsidiary, which was obliged to offer its shares to the government. The court decided that the President alone could not buy the shares, as he had to seek the House of Representatives' approval, have the House oversee the share purchase and buy the shares transparently and responsibly. This judgment imposed additional requirements on the government for buying the shares of foreign investors, thereby providing extra protection to investors to ensure their rights are respected during divestment process. [Contributed by: Jo Delaney, Andi Y. Kadir, Richard Allen and Hadyu Ikrami]

## Covid-19 pandemic; travel restrictions lifted for participants in PCA hearings and meetings

4 September 2020



Having conducted a number of virtual hearings since the start of the Covid-19 pandemic, the Permanent Court of Arbitration has now resumed (partial) in-person hearings.

To be noted in that connection is that the Netherlands' authorities have added 'essential guests invited by International Organisations' to the list of exceptional categories of persons, to whom the entry restrictions applicable to travelers to the Netherlands from outside the EU, Schengen area and United Kingdom do not apply.

As a result, persons invited by the PCA for the purpose of participating in a PCA-administered arbitration at the Peace Palace are exempted from the

advice to self-quarantine, regardless of the country of departure. Upon review by the authorities of the invitation issued by the PCA, and carrying with them supporting documentation issued by the PCA and the Netherlands Ministry of Foreign Affairs, participants are allowed entry into the Netherlands.

Please note that the other general health guidelines continue to apply, most notably: do not travel if you have any symptoms that could be caused by the corona virus. PCA-invitees travelling on the basis of the aforementioned procedure would still have to comply with regular visa requirements as applicable.

<https://www.government.nl/topics/coronavirus-covid-19/tackling-new-coronavirus-in-the-netherlands/travel-and-holidays/air-travel;www.rivm.nl>

*“The Believers are but a single Brotherhood: So make peace and reconciliation between your two (contending) brothers; and fear Allah, that ye may receive Mercy.”*

— Al Quran: Chapter 49, Verse 10



## Articles

## COVID-19: Time to introduce virtual ADR

**Md. Mahatab Uddin***Advocate, Supreme Court of Bangladesh*

Considering the emergency circumstances that have emerged from COVID-19 pandemic, the Bangladesh judiciary has lately started to conduct court proceedings via video conferencing. However, we are yet to hear about any initiative regarding the virtual form of judicial or formal Alternative Dispute Resolution (ADR). Hence, this write up advocates for wide ranged introduction of virtual ADR practices covering not only judicial or formal ADR, but also quasi-formal, and informal ADR practices in Bangladesh. Such virtual ADR practices can either be based on phone-conferences or be based on internet supported video-conferences.

In Bangladesh, ADR practices that consist of mediation, arbitration, conciliation, traditional salish and NGO modified salish can be broadly grouped into three groups – formal or judicial ADR practice, quasi-formal ADR practices, and informal ADR practices. Formal ADR practices include arbitration or mediation under the Code of Civil Procedure (Amendment) Act, 2003 or under the Money Loan Court Act, 2003 or under the Muslim Family Laws Ordinance, 1961 or the Family Courts Ordinance, 1985. ADR that takes place under the Conciliation of Dispute (Municipal areas) Board Act, 2004 or under the Arbitration Act, 2001 or the Village Court Act, 2006 or the Labour Code, 2006 can be considered as quasi-formal ADR. However, traditional salish, NGOs modified salish can be considered as informal ADR practices. Besides these, the Contract Act 1872, the Specific Relief Act 1877, the Bank Companies Act 1991 and the Chittagong Hill Tracts Dispute Settlement Commission Act 2001 either explicitly or implicitly refer to ADR practices.

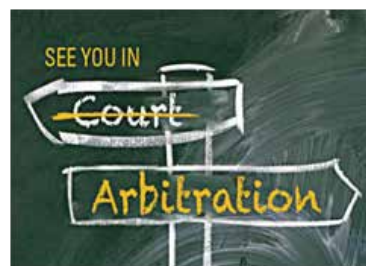
To introduce phone-based ADR, it is understandable that only access to a land phone or a mobile phone will be enough for parties to participate in mediation or arbitration. Many countries have already started this practice. For example, being funded by the Australian Government under the Family Support programme (FSP), Queensland province of Australia initiated Telephone Dispute Resolution Service (TDRS) in 2007. Providing telephone-based mediation needs some specific set of skills connected with telephone environment. We need to provide training to our

mediators to those specific issues. For instance, employees working in TDRS receive training as to their appropriate behaviours with co-mediators during telephone

environment, rapport building techniques during phone conversation, active listening, controlling language, time management, interpreting silences and taking notes at the same time. Besides, conducting telephone based mediation also needs to take into account that telephone calls might face call drop or unintentional interruption deriving from micro level household issues of the participants (e.g. necessity of immediate attention to a child, finding out any undisclosed person in the room, etc.). The telephone-based family mediators, community mediators or workplace mediators in Bangladesh must also be taught or given training about how to deal with the above stated issues.

For online or internet-based virtual mediation, two kinds of internet-based communication methods are possible to apply: synchronous communication and asynchronous communication. Synchronous technology refers to conversation in real time through using web-based technologies which support online calls or video conferences. An asynchronous communication refers to communication via email. Both methods of communication can be employed for establishing online-based ADR system.

Before wide range introduction of these methods and mechanisms in Bangladesh, it would be wise to conduct some studies on similar methods which have been introduced globally by others. For instance, the World Intellectual Property Organisation (WIPO) introduced online dispute settlement system for domain name disputes and intellectual property related disputes (WIPO e-ADR). Online dispute settlement systems also exist for online consumer purchases that take place through e-commerce sites. In addition to the just mentioned instances, there are also instances of



online arbitration and mediation under the Virtual Magistrate and Online Ombudsman programmes of the USA. Besides these, there are number of private initiatives which provide online dispute resolution services across the world.

All of the above-mentioned internet-based initiatives require some common accessories or technologies which must contain a delivery mechanism, a receiving mechanism, and a medium of discussions. Sometimes it may also be essential to have facilities of video conferencing. It is essential that all parties to the mediation or arbitration or conflict coaching also have access to email for conducting initial communication. Hence, the technologies essential to avail or run online based dispute resolution may involve – internet, intranets, desktop or smart phone, video conference service providing app or technology or satellites. Since

all these technologies are moderately available here, it will not be a difficult task – at least from technological point of views – to initiate and popularise virtual ADR services in Bangladesh.

Till date, experts are unable to predict when the necessity of maintaining physical distancing rules will end. Considering the ongoing pandemic, we all have to be prepared for such a 'new normal' scenario that might help ourselves protecting from Covid-19. For ADR practitioners, it means we might require avoiding face-to-face meeting for an indefinite period of time. Hence, as like as other countries of world, the ADR practitioners of Bangladesh should also immediately shift their focus to virtual modes of ADR.

<https://www.thedailystar.net/law-our-rights/news/covid-19-time-introduce-virtual-adr-1911389>

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*\* This article was originally published in the Daily Star, Dhaka.*

*“O you who believe! Stand out firmly for Allah as witnesses to fair dealings and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just, that is next to piety. Fear Allah, indeed Allah is well acquainted with all that you do.”*

*— Al Quran: Chapter 5, Verse 8*

## How Force Majeure affects the RMG industry

**Anusha Islam Raha**

*LL B Honours Graduate from BPP University, UK*



A clause that was initially created to protect contracting parties is now being misused by buyers as a deadly weapon to avoid liability

As the world unravels the novel corona virus, it has claimed millions of people's lives, jobs, and freedom, and has forced economies to come to a staggering halt. Although most industries have been hit hard by this pandemic, the textile industry of Bangladesh can be said to have witnessed the hardest blow. The industry has lost billions of dollars due to delays or cancellations of orders. However, the worst part is that, a clause that was initially created to protect contracting parties is now being misused, typically by buyers, as a deadly weapon to avoid liability.

Essentially, centuries ago when the first contract was made, the most imperative element that the parties relied on was trust -- a trust that the parties will fulfill their obligations, come what may. But as the society progressed, this trust was codified into a document and a number of clauses were invoked to protect all the parties involved. One such clause is "force majeure," a concept that is somewhat corroborated in Bangladeshi law under s.56 of The Contract Act 1872.

Professor Anowar Zahid (an expert in international trade law) defines force majeure as something unexpected and beyond reasonable human foresight, an occurrence of which makes the performance of the contract impossible and, therefore, discharges the parties from the contractual obligations. Such events could be war, hurricanes, fires, earthquakes, terrorism, etc.

Nevertheless, whether or not a party can plead Covid-19 as a force majeure event depends on whether or not the contract contains a clause in this regard. If it is there, still it depends on how it is crafted. For example, it (force majeure clause) may include terms like "pandemic," "epidemic," "quarantine," "illness," "plague," "outbreak," or "disease." Even depending on the context, Covid-19 could arguably be included within the scope of broader catch-all phrases, such as "Act of God," or "circumstances beyond a party's reasonable control."

But if the aforementioned terms like "pandemic" or "epidemic" are not included in the contract, Covid-19 might not be considered as a force majeure event unless the contract is being carried out in areas where the government has instructed all non-essential businesses

to discontinue operation, consequently, deferring the performance of the contract.

If the force majeure clause itself is not included in the contract, a party may still rely on the principle of *rebus sic stantibus*, when the circumstance under which the contract was originally made has fundamentally changed. This is an exception to the principle of *pacta sunt servanda* (promise must be kept).

However, the court of law takes a very restricted approach to give effect to the force majeure clause or the *stantibus* principle, and performance will only be exempted if the event that caused the party's non-performance is specifically identified. Essentially, the court wants to be satisfied with two important things, namely that the force majeure has the direct effect on the performance of the contract, and that the party relying on this clause has taken steps to avoid and mitigate that effect.

At this point, it is crucial to understand that if an event such as the Covid-19, results into economic hardships, that hardship does not amount to a force majeure event. Many of the foreign buyers are unfortunately using the Covid-19 situation as a force majeure event (although Covid-19 did not directly affect their performance in any way) and cancelling their orders without monetary compensation. Some of these orders had already reached the buyer's ports! Such cancellation is utterly illegal because as mentioned, one simply cannot terminate or cancel an order because of economic hardships as it does not constitute a force majeure event.

Furthermore, force majeure clause can only be invoked in cases of an executory contract ie, a contract that is yet to be executed. Because the orders cancelled by the buyers are basically contracts that have been executed, there is no scope for the application of a force majeure clause.

These illegal cancellations have led to huge disruption in society as millions of workers lose their jobs and almost all of them experience unjustified pay-cut. Rubana Huq told DW that BGMEA is trying to secure workers' wages: "We are trying not to shut down the factories," alluding to a calamitous situation that is principally caused because of these illegal cancellations.

To settle such illegal cancellations, the appropriate first step would be the buyers and sellers negotiating, with the aim of reaching a common ground. However, due to lack of dispute-resolution-provisions in the contract, negotiating becomes a difficult job to pull-off.



Hence, it is very important to draft a contract incorporating sufficient dispute resolution provisions such as arbitration, which can ultimately help both the parties settle disputes that may arise during the performance of a contract, without having to go to the court, thus maintaining privacy and speed.

The whole purpose of this article is to make people aware of the “force majeure” clause so that everyone

can understand when such a clause is applicable, when it is not, and what can be done if such a clause is unjustifiably invoked. This article also aims to promote the incorporation of a dispute resolution provision in the contract in order to help people avoid exploitation, huge financial losses, and save the jobs of millions.

<https://www.dhakatribune.com/opinion/op-ed/2020/08/09/op-ed-how-force-majeure-affects-the-rmg-industry?fbclid=IwAR1jYvth3Dwbw8LAeCXw8Afc2ziKo7lH9TZgLBkkpJo4RikbJlJ3p6fleo>

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\* This article was originally published in the Daily Dhaka Tribune, Dhaka.

*“All disputes (if unhappily any should arise) shall be decided by three impartial and intelligent men known for their probity and understanding; two to be chosen by the disputants, each having the choice of one, and the third by those two - which three men thus chosen, shall unfettered by law, or legal constructions, declare their sense of the Testator’s intention; and such decision is, to all intents and purposes to be as binding on the parties as if it had been given in the Supreme Court of the United States.”*

— George Washington

## MEDIATION BEFORE OPTING FOR ARBITRATION OR LITIGATION

**Kiran Bhardwaj**

*Advocate & Mediator, Supreme Court of India*



With the traditional court oriented litigation there is delay in disposal of cases and cost of litigation is very high which has compelled us to look into for alternative methods of dispute resolution. It is well said in a Chinese proverb that “It is better to die of starvation than to become a thief: it is better to be vexed to death than to bring a law suit.”

Mediation is one of the oldest forms of dispute settlement. It is voluntary, party centred and structured negotiation process, where the mediator assists the parties in amicable resolving their disputes by using specialised communication and negotiation techniques. Arbitration is a quasi judicial adjudicatory process in which the arbitrator(s) who are appointed by the court or the parties themselves decide the dispute between the parties. The process is adversarial in nature as the focus is on determination of rights and liabilities of the parties. The award in an arbitration is binding upon the parties.

In Mediation the mediator cannot impose a decision on the parties. The mediator controls the process, facilitates negotiation but the outcome is always in the hands of the parties. Mediation is complement to the judicial system. Mediation proceedings are usually concluded within days, weeks or months, whereas the traditional litigation is expensive, it takes long time to decide the case. Even justice can differ from case to case and there are different results of trial and often appeals are there and sometimes the decisions can be unfavourable to both the parties. Sometimes, courts impose heavy cost to the parties. In litigation the courts compel the parties to produce a substantial amount of evidence which is sometimes unnecessary. Whereas, the process of mediation is tailored made as per desire, demand and satisfaction of the parties, the parties are not obliged to produce unnecessary evidence and it is flexible as it is not bound by any procedure or time. It resolves all the issues which are pending in different courts too. The parties also prefer to mediate when the case requires an expertise in a given field to address a specific issue which is not possible by a regular court which is used to hear usual civil and criminal claims. Further, in mediation there is greater possibility to preserve the relationship between the disputing parties as it reduces tension, spread peace and harmony in the society and in Litigation before the court is not usually to create harmony and sometimes it goes from bad to worse.

Med-Arb, i.e. Mediation and Arbitration is successful in the US in the case of public sector bargaining to be used for the peaceful resolution of disputes. The International Chamber of Commerce (“ICC”) and many other institutions follow the combination of mediation and arbitration. The med-arb process begins with applying the procedure of mediation first and if it is possible then a settlement either partly agreeing on certain issues or fully on the terms and conditions arrived at. The presence of third party, i.e., Mediator-Arbitrator provides parties to reach their own agreement as they are aware if they failed to do so in mediator-arbitrator will give a binding decision. The Mediator will assist the parties in executing and signing a Mediation Settlement Agreement which is a legal contract and is enforceable through contract laws in a court of competent jurisdiction. But if the parties are not able to resolve each and every dispute, it would be forwarded to binding arbitration process as specified in Med-Arb agreement where the arbitrator gives his award.

The parties are assured that there will be a final resolution of the dispute either voluntarily through Mediation or by an arbitral award. A hybrid process or this merge system has been adopted in countries like China, Germany, Switzerland, Taiwan and many other countries. This process is taking its place as arbitration is a more rigid process than mediation and by diversifying the process and making mediation as first choice infuses flexibility in the process. In Asian societies tend to value the harmony and amicability and before applying to any country we have to consider the needs and circumstances of the society. In Mediation which is voluntary and the parties can walk out from mediation at any stage, if they are not happy with the outcome. The results have been encouraging in the globalisation of economy and in commercial disputes which demands speedy and effective mechanism for resolving domestic as well as international disputes.

A Bilateral Investment Treaty (BIT) signed between two countries paves passage for safe investments by foreign nationals. When the dispute arises, Arbitration may commence after certain preliminary conditions are met like, after the cooling period has lapsed. The parties submit evidence and make arguments and thereafter, final award is passed by the Arbitral

Tribunal which is enforced either under the New York Convention or through voluntary compliance by the State. But the International Centre for Settlement of Investment Disputes (ICSID) also have certain breeding controversies such as, in a case pertaining to Bangladesh in the case of Saipem Vs. the People's Republic of Bangladesh (ICSID) Case No. ARB/05/7, Award (30 June 2009), an ICSID Tribunal held that certain orders of a court in Bangladesh which effectively took away the fruits of an arbitration award made in favour of the investor amounted to an expropriation. It is interfering with the judicial determinations by the competent court of law, which is a sovereign function. In the aforesaid backdrop, a consensus is emerging that before resorting to arbitration, there should be an endeavour to settle these disputes through mediation/conciliation.

To overcome the negative effects of the adversarial system hybrid processes like Med-Con are also viable options. The mediation should be incorporated and promoted in all the treaties or Countries to resolve domestic as well as international commercial disputes. Sometimes the mediation may fail and there may be some issues which may have to be necessarily adjudicated upon and for adjudication process arbitration will have to be resorted to. But before resorting to arbitration there should be compulsory mediation.

India is a democratic country governed by the rule of law which ensures access to justice for all the segments of the society and alternative methods to resolve dispute are necessary to give justice to all in an expeditious and inexpensive way.

*“I realised that the true fiction of a lawyer was to unite parties. A large part of my time during the 20 years of my practice as a lawyer was occupied in bringing out a private compromise of hundreds of cases. I lost nothing thereby- not even money, certainly not my soul.”*

— Mahatma Gandhi



## Interviews

*We are confident that, publishing interviews of leaders and experts from different business, financial, legal and academic sectors on their perception and understanding of Alternative Dispute Resolution (ADR) based on a number of questions put forward by BIAC, will generate more awareness about ADR in the country and importance of introducing it to assist our judicial system in order to reduce the backlog of over 3.7 million pending cases in all courts of Bangladesh and the time taken to resolve commercial disputes. It is our pleasure to publish interviews of Mr. Osama Taseer, former President of Dhaka Chamber of Commerce & Industry (DCCI) and Chairman of Four Wings Ltd. and Mr. Ali Arsalan, Managing Director of Atiya Consulting Ltd. who is currently representing the Cotton Council International (CCI), U.S.A.*



**Osama Taseer**

*Chairman of Four Wings Ltd.*

*Former President of Dhaka Chamber of Commerce & Industry*

**BQB: Globally, corporate bodies are moving away from using the traditional court based judicial system for resolving commercial disputes and adopting ADR. Do you believe that this global best practice has a future in Bangladesh? Why?**

**OT:** If we are able to adopt ADR which is considered as a best practice- this can be an effective alternative to resolving business disputes in Bangladesh. The main reason for the incorporation of ADR system is to avoid the long time and waiting in procedures of the judiciary. This long time can be years together. Since justice delayed is justice denied, we cannot gain the confidence of the business people. In enforcement of Contracts index of Ease of Doing Business Report perhaps Bangladesh ranks 189th out of 190 counties. Therefore, it becomes a real taboo and ADR has become an effective alternative to attract new businesses and open new horizons. If we consider the business plethora as global, it becomes even more significant where joint ventures and external partners are involved with the venture; it becomes a real issue if only settlement of disputes eventually make the business unsustainable.

In addition, most of the businesses in Bangladesh are in the size of SMEs. They are unable to afford the high costs of litigation. Thus, to reduce the cost of litigation the ADR schemes can be an effective alternative.

**BQB: What are the main obstacles in the mainstreaming of ADR in this country?**

**OT:** A dispute resolution outside of courts is not new in Bangladesh; non-judicial and indigenous methods have been used by our society for generations but they are not structured or based on any procedures. ADR is included in many of our legislations; however, the law must be amended to provide for pre-litigation ADR in order to serve the intended purpose.

ADR provisions in our legislation only envisage what can be done in the event a dispute arises; however, the rules for their implementation have not been enacted to lay down the process, thus impeding implementation. For expedited dispute resolution there should be an exclusive institution for ADR, same as we have in the form of BIAC which can offer its rules and be an appointing authority as an accredited institution. Lack of proper education and awareness about ADR process among the businessmen and reluctance of the parties who are in dispute to go through this alternative arrangement-is one of the main obstacles. If the legal professionals have any negative impression about ADR as an alternative tool, this can be mitigated by engaging more with the legal professionals with their wide experiences where ADR can actually reduce their workloads.

**BQB:** What are your thoughts on 'reputation risk', given that the legal cases are heard in courts of Bangladesh the proceedings are considered to be in the public domain?

**OT:** Definitely there is a 'reputation' risk for the businesses when it goes through a long drawn litigation in court. ADR can help the companies to resolve the disputes indoors while reducing the 'reputation risk' and still be friends as both parties in ADR agree to a solution.

**BQB:** Do you support insertion of ADR clause in all commercial contracts or do you feel the court system can adequately provide risk mitigation coverage without ADR clause in the contract?

**OT:** I think all organisations should incorporate ADR Clause in the commercial contracts with the provision of both Mediation and Arbitration under an institutional framework with Rules to administer these processes like an institution of the stature of BIAC. It is legally valid to have an ADR Clause in Loan agreements and is compatible with the "Artha Rin Adalat Ain" if not contrary to the existing legal framework of the country.

**BQB:** One of the main risks businesses face is non-performance of contract. This has very impactful cost implications. For example in disruption of supply chain with a long delay in resolution of a dispute in the courts could mean a long delay in the financial settlement. In such a situation, do you believe the court system provides sufficient risk coverage to parties to a commercial contract? Why?

**OT:** Court system provides risk coverage to parties to a commercial contract, but it is not sufficient as procedures of resolving disputes arising from non-performance of Contracts are complex. Given the current situation with our judicial system where there is a long back log, an alternative route must come in to play that can coexist with the judiciary. ADR can resolve disputes amicably at low cost and in much lesser time. The weaknesses of the above traditional approaches make adoption of ADR as a priority. Our businesses shall benefit from this good practice and move on to the new threshold. The NEW WORLD order in the post COVID-19 era may assign even greater importance to this form of dispute resolution.

*"A reputable lawyer will advise you to keep out of the law, make the best of a foolish bargain, and not get caught again."*

— Mark Twain



**Ali Arsalan**  
*Managing Director*  
*Atiya Consulting Ltd.*

**BQB:** Globally, corporate bodies are moving away from using the traditional court based judicial system for resolving commercial disputes and adopting ADR. Do you believe that this global best practice has a future in Bangladesh? Why?

**AA:** ADR appears to offer a quicker route towards dispute resolution. Traditional litigation is more often than not, costly and time-consuming. My belief is that ADR offers an important middle ground between disputes and traditional court based judicial system. Ultimately the leverage for enforcing an ADR award would lie with the strength of the local judicial system.

**BQB:** What are the main obstacles in the mainstreaming of ADR in this country?

**AA:** Lack of understanding of ADR and its opportunities. As well as it is the over-reliance on outsourcing disputes to legal firms with the sole intention of delaying a debt.

**BQB:** What are your thoughts on 'reputation risk', given that the legal cases are heard in courts of Bangladesh the proceedings are considered to be in the public domain?

**AA:** Reputation Risk carries more weight in the current days of fast news and social media. It is a negative point for the traditional judicial system in Bangladesh.

**BQB:** Do you support insertion of ADR clause in all commercial contracts or do you feel the court system can adequately provide risk mitigation coverage without ADR clause in the contract?

**AA:** I support ADR - it should be the default option for a quick and amicable resolution in the breakdown of direct negotiations regarding a dispute and before an unnecessary and costly jump towards traditional litigation.

**BQB:** One of the main risks businesses face is non-performance of contract. This has very impactful cost implications. For example in disruption of supply chain with a long delay in resolution of a dispute in the courts could mean a long delay in the financial settlement. In such a situation, do you believe the court system provides sufficient risk coverage to parties to a commercial contract? Why?

**AA:** Non performance of contracts within their specified time period could result in huge Market to Market differences for either party, as well as negative implications on cash flow. Currently there are too many provisions in the local court system which are supportive of delays (change of representation, illness of lawyer of either party, etc).

*“Knowing others is intelligence; knowing yourself is true wisdom.  
 Mastering others is strength; mastering yourself is true power.”*

— Lao Tzu



## EVENTS NEWS

## BIAC's Upcoming Events

Organization	Events	Date
Bangladesh International Arbitration Centre (BIAC)	BIAC Inter University Arbitration Contest 2020 Final	17 October 2020
Bangladesh International Arbitration Centre (BIAC) & Singapore International Arbitration Centre (SIAC)	Webinar on: Challenges of Application of Institutional ADR in Real Estate and Construction Disputes in Bangladesh	21 October 2020
Bangladesh International Arbitration Centre (BIAC)	Module 1: Overview & Drafting of an Arbitration Clause	28 October 2020
Bangladesh International Arbitration Centre (BIAC) & Dhaka Chamber of Commerce & Industry (DCCI)	Webinar on: Settlement of Letter of Credit Related International Trade Disputes Through ADR	14 November 2020
Bangladesh International Arbitration Centre (BIAC)	Module 2: Arbitration Proceedings: Principle & Practice	30 November 2020
Bangladesh International Arbitration Centre (BIAC) & Legislative & Parliamentary Affairs Division, Ministry of Law	Webinar on: ADR can Create Faster Access to Justice	5 December 2020
Bangladesh International Arbitration Centre (BIAC)	Online Training on Arbitration: Module 3: Arbitration Award and Enforcement	28 December 2020

## Did You Know?

- *It takes from 3 months to 388 days for a case to be resolved by Arbitration under BIAC Rules, while in civil litigation it takes 15.3 years on an average!*
- *Mediation can even be done in a day; BIAC has successfully resolved a case through Mediation under BIAC Rules in 14 hours!*

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when we exchange  
what we have.

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