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ARTICLE

Common International Trade Disputes in Bangladesh

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Loss of Cargo, Loss of Export earning, receiving defective goods, rejection by buyer, documentary Fraud etc. are increasingly becoming common in international trade practice in Bangladesh.

The problems are arising due to lack of understanding, use of wrong Incoterms, lack of understanding of duties of parties at the documentary tender stage, delivery of goods stage, confusion as to roles and responsibility of parties involved e.g. seller, shipper, consignor, buyer, consignee, cargo receiver, issuing bank, advising bank, negotiating bank, confirming bank, notify party, freight forwarder, C & F agent, carrier etc., lack of understanding of the significance of crucial documents like Bill of lading, sales contracts and its terms, waiver, rejection, use of association rules, illegal practices like advance acceptance of documentary tender, inconsistencies in regulations etc. are contributing to the increasing the number of disputes.

Although FOB is more popular while amongst the exporter and CFR is more popular amongst the buyer, the law allows uses of other Incoterms like E, D terms at the risk of the parties.

While the problem in case of import is comparatively less although due to circulation of both received for shipment bill of lading and master bill either mistakenly or deliberately consignment often get lost and cargo are released by buyer/agent/freight forwarder agent by one set of documents while seller is holding another set of bill of lading.

In case of export, the Letter of Credit and D/A and D/P are the only mode of payment allowed. Foreign Exchange Regulation Act 1947 and guidelines there under imposes duty on the seller and AD to bring export proceeds in Bangladesh within four months hence irrespective of Incoterms used in sales contract and LC, carriers are bound to issue Bill of lading and other title documents to the order of Authorized Dealer Bank (AD). In case of delay in receiving Bill of Lading, advising AD bank are allowed to providing credit facilities, negotiate on the basis of House Bill(received for shipment Bill) issued by freight forwarder. However, this would not be sufficient for documentary tender as AD bank is required to take Master Bill as issued by Carrier. In practice, due to lack of knowledge, AD bank often complete documentary tender with House Bill while master bill is in circulation not taken by AD bank. This creates opportunity for fraud and often cargo get lost and released by using Master bill by the Agent/Buyer etc leaving the corresponding bank and seller unpaid by not accepting the documentary tender due to discrepancy.

Acceptance before documentary tender is contributing toward significant number of fraud practice. Seller insists on prior acceptance even before or at the time of signing sales contract. Practice has grown in such a way that the buyers are bound to do so giving opportunity to the seller to non deliver/misbeliever/partially deliver the goods while receiving the payment from issuing bank.

Banks often open LC, mostly relying on UCP 600 terms without having the knowledge of other laws and practices and need for the existence of any sales contract. This is happening often due to own ignorance or by taking advantage from the ignorance of the seller. Further legal enforcement mechanism are often weak due lack of understanding of the trade fraud and mechanism by the lawyers and others concerned. Parties generally do not use mediation and arbitration clause causing further difficulties in case of cross-border disputes.

Much more is required to be done by raising awareness amongst bankers, sellers, buyers, and freight forwarders. Focus should be given on the sales contract perhaps by ratifying the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) ("CISG").

FF Agents (Licensing) Rules 2008 created confusion by allowing issuance of "Bill of Lading" as if MTO although being a rule it cannot supersede the mother laws: Carriage of Goods by Sea Act 1925 and Carriage of Goods by Air 1966, which do not allow issuance of bill of lading other than by carrier, which is the ship-owner or airline as applicable. However, the confusion must be removed.

If Multimodal transportation is required to be allowed, a lot is required to be done. Entire legal regulatory regime is required to be changed and MTO's licensing rule must address the need for bigger insurance and higher capital structure of the licensee.

Practice is required to be developed for using mediation and arbitration clause particularly in high volume international trades to give a clear picture to the parties and also to provide a clean legal redress mechanism.

By **M. Forrukh Rahman**, Barrister-at-Law, ACIArb, ASIArb, CEDR (UK) accredited mediator, Advocate, Supreme Court of Bangladesh.

ARTICLE

Solving disputes by Commercial Mediation: A logical approach in Bangladesh

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A Mediator is a skilled person, a neutral facilitator, who gains trust of the parties and work towards building the broken bridge by reducing the differences applying his/her skills so that they end up in shaking hands and sign agreement keeping the dignity of the parties and the mediator intact. In a legal system where the trust of common people is gradually deteriorating for delay, cost, corruption, interference, favour etc, mediation becomes the only logical way where the parties themselves decides the legally binding outcome and sign an agreement on the agreed terms saving time, money and relations.

Mediator helps parties, by following a well defined process, to overcome emotional blockage, help each party to understand other parties case, view point, suggest new avenue to explore, focuses attention on the realities, helps parties to overcome deadlock, save faces for the parties, explore settlement proposal in depth, keeps confidentiality.

Mediators also Challenge parties, to let the parties review their own position, bring clarity in thoughts, understand risk, consider their weakness, consequences, reassess their position and finally remind them about taking responsibility for their own position.

Mediation can be agreed by inserting a clause in any agreement; it can be tried even if there is no agreement by approaching to a mediator, who communicates other side inviting for mediation clarifying the mediator's role and mediation process step by step. Normally it lasts for one day. Even if at the end of the process parties do not sign agreement, the parties leave the mediation having a clear picture and often solve the problem themselves sooner or later. The success rate is 85%.

By **M. Forrukh Rahman**, Barrister-at-Law, ACIArb, ASIArb, CEDR (UK) accredited mediator, Advocate, Supreme Court of Bangladesh.