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In This Issue **Page**

Case report	...	1
Article on Arbitration	...	1-2
Article on Cheques	...	2

LAW IN FOCUS

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Rahman's Chambers

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CASE REPORT:

Name of the guarantor may appear as guarantor only
in the CIB report

In writ petition No. 60106-08 between Anwar Cement Ltd vs. Bangladesh Bank and others, the Division Bench of Hon'ble court presided over Justice Jinat Ara passed a Judgment and order dated 24.04.11. It is held that the name of the guarantor may appear in the CIB report of Bangladesh Bank as guarantor only and not as defaulting borrower. Therefore, the ban against defaulting borrower on granting new loan shall not automatically apply to guarantor by simply saying that its name is reported in CIB report. However, previous case law refers that the guarantor's name cannot appear in the CIB report at all is hereby overruled. Under article 43 of Bangladesh Bank Order 1972 as well as CIB circulars 01/1994 inserting someone's name in the CIB report does not automatically mean that it is classified as defaulting borrower as per the provisions of section 27(kaka) of Bank Company Ain 1991. CIB report contains much information which helps central bank to formulate monetary policy as well as helps commercial bank to develop credit policy. Since this landmark judgment, the name of Guarantor from now on would be there in the CIB report as credit information having no sanction attached to it. Whether or not to sanction credit to guarantor shall be the discretion of the commercial bank. Mr. Forrukh Rahman, Barrister-at-Law, head of chambers conducted the case for Bangladesh Bank as well as for Dutch-Bangla Bank Ltd.

ARTICLE

**Bangladesh as a Forum for holding International
Arbitration**

Forrukh Rahman*

The popularity of Arbitration as a means of dispute resolution is rapidly increasing in Bangladesh. Since the enactment of Arbitration Act 2001, the law and procedure relating to holding local and international arbitration is simplified and made suitable for all concerned.

Bangladesh is one of the first countries, who fully ratified the Convention on the Recognition and Enforcement of foreign arbitral awards, adopted by the United Nation in New York on 10 June 1958. Besides, holding arbitration in Bangladesh is less expensive compared to many other countries of the world.

There is a high possibility that the Bangladesh would be made a venue for holding the international arbitrations by the neighboring countries. The opening of arbitration institution this year, namely Bangladesh International Arbitration Centre (BIAC) is a testimony to this. Further, all laws relating to arbitration are available in English.

As per the Arbitration Act 2001, the arbitration will be made applicable in any contract if such terms and conditions are agreed by the parties in the agreement.

The parties are also free to agree on venue of arbitration. As per the said Act, Bangladesh can be a forum for holding institutional arbitration, if agreed by the parties in the contract. In case, if there is no clause in the agreement regarding applicable jurisdiction, the bilateral or multilateral treaties and/or related conflict of laws rules on jurisdiction will apply.

As per the said Act, the Court's intervention is allowed for limited purposes only. An arbitral award can however be challenged in the High Court Division of the Supreme Court in respect of international commercial dispute & in district courts for domestic disputes. In case of international arbitration, appeal lies to the highest judiciary namely Appellate Division for limited purposes.

The arbitration tribunal in Bangladesh can adopt any rules of procedure for conducting the session, if not agreed otherwise. The Substantive law regarding terms and conditions of the contract will depend on the agreement made by the parties in the contract. It may be the laws of any jurisdiction.

The award of arbitration tribunal will have the force of law as if it is a decree of the court. All foreign arbitral awards involving a Bangladeshi entity will be enforced (except in very special circumstances) in Bangladesh as if it was a decree of a Bangladeshi court.

No Judicial Authority shall normally hear any legal proceedings filed by one party to the arbitration agreement against the other till the arbitration process is exhausted and that hearing in court will be done in a manner prescribed by this Act.

Besides, the legal system of Bangladesh has the heritage of English laws. The lawyers and judges till today heavily rely on the laws of India and England. English is the language of the higher and lower judiciaries. There are lawyers and judges who have long experience of handling arbitrations.

Bangladesh is a lucrative place for holding international arbitration.

Taking "Blank cheques" as a security for loan

Forrukh Rahman*

Taking blank cheque/undated cheque as a security is a common practice for banks/FIs. The principle laid down by section 87 of Negotiable Instrument 1881 is that any change in written instrument which **changes the legal relation of the parties to it**, is a material change, or technically, an alteration and such a change *invalidates* the instrument against the persons not consenting to the change. In other words an alteration of Negotiable Instrument is material if it might easily affect a party's substantial rights whether such result actually follows or not. On the other hand, section 20 of the Act permits the drawer of negotiable instrument to issue a blank instrument to another person who **may complete the instrument for an amount** not exceeding the amount intended by the drawer to be paid under the instrument.

It follows that the subsequent insertion of the amount in the cheque that has been issued by the drawer with his signature only without specifying the amount would not be taken as material alteration. However, inserting the name of the payee, date etc. would amount to material alteration rendering the instrument void under S. 87 of the Act unless the name of the payee and the amounts are inserted with the **consent** of the drawer.

The common intention of the original parties, may however be shown by producing loan Agreement indicating repayment dates and the name of the issuer as borrower. It is therefore submitted that subsequent insertions by the Bank of the name of the payee, date etc would not invalidate the instrument provided that the insertion falls within the common intention of the parties.

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