



Year 2015 Volume 2

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LAW IN FOCUS

A Newsletter of
Rahman's Chambers

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REPORTED CASES CONDUCTED BY CHAMBERS IN 2015

Important legal interpretations were given and useful directions were passed by the Hon'ble courts in the case below as conducted by Chambers lawyers. Please log on to <http://www.rahmansc.com/index.php/about-us/reported-cases> for complete reported judgments.

Abdul Jalil & Others Vs. Judge, Artha Rin Adalat, 2nd Court, Dhaka & Another reported in 67 DLR 475 (In Artha Rin Execution case Bank needs to add Insurance Company as a party if claim remains unpaid)

Other judgments which are likely to be reported in 2015 will be posted in the next newsletters.

ARTICLE:

Construction & Engineering related Disputes in Bangladesh

*Mohammed Forrukh Rahman**

The Construction & Engineering related disputes are in rise in Bangladesh. As per a recent Survey, clients, contractors and consultants found that 30% of the construction contracts signed is going into dispute in the past 12 months. More than 8 out of 10 disputes arose between the client (owner) and main contractor with the assessment of delay, extension of time and contract variations cited as the primary causes of contention.

Construction & Engineering related disputes can be categorized in 2 categories, (i) Public Projects & (ii) Commercial Projects.

In Public Projects, contract is awarded by way of rigorous competitive tendering process due to presence of Public Funds. On the other hand, Commercial Projects may not involve competitive tendering process. Contractor may be selected informally based on negotiation. In both type of projects there is inevitably a main contract between owner and contractor. Besides, there may or may not be several other contracts with Banks, Insurance, Architect, Engineer, Sub-contractor etc. In major Construction & Engineering contracts the Contractor may appoint Engineering Company for engineering, procurement & commission (EPC) for completion of actual construction work while the contractor remains in charge of the overall project, success or failure.

Similarly, after commissioning the main contractor/owner may also sign sub-contract with another engineering company for operation & maintenance (O & M) of the project. Again, the main contractor/owner remains responsible for the success or failure.

The Disputes are increasing for several reasons which are described as follows:

- A. **Tendency to avoid Due Diligence** including Legal Due Diligence before signing contract is a very common. This is because the parties have the tendency to save time and cost, which is very negligible compared to the overall cost of the project, at the early stages of the project. Legal Due Diligence actually helps the parties involved in assessing their risk, cost, time etc.
- B. **Drafting of contract without the help of legal advisor** and/or using bespoke contracts which may not be suitable for the project from legal point of view. Such contracts may lead to several confusions, misunderstanding, conflicting outcome etc which may ultimately results in disputes between the parties involved.
- C. **Due to lack of knowledge and ignorance of the parties** the contract may not contain suitable dispute resolution clause. Depending on the nature of the contracts, parties involved, cross-border transactions, location of parties etc international arbitration, local arbitration, institutional arbitration, mediation, mutual consultation, and finally litigation may be suitable. Hence, it is important that the parties agree to an appropriate Dispute Resolution clause.

In major construction projects e.g. Power Project, there may be more than one agreement e.g. Power Purchasing Agreement (PPA), Gas Supply Agreement (GSA), Land Lease Agreement (LLA) etc. which are prepared in standard form and are found in the tender documents. However, tailor-made clauses suitable for the project are always required. This can be achieved and further negotiated in pre-bid meetings.

Similarly in Ship construction contracts, complex agreements are often required involving performance guarantees, refund guarantees and also payment by installment which surely has implications of local and international laws.

Accordingly, owner, contractor, sub-contractor, EPC and O&M companies, architects, engineers etc. for their own interest may allocate time and resources for Legal Due Diligence to avoid disputes which may lead to complex lengthy litigations etc.

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Acknowledgement:

-www.bdonline.co.uk

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