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ARTICLE:
Company Law & Our Corporate Culture

Mohammed Forrukh Rahman*

Our Companies Act 1994, in comparison with the similar Company acts of most developed countries, can be said as a standard law. Under the said Act, the company court as well as the registrar of joint stock of companies & firms (RJSC) have been empowered with certain powers & authorities as per English law tradition. The Act provides incorporation formalities, the procedure for merger & amalgamation, the scope for winding up, and different other company affairs.

Formation of a new company by the local & foreign entrepreneur is a regular affair in our country. Businessmen tend to understand the difference between company, proprietorship & partnership. Businessmen open more than one company to run different kinds of business. Two, three or more companies under the same ownership often refer to as a group of companies. Owning a group is certainly a matter of prestige.

On the other hand, there are nearly 1.4 lac companies already incorporated; however, out of which only 40% file returns regularly (information collected from RJSC, Dhaka). The rest of the companies do not file their audited financial statement as they are most likely paper-based company, having no business or activities. Entrepreneurs prefer to operate within their own family or business structure. Particularly in case of group ownership, when businessman tries to diversify their business portfolio, rather than buying shares or joining hands with existing enterprises, there is a strong tendency amongst them to start from scratch by forming a new company & obtaining fresh licenses from different regulating authorities. The end result is due to lack of focus, competitive strength in the market & cut-throat competition, only one or two of the companies in the same group is surviving, while others are losing their importance. Few regulators like Bangladesh Bank in banking & finance sector also encourage merger & amalgamation by issuing specific guidelines. In reality, merger & amalgamation is a rare affair in our business culture. This in fact not allowing the companies to flourish, grow & compete with bigger brands. Rarely these family-oriented businesses are successful with extreme hard labor or generations of business history or by other means, but same is rare. Certainly, the advantages associated with the merger are neglected by business owners.

The process of a merger is clearly narrated in Section 228 and 229 of the said Act. In merger, both transferor & transferee companies are required to draft a scheme of amalgamation deciding several factors for example, salary & benefit of human resources, share denomination, transfer of assets & liability etc. A draft scheme with board approval is required to be submitted before the company bench of Hon'ble High Court jointly by both companies. Once allowed the Hon'ble Court will ask the petitioners to advertise in the newspapers informing general public about the proposed merger.

Both companies are required to approve the scheme in their respective general meetings & appear before the court for approval. Once approved, the Honorable Court declares the transferor company as dissolved & also direct concerned authorities to correct the record of license, ownership etc, in the name of Transferee Company. The process is straight-forward. The total expenses incurred are not very significant.

Similarly, only 40% of the companies on average regularly file returns with Registrar of Joint Stock of companies & firm. Out of total One Lac, Forty Thousand companies approximately, the rest of the companies do not file returns regularly. Although they continue to maintain their corporate status. There are a significant number of companies who have no business operations for more than 10 years & also do not file return for several years. However, due to lack of knowledge & awareness they do not give much attention in winding up of the company, these not only creating liabilities for the shareholders but also putting other stakeholders at vulnerable position.

It is not very difficult to wind up a company & completely relinquish their liability. The process involves filing petition before Company Bench of Honorable High Court for winding up. Honorable Company Bench of High Court may allow such applications if satisfied that will be just an equitable to wind up or company unable to pay off its debt or number of members reduced below legal requirement or company has failed to file return etc. Normally mismanagement, deadlocks etc are considered as just and equitable. After admitting the application, the Honorable Court issue show-cause notice & also asks the petitioners to publish a notice in the newspaper. After hearing the parties the Honorable Court may allow winding up from the date of filing of petition & appoint a liquidator.

The liquidator takes custody of all movable and immovable properties, and dispose of the same with prior approval of Hon'ble Court. The sell proceeds are utilized to settle liabilities of the company.

The Act also provides other exit options, such as allowing 100% takeover of the company. 100% takeover is an option which is currently in use amongst mostly foreign-investors in garments & textile sector. However, the practice is not very popular due to lack of awareness in other industries.

Besides, running companies who have hope to survive in the business but right now in severe financial hardship without any fault may also take the opportunities as provided in the Bankruptcy Act 1997. Similarly, Creditor may also put their outstanding debt in the schedule of Bankruptcy Court to speed up collection process by faster mechanism of the said court without need for winding up in a situation where the company has hope to Survive.

In conclusion, it can be said that much awareness initiatives are required to introduce businessman with the corporate opportunities which are available in our laws. "

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ARTICLE

"A Global comparative analysis of time & cost efficiency amidst general Domestic hurdles"

Abdur Rahman Junaid*

"While there are Courts of Law to deliver messages of "justice", ADR may be one of its strongest "messengers" in terms of granting relief from long, arduous, and (at times) expensive litigation process from a layman's perspective.

Even from a historical standpoint the concept of resolving disputes amicably amongst parties without trial proceedings, is not foreign or outlandish, as the roots of Arbitration may be traced back to ancient Greek and Roman times from individuals like as Aristotle to large multinational conglomerates in the present all throughout the world, from companies such as Chevron, Toyota etc.

.More recently, according the US Department of Justice, a total of USD $70,610,213 of Litigation or Discovery expenses were saved in 2017, which was a sharp increase from USD $ 14,208,626 in 2016. Aside from the budgetary and financial relief granted, the success rate of the Voluntary ADR Proceedings in 2017 was 75% in contrast with 71% in 2016 with a total 26,388 days (2,733 months) and 20,866 days (2.108 months) of Attorney/Staff time saved respectively in 2017 and 2016.

Reports from World Bank estimates that cost savings with ADRs in percentage, compared to court litigation, in countries such as Bosnia and Herzegovina, Macedonia and Serbia was a staggering 50% compared to Trial proceedings, while other countries such as Colombia stand between 40-50%. Other than percentages it is estimated that approximately USD $6,000 is saved per party in any ADR proceeding in Canada and the US.

Relief from budgetary constraints have been key for ADR's success as much as increasing the effectiveness of Courts by reducing bottlenecks all the while improving trust in the legal system which in turn may increase foreign investments. All these traits are absolutely vital for a country with a booming economy such as Bangladesh. While the general people and legal practitioners are aware of the said laws involving ADR, one may also need to address (and if possible) remedy the general hurdles which are existent in the legal consciousness of Bangladesh.

- Stronger encouragement from the Judiciary; Many Courts throughout the world have a Court Rule authorizing the use of ADR processes for cases filed in the court, however such a Rule is hardly ever used or encouraged in reality, thus creating a absence of a potential catalyst for new or voluntary ADR programs.

- Stronger encouragement from the Legal Practitioners; Knowledge is power and utilization of said knowledge for the greater good is our moral duty. Reports indicate one of the foremost causes of delay in the disposal of trail proceedings can be traced back to the dilatory tactics used by lawyers by way of seeking repeated time petitions. ADR seeks to remedy that very notion by speeding up the trial proceedings in favor of the parties who would have otherwise been shunned or neglected under these scenarios.

- Stronger enforcement of Good Faith; The endgame of any successful ADR lies in securing a decision/judgment that is perceived to be a middle ground i.e. one which is acceptable to both Parties. In a stark contrast to trial proceedings where, there must always be one winner, ADR aims to ensure the continuity of the business and trade relationship even after the resolution of any such disputes. In most court appointed mediation in the US, the parties are required to "mediate in good faith" and experts recommend programs to be designed with stakeholder inputs to prevent problems with good faith requirements as such.

There is no denying the usefulness and efficiency of ADR from an economical standpoint on a global and domestic scale. However, in terms of the latter, the use of ADR aside from granting a much needed economical redress also helps in granting relief from a wide variety of legal issues branching from divorce proceedings and other family matters, professional liability cases, personal injury situations, insurance issues, commercial & industrial disputes. In an era of economic boon in a developing country such as Bangladesh, the usages and practices of ADR is becoming widely popular in the commercial and corporate field, with the inclusion of standard ADR clause in almost every major agreements and deeds between Parties. However the collective goal shall be to emulate such acceptance of ADR as a legitimate alternative to court proceedings in all other matters and areas of law as well, available to all; ranging from the rural to the elite hierarchy of the society.

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