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Investment Arbitration of Bangladesh**

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Over centuries it is a well-established international principal that every state is entitled to enjoy absolute immunity against trial (Jurisdiction) & Judgment & Order (Execution) of any foreign Court. Actions against state as a party to a foreign procedure could only be brought with their consent. To limit the effect of the said doctrine in particular for investment many countries in order to create favorable climate and also to protect their own citizen has ratified Washington Convention in 1966 popularly known as ICSID Convention.

Besides, in the absence of any statute on immunity from jurisdiction of an arbitral tribunal state is now considered as impliedly waived its immunity against submission to **jurisdiction** of tribunal. [*Kuwait Airways Corporation v Iraqi Airways Company & Others* (2002) UKHL 19]. However, in case of investment arbitration against state, **execution** of award in another country, subject to limited exception, is still considered as a matter of prestige and still taken as interference by a court of tribunal of another state against sovereign immunity. [*Article 55 of Washington Convention*]. Nevertheless, except in the USA, express waived from state immunity from execution may be considered as acceptable.

Unlike commercial Arbitration investment Arbitration, generally involves high value claim, significant investment having impact on national economy and always involves a state as a party, hence provides addition layers of protection e.g. delocalized appeal procedures within ICSID, recommendation (Article-47), recognition (Article-54), diplomatic protection, economic pressure etc. Besides, in case of investment disputes the Arbitration clause need not always be present in the investment agreement. It may find its place within the framework in Bilateral Investment Treaty (BIT), Multilateral Investment Treaty or national legislation.

Bangladesh also provides guarantees & standard protection to foreign investors as it signed ICSID Convention on 20th November, 1979; same was ratified on 27th March, 1980 & enforced on 26th April, 1980.

There is no specific statute in Bangladesh which specifically protests sovereignty against execution of award of an international Arbitral Tribunal. Rather Bangladesh enacted Foreign Private Investment (Promotion and Protection) Act, 1980 to accord fair and equitable treatment to foreign investment.

Besides, Bangladesh also signed 30 bilateral treaties, out of which ICSID arbitration clause has been incorporated in the following treaties i.e. Australia (2000), India (2009), Indonesia(1998), Italy (1990), Netherland(1994), Philippines (1997),United Arab Emirates (2011), & United States of America(1986).

Right now three ICSID arbitrations between foreign investors and Bangladesh have been concluded i.e. Chevron Bangladesh Block Twelve Ltd (ICSID Case No. ARB/06/10). (ICSID Case No. ARB/05/7); Scimitar Exploration Limited (ICSID Case No. ARB/92/2) & Saipam S.P.A. (ICSID Case No. ARB/05/7). While three arbitrations are now pending with ICSID i.e. NEPC Consortium Power Limited (ICSID Case No. ARB/18/15), Niko Resources Ltd (ICSID Case No. ARB/10/18) & Niko Resources (Bangladesh) Ltd (ICSID Case No. ARB/10/11).

Therefore, any prudent state or investor before signing any investment agreement of any form always required to conduct due diligence to ensure better protection of their respective interest in particular as follows (a) verify whether they would like to incorporate arbitration clause in the agreement with express provision on waiver from immunity from execution; (b) conduct due diligences on applicable bilateral and multilateral treaties; & (c) determine who will sign the arbitral agreement whether state party or its agency etc.

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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