Speech to be delivered by the Hon’ble Chief Guest

Mr. Justice A.F.M. Abdur Rahman.

At the seminar held in commemoration of WORLD FAIR TRADE DAY-2015.

Hon’ble Special Guest Mr. Md. Manzur Hasan Bhuiya, Joint Secretary, Ministry of Commerce, Mr. Ali Ahmed, CEO, Bangladesh Foreign Trade Institute, Mr. Kei Kawano, Country Representative Japan External Trade Organization (JETRO) and President, Japan Bangladesh Chamber of Commerce & Industry (JBCCI) and Dr. Toufiq Ali, CEO, Bangladesh International Arbitration Centre (BIAC).

The Hon’ble designated discussants Mr. Shah Abdus Salam, Founder and CEO, Development wheel (DEW), Mr. AKM Abdullah, Senior Financial Sector Specialist, World Bank, Mr. A.M. Mahbub Chowdhury, Advisor Port and Shiping, BGMEA and Mr. Shamin-Ul-Huq, Managing Director, Maersk Bangladesh Ltd.

The distinguished audience. Ladies and Gentleman.
Assalamualaikum and Good afternoon.

While it’s my great privilege to attend this august occasion as chief guest, hosted by ‘Rahmans Chambers’ in commemoration of the World Fair Trade Day 2015, nevertheless it’s a great pain for me that no room has been left for the chief guest to touch upon any point on the subject, as the hon’ble designated discussants and the hon’ble Special Guests in their deliberation, as to the affairs of fair trade and world fair trade day, has exhaustively expressed and accordingly I am unable to make points and to deliver a meritorious speech.
However, pursuant to my decade old experience in the bench of the High Court Division, connected with commercial matters, especially VAT and Customs matters, Company matters, Admiralty matters and the Income Tax jurisdiction, I may be able to make some points on the object and scheme of the Fair Trade and Fair Trade Day as floated by the World Fair Trade Organization (WFTO), the Netherlands.

Practically Fair Trade indicates fairness in the trading, either in domestic level or in the International trade. World Fair Trade Organization (WFTO) dealing on the subject has formulated the definition of Fair Trade as an International trading partnership based on dialogue, transparency and respect, that seeks greater equity is International Trade and contributes to sustainable development by offering better trading condition, securing the rights of marginalize producer and worker-specially in the south. The World Fair Trading Organization (WFTO) further asserted that fair trade is more than just trading, while it proves that greater justice in world trade is possible. In their version the WTO also highlighted the need for change in the rule and practice of conventional trade and shows how a successful business can also put people first and as such the concept of fair trade is a tangible contribution to the fight against poverty, climate change and economic crisis in the developing countries, like Bangladesh where weaker manufactures of garments fails to obtain its rightful share in sale price from the stronger European and American Fashion Buyer.

The World Fair Trade Organization aims at to improve the livelihood of disadvantaged traders and producers in developing countries by linking and strengthening these capacity of the marginalized producer with the help
of the organizations that offer just alternative to unfair trade structures and practice, who by their own activity become members of WFTO. Accordingly WFTO members shares code of practices which are as follows;

1. Commitment to fair trade.
2. Transferency in trade relation.
3. Highlighting of the ethical issues.
4. Working condition of the producers.
5. Equal employment opportunities.
6. Concern for peoples livelihood.
7. Concern for the environment.
8. Respect for producers cultural identity, and
9. Education and advocacy.

This code of practices defines the working relationship in between the Fair trade organization and the stake holders. In these respect WFTO prescribes 10 principles for the Fair Trade Organization to follow in the day to day works. These are;

1. Creating opportunity for economically disadvantaged producer.
2. Transparency and accountability.
3. Fair trading practice.
4. Payment of fair price.
5. Ensuring no child labour and force and forced labour.
6. Commitment to non discrimination gender equity and women Economic Empowerment and freedom of association.
7. Ensuring good working condition.
8. Providing capacity building.

10. Respect for environment.

All this principles become the charter of the WFTO which was adopted by the World Fair Trade Organization to treat it as a single international reference point for fair trade. It provides concise explanation of fair trade principle and the two main routes by which these principals can be implemented. It also sets out common vision, definition of fair trade and core principles to be observed worldwide.

The World Fair Trade Organization (WFTO) intends that the people awareness as to the fair trade shall bring the whole world into one harmonized commercial condition, where the marginalized producer as well as the Multinational Companies will enjoy the similar privilege and as such WFTO encourages people’s awareness through seminars, symposiums and workshop around the world. To that end in view World Fair Trade Fair day has been floated to be observed on the second Saturday of May of every year. It is the published principals of WFTO that it values the people’s awareness works done in the field of fair trade, with intention to provide freely acceptable information to everyone who is interested in learning more about fair trade and its impact on many different spheres which practically will be beneficial to the fair trade movement to help WFTO tackle current challenges and bring fair trade as a global solution, now and in the future. That is the aim of this seminar as organized by Rahmans Chambers, which is discharging its duty as Fair Trade Organization in the field of law and legal issue.

In the aforesaid light of fair trade dealings, the Bangladesh situation is required to be examined for the development of the fate of the marginalized
producers on every aspect. In Bangladesh practically vast of these marginalized producers are micro, small and medium sized enterprises, which are widely formed as 'Single member business entity' as against the joint stock companies. These are the proprietorship enterprise or at best partnership firm's only regulated for its conduct by the terms of its trade licence or formation document respectively. The United Nations Commission on International Trade Law (UNCITRAL) in its twenty third session of its working group, made a draft model law for the micro, small and minimum sized enterprise specially for 'single member business entity' in respect of its formation, capital, organizational structures and re-structure, dissolution and winding up which is required to be adopted in Bangladesh in order to achieve a harmonized status in respect of these entities.

Primarily the business law which regulates the commercial transaction in Bangladesh is the age old “Sale of Goods Act 1930”, which is equally applicable both for the 'Single member business entity' as well as the companies. This piece of statute has lost its efficacy due to passage of time and further that this legislation is not applicable to International sale of goods. Considering this sort of situation elsewhere in the world, the core legal body of the United Nations, working in the field of international trade law, named The United Nation Commission on International Trade Law (UNCITRAL), formulated modern, fair and harmonized rules on commercial transactions which to be followed by the member states at the time of making laws on commercial affair, which includes;

1. Conventions, model laws and rules which are acceptable worldwide.
2. Legal and legislative guides and recommendations of great practical value.

3. Updated information on case law and enactments of uniform commercial law.

4. Technical assistance in law reforms project.

5. Regional and national seminars on uniform commercial law.

Under the UNCITRAL commission, a working group has drafted a model commercial law under the name ‘United Nations convention on contracts for the International Sale of Goods’, in short CISG, in its session held in Vienna on 11 April, 1980, which provided a modern, uniform and fair regime for contracts for the international sale of goods, keeping in mind that the small and medium sized enterprises as well as single person business entity and traders located in developing countries have typically reduced access to legal advice when negotiating an international contract. The same enterprises and traders may also be the weaker contractual parties and could have difficulties in ensuring that the contractual balance is kept. Those merchants would therefore derive particular benefit from the default application of the fair and uniform regime of the CISG to contracts, falling under its scope.

Bangladesh, being a contracting state of UNCITRAL, may adopt the draft model law CISG, without facing any financial implication. Moreover since the administration of CISG does not required a dedicated body at the domestic level and involve no reporting back obligation, only an administrative action is required to adopt the CISG to be operative in the case
of Bangladeshi Traders in respect of their import and export business, else these traders will be left vulnerable in the International transactions.

The first recommendation of this seminar has directed to consider the possibility of adopting CISG in Bangladesh on the ground that ‘Sale of Goods Act 1930’ is not conforming to the prevailing situation in Bangladesh. This has prompted me to examine as to the lacking of the said statue, where upon my conception to the said Act is not positive. The said Act is only applicable within whole of Bangladesh, meaning thereby it has no application in the international trade. Then the question arises what is the guiding law applicable for the international trade, when dispute arises out of import and export business in Bangladesh. My experience says that the answer directs us to the century old law named Bill of Leading Act 1866, The Carriage of Goods Act 1865, The Marine Insurance Act 1906 and The Maritime Convention Act 1911, which are practically the prevailing guiding law for the international trade of Bangladesh. But all this laws have practically lost its efficacy due to passage of time and therefore are not conforming law regarding International sale of Goods and related transaction. This has required to adopt the CISG for the security of the Bangladesh traders involved in international trade. Since the draft model law of CISG provides a modern and uniform rules for the International sale of Goods, covering all possible aspects, thus the CISG contributes significant role to introducing fairness in commercial exchanges and decreasing transaction cost.

The instant seminar also recommends to consider the possibility of establishing a separate commercial court for resolving the commercial disputes only.
Practically under the provision of Civil Court Act 1881, prevailing in Bangladesh Civil Courts are established with any jurisdiction under the law. But under the constitution of Bangladesh, The Hombre Chief Justice of Bangladesh, being the head of the High Court Division of the Supreme Court of Bangladesh, may constitute a bench conferring any jurisdiction in order to resolve dispute under any provision of law. In this respect Admiralty bench, popularly known as Admiralty court, interalia, is functioning under the ‘Admiralty court Act 2000’ to resolve dispute arising out of carriage of Goods by sea and any question or claims arising out of that law or damage of goods carried in a ship along with other specific questions. But this law is not adequate to resolve all disputes arising out of commercial transaction. Previously there was courts constituted under the name & style “Commercial Court” under the Civil Court Act 1881, but those courts had ultimately took over the tusk of “Artho Rin Adalot” constituted under the statute “Artho Rin Adalot Ain 2003”. Consequently all disputes arising out of commercial transaction are now adjudicated within the jurisdiction of Joint District Judges and that being extra burden upon these courts, apart from it civil and criminal business, pile of commercial dispute are now pending in these courts.

Therefore, a separate bench in the High Court Division is required to be constituted in order to resolve the commercial disputes arising either out of International Trade or under the municipal law.

The final recommendation of this seminar is as to bring changes in the Civil Procedures Code 1908, Sale of Goods Act 1930 and other related law as these age old laws are inadequate in view of the digitalization of Bangladesh.
I fully subscribe to all these recommendations as made as outcome of this seminar.

I thank everybody attending and organizing this seminar; specially I thank the key note presenter Barrister Forrukh Rahman, the hon'ble special guests and designated discussants and the moderator of the seminar.

Thank you all.

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