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Practice of arbitration mechanism a must to woo int'l investors

Regional head of dispute resolution at Rajah &Tann tells FE

Mohammad Ali

Practice of arbitration mechanism in Bangladesh mainly to resolve the cross-border business disputes is sine qua non to attract more Foreign Direct Investment (FDI) that the country is looking for, an international arbitration expert opines.

"International investors don't feel comfortable to settle any business dispute in a foreign country's court rather than an international neutral platform like an arbitration center," Francis Xavier, SC, regional head of dispute resolution at Rajah &Tann, a leading law firm in Asia, told the FE in an interview recently.

Mr Xavier was in Dhaka to deliver his speech at a recent seminar on "The Rise of International Arbitration in Asia", jointly arranged by Bangladesh International Arbitration Centre (BIAC) and Rajah & Tann Singapore LLP.

It was the first visit of the 51-year old arbitration expert in Dhaka.

"The investors are usually not interested in investing in a project if they apprehend of facing difficulty in getting the money back in case of any dispute," Mr Xavier said.

"It is all about business confidence," he said.

"Practice of arbitration mechanism to resolve dispute would significantly boost up it (business confidence)," he continued.

If you look at the advanced countries like Hong Kong and Singapore in terms of GDP growth, you will see strong presence of Alternative Dispute Resolution (ADR) there, he said. "So, it (ADR) is important for Bangladesh too."

Mr Xavier further said that arbitration is important for not only cross-border businesses but also local businessmen because the prolonged delay in disposing of civil cases in court, in fact, impedes growth of their own business too.

To do so, the arbitration expert suggested creating awareness among the businesses, lawyers, arbitrators and policy makers.

Mr Xavier also called for changing their mindsets towards this quick and effective resolution system from the delayed traditional system of settling the business dispute in court.

In this connection, he expressed his interest in working together with Bangladesh and share the firm's long ADR experience and knowledge in Singapore, a model in arbitration practice, to make this region more vibrant economically and robust in legal framework.

To promote the arbitration in Bangladesh, "BIAC is obviously doing well in its part," Mr Xavier said and called for boosting up its activities to this effect.

"The businesses don't really understand what ADR is?" they need to be aware of why ADR is good for them, he said. "There are many ways of doing ADR and some are not effective."

"BIAC can do a lot in this field by arranging different promotional programmes like seminar," he said.

Citing BIAC's interest to work with the firm and train the lawyers, arbitrators in Bangladesh, he said, "We are

very happy to share our experience and knowledge to develop arbitration system in this part of the world."

The 51-year old arbitration expert also said that apart from the private sector initiatives, the government needs to play a key role.

The government should pass very progressive legislation having different promoting provisions for ADR.

He recommended the government to provide various incentives such as tax exemption for the arbitrators irrespective of local and international identified in Bangladesh to promote the mechanism.

"The government can borrow some ideas from the ADR-friendly countries such Singapore and Hong Kong" Mr Xavier said.

In a query about alleged 'less income' of a section of legal practitioners under ADR, he said that if ADR is introduced, the number of quality business deals and business will surely increase, raising the number of disputes too.

"Ultimately, all the parties including lawyers and businessmen will benefit," said Mr Xavier, also senior counsel of the Supreme Court of Singapore.

"Singapore and Honk Kong are ADR-friendly. So, will you say that the lawyers in Singapore are underpaid compared to the Bangladeshi counterparts?" he posed a question.

"When disputes are resolved quickly, so many companies do business and all of them need lawyers," he elaborated his point.

"I can very clearly see that Bangladesh is poised to emerge as an economic power in Asia," he said and expressed his willingness to work with together Bangladesh.

"If I would not come to Dhaka, I would not see that. Because, whatever you read in the press about Bangladesh and Dhaka is filtered."

"As foreigner, I never truly understood Dhaka, unless I came here, saw your country, talked judges, lawyers and businesses," said the Singaporean arbitration expert born in Malaysia.

Rajah & Tann is a leading Asia law firm having biggest office in Singapore, he said, adding that it has offices in eight countries-- China, Thailand, Vietnam, Laos, Cambodia, Malaysia, Indonesia and Myanmar.

"We provide complete legal services in drafting and signing of any deal or joint venture between the international corporate bodies, fighting in court and resolving disputes through arbitration etc," he said.

"We yet to have formal operation in Bangladesh, but we have many international corporate clients, who are interested in investing in Bangladesh," he said.

"That's why we, as Asian law firm, are very keen to know about Bangladesh in order to help them come to Bangladesh, one of the fastest growing economies in the world," added Mr Xavier.

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