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# NEWS LETTER

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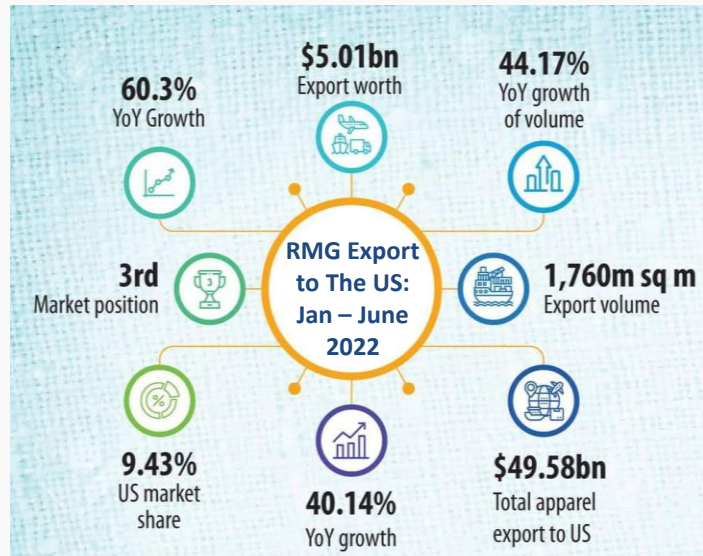
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## Bangladesh Continues to Boost its RMG Exports to The United States

Bangladesh has successfully maintained its growth momentum in exporting apparel items to the United States, the biggest single destination of readymade garment (RMG) manufacturers, in the first half (January-June) of 2022, securing the position of the third largest exporter to the destination.

According to latest data from the Commerce Department's Office of Textiles and Apparel (Otexa), Bangladeshi exporters shipped apparel items worth \$5.01 billion, fetching a growth of 60.3%, in the first six months of the current calendar year.



Bangladesh had previously exported RMG goods worth \$3.13 billion to the US in the same period of 2021. The market share of Bangladesh in the US also rose to 9.43% while China and Vietnam were ahead of Bangladesh with market shares of 23.54% and 17.49% respectively, Otexa data further showed. In the same period, the overall US apparel imports reached \$49.58 billion, noting a 40.14% year-on-year surge. The data also showed that the single-month apparel export earnings from the US in June grew to \$906.06 million, fetching a growth of 66.20% from \$545.21 million in the same period last year. Apparel exports also experienced a growth in terms of volume by 44.17% to 1,760 million square metres in the first six months of 2022, from 1,221 million square metres in the same period of 2021.

In June 2022 alone, apparel exports experienced a growth of 46.5% to 282.494 million square metres from 192.77 million square metres in the same month of 2021. Manufacturers said that Bangladeshi clothing always had a good position in the US market and they were working hard to sustain this trend of export growth amid record-high inflation in the US. According to the Otexa data, China and Vietnam occupied the first and the second highest positions respectively in the US market as of June 2022.

US apparel imports from China in the first half of 2022 experienced a growth of 40.15% to \$10.25 billion from \$7.31 billion in the same period of 2021, proclaiming the first position with a market share of 23.54%. Vietnam exported apparel items worth \$9.19 in January-June of 2022, fetching a growth of 35.03% from \$6.81 billion in the same period of the past year, claiming a market share of 17.49% which left them at the second position. India secured the fourth position by exporting apparel items worth \$3.2 billion, registering a growth of 57.27% from \$2.03 in the January-June period of 2022 with a market share of 5.6%.

# CASE LAW UPDATE

## Bangladesh Telecommunications Company Ltd. and others. - Vs. - Review Panel-2, Central Procurement Technical Unit (CPTU) and others

### **Facts:**

In this case, the petitioner is a public limited company owned by the Government and provides fixed phone telephone services to the country. It is stated that the Government of Bangladesh has executed a Loan Agreement (Bd-P-53) with the erstwhile Japan Bank for International Co-operation (JBIC), which has been renamed as Japan International Cooperation Society. Since the project is financed by JICA, the provisions of the Loan Agreement shall prevail if any difference of opinion or provision is found in the Loan Agreement. BTCL invited quotation for pre-qualification of bidders for implementation of the said project. Two companies were found pre-qualified in accordance with the Evaluation Report of Technical Specification Committee. Accordingly, JICA sent their concurrence.

The respondent No. 4, NETAS was informed about its failure to pre-qualify. NETAS reached out to the authority of BTCL with a complaint but was dissatisfied with the decisions. Further, it filed a Review Petition before the Review Panel No. 2. The jurisdiction of the review panel was in question as no complaint could be lodged against rejection of pre-qualification application as per Section 29(2) of PPA 2006.

The Review Panel delivered its decision upon hearing the parties and pursued an order allowing the Review Petition of NETAS and declared them as pre-qualified with a direction upon the BTCL to treat NETAS as a pre-qualified entity. JICA by their letter

conveyed their concurrence to BTCL with regard to two successful pre-qualified bidders of Lot B and by referring to their Guidelines for Procurement under Japanese ODA Loans, it reminded BTCL that at every stage of the procurement process JICA would review and monitor strict compliance with the Loan Agreement.

Having been aggrieved with the decision and order passed by the Review Panel, the petitioners (BTCL) approached this Court for redress.

### **Issues:**

1. Whether the Review Panel-2 is eligible to pass a direction for a company to be pre-qualified for the bidding process according to PPA, 2006 and PPR of 2008;
2. Whether the terms of the Loan Agreement prevail over the PPA 2006 according to clause (Gha) of Section 3(2) of PPA 20; and
3. Whether NETAS should be qualified to ensure a healthy and competitive bidding process under Rule 93(9) and Rule 93(11) in accordance with schedule II of the PPR, 2008.

### **Decision:**

If there is anything in the Loan Agreement which is contrary to the provisions of PPA or PPR, only then will the provision of that Loan Agreement prevail. In this case, since there is no contradiction between the Loan Agreement and the PPA and PPR, the provisions of PPA or PPR will be applicable to this case.

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**CASE LAW  
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Again, the decision of any Review Panel will be binding upon all parties who must act in accordance with the order passed by the Review Panel under Rule 60(5) of the PPR, 2008, which has been clarified by the competent authority.

The Court finds the Review Panel's observation of Making NETAS eligible to ensure healthy competition appropriate. According to Rule 93(9) and Rule 93(11) read with schedule II of the PPR, 2008 a healthy and competitive bidding process is a definite requirement and at least 3 companies need to be declared as pre-qualified by the purchasing entity (the BTCL). To ensure that, the purchasing entity (BTCL) can also allow companies with minor deficiencies to prequalify. Rule 93(11) strictly ensures that the purchasing entity can amend the prequalification document and issue new advertisement if that is necessary.

The Court also does not find any substance in the argument raised by BTCL on the point of limitation. It appears that the BTCL approbates and reprobates in this case by taking recourse of aforesaid Rule 56 (Ka) in an attempt to make the complaint of NETAS time barred under PPR 2008 while their main argument is that the PPA 2006 and the PPR 2008 do not have any applicability in this matter.

The Court is satisfied with how the Review Panel has diligently dealt with each and every issue raised by BTCL and the reasoning and findings of the said Review Panel were appropriate and sound and, as such, the Court does not find any illegality in the decision and order passed by the panel.

In addition to the above findings, it also appears before the Court that the Managing Director of BTCL is barred by principle of estoppel to challenge the impugned decision and BTCL did not come in clean hand before this Court in seeking equitable relief under Article 102.

Therefore, Rule issued in Writ Petition No. 5073 of 2012 is discharged and Rule issued in Writ Petition No. 5095 of 2012 is made absolute.

# LEGISLATIVE UPDATES

## Overview on Information and Technology (Investigation Conduction) Rules, 2022

The Department of Information and Communication Technology under the Ministry of Posts Telecommunications and Information Technology has recently published the Information and Technology (Investigation Conduction) Rules, 2022 virtue of Section 88 of the Information and Communication Technology Act, 2006 vide S.R.O No. 231-Law/2022. Through this Rule, an aggrieved person can file a complaint to the Controller for any offense related to the electronic signature certificate issuing authority under the Information and Communication Technology Act, 2006. It also allows an aggrieved person to file a complaint to the nearest police station or controller in case of any other offense related to the electronic signature certificate and certificate issuing authority.

The Rule defines the stakeholders and involved objects or devices. For example, digital evidence has been defined as the data that is stored, transmitted, or acquired by digital forensics using digital electronic computers and is admissible in court as such. Additionally, Digital Forensic Lab has been defined as the Digital Forensic Lab established under section 10 of the Digital Security Act, 2018.

Under the ambit of this Rule, grievance procedure, investigation of both civil and criminal offenses, the methods of seizing digital signatures and procedures for transfer, collection, and preservation of digital signatures, digital forensic lab report, transnational investigation, the confidentiality of information, and so forth has been covered.

It prescribed a detailed procedure for the seizure of digital signatures. The seizure of the signature has to be done in writing and included on Form - 7 or Form - 8. Without the permission of the tribunal, the signature cannot be used for any other purpose.

The evidence that has been seized cannot be used without the permission of the Tribunal in case of criminal proceedings, and the Controller in case of civil proceedings. Furthermore, the seized sample has to be stored in Faraday or similar bags.

In scenarios where the offenses are of criminal nature, any police officer not below the rank of Controller or Sub-Inspector will conduct the investigation. Whereas, if the offense is of civil nature, the Controller or any empowered officer will conduct the investigation.

The Rule allows the investigator officers to visit the crime scene outside Bangladesh through international or regional, bilateral, or multilateral cooperation of any state or organization, or by agreement. In circumstances where any regional or international cooperation is required, as the Rule directed, the provisions of The Mutual Assistance in Criminal Matters Act, 2012 will be applied.

For the purpose of maintaining the procedures, such as authorization letter for both civil and criminal offenses, investigation report, complaints register, seizure list and chain of custody form and so forth, the Rule has also prescribed nine forms.

## A New Wave In The Punishment of Cheque Dishonor ?



The Negotiable Instruments Act 1881 is the primary law relating to negotiable instruments in Bangladesh. The Act deals with three kinds of negotiable instruments, which are promissory notes, bills of exchange and most importantly cheques. It is evident from Section 13(1) of the Act, that a “negotiable instrument” means a promissory note, bill of exchange or cheque. Now focusing on cheques, section 6 stipulates, ‘A “cheque” is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

But what happens when a cheque is dishonored? This question is dealt with Section 138 which promulgates certain situations when a cheque can be dishonored and subsequently becoming a punishable offense. If a payee remains unpaid either because the amount of money standing to the credit of an account is insufficient to honor the cheque or that it exceeds the amount arranged to be paid from an account by an agreement made with that bank, the drawer of the cheque may be punished. But for such persons to get a penalty the provisos to section 138 needs to be factored in too.

The said provisos are:

(a) the cheque must have been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, must make a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and

(c) the drawer of such cheque must fail to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within thirty days of the receipt of the notice.

After all these tests are exhausted, according to the statute (section 138) the punishment of cheque dishonor is imprisonment for a term which may extend to one year, or with fine which may extend to thrice the amount of the cheque, or with both.

But recently the High court division, while hearing criminal petitions regarding cheque dishonor, observed that sending anyone to jail in a cheque dishonor case is contrary to Article 32 of the Constitution. The bench consisting of Justice Md. Ashraful Kamal opined this provision of jailing someone in the matter, curtails a citizen’s personal liberty. Amendment of Section 138 of the Act for abolishing the provision of jail in check dishonor cases was suggested for the legislative body of the country. Adding to this, the court issued a guideline to follow for the settlement of dishonor cases until the amendment of the provision of the Negotiable Instruments Act.

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# A New Wave In The Punishment of Cheque Dishonor ?



While laying out this judgment the court considered certain international practices where matters of cheque dishonor is kept within the civil realm. The reasoning of the judgment, also factored in Article 11 of international Covenant on Civil and Political Rights (ICCPR) which says no one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation. It is to be mentioned Bangladesh is a signatory of ICCPR.

Now it is to be seen how this judgment is reciprocated by the socio-legal fabric of the country. A question may arise on what the realistic impact would be of the judgment. Although on the face the judgment may seem pragmatic, the reception and appreciation of such judgment by the legislative/political sector/s, will decide the ultimate fate of the concerned provision, with regards to separation of power.

## In Other News

### **FDI in Bangladesh saw 50% Growth in Q1 of 2022**

Bangladesh received foreign direct investment (FDI) worth \$888.48 million in the first quarter (January-March) of the ongoing 2022, fetching a positive growth of 50.14%. According to the recently-published Central Bank data, net influx of foreign investment during the same period last year was \$592 million.

Moreover, FDI in the form of equity capital also skyrocketed 105.26% to \$288.33 million during the first three months of the current calendar year, an increase from \$140.47 million of the same period last year. The central bank data also said that the reinvestment of earnings rose to \$613.53 million in Q1 of 2022, registering a growth of 61.11% from last year's \$381 million.

As per the data, FDI inflow in Bangladesh had declined 10.8% in 2020 year-on-year due to the global outbreak of Covid-19. The economic recovery from the pandemic boosted the confidence of foreign investors, which accelerated new investment in the country.



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