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NEWS LETTER

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Bangladesh On Track To Be One of The Top Consumer Nations By 2030

Despite Covid-19, the Global Consumer Class is growing fast, and since 2000, the global consumer class grew by more than 4% each year, reaching a new milestone of 4 billion people, for the first time in 2021. At the beginning of this century, the middle class was mostly a Western phenomenon. Consumer companies were selling their goods in OECD countries, especially the USA and Europe.

But today, the consumer class is Global and increasingly Asian. Spending by the Asian middle class exceeds that in Europe and North America combined. Global Consumer Class is defined as anyone living in a household spending at least $11 per day per person, of which the global middle class ($11-$110 per day) represents the lion's share with 3.75 billion people.

Bangladesh is one of the top performers in that race as the country is forecast to have very large increases, in the tens of millions, in the consumer class numbers by 2030. The country is expected to jump 17 notches from the 28th to the 11th biggest consumer class of 85 million people, according to ***World Data Lab MarketPro***.

Although the country's global share of consumer class was about 0.8% last year, it is expected to constitute 1.6% by 2030, more than double. Today, 35 million people in Bangladesh spend more than $11 a day, but as per data, by 2030 it could be 85 million.

Everyone is familiar with the consumer class growth in China and India. In Europe and North America, the numbers in the consumer class will stagnate and growth will come about only because households will become richer. One of the other top movers in the consumer class is Pakistan, which is expected to move up eight notches to the seventh position with 121 million consumers in 2030. Vietnam is expected to move up seven notches to the 19th position with 56 million consumers, while Philippines expected to jump six positions to the 14th place with a 79 million-strong consumer class in 2030. And finally, Indonesia is expected to go up two notches to the sixth place with 199 million people in its consumer class by 2030.

According to market experts, the consumer class is spreading across the world, and many emerging markets will have large consumer markets where supply-chain-scale economies, digital platforms, and local preferences will need to be better understood and developed.

CASE LAW UPDATE

Qazi Anwar Hossain v Government of Bangladesh and Others

WRIT PETITION NO. 4650 of 2020

Background Facts:

Sheikh Abdul Hakim on 29.07.2019 filed an application before the Registrar of Copyrights Office, Bangladesh under Section 71 and 89 of the Copyright Act, 2000 and claimed himself as the author of some of the books of "Masud Rana" and 'Kuasha' series respectively, that was published by the petitioner Qazi Anwar Hossain and alleged Copyright infringement, claimed royalty and sought relief from the Registrar of Copyrights Office, Bangladesh for this infringement.

The Registrar of Copyrights Office, Bangladesh took cognizance of the said complaint, held a hearing and gave an order.

In the crux of the order some principles of copyrights as an intellectual property right was discussed. Basically, it was decided that in absence of any documentation in regards to employment of any writer by the publisher for the particular work, moral right of the literary work shall remain to the author of the work. And in absence of any contract between the author and the publisher of the work regarding commercial terms, the author is the sole owner of the intellectual property.

In this context the Registrar's office gave an order where it provided directions regarding the enforcement mechanism of such copyright claims and ordered commercial sale of the books in dispute to be halted for the time being and demanded sales records for royalty sharing purposes.

The petitioner challenged the jurisdiction of the Registrar in giving such order and obtained a rule nisi calling upon the respondent, The Registrar of Copyrights Office, Bangladesh to show cause as to why the proceedings of the initial Copyright

Complaint before the respondent for infringement of copyright drawn up against the petitioner, and the adjudication order, dated 14.06.2020, passed by the respondent in the said Copyright Complaint in violation of sections 81 and 92 of the Copyright Act, 2000, and without jurisdiction should not be declared to have been proceeded without lawful authority and is of no legal effect.

Issues before the Court:

The High Court Division did not go to the merit of the Registrar's order. Rather the ambit of the Registrar's power and other remedy available for the petitioner under the Copyrights Act 2000 was looked upon in order to determine whether the writ was maintainable or not.

Reasoning of the court:

The court observed that, the Registrar may enquire and decide questions of fact in a dispute of civil nature. In such cases the Registrar was entitled to exercise the powers under Section 99 of the Act having the powers of a civil court under the Code of Civil Procedure (Act V of 1908) when trying a suit in respect of several matters. But this does not give the Registrar any power to sit upon an allegation under Sections 71 and 89 of the Act, 2000. However, the court observed that the Registrar did not give any final adjudication in the allegation brought upon under section 71 and 89 rather provided directions as to the available forum to address and enforce such copyright claim.

The court further observed that, under section 95 of the Act, the petitioner had available remedy to appeal against the Registrar's order to the Copyright Board which it did not exhaust. Therefore, the court discharged the rule not being maintainable.

Decision:

Article 102 of the Constitution it is not legally approved to address any of the issues that has been agitated before the court since the petitioner may find his relief under the Copyright Act itself.

LEGISLATIVE UPDATES

Temporary Import of Product-Machinery, Spare Parts, and Equipment Subject to Return, 2022 ("the Rules")

The customs wing of the National Board of Revenue (NBR) has framed a new rule namely the 'Temporary Import of Product-machinery, Spare parts, and Equipment Subject to Return, 2022' ("the Rules") recently. Implementing authorities of different projects would be able to import and use duty-free machinery, equipment and spare parts for multiple projects under the simplified new Rules from now on subject to fulfillment of the conditions specified in the Rules like furnishing un undertaking, a bank guarantee and returning them after the approved period. The Rules replaces the previous S.R.O. No. 542-L/84/886/Cus dated December 10, 1984.

Importer will have to submit all necessary documents to the customs authorities for physical examination and provisional assessment of customs duty. An undertaking on non-judicial stamp will have to be submitted by the importer to the concerned Commissioner of Customs that the imported consignment would not be used for any other purposes than the declared one and/or would not be sold or transferred to any other person or establishment. Importer will also have to submit an unconditional and continuous bank guarantee equivalent to the amount of custom duty provisionally assessed by the authorities.

Once all necessary documentation is in place, the concerned Commissioner will issue permit for importation of consignment to be returned within one year, which can be extended for further 6 months subject to prior approval. The time for returning or sending back the temporarily imported machinery could be extended upon approval by the customs authorities of NBR showing valid reasons as per the Rules.

In case of failure in sending back such imported machinery without valid reasons, the importer will have to pay the applicable customs duty related to the imported consignment. Project-implementation entities import machinery for a project and after expiry its tenure or using the machinery for a year, the machinery could be used for another project under the Rules. However, approval of customs commissioner and other procedures as stated in the Rules have to be obtained.

The temporarily imported machinery, equipment and spare parts will have to be returned via the same port of importation. However, it can be returned via another port with prior approval. Physical inspection will be carried out at the time of returning the imported machinery, equipment and spare parts and all documentation formalities will have to be completed. The concerned Commissioner may approve release of bank guarantee after completion of return formalities. However, if the consignment is not returned within assigned timeframe, the concerned Commissioner can impose customs duty upon final assessment along with any applicable penalty and charges and also can order encashment of bank guarantee, if needed.

The provisions of the Rule would not be applicable to (a) machinery, spare parts, equipment imported by diplomats and privileged persons (defined in Privileged Persons (Customs Procedure) Rules 2003), (b) machinery, spare parts, equipment listed in HS Code 87.02 and 87.03 of the First Schedule of Customs Act, 1969, and (c) consumable products imported in any project or plant or machine or for any specific purpose which has been depleted or becomes unusable due to the use thereto. It is contemplated that implementation of the Rules would ease the process for the implementing authorities of project in importing consignment.

Naturally Arising Loss and Reasoning of Providing Damages as Compensation in Breach of Contract

Section 73 of the Contract Act, 1872 mentions compensation for loss or damage caused by breach of contract. It is one of the ways of discharging a contract. The sufferer party gets entitled to compensation as soon as the contract is breached. This article explains the ways of receiving compensation mentioned under Section 73 for losses suffered in the course of the contract as well as theories on how the compensation will be measured.

The section lays down two rules for determining compensation for any loss or damage. First of which is loss that naturally arose in the usual course of things from such breach and the second is loss which the parties knew while making the contract that it was likely to be caused as a result from such breach. The section also clarifies that such compensation will not be provided for any loss or damage which were too remote or indirect to the contract.

The Contract Act,1872 finds its roots in English common law as it was enacted during British colonial rule and the act also bears a complete resemblance with the Indian Contract Act. Section 73 hence is also based primarily in the English principle of restitutio in integrum which implies that the party suffering the loss should be placed in a position where the party would be if the contract had been performed. This was also used in an observation made by the Supreme Court of India in the case of Pannalal Jankidas v Mohanlal AIR 1951 SC 144.

The benchmark judgment made in Hadley v Baxendale (1843-60) All ER Rep 461 laid down a principle which was later incorporated in most common law countries where a distinction was made between general and special damages which have been included in the section as damages which naturally rose and damages likely to arise respectively.

The distinction between “naturally arose”, “likely to arise” and “remote or indirect” can be better understood by examining the fact of the case Victoria Laundry (Windsor) Ltd. v Newman Industries Ltd. (1949) 2 KB 528 where the claimants contracted with the defendants for the supply of a boiler by a specific date. The claimants needed this to meet a number of dyeing contracts with the Royal Navy but they did not communicate that with the defendants. Here, the claimants could only recover the ordinary business losses as it was a natural consequence of the breach. But, the loss from the dyeing contracts was not recoverable as the defendants did not have knowledge of that loss. So whether a loss would be “likely to arise” or “remote or indirect” is a question of fact along with other relevant factors. But, general damages flow naturally from the defendant’s wrongful conduct. A similar distinction has been made in the case of M/s. Amin Jute Mills Ltd. Vs. M/s/A.R.A.G. Ltd. 28 D.L.R. (AD) 76 where it was held that a party

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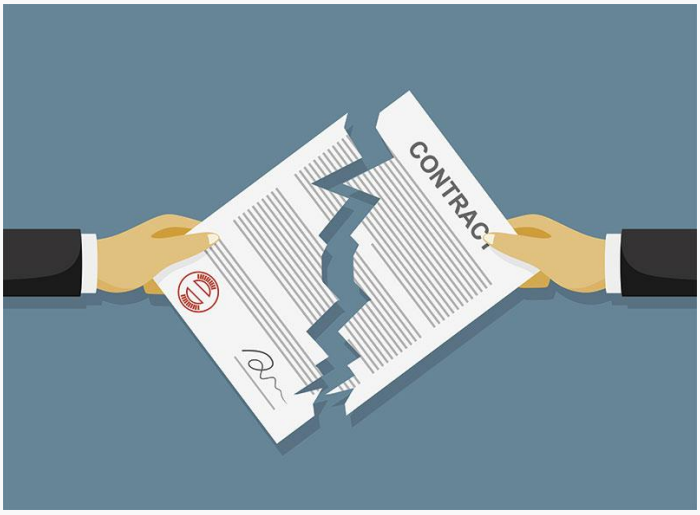
guilty of such breach of contract is liable to pay compensation for loss sustained due to such breach or which the parties knew to be likely to flow from the breach. It shows that Bangladesh has drawn inspiration from English common law doctrines in awarding compensation to injured parties.



Compensation is available for both general and special damages upon the prerequisite that the injured party brings an action for it. Damages provided under Section 73 means compensation in terms of money for the loss suffered by the injured party. However, few other remedies like injunction, specific performance etc. are available within the scopes of The Specific Relief Act,1872. Determination of the amount of damages to be awarded is based on the principle of restitutio in integrum, i.e the contractual damages will be forward looking. But this is not always possible since sometimes the loss is too speculative. So to calculate the award of damages three notable theories are available, which are, expectation interest, reliance interest and restitutionary interest.

The aim of expectation interest is to put the innocent party where they would have been if the contract had been performed. Which means the award will be the difference between what was expected and what was provided.

To assess this value, the court primarily looks at market price if the contract is related to sale of goods. Here the aggrieved party has a duty to mitigate the loss as soon as they receive news of the breach. Another method is determining the "cost of the cure" which offers the cost of remedying the damage caused by the breach. Since this value sometimes means that the damages may exceed the market price, the courts show reluctance to award this type of damage. Next is diminution in value which measures the difference between the value of property as it was contractually promised and the value of the property as it currently exists or was contracted. As a general rule, a claimant cannot recover damages for injured feelings for breach of contract. But the exception of this rule is to award pleasure, relaxation, peace of mind or freedom such damages are recoverable. This is known as loss of amenity.

The reliance interest comes into play when the primary measure of providing the expectation interest of the innocent party cannot be fulfilled. This type of interest puts the claimant in a position where they would have been if the contract had not been performed. So in a sense this is a backward theory as opposed to expectation theory. Restitution interest is given when both expectation and reliance interest are unavailable, but someone gains an unlawful enrichment at the expense of the sufferer party. This kind of interest is defendant focused and holds the defendant accountable for any profit they make as a result of this breach.

Damages are the primary remedy for breach of contract according to Section 73 of the Contract Act, 1872. This compensates and safeguards the innocent party from breach. The award is given following the theories which have been established through English case laws and Bangladesh has followed the example and applied them in its courts.

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