Commercial Disputes Settlement Through Arbitration in Bangladesh

A commercial dispute can be defined as a dispute that arises between the parties in trade or commerce. Which involves arguments about money or about pricing or quantity of goods or others. Hence a commercial dispute can be defined as a disagreement between two or more businesses regarding the supply of goods or services. There are a number of ways to resolve a dispute, in this paper the arbitration process in resolving disputes will be discussing.

**Arbitration:**Arbitration is a dispute resolution process where the parties agree that an impartial and independent third party will determine or resolve the issues between them. The party also agrees that the decision by the arbitrator will be binding upon them and final. In Bangladesh the arbitration process regulated by **The Arbitration At, 2001**.

**Organizing an arbitration:**The disputing parties will be able to choose where the arbitration takes place. Then who will make up the arbitration panel and what procedure the arbitration will follow? Also, the party can go to any arbitration institution for settlement. The parties should determine the method for constituting the arbitral tribunal.   This period of four months, as referred to in section 3 of the First Schedule of the Arbitration Act is fixed for concluding an arbitration proceeding as held under the case of ***Bux Shipping Line Vs. Bangladesh Water Development Board & others*, 2002, 31 CLC (AD).**

 In commercial dispute for the formal arbitration the process is discussing following-

**Arbitration clause:**Arbitration clauses are required in a commercial contract because without this it will be complicated to determine which institution or court the party will go for settlement. Thus, the agreement must be in writing and sign by both parties which clause shall consist, the institution has the jurisdiction to settle the disputes or the process of settlement. The arbitration clause is necessary because- It Produces binding effects for the parties, then excludes court intervention in the settlement of a dispute, at least before the rendering of the award. Also, it grants power to the arbitrators to settle disputes between the parties and enable efficient proceedings and an award enforceable in law.

It is to be mention that without an arbitration clause a dispute can also possible to settle by a separate agreement of arbitration by the parties, containing all the procedure of arbitration as mentioned in chapter III of the Arbitration Act, 2001.

**Law applicable in Arbitration Process:**The arbitration clause is normally governed by the same law as the rest of the contract and its validity will be examined under that country’s law. As an arbitration clause is distinct and independent from the contract hence in the arbitration process different laws can be applied. Thus, when a party wishes that the law applicable to the arbitration clause be different from the law applicable to the contract, the arbitration clause should expressly state this requirement.

The ***lex arbitri*** rule may also apply if the parties agree. If the law of a third country is chosen then to the extent possible it should belong to the same type of legal system as one’s own national law. In some case when the party chooses a law in goes against public interest then the arbitrator may refuse to apply that.

**Composition of the Arbitral Tribunal:**chapter IX of the Arbitration Act,2001 discusses the composition of the tribunal. Generally, the chair of a three-member arbitral tribunal and a sole arbitrator from any nationality can be an arbitrator.

**The number of the Arbitrator:**Many national arbitration laws require that there be an odd number of arbitrators. In commercial arbitrations have either one or three arbitrators. The party may choose either they want one or three.

**Single Arbitrator**: In the case of single arbitrator two options are possible by the parties either appoint the arbitrator in advance or when a dispute arises. usually, a sole arbitrator is appointed when a dispute arises. The parties should agree on how the arbitrator will appoint and how the arbitrator will do his function. Also, it is possible by an arbitration institution to make the appointment.

**More Than One Arbitrator:**The usual number of multiple arbitrators is three. Each party appoints its arbitrator and the two party-appointed arbitrators appoint the third arbitrator who chairs the arbitral tribunal. In case of default of appointment of any of the arbitrators, an appointing authority should be designated to appoint the arbitrators.  In terms of choosing each arbitrator the claimant party shall notify its request for arbitration in writing and by registered mail or courier service to the respondent party and simultaneously appoint an arbitrator. The respondent party shall answer in writing and by registered mail or courier service from receipt of the request for arbitration, and in the answer appoint an arbitrator.

**Arbitration Proceedings**: As arbitration is an informal procedure so the arbitrator as deems fit continues that way. The arbitration starts with submitting an application by the applicant and the proceeding can be oral but mostly it is written. In terms of evidence and witness can be oral or written as deems fit by the arbitrator. Under the Arbitration Act, 2001 the evidence shall take as per the procedure mention in the Evidence Act, 1872.

**Language of the Arbitration:**Usually in business transactions the contract made in more than one language so that the transaction may run smoothly. Generally, the party may choose the language at the time of dispute but if failed to reach an agreement. Then the language used during the negotiation and performance of the contract shall apply and both are fluent.

**Award:**If parties reach a settlement agreement during the arbitration, they may ask the arbitral tribunal to record the terms in the award. Generally, an arbitration tribunal provides an award by the majority decision of the arbitrator if fails then by the president of the panel. In terms of a sole arbitrator, the president may also pass the award.

In terms of execution of the award, the winning party can go to the national court of the other party. It is to be mentioned that the award is binding upon the parties. In some exceptional cases, the award is subject to appeal and the party can also request to set aside the award under the Arbitration Act, 2001.

**Setting Aside the Award:** under the Arbitration Act, 2001 the High Court Division may set aside an arbitral award made in an international commercial arbitration held in Bangladesh on the application of a party within sixty days from the receipt of the award. For example, in the case of Nurul Abser vs Golam Rabbani, 68 DLR (AD) (2016) states that an application to set aside an arbitral award has to be made within 60 days and after the expiry of 60 days the award becomes enforceable. As in this case, the petition side failed to challenge the award within the stipulated time hence, the award has become final and enforceable.

**Enforcement of Arbitral Award:**Chapter IX of the Arbitration Act, 2001 deals with the enforcement of the award. Where the time for making an application to set aside the arbitral award has expired or such application has been refused then the request for enforcement of the award shall be made under the Code of Civil Procedure, in the same manner as if it were a decree of the Court. The enforcement of the foreign arbitral award shall be made in the same process and the execution by the court in the manner as if a decree of the court.

**Appeals**: An appeal under the Arbitration Act, 2001 shall lie before the High Court Division, on the following issues-

a) The setting aside decision or refusing to set aside an arbitral award,

(b) Refusing to enforce the arbitral award, and

(c) Refusing to recognize or enforce any foreign arbitral.

**Cost:**The number of arbitrators impacts the costs of the arbitration. Three arbitrators cost three times as much as one. The parties may also fix the cost before the arbitration proceedings. In terms of arbitration by the institution the cost fix by the institution.

Lastly, it can be saying that as there are many institutions of arbitration the parties can choose a regulated professional body. As the arbitrations are normally confidential and this attracts the parties in settling their dispute through arbitration also the process is speedy than the court. The arbitration is suitable for disputes across different countries because the decisions are internationally binding.