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LAW IN DEPTH

Promoting FDI and SDGs through judicial development

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Sekander Zulker Nayeem

Sustainable development and Foreign Direct Investment (FDI) are somehow strongly connected which is widely recognised by a large number of policy instruments. For example, the Rio Earth Summit 1992 affirmed that investment is critical to the ability of developing countries to achieve needed economic growth to improve the welfare of



their population and to meet their basic needs in a sustainable manner. The Monterrey Consensus and World Summit on Sustainable Development (2000) also recognised that mobilising FDI is important to achieve the goals of eradicating poverty, effectuating economic growth and promoting sustainable development. Goal 17.5 of the UN Sustainable Development Goals (SDGs) sets a target for adopting and implementing investment promotion regime for the least developed countries. Therefore, FDI is recognised for its role in establishing economic foundation of achieving sustainable development which eventually prompts the developing countries to extend the investors some broad standards of protection and incentives even with a little or no corresponding obligations.

Like other developing countries, Bangladesh also offers extensive incentives to attract investments. Bangladesh Investment Development Authority's (BIDA) website divulges many striking incentives - such as - tax holidays and tax exemption, accelerated depreciation, exemption on import duties, tariff refund, double taxation prevention, repatriation of invested capital and dividend and many more assurances regarding the best environment of doing business in this country. These are the offers from the part of Bangladesh. But what do the investors look for? They actually inquire for ease of doing business. Considering such inquiries, the World Bank (WB) published an index of 'ease of doing businesses' in different economies ranking countries from 1 to 190.

A high ease of doing business ranking means the regulatory environment is more conducive to the starting and operation of a firm. Despite proclaiming hundreds of incentives for the investors, Bangladesh is ranked at 176 out of 190 in this 'ease of doing business' index. However, the rankings are determined by sorting the aggregate scores on 10 topics, each consisting of several indicators, giving equal weight to each topic. Those topics are - starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts, resolving insolvency. Of these, the one for 'enforcing contract' depends solely on the performance of the civil justice system.

Bangladesh has been ranked at 189th position out of 190 in this topic which in turn declined the country's overall position. The score Bangladesh obtained in 'enforcing contract' is 22.21 whereas India, Pakistan, Sri Lanka scored almost double than it. What indicators did influence this scoring? With a view to determining such scoring, they alluded three overarching things, first, the required trial length; second, percentage of costs as against the value of claim; third, an index for quality of judicial processes. The trial lengths in Bangladesh, India, Pakistan and Sri Lanka are quite similar, but those countries succeeded in lowering litigation costs less than a half of Bangladesh. Litigation cost in Bangladesh is 66.8% of the total claim-value, while it is 31% in India and 22.5% in Pakistan.



However, the index for quality of judicial processes is again divided into four key indicators, such as court structure and proceedings, case management, court automation, alternative dispute resolution. Bangladesh scored 7.5 out of 18 in this index. In court structure & proceedings the score was 3 out of 5 and in alternative dispute resolution it was 3 out 3. It seems a good figure to the increase of overall positioning. But the scorings are the worst in case management (1 out of 6) and court automation (0.5 out of 4). In case management sector, they basically asked for compliance to the existing rules of adjournments, pre-trial conferences and electronic case management tools. In court automation sector, they inquired for e-filing of cases, electronic service of summons, online payment of court fees, and online publication of judgments.

As our Code of Civil Procedure (CPC) provides some time standards and limit of adjournments, we obtained 01 in case management. We secured 0.5 in court automation because the Supreme Court's judgments are available over the internet. The rest of the matters did not add any scores for Bangladesh. It has been noticed that Bangladesh may considerably increase its position, simply by concentrating on electronic case management and court automation. The WB and BIDA reveal some reformative initiatives undertaken by Bangladesh for developing its position in several topics in last couple of years wherein judiciary is miserably found absent. Thus, development of the quality of judicial processes should be included in those initiatives, if the government wants to attract FDI boosting its position in the 'ease of doing business' index and thereby achieve SDGs.

The writer is Joint District Judge and volunteer of SDG Lab.

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