



Challenges for Banks during Loan Adjustment: A Case Study in Bangladesh

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ARTICLE INFO	ABSTRACT
<p>Received date: August 16, 2020</p> <p>Accepted date: Dec. 9, 2020</p>	<p>This paper discussed the law of loan adjustment procedure and the efficiency of banks while sanctioning loans. Banks provide support to their local communities through credit facilities for all legitimate business in line with competitively determined interest rates. Although, making loans is the main economic function of banks. When the loans become uncollectible due to mismanagement, illegal manipulation of loans, misguided lending policies or an unexpected economic downturn, banks fall in trouble. At the time it needs to file law suit to adjust the loans. In an underdeveloped banking system, bank deposits have a positive and significant impact on bank loans, but the reverse relationship is not significant. However, litigation is the last way to recover bad loans. There are several problems in the banking industry of Bangladesh. Bangladesh Bank is trying to reduce those problems. In this paper, several solutions are sort out to reduce those problems which will more reliable that will be implemented.</p>

Key words: Artha Rin Adalat, Execution, Loans, Non-performing loans, Recovery, Suit

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1. INTRODUCTION

The continued improvement of the credit management system of banks is indispensable in the current financial environment. Advances in information technology, the growth of new financial gadgets and other innovations in banking, along with increased regulation and competition from non-regulated financial entities have made a much less friendly environment for public banks today than in the past (Li & McMahan, 2015). This article consists of a case study that will provide a clear idea about running cases and impediments for loan adjustments. However, with the growth of loan market, the number of defaulters is also increasing which is causing a major concern for the banks (Dhar, 2013).

Basically, loan management is the process of sanctioning loans for the clients with some terms and conditions. There are many challenges in this process. If such challenges are not tackled properly, then some problems may arise. Such loans can be taken with the intention of cheating or fraud if it is not verified properly before disbursement. Financial sector liberalization is playing a vital role through reducing gaps between deposit and lending procedure and ensuring quality services through international trade (Unescap, 2020). Furthermore, financial organizations are playing significant role in enhancing economic activities of Bangladesh. Thus, one of the purposes of this case study is to provide an alternate method of learning by which the authority can cope up with conducting cases to adjust bank loans.

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2. LOAN GRANTING PROCEDURE

Loan officer works with the client at branch level to ensure the accuracy of the loan application. After getting loan of application, a risk assessment is conducted and the submitted documents are scrutinized by the law division thoroughly. Various divisions of head office are actively involved in scrutinizing, analyzing, assessing and processing the loan proposal. The loan officer follows the observations of the credit review committee for decision. As per the recommendation of the committee, the proposal can be rejected. On the other hand, managing director has the power to recommend the loan proposals to the board of director for approval. Upon such approval a letter is issued for the sanction of loans to the related departments. Furthermore, credit documentation should be done as a process of reducing risk of non-repayment of loan comprehensively in 03 (three) dimensions as are the type of borrower, the type of loan and type of security arrangement (Rahman, 2019a). Traditionally, loans are granted based on a "judgmental" concept using previous experiences of the loan officers (Witkowska et al., 2001). An alternative loan granting procedure can be introduced by applying different neural network systems like discriminant analysis and the k-means method to evaluate firms (Witkowska et al., 2001). Mainly the process of loan sanction contains receiving application, collecting confidential information, documents verification, risks assessment, opening client's bank accounts, sending CIB to Bangladesh Bank, sanction letter, charge documents checking and disbursement of the amount. Finally, after disbursement, the borrowers can withdraw cash through cheque or other electronic means (Rahman, 2019b).

3. RECOVERY OF LOAN

Recovery is the hardest job for the bankers. Actually, a loan's life cycle is finished with its recovery. Actually, recovery process employs various procedures of recovery rate where one common measure is the trading price of the debt instrument (Khieu et al., 2012). On the other hand, due to know the causes for non-payment of loans from the defaulter's perspective, it was found that though the defaulters had various logical reasons for not being able to pay their installments but the main reason for the default was mostly due to unplanned spending pattern compared to the income (Dhar, 2013). However, after the scrutiny of financial situation of the borrowers, the banks should consider the opportunity of restructuring of debt. Such restructuring plan must investigate the ability of the borrowers to repay their loans regularly (Stijepović, 2014). But in this process, a banker has to go through a big trouble because of the lengthy process of the legal system. Procedural adjournment in disposal of cases is the main challenge and a barrier to recovery of non-performing loans. According to the Bangladesh Bank statistics, a total of 62,204 cases were pending with the Money Loan Courts until June 2019 involving funds worth Tk. 1176.14 billion (Hossain, 2020). Besides, many defaulters use political

influence to delay the legal procedure. Furthermore, existing laws should be applied strictly to arrest and punish defaulters by showing zero tolerance to the willful on defaulters and scamsters. So, tackling the defaulters with an iron hand is a must to give the banking sector and the economy a better shape and a sustainable pathway to make the country a developed one by 2041 (Express, 2020).

4. SUIT IDENTIFICATION

For this study, a case titled *Quazi Ehsanul Alim Vs Agrani Bank Limited* No. Writ petition 987 of 2010 has been taken into consideration. This case is studied in detail for getting full information. This suit is arisen from the Artha Rin Suit No. 583 of 2004. In this suit Court has given judgment in favor of bank. The author has collected the petition to conduct this study where the concerned bank has filed suit against the party in the Arthat Rin Adalat as per the Arthat Rin Adalat Ain, 2003 when they failed to repay the loan amounts. The concerned Court has delivered a judgment in favor of the bank after formal trial. Then the bank filed Artha Execution Case No. 142 of 2009 in the Artha Rin Adalat 1st Court, Dhaka. In this suit Court has given judgment in favor of bank for implementing the judgment.

5. BRIEF STATEMENT OF FACTS OF THE SUIT

Quazi Ehsanul Alim, Managing Director of M/S Alim Knitting (Pvt.) Ltd opened a Current Account at the Foreign Exchange Corporate Branch of Agrani Bank Limited for daily business transaction. Thereafter, M/S Alim Knitting (Pvt.) Ltd applied for a project loan at the bank on 30.03.1993 for expansion of its business, *Quazi Ehsanul Alim vs Agrani Bank Limited*. The bank after scrutinizing its transaction history as well as the condition of business, approved conditional long-term loan amounting to Tk. 38,18,000.00 and short-term current capital loan amounting to Tk. 9,42,000.00 vide sanction letter no. sheribi/OPEC/75 dated 09.01.1994 of OPEC Credit No.393-P project, *Quazi Ehsanul Alim vs Agrani Bank Limited*. According to the conditions mentioned in the sanction letter, for long term loan yearly 10% interest within 8 years and for short term current capital loan yearly 13% interest within 1 year have to be paid to adjust the loan. M/S Alim Knitting (Pvt.) Ltd was informed about the conditions of the sanction letter through an official letter dated 26.01.1994 where the MD of the company agreed with the conditions and duly signed to accept the credit facilities from the bank. Mrs Quazi Ashiana Alim and Mr. Quazi Saad Ullah Alim guaranteed the loans through mortgage of their ownership property against the sanctioned loan vide registered deed no. 855 dated 23.02.1994. *Quazi Ehsanul Alim vs Agrani Bank Limited*. On the same date, the bank also got power by the company through registered power of attorney to sale the mortgaged property in case of default of loan. After disbursement of the loan, the company has not repaid the loan according to the conditions of the sanction letter. Moreover, the bank communicated them formally as well as informally to

remind their conditions but no steps were taken to adjust the loan. In the meantime, legally payment date of the project loan with interest expired on 14.12.2002. Though, the bank requested the company to adjust the loan through several letters dated 14.12.1996, 20.02.1997, 22.04.1997, 26.08.1997, 22.10.1997, 21.11.2000, 10.01.2001, 15.10.2001 and 22.11.2001 but they did not comply the request. *Quazi Ehsanul Alim vs Agrani Bank Limited*.

On the other hand, Mrs Quazi Ashiana Alim in favour of the company again applied for reschedule of the classified project loan, extension of current capital CC Hypo loan with 100% interest waiver and opening debenture on 17.06.2001 through official letter. In a reply through official letter dated

31.07.2001, the bank requested them to deposit 10% down payment of the classified loan. But they have not deposited any loan amount whereas the bank has not considered the application of the company but again applied for opening back-to-back L/C to the bank due to urgent import of raw materials for producing Sweater to export in the foreign countries. Although few back-to-back L/C were expired but the company had not paid the loan amount whereas the bank opened demand loan account in the name of M/S Alim Knitting (Pvt.) Ltd. to pay the foreign banks liability. The back-to-back L/Cs against which demand loan is created is given below.

Table 1 Back-to-Back L/Cs for Demand Loan

IFBC No.	Demand Loan (TK.)	Demand Loan Creation Dated	Present Demand (TK.)
59,64,597/97	42,50,321.00	10.12.1997	
957/97	4,66,165.00	16.09.1998	
123/98	9,98,025.00	16.06.1998	
42/98	17,66,178.00	17.06.1998	1,68,31,857.00
106/98	25,25,589.00	17.06.1998	
1005/97	19,98,118.00	17.06.1998	
1006/97	4,84,682.00	17.06.1998	
1028/97	35,567.00	17.06.1998	

Source: (Suit, 2004)

However, the company had not paid the loan amount, although the bank gave a final opportunity on 19.12.2002 and 10.08.2003 to pay the loan. Finally, on 01.03.2003 and 29.01.2004 the bank sent legal notice through its lawyer but no response was found. On the other hand, till 31.03.2004

the loan amount turned into Tk. 2,70,29,600.25. Apart from this, the bank can demand capital, interest, and other related expenses, according to the section 8 (2) of the Artha Rin Adalat Ain, 2003. All the amount of loan is given below.

Table 2 Summary of total loan

Different Types of Loan	Total Withdrawn (TK.)	Total Interest (TK.)	Other Expenses (TK.)	Total Paid (TK.)	Due till Date
Project Loan	34,30,349.00	48,65,327.00	6,41,296.25	6,66,566.00	82,70,406.25
CC Loan	9,40,651.00	14,20,488.00	600.00	4,34,402.00	19,27,337.00
Demand Loan	1,25,24,645.00	1,02,83,899.60	-	59,76,687.60	1,68,31,857.00
Others	1,68,95,645.00	1,65,69,714.60	6,41,896.60	70,77,650.60	2,70,29,600.15

Source: (Suit, 2004)

According to the section 12 of the Artha Rin Adalat Ain, 2003, the bank published advertisement for sale of the mortgaged property before filing suit on the daily Jugantor dated 09.03.2004. Unfortunately, no purchaser was found so that the property was not sold before filing suit. Later the accused filed writ petition no. 1210 of 2004 against the advertisement for sale in the newspaper, whereas the Hon'ble High Court Division ordered to stay the advertisement for sale, Writ Petition No. 1210 of 2004.

6. INSTITUTION OF SUIT

Finally, the concerned bank instituted a suit on 28.04.2004 before the Artha Rin Adalat 1st Court, Dhaka for the recovery of money amounting to Tk. 2,70,29,600.25 -Till 31.03.2004, against M/S Alim Knitting (Pvt.) Ltd and others by selling mortgage properties and the same was registered as Arthya Rin Suit No. 583 of 2004. The company along with the petitioner preferred an application under section 57

of the Artha Rin Adalat Ain, 2003 and prayed for rejection of plaint. The application was rejected vide order no. 18 dated 26.01.2006. Therefore, the petitioner preferred writ petition no. 2356 of 2006 before the Hon'ble High Court Division of the Supreme Court of Bangladesh in which rule was issued and stay order was passed. The rule ultimately came up for hearing and the same was discharged. The Order passed in writ petition no. 2356 of 2006 was communicated to the Artha Rin Adalat on 07.07. 2008. On 04.09.2008 the suit accordingly decreed *ex parte* in favor of the bank. The preliminary decree under Order XXXIV Rule 4 (1) was drawn up and signed on 11.09.2008. In the decree, the Court directed the company to pay the decretal amount within 60 days. If default, the plaintiff bank can realize the decretal amount through the Court in accordance with law.

7. EXECUTION OF DECREE

The bank, after expiry of statutory period described in the section 28 of the Artha Rin Adalat Ain, 2003, on 29.06.2009 preferred an application under Order XXI Rule 11 of the Code of Civil Procedure for execution of the decree and the same was registered as Artha Execution Case No. 142 of 2009. Thereafter, the decree was drawn up and signed on 11.09.2008. In the judgment and decree the Court directed the company to pay the decretal amount within 60 days although the time limit for payment of decretal dues was expired on 11.11.2009. As per section 29 of the Artha Rin Adalat Ain, 2003, the time limit for filing of execution proceeding starts after expiry of the said time mentioned in the decree. In the instant case, the execution proceeding was initiated on 29.06.2009 after expiry of 180 days. On 23.12.2007 the parliament was not in session and the provision of sub-section I of section 28 of the Artha Rin Adalat Ain, 2003 was amended vide the of the Artha Rin Adalat (Amendment) Ordinance, 2007 (Ordinance No. 39 of 2007) wherein limitation for filing of execution proceeding was inserted for one year instead of 180 days. The Artha Rin Adalat (Amendment) Ordinance 2007 was published in Bangladesh Gazette on 23.12.2007. The Article 93 (2) of the Constitution of the People's Republic of Bangladesh (Constitution, 1972), prescribes that an ordinance made under clause 1 of Article 93 shall be laid before parliament at its first meeting following the promulgation of the ordinance and shall unless it is earlier repealed, cease to have effect at the expiration of thirty days after it is so laid or if a resolution disapproving of the ordinance is passed by parliament before such expiration upon the passing of resolution. However, the said amendment of Artha Rin Adalat Ain, 2003 was not placed before the parliament at its first session and the same is not approved by the parliaments till date. As a result, the ordinance died on 25.02.2009. In the instant case the execution proceeding was initiated under the amended provision of section 28 (1) of the Act which was inserted vide the Artha Rin Adalat (Amended) Ordinance, 2007. The constitution scheme of article 93 prescribes that if an ordinance is intended to be continued it must be placed before parliament for approval. But in the instant case

Ordinance no 39 of 2007 is not placed for approval as such the ordinance has no effect in the eye of law. But the auction notice was published under the provision of law which was inserted vide the Ordinance No. 39 of 2007.

8. PRESENT POSITION OF THE SUIT

M/S Alim Knitting (Pvt.) Ltd filed a Writ Petition No. 987 of 2010, *Quazi Ehsanul Alim vs Agrani Bank Limited.* against the Artha Execution Case No. 142 of 2009 to stop its proceeding in the ground of the time limit for filing of execution proceeding was expired. The Last hearing date of the Writ Petition was on 08.03.2020, (Petition, 2010) when it is adjourned till 01.04.2020.

9. SUMMARY OF FINDINGS AND CHALLENGES

The foregoing discussion regarding Artha Rin Suit in Bangladesh reveals that the banking sector of Bangladesh is yet to get out of its Non-Performing Loans, although significant improvement has been noticed recently. In terms of adoption of the international loan classification and provisioning system, Bangladesh follows international standard, but lags far behind with regard to the management of Artha Rin Suit. It clearly shows the inefficacy of the banking system to tackle the “flow problem of bad loans”. If a loan is delinquent, the account will remain active for longer since the bank will apply different methods to obtain the payment until it is done, or the loan is written off (Visaria, 2009). Therefore, the first challenge facing the banking sector of Bangladesh is how to constitute sufficient measures to address the flow problem of bad loans effectively. The second challenge before the banking system is to reorganize the loan sanction procedure through scrutinizing and financial engineering. The main problem related to very low recovery lies in the very slow execution of the decrees. The huge loan delinquency of the Bangladesh banking system reflects the weakness of the legal infrastructure, which cannot ensure lenders' recourse on borrowers which creates a negative impact on the banking sector. However, if the delay in the settlement process arises due to the shortage of judges, then separate Courts like “Artha Rin Adalat” can be created to settle bank and finance related issues. The third challenge before the banking sector is how to ensure cooperation and accountability of the plaintiff, defendants, lawyers and judges, in order to quick disposal of cases. Some other findings are pointed out below:

- Digital banking must be developed in providing credit facilities to the customers.
- Easier process of loan sanction must be developed.
- A very effective way of improving customer service should be introduced.
- Unnecessary delay of cases in trial stage needs to be solved.
- Proper verification before the loan sanction is essential.

Finally, maintenance of an ethical standard in the banking profession from all concerns can be viewed as an important means for making the credit environment credible and vibrant (Adhikary, 2006). Ethics contributes a great deal too fair practices of lending when law itself becomes impotent due to invisible contingencies (Adhikary, 2006). Hence, the importance of ethics in financial institutions should not be overlooked.

10. RECOMMENDATION

There are several problems in the banking industry of Bangladesh. Bangladesh Bank is trying to reduce those problems. In this paper, several solutions are sort out to reduce those problems which will more reliable that will be implemented and Agrani Bank Limited will get benefit. Those are mostly theoretical which may be implementable. By identifying a few of the previously mentioned problems, some recommendations are as follows:

- a) Before passing the decree, if a party to an Artha Rin Suit feels aggrieved by an order, writ jurisdiction may be invoked;
- b) In disposing of the exparte disposal of the Artha Rin Suits, the Court must record its reasoning's in detail;
- c) Upon receiving the summons, when the defendant appears and seeks adjournment for filing written statement, Court should not allow more than two adjournments;
- d) The Court should go for exparte disposal if the defendant approaches for more than two adjournments without submitting the written statement;
- e) After filing the written statement and framing issues, when the date is fixed for peremptory hearing, Court should not allow more than two adjournments;
- f) On the prayer for more than two-time adjournments for attending hearing, Court should dispose of the suit exparte;
- g) The Court should not allow unnecessary time petition;
- h) Rules and regulations must be stricken for loan sanction;
- i) Government has to take the initiative even in the root level to increase literacy regarding this;
- j) Bank has to maintain KYC (Know Your Customer) properly for ensuring effective fraud management;
- k) Bank has to ensure the customers quick service by using technology;
- l) To develop strong credit management to mitigate the problems;
- m) A Strong legal team must be formed to fight against the bad loan;
- n) The Strong cyber protection unit must have to be formed by taking IT specialists and legal experts;

- o) Arranging adequate training for the employees regarding loan sanction system, bad loan management and facing upcoming cyber threats;

11. CONCLUSION

Loan is one of the most important parts of a banking institution. It is the primary source of income for a bank. The interest that a bank earns by giving credit covers most of the total earnings. So, it is very important for a bank to concentrate on its credit management. However, loan recovery is critical to bank performance as well as to the appropriate measure of the capital required to buffer against risk (Khieu et al, 2012). To protect Bank's interest, a comprehensive view of the capital, integrity of the borrower, adequacy, nature of security, compliance with all legal formalities and continuous follow-up is mandatory. At present, most of the banks try its level best to perform financially well. In spite of trying to do well in some aspects, banks faced some financial problems from time to time. Bad loan is one of them. To stop the problem borrower should be selected very carefully and the suit has to be filed timely. The legal framework and the institutions associated with the loan sanction process must be strengthened through the appointment of bailiffs, elimination of the existing tax, acceptance of strategies in finding solutions for bad loans and founding of a system for alternative settlement of disputes for adjusting non-performing loans. Structural and institutional reforms within the bank will be required for strong and sustained development of the banking system. In the whole reform process, the regulating capacity of the central bank needs enhancement (Unescap, 2020). By speeding up the judicial process, the reform has efficiently increased the value of collateral that the lender could seize in the event of default (Visaria, 2009). Monitoring of the suits filed by the bank is very urgent. So that special officers must have to be recruited to follow up running cases. The evaluation of the scope of past due loans is very important for the adoption of the appropriate legislative solution (Stijepović, 2014). Finally, proper implementation of law and raising consciousness among the stakeholders can create an easier loan adjustment process.

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