

বাংলাদেশ সুপ্রীম কোর্ট

হাইকোর্ট বিভাগ, ঢাকা।

(বিচার শাখা)

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বিজ্ঞপ্তি নং-১৮/২০২২

জে,

তারিখ : ২৪.০৮.২০২২ খ্রিস্টাব্দ

বিষয় : বাংলাদেশ সুপ্রীম কোর্ট হাইকোর্ট বিভাগের ২৯৯/২০১৯ নং কোম্পানী ম্যাটার মামলায় আদালত কর্তৃক নিযুক্ত International Leasing and Financial Services Limited (ILFSL)-এর Independent Board of Director & Chairman যোগদানের পূর্বে উক্ত কোম্পানীর ইস্যুকৃত যে কোন ব্যাংক চেক হতে সৃষ্ট দায়বদ্ধতা থেকে অব্যাহতি সংক্রান্তে মাননীয় বিচারপতি জনাব মুহাম্মদ খুরশীদ আলম সরকার মহোদয়ের একক বেঞ্চ কর্তৃক গত ২৪.০৫.২০২২ খ্রিস্টাব্দে প্রদত্ত আদেশের অনুলিপি দেশের সকল জেলা ও দায়রা জজ, মহানগর দায়রা জজ, চীফ মেট্রোপলিটন ম্যাজিস্ট্রেট ও চীফ জুডিসিয়াল ম্যাজিস্ট্রেট-কে প্রেরণসহ অত্র কোর্টের ওয়েবসাইটে প্রকাশকরণ প্রসঙ্গে।

উপর্যুক্ত বিষয়ে নির্দেশিত হয়ে জানানো যাচ্ছে যে, বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগের ২৯৯/২০১৯ নং কোম্পানী ম্যাটার মামলায় আদালত কর্তৃক নিযুক্ত International Leasing and Financial Services Limited (ILFSL)-এর Independent Board of Director & Chairman যোগদানের পূর্বে উক্ত কোম্পানীর ইস্যুকৃত যে কোন ব্যাংক চেক হতে সৃষ্ট দায়বদ্ধতা থেকে অব্যাহতি সংক্রান্তে মাননীয় বিচারপতি জনাব মুহাম্মদ খুরশীদ আলম সরকার মহোদয়ের একক বেঞ্চ গত ২৪.০৫.২০২২ খ্রিস্টাব্দে সদয় আদেশ প্রদান করেন। উক্ত আদেশের অনুলিপি দেশের সকল জেলা ও দায়রা জজ, মহানগর দায়রা জজ, চীফ মেট্রোপলিটন ম্যাজিস্ট্রেট ও চীফ জুডিসিয়াল ম্যাজিস্ট্রেট-কে প্রেরণসহ অত্র কোর্টের ওয়েবসাইটে প্রকাশ করার জন্য মাননীয় আদালত কর্তৃক নির্দেশ প্রদান করা হয়েছে।

০২। এমতাবস্থায়, বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগের ২৯৯/২০১৯ নং কোম্পানী ম্যাটার মামলায় গত ২৪.০৫.২০২২ খ্রিস্টাব্দে মাননীয় আদালত কর্তৃক প্রদত্ত আদেশ প্রতিপালনের নিমিত্ত প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য নির্দেশ প্রদান করা হলো।

০৩। উল্লেখ্য, বর্ণিত মামলায় গত ২৪.০৫.২০২২ খ্রিস্টাব্দে প্রদত্ত আদেশের কপি বাংলাদেশ সুপ্রীম কোর্টের ওয়েব সাইটে রয়েছে।

আদেশক্রমে

স্বাঃ/-

(মোঃ গোলাম রব্বানী)

রেজিস্ট্রার

হাইকোর্ট বিভাগ

ফোন : ৯৫১৪৬৪৬।

ই-মেইল: registrar_hcd@supremecourt.gov.com

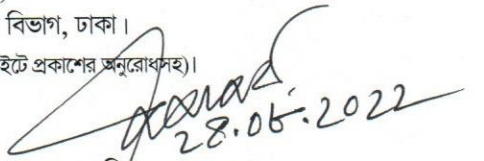
স্মারক নং-১ই-৩৬/২০২২-৭২৪৪

জে,

তারিখ : ২৪.০৮.২০২২ খ্রিস্টাব্দ

অবগতি ও প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য প্রেরণ করা হলো :

- ১। সচিব, আইন ও বিচার বিভাগ, আইন, বিচার ও সংসদ বিষয়ক মন্ত্রণালয়, বাংলাদেশ সচিবালয়, ঢাকা।
- ২। জেলা ও দায়রা জজ,(সকল)।
- ৩। মহানগর দায়রা জজ,(সকল)।
- ৪। চীফ মেট্রোপলিটন ম্যাজিস্ট্রেট,(সকল)।
- ৫। চীফ জুডিসিয়াল ম্যাজিস্ট্রেট,(সকল)।
- ৬। মাননীয় প্রধান বিচারপতির সচিব/একান্ত সচিব, বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ/আপীল বিভাগ, ঢাকা।
- ৭। সিস্টেম এনালিস্ট, বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ, ঢাকা (বাংলাদেশ সুপ্রীম কোর্টের ওয়েব সাইটে প্রকাশের অনুরোধসহ)।
- ৮। অফিস কপি।


28.08.2022
(মোঃ মিজানুর রহমান)
সহকারী রেজিস্ট্রার (বিচার)(ভারঃ)
ফোন : ০২২২৩৩৮১৯৩২।

AP (Judicial)

30 MAY 2022
রেজিস্টার জেনারেল

Super
no 299
24/05/2022

24.05.2022
Ord. No. 32

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(STATUTORY ORIGINAL JURISDICTION)

Company Matter No. 299 of 2019

IN THE MATTER OF :

An application for immunity of the Court-appointed Independent Directors, including the Court-appointed Chairman of ILFSL from any legal actions against them in respect of affairs of the ILFSL while performing their duty as the Court-appointed Board of Directors.

AND

In the matter of:

MM Structural and Holding Limited and others
..... Petitioners

-Versus-

International Leasing and Financial Services Limited (ILFSL) and others

... Respondents

Mr. Margub Kabir, Advocate with
Mr. Md. Mahfuzur Rahman (Milon), Advocate
..... For the ILFSL-Applicant

The 24th May, 2022

Present:

Justice Muhammad Khurshid Alam Sarkar

By filing an application, the respondent No.1-Company International Leasing and Financial Services Limited (hereinafter referred to either as the 'applicant' or as the ILFSL) sought for an Order from this Court ensuring immunity of the Court-appointed Board of Directors from any legal actions against them in respect of the affairs of the ILFSL while performing their duty as the Court-appointed Chairman and Directors of the ILFSL.

It is stated in the application that as per order No. 13 dated 19.03.2020 passed by this Court in Company Matter No. 299 of 2019,

Mr. Nazrul Islam Khan joined the ILFSL on 01.06.2020. His appointment as Court-appointed Chairman has been approved by the Bangladesh Bank vide its Memo No. DFIM(S)1055/56/25/2020-951 dated 05.07.2020. Since his appointment Mr. Nazrul Islam Khan has been discharging his functions as the Court-appointed Chairman as per the direction of the Court. His contribution to the ILFSL and his sincerity to his duties have been recognized by the Court vide Order dated 21.10.2020, the relevant extract of which is as follows:

“Then, in order to run the business of ILFSL resourcefully and professionally, on 19.01.2020, this Court-appointed Mr. Ibrahim Khaled, former Deputy Governor of the Bangladesh Bank, as the Independent Chairman of the ILFSL who after performing his duties for a few days resigned from the post of the Independent Chairman on the ground of his health condition and, thereafter, vide order dated 19.03.2020, this Court appointed Mr. Nazrul Islam Khan (NI Khan), as the Independent Chairman of the ILFSL. Since his appointment, Mr. NI Khan is putting his best efforts to recover the loan monies as well as to pay off the depositors’ money and, at the same time he is also providing every updates to this Court by filing affidavits from time-to-time.”

[underlined to put emphasis]

Subsequently this Court extensively reconstituted the Board of the ILFSL by appointing 5 (five) Independent Directors vide Order No. 27 dated 16.06.2021 upon allowing the ILFSL’s application for induction of a few members of the Board and accordingly the following persons were inducted in the Board of the respondent No. 1 Company:

- (1) Mr. Sayed Abu Naser Bakhtear Ahmed
- (2) Mr. Md. Shafiqul Islam

- (3) Brigadier General (retired) Md. Meftaul Karim
- (4) Mr. Md. Ashraf Ali, Barrister-at-Law
- (5) Mr. Enamul Hasan, FCA

It is stated that since Mr. Nazrul Islam Khan joined the ILFSL as its Chairman on 01.06.2020, the Board has been successful in recovering Tk.180 crore from various borrowers. With that money, the ILFSL has been able to pay Tk. 126 crore to the depositors and Tk. 30 crore to its various creditors (including various banks and financial institutions) against loans taken. The ILFSL also paid VAT, Tax and other expenses to carry out its operation. Since joining of the Court-appointed Chariman, Mr. NI Khan, all financial transactions of the company are being made electronically without issuance of any cheque. Subsequently this Court vide its Order No. 21 dated 16.03.2021 allowed the ILFSL's application for immunity of the Court-appointed Chairman from any legal actions against him in respect of affairs of the ILFSL while performing his duty as the Court-appointed Chairman and passed, inter alia, the following Direction:

"It is declared that Mr. N.I. Khan is not, and shall not be responsible for any illegality committed by the Board of the Directors of the ILFSL or management of the ILFSL before his joining as the Chairman of the ILFSL in issuance of any cheque or for any other irregularity committed by them before the joining of Mr. NI Khan. He shall not be made party to any civil or criminal case in which the cause of action arose before his joining. However, there shall not be any bar to institute any suit or file any case against him in course of performing his duties as the Court-appointed Chairman, if there is any specific and clear evidence of violation of any law of the land."

It is stated that before Mr. Nazrul Islam Khan and other Court-appointed Directors joined the ILFSL, its previous Board of Directors issued various security and other Cheques on behalf of the ILFSL in favour of different persons/ entities. They also provided blank cheques to different entities. The said persons/entities by putting current and recent dates are placing those cheques for clearing and as the ILFSL has liquidity crisis, a good number of cheques are being dishonored. Thereafter, the entities are filing proceedings under Section 138 read with Section 140 of the Negotiable Instruments Act, 1881 (NI Act) against the ILFSL and its Directors including the Court-appointed Chairman, although he was not the Chairman when the cheques were provided nor is he a signatory of the said cheques. Even then, the Court-appointed Chairman has been implicated as accused. It is stated that the following blank Cheques were issued by the previous Board of the ILFSL before the appointment of the Court-appointed Chairman Mr. Nazrul Islam Khan:

- (1) Cheque No. 7903330 drawn on the Premier Bank Limited for the amount of Tk. 21,93,518 (twenty lac ninety-three thousand five hundred and eighteen)
- (2) Cheque No. 7903331 drawn on the Premier Bank Limited for the amount of Tk. 21,93,518 (twenty lac ninety-three thousand five hundred and eighteen)

Both the blank Cheques were issued in favour of the UAE Bangladesh Investment Company Limited (UBICO) of Erectors House, (5th Floor), 18 Kamal Ataturk Avenue, Banani C/A, Dhaka. It is further stated that even though the blank cheques were provided in 2019, UBICO subsequently inserted dates on the said blank Cheques. Cheque No. 7903330 was subsequently dated 10.01.2021 and Cheque No.

7903331 was subsequently dated 10.02.2021. On presentation of the said Cheques, both of them were dishonored. Cheque No. 7903330 was dishonored on 31.01.2021 and Cheque No. 7903331 was dishonoured on 16.02.2021. Both of the Cheques were dishonored with the remark "account closed or dormant or blocked." Subsequently UBICO filed C.R. Case No. 543 of 2021 in the Court of Chief Metropolitan Magistrate, Dhaka with respect to Cheque No. 790330 and C.R. Case No. 544 of 2021 in the Court of Chief Metropolitan Magistrate, Dhaka with respect to Cheque No. 790331, both under Section 138/ 140 of the NI Act, most illegally implicating the Court-appointed Chairman Mr. Nazrul Islam Khan as one of the accused. Even though it is within the public knowledge that Mr. Nazrul Islam Khan is a Court-appointed Chairman, UBICO most illegally implicated Mr. Khan only to harass and humiliate him and in the process frustrate the noble objectives of the Court and in relation to the said CR cases, the learned Metropolitan Magistrate Court No. 31, Dhaka issued Warrant of Arrest for the Court-appointed Chairman of ILFSL Mr. Nazrul Islam Khan along with previous Directors of the ILFSL. The police came to the Head Office of ILFSL on 18.05.2022 for executing the warrant. Thereafter on 19.05.2022, Mr. Nazrul Islam Khan filed an application before the learned Court below praying for recall of the Warrant of Arrest and prayed for removal of his name from the said CR cases on the basis of the Order of this Court dated 16.03.2021 passed in Company Matter No. 299 of 2019. The learned Court vide Order dated 19.05.2022 recalled the Warrant of Arrest issued for Mr. Nazrul Islam Khan.

It is stated that the said C.R. cases were filed against the Court-appointed Chairman of the ILFSL even though the complainant knew fully well that the Chairman Mr. Nazrul Islam Khan was appointed by the Court for a special purpose. Therefore, it is clear that the said C.R. cases have been filed with malafide intention in derogation of the Order No. 21 dated 16.03.2021 passed by this Court directing that Mr. Nazrul Islam Khan shall not be made party to any civil or criminal case in which the cause of action arose before his joining. It is also clear that the said C.R. cases have been filed in relation to the said blank Cheques by willfully inserting dates after Mr. Khan joined ILFSL, only to frustrate the very purpose of appointment of Mr. Nazrul Islam Khan as the Chairman of the ILFSL by this Court, i.e., to salvage the company and ensure that depositors get their money back and interest of common shareholders are protected. As such, the institution of the said C.R. cases against Mr. Nazrul Islam Khan is clearly a contempt of this Court made with malafide intention.

Mr. Margub Kabir with Mr. Md. Mahfuzur Rahman (Milon), the learned Advocate for the applicant submits that the Court-appointed Independent Directors cannot and do not have any information or knowledge about any Cheque issued prior to their appointment by the previous Board of the ILFSL and hence, any liability arising out of any dishonor of those Cheques are attributable exclusively to the affairs of the previous directors of the company and not to the affairs of the court-appointed directors of the Board. However, the payees of those Cheques are now implicating the Court-appointed Independent Directors instead

of the previous directors with the *malafide* intention to frustrate the very purpose of the Orders passed by this Court to salvage the company and ensure that depositors get their money back and interest of common shareholders are protected. He submits that the immunity which was previously granted to the Court-appointed Chairman needs to be granted to all other Court-appointed Independent Directors, lest they are implicated in any criminal cases in the same manner as the aforesaid C.R. cases and, although there is no scope of implicating the Court-appointed Independent Directors in any proceedings under Section 138 of the NI Act and/ or Artha Rin Adalat Ain, 2003, even then the said Court-appointed Independent Directors are in constant risk of being implicated by the unscrupulous in such proceedings. Mr. Kabir, therefore, prays to have an Order from this Court ensuring immunity of the Court-appointed Independent Directors, including the Court-appointed Chairman of ILFSL from any legal actions against them in respect of the affairs of the ILFSL while performing their duty as the Court-appointed Chairman and Directors of the ILFSL. The learned Advocate for the applicant informs this Court that the Court-appointed Independent Directors, including the Court-appointed Chairman of ILFSL have been trying their best to refund the money of the depositors, including his clients and, therefore, as he submits, this Court should pass necessary Orders and Directions to let them perform their duties peacefully.

After perusing the application together with its annexures and hearing the learned Advocate for the applicant-ILFSL and the learned

Advocate for the petitioners of the substantive matter, it appears to this Court that the substantive matter is about winding up of the ILFSL. On 19.01.2020, upon hearing the parties, instead of admitting the application for winding up, this Court passed some Orders/Directions upon the ILFSL, Bangladesh Bank and, also, upon some State-Functionaries to keep the company running and operational. In that process, this Court also ventured to reconstitute the Board of Directors of the ILFSL with an expectation of running the company more efficiently having appointed Mr. N.I. Khan as the Independent Director-cum-Chairman of the ILFSL. From the submissions advanced by the learned Advocate for the applicant-ILFSL, it appears to this Court that since the appointment of the Independent Chairman to the Board of ILFSL, the company is trying its best to collect the outstanding dues from the persons/entities who have taken loans from ILFSL and, at the same time, ILFSL is also trying to refund deposits to the depositors. Therefore, it appears to this Court that the approach of the applicant-ILFSL appears to this Court to be very pragmatic and bonafide. And, in fact, in most of the Orders, by which this Court appoints Independent Chairman of any company, it is usually expressly stated that the Court-appointed Chairman shall not be liable for non-payment of any cheques which were issued by the company before his appointment as the Chairman of the company.

Accordingly, the application is allowed with the following Declarations, Orders and Directions:

- (1) It is declared that the Court-appointed Independent Directors, including the Court-appointed Chairman, of the

ILFSL are not and shall not be responsible for any illegality committed by the Board of the Directors of the ILFSL or management of the ILFSL before their joining as the Court-appointed Independent Directors including the Court-appointed Chairman of ILFSL in issuance of any cheque or for any other irregularity committed by them before the joining of the Court-appointed Independent Directors, including the Court-appointed Chairman of ILFSL. The Court-appointed Independent Directors including the Court-appointed Chairman of ILFSL namely; (a) Mr. Nazrul Islam Khan (N.I. Khan) (joined on 01.06.20), (b) Mr. Sayed Abu Naser Bakhtear Ahmed (joined on 12.07.21), (c) Mr. Md. Shafiqul Islam (joined on 12.07.21), (d) Brigadier General (retired) Md. Meftaul Karim (joined on 12.07.21), (e) Mr. Md. Ashraf Ali, Barrister-at-Law (joined on 12.07.21) and, (f) Mr. Enamul Hasan, FCA (joined on 12.07.21) shall not be made party to any civil or criminal case in which the cause of action arose before his joining. Further, they shall not be treated as defaulter for any past loan/liabilities of the ILFSL. However, there shall not be any bar to institute any suit or file any case against them in course of performing their duties as the Court-appointed Independent Directors including the Court appointed Chairman of ILFSL, if there is any specific and clear evidence of violation of any law of the land.

- (2) The name of the Court-appointed Chairman Mr. N.I. Khan is hereby struck out/deleted from the proceeding being C.R. Case No. 543 of 2021 and C.R. Case No. 544 of 2021, now pending before the learned Metropolitan Magistrate, Court No.31, Dhaka.
- (3) All the creditors of the International Leasing and Financial Services Limited are hereby restrained from commencing any legal actions implicating any of the Court-appointed Independent Directors, including but not limited to proceedings under Section 138 of the NI Act, Artha Rin Adalat Ain, 2003 and/or Penal Code, 1860, without first notifying the Company Court;
- (4) The Governor, Bangladesh Bank shall notify all the Scheduled Banks and Financial Institutions to the effect that the holders of Cheques issued in the name of the International Leasing and Financial Services Limited are required to approach the Company Court first before presenting any Cheque signed by the Court-appointed Directors.
- (5) (a) The Secretary, Law and Justice Division, Ministry of Law, Justice and Parliamentary Affairs, (b) all the District and Sessions Judges, (c) all the Metropolitan Session Judges, (d) all the Chief Metropolitan Magistrates and (e) all the Chief Judicial Magistrates of the country are hereby directed to take necessary steps regarding striking

out/exclusion of the names of the aforesaid Court-appointed Independent Directors from all the proceedings commenced under Section 138 of the NI Act 1881, Artha Rin Adalat Ain, 2003 and/or Penal Code, 1860 if any, against the International Leasing and Financial Services Limited in connection with any affairs or loans of ILFSL prior to their joining, and/or in connection to any Cheque issued during the tenure of the previous Board of Directors or in which they are not signatories and to recall and cancel any summons and/or warrant already issued, if any, in pursuance of any of the aforesaid proceedings.

- (6) The Secretary, Ministry of Home Affairs and the Inspector General of Police are directed to take necessary steps not to enforce but to return to the concerned Court any summons/warrant issued in the names of the aforesaid Court-appointed Independent Directors in any proceedings commenced under Section 138 of the NI Act 1881 and/or Penal Code, 1860 against the International Leasing and Financial Services Limited in connection with any Cheque if shown to have been issued by of the Court-appointed Board of Directors of ILFSL.
- (7) The Registrar, High Court Division is directed to circulate this Order upon all the District and Sessions Judges, all the Metropolitan Session Judges, all the Chief Metropolitan Magistrates and all the Chief Judicial Magistrates of

Bangladesh in addition to publish this Order in the website of Supreme Court of Bangladesh.

The Office is directed to serve notices upon the following State Functionaries, namely, (i) The Governor, Bangladesh Bank, (ii) The Secretary, Ministry of Home Affairs, (iii) The Inspector General of Police, (iv) The Secretary, Law and Justice Division, Ministry of Law, Justice and Parliamentary Affairs, (v) The Registrar General of the Supreme Court of Bangladesh, (vi) District and Sessions Judge of Dhaka and (vii) learned Metropolitan Magistrate, Court No.31, Dhaka at once by a Special Messenger at the costs of the respondent No. 1-company.

The respondent No. 1-company (ILFSL) is directed to put in requisites for service of notices.

Muhammad Khurshid Alam Sarkar

Memo No. 5509 O. S. Dated - 30.5.2022

Copy forwarded for information and necessary action to:

1. The Governor, Bangladesh Bank, Motijheel, Dhaka.
2. The Secretary, Ministry of Home Affairs, Dhaka.
3. The Inspector General of Police, Police Head Quarter, Dhaka.
4. The Secretary, Law and Justice Division, Ministry of Law, Justice and Parliamentary Affairs, Dhaka.
5. The Registrar General, Bangladesh Supreme Court.
6. District and Sessions Judge of Dhaka.
7. Learned Metropolitan Magistrate, Court No. 31, Dhaka.

Superintendent

[Signature]
29.5.22

By Order

[Signature]
29.5.22
Assistant Registrar
(Civil Original Jurisdiction)
Supreme Court of Bangladesh
High Court Division, Dhaka.

Composed by: Saiful Islam

Read by: *[Signature]*

Exam by: *[Signature]*
29.5.22