

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

WRIT PETITION NO. 5579 OF 2014

IN THE MATTER OF:

An application under Article 102 of the Constitution of  
the People's Republic of Bangladesh.

-AND-

IN THE MATTER OF:

Mr. M. Qumrul Haque Siddique, Advocate, Supreme  
Court of Bangladesh, Room No. 1106 (11<sup>th</sup> floor),  
Baitul Khair, 48/A-B, Purana Paltan, Dhaka-1000 and  
Room No. 3023 (New Building), Supreme Court Bar  
Association, Dhaka-1000

..... Petitioner (in person).

-Versus-

The Secretary, Ministry of Finance, Government of the  
People's Republic of Bangladesh, Bangladesh  
Secretariat, Ramna, Dhaka-1000 and others

.....Respondents.

Mr. M. Quamrul Haque Siddique, Advocate in person

.....For the petitioner

Mr. Shamim Khaled Ahmed, Advocate

....For the respondent no. 2

Mr. Md. Khurshid Alam Khan, Advocate

.... For the respondent no. 4

Mr. Tanjib-ul-Alam with

Mr. M. Saquibuzzaman, Advocates

..For the respondent nos. 9 and 10

Mr. Md. Ramzan Ali Sikder with

Mr. A.M. Hasan, Advocates

...For the respondent no. 11

Mr. Md. Asduzzaman with

Mr. Md. Anisul Hassan,

Mr. Md. Sleguzzaman and

Ms. Farhana Islam Khan, Advocates

...For the respondent nos. 12 and 13

Mr. Ajmalul Hossain QC with

Mr. Abdullah Al Hady,

Mr. Suhan Khan,

Mr. Foyez Uddin Ahmed,  
 Ms. Srijony Tripura and  
 Ms. Bushra Rahman, Advocates  
 ....For the respondent no. 14  
 Mr. Muhammad Saifullah Mamun with  
 Ms. Reba Kaniz and  
 Mr. Robin Rokshit, Advocates  
 ...For the respondent nos. 15 and 17  
 Mr. M. K. Rahman with  
 Mr. Sanian Rahman, Advocates  
 ....For the respondent no. 16  
 Mr. Omar Farook , Advocate  
 ...For the respondent no. 18  
 Mr. Md. Motiur Rahman, Advocate  
 ....For the respondent no. 21  
 Mr. Md. Shamsul Haque, Advocate  
 ... For the respondent no. 24  
 Mr. Md. Abdul Quium, Advocate  
 ...For the respondent no. 26

Heard on 06.07.2017, 17.07.2017,  
19.07.2017, 11.10.2017, 19.10.2017,  
22.10.2017 and 23.10.2017.  
Judgment on 29.10.2017 and 30.10.2017.

Present:

Mr. Justice Moyeenul Islam Chowdhury  
 -And-  
 Mr. Justice J. B. M. Hassan

**MOYEENUL ISLAM CHOWDHURY, J:**

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh filed by the petitioner in person, a Rule Nisi was issued calling upon the respondent nos. 1, 2 and 3 to show cause as to why their failure in performing their legal duties/obligations under the laws of the land, i.e., the Foreign Exchange Regulation Act, 1947, the Income Tax Ordinance, 1984, the Money Laundering Prevention Act, 2012 and the Anti-Corruption Commission Act, 2004 in respect of the dealings of the respondent nos. 9, 11 and 14 and their respective agents, the respondent nos. 10, 12, 13, 15 and 16 should not be

declared to be without lawful authority and of no legal effect and why a direction by way of Continuing Mandamus should not be given upon the respondent nos. 2 and 3 to investigate the business and affairs of the respondent nos. 9, 11 and 14 and their agents, the respondent nos. 10, 12, 13, 15 and 16 in relation to the export and import of cargo volume carried by each of them, the freight earned and commissions paid and declared under the Foreign Exchange Regulation Act, 1947 and the Income Tax Ordinance, 1984 to establish whether there have been any breaches of the said laws and to take positive steps to prevent such breaches and such further actions, civil and criminal, in accordance with law and why a direction by way of Continuing Mandamus should not be given upon the respondent nos. 1, 2 and 3 to file affidavits at the end of September, December, March and June each year stating what investigations have been carried out and what steps have been taken by each of them in respect of any breaches found as a result of the said investigations and why the respondent nos. 1, 2 and 3 should not be directed to explain what steps they have taken pursuant to the report of Bangladesh Financial Intelligence Unit (BFIU) of Bangladesh Bank as published in different newspapers and/or such other or further order or orders passed as to this Court may seem fit and proper.

The case of the petitioner, as set forth in the Writ Petition, in short, is as follows:

The petitioner is a practising Advocate of the Supreme Court of Bangladesh. He is conscious of his duty as a citizen in consonance with Article 21 of the Constitution. He desires to ensure that the foreign shipping companies and airlines pay all taxes that all are legitimately due to the national exchequer and that there is no evasion of taxes of any kind by them. The petitioner has a special interest to see that the national interest is upheld, rule of law prevails and

public functionaries are doing what the law requires them to do. Anyway, the petitioner noticed several news items in some national dailies between October, 2012 and June, 2013 which raised issues about how various shipping and airline companies and their agents were breaching the laws of Bangladesh and were siphoning off a huge amount of foreign exchange from Bangladesh by using various devices and providing false information to the authorities as evidenced by Annexures- 'A-1' to 'A-9' to the Writ Petition. The foreign shipping companies and airlines, namely, the respondent nos. 9, 11 and 14 operating in Bangladesh are involved in money laundering and tax evasion in collaboration with their local and foreign agents, namely, the respondent nos. 10, 12, 13, 15, 16 and 17 often using a web of companies and individuals and other devices. The petitioner also noticed from the news items that the named shipping companies and airlines were paying only a part of the commission to their local agents and sending the remaining portions to their countries thereby evading taxes and laundering the amounts siphoned off. Almost in all cases, the foreign shipping and airline companies are providing substantially less commission to their local agents than the 5% commission which is required to be paid under the Guidelines for Foreign Exchange Transactions, 2009 (Volume-1) published by Bangladesh Bank. It is evident from the news items that the respondent no. 3 (BFIU) of Bangladesh Bank has conducted inquiries into money laundering activities of various foreign shipping and airline companies in collusion with their local counterparts in Bangladesh and unearthed information that in most cases, the foreign shipping companies are paying commission to their agents less than the 5% commission required under the aforesaid Guidelines. The remaining sums are being laundered from Bangladesh resulting in loss of taxes on the laundered money. BFIU has apparently made inquiries in respect of the business

and dealings of the respondent no. 9, Orient Overseas Container Line (OOCL) which is the foreign principal of the respondent no. 10, Continental Traders (BD) Limited. From the news reports, it has been found that the respondent no. 10 is claimed to have been paid Tk. 13,50,00,000/- only as commission during 2010-2011 fiscal year. However, it transpires from the audit and tax documents that the OOCL paid only Tk. 6,70,00,000/- to the Continental Traders (BD) Limited (respondent no. 10) as commission. It has also been found by the BFIU that the OOCL in collaboration with its Bangladeshi agent (respondent no. 10) laundered US\$ 8,50,000 equivalent to approximately Tk. 6,50,00,000/- only during the fiscal year 2010-2011 and evaded taxes thereon. On further inquiries made by the petitioner, it has been revealed that the respondent no. 10 earned ocean freight to the tune of US\$ 37,735,825 equivalent to BDT 2,71,07,33,053/- only during the period from July, 2010 to June, 2011. On that sum, the respondent no. 10 paid freight tax on account of the OOCL at 8% amounting to BDT 21,68,58,644/- only. The agency commission payable under the Guidelines for Foreign Exchange Transactions is 5% if the entire cargo is booked by the Continental Traders (BD) Limited as an agent and 2.5% if the entire cargo is booked by the principal, that is to say, OOCL. Therefore the highest agency commission, if booked by the Continental Traders (BD) Limited, on the freight earned by the OOCL as disclosed in the Freight Tax Calculations for 2010-2011 would be US\$ 18,86,791 equivalent to BDT 13,55,36,653/- only and the lowest commission, if booked by the OOCL, would be US\$ 9,43,396 equivalent to BDT 6,77,68,326/- only.

The Chittagong Port Authority publishes Annual Import and Export Reports showing the volume in TEUs for each of the Main Line Operator (MLO) importing and exporting goods through the port. These reports show that

the import volume of the OOCL for the calendar year 2010 was 49,750 TEUs and for the calendar year 2011 was 53,245 TEUs. Since the freight tax figures are available until the end of the accounting year of the OOCL (30<sup>th</sup> June) which have been used for calculating the commission of export freight, the petitioner has computed the average TEUs carried in those two years (2010 and 2011) for the import volume as 51,498 TEUs. The freight rates available from the industry sources for 2010 and 2011 show that the average freight into the Chittagong Port was US\$ 800 per TEU. On this basis, the total freight earned would be US\$ 4,11,98,400 only. There was substantial undeclared commission which amounted to US\$ 11,29,186 equivalent to BDT 8,11,14,491/- only if the export cargo was booked by the Continental Traders (BD) Limited and US\$ 1,85,791 equivalent to BDT 1,33,46,165/- only if all the export cargo was booked by the OOCL. Besides, the accounts of the Continental Traders (BD) Limited show that the container handling charge was paid by the Continental Traders (BD) Limited which, according to the standard practice, is an expense which the Principal (OOCL) should have borne. The sum of US\$ 3,02,781 equivalent to BDT 2,17,50,105/- only was wrongly borne by the local agent Continental Traders (BD) Limited under this head. So it is clear that in 2010 and 2011, the OOCL and the Continental Traders (BD) Limited did not declare commission in actual amounts as earned and the Continental Traders (BD) Limited took the responsibility for the container handling charge and allowed the OOCL to receive the sum in breach of the Guidelines for Foreign Exchange Transactions. According to the above analysis and calculation, the maximum sum that was lost to Bangladesh in foreign exchange is US\$ 14,31,967 equivalent to BDT 10,28,64,596/- only and the minimum is US\$ 4,88,571 equivalent to BDT 3,50,96,270/- only. Over and above, for the years 2011-2012 and 2012-2013, the

Continental Traders (BD) Limited defrauded the public exchequer of a prodigious amount of money on freight tax count. As the Continental Traders (BD) Limited did not file its returns and accounts for these years with the respondent no. 8, it is not possible to calculate the sum in foreign exchange which was lost to Bangladesh or the tax dodged for those years (2011-2012 and 2012-2013). Because of the illegal activities of the OOCL and its Bangladeshi agent (Continental Traders (BD) Limited), Bangladesh is facing two adverse consequences: first, it is losing foreign exchange and secondly, it is losing taxes due from their business. This requires a full-scale investigation by the concerned agencies.

According to the news report in “The Daily Ittefaq” dated 11.06.2013 (Annexure-‘A-1’ to the Writ Petition), the respondent no. 13 is one of the major conglomerates of Sri Lanka. The respondent no. 13 (Aitken Spence Shipping Limited) as Sri Lankan Agent of Hapag-Lloyd (respondent no.11) commenced the representation of Hapag-Lloyd in Bangladesh through a Bangladeshi Shipping Agent, namely, GBX Logistics Limited (respondent no. 12) since May, 2013 at a lump-sum handling fee (as reported in the newspapers) violating the Foreign Exchange Regulation Act and the Guidelines for Foreign Exchange Transactions. These matters also require a full-fledged investigation by the concerned instrumentalities. The respondent nos. 11, 12 and 13 have contractual and financial documents available with them which will show the true relationship between them and the financial dealings they have been carrying on during the years 2010-2011, 2011-2012 and 2012-2013. These documents are required for an exhaustive investigation to be carried out regarding the total export and import volumes, the freight earned for imports and exports and the commission payable contractually and actually paid. The business of the

respondent no. 12 (GBX Logistics Limited) in the past was and currently is being run or managed by Aitken Spence Shipping Limited through a Sri Lankan national, namely, Mr. Bevin Mack, who concurrently holds the position of the Chief Operating Officer of GBX Logistics Limited while remaining as the Deputy General Manager of the respondent no. 13 Aitken Spence Shipping Limited in Sri Lanka. This also requires a detailed investigation.

According to the news item published in “The Daily Amader Shomoy” dated 12.02.2013, the respondent no. 16 Speed Air Cargo Net (Pvt.) Limited, a Sri Lankan Agent of Etihad Cristal Cargo of Etihad Airways, owned by one Mr. Sunil Malawana, has been doing business under the umbrella of GSA purportedly at a lump-sum fee which is in contravention of the Foreign Exchange Regulation Act, 1947 and the Guidelines for Foreign Exchange Transactions, 2009 for airlines agency business. Speed Air Cargo Net (Pvt.) Limited (respondent no. 16) has been managing this business through one of its senior employees Mr. I. M. Shumaiz who regularly receives salaries and other financial benefits from the respondent no. 16 and other companies in Sri Lanka. His P.F is being deposited to his Sri Lankan Central P.F on a regular basis by the respondent no. 16 and other associated companies. There are other companies including the respondent no. 17 which have been referred to in the news report of the Amader Shomoy. These companies have common ownership and common directors and seem to be operating in multiple jurisdictions. These companies are all part of the same device to hide the unlawful activities in breaching the foreign exchange and tax laws. The aforementioned activities of the respondents concerned are punishable offences under the Money Laundering Prevention Act, 2012, the Anti-Corruption Commission Act, 2004 and the Income Tax Ordinance, 1984, as the case may be. So those respondents should

be brought to book. Unfortunately the petitioner has not found any report in any news media that any action has been initiated by any of the respondent nos. 1-8 against the perpetrators of the offences of money laundering, graft and tax evasion. The respondent nos. 1-8 have miserably failed in upholding the laws of Bangladesh and in protecting its interests. Given this scenario, the petitioner has invoked the writ jurisdiction of the High Court Division under Article 102 of the Constitution by filing this public interest litigation.

The respondent no. 2 (Governor of Bangladesh Bank) has contested the Rule by filing an Affidavit-in-Opposition. The case of the respondent no. 2, as set out in the Affidavit-in-Opposition, runs as follows:

The newspaper reports (Annexures- 'A-1'- 'A-9' to the Writ Petition) did not specifically identify any particular transactions and Bangladesh Bank being a regulatory authority of all commercial banks and financial institutions in operation in the country can not look into each and every transaction and as such the allegations published in the paper-clippings as evidenced by Annexures- 'A-1'- 'A-9' to the Writ Petition are vague, nebulous and unspecific. Bangladesh Bank being the regulatory body from time to time discharges its functions by conducting inspections, audits, inquiries etc. through its Financial Intelligence Unit (FIU). However, if any representation or complaint is lodged with Bangladesh Bank, it can employ itself to investigate the particular matter which however is not the instant case. Though as per Section 23(1)(e) of the Money Laundering Prevention Act, 2012, BFIU has the authority to carry out on-site inspections of the organizations reported upon; but it did not conduct any such inspection and as such no report as alleged is available in this respect with Bangladesh Bank. However, after issuance of the Rule Nisi in the instant Writ Petition, BFIU, in addition to its routine inspections, collected information from

the related Departments of Bangladesh Bank, namely, Foreign Exchange Policy Department, Foreign Exchange Operation Department, Foreign Exchange Inspection Department, Foreign Exchange Investment Department and from the information received from those Departments, BFIU found no irregularities or illegalities as alleged in the Writ Petition.

The respondent no. 4 is the Chairman of the Anti-Corruption Commission. He has also contested the Rule by filing an Affidavit-in-Opposition. The case of the respondent no. 4, as set forth in the Affidavit-in-Opposition, in short, is as under:

The Anti-Corruption Commission (Durnity Daman Commission) is a statutory body established under the Anti-Corruption Commission Act, 2004. After the latest amendment of the Anti-Corruption Commission Act as introduced by the Act No. 25 of 2016, the Commission has the power of inquiry and investigation about any allegations relating to corruption and bribery, if any. Anyway, on receipt of the allegations of money laundering against the respondent nos. 10 and 15, the Anti-Corruption Commission appointed 2(two) separate Inquiry Officers and the Inquiry Officers, after thorough inquiries, submitted two inquiry reports dated 23.04.2015 and 19.05.2015 respectively. As no prima facie cases of the alleged graft and money laundering were made out, the Anti-Corruption Commission disposed of the allegations as not proved on 18.02.2016.

The respondent no. 9 Orient Overseas Container Line (OOCL), a Hong Kong-based company has filed an Affidavit-in-Compliance. The sum and substance of this Affidavit-in-Compliance is as follows:

The petitioner, not being involved in the shipping business in any way whatsoever, is not a person 'aggrieved' within the meaning of Article 102(2)(a)

of the Constitution of the People's Republic of Bangladesh and as such the instant Writ Petition is not maintainable. Besides, the instant writ proceeding is mala fide and has been initiated at the instance of a vested quarter who has embarked upon a witch-hunt and fishing expedition, especially after losing all of its foreign principal clients to others. Anyway, at one stage, the pro-forma respondent nos. 9 and 10 came to know that many allegations of money laundering had been brought against both of them by several Bangladeshi newspapers as evidenced by Annexures- 'A-1'- 'A-9' to the Writ Petition. Thereafter the pro-forma respondent no. 10 issued through its lawyer legal notices upon such newspapers controverting all such allegations as being based on inadequate information and inaccurate facts. But the newspapers have not till date replied to the legal notices issued by the pro-forma respondent no. 10. The method of calculation of agent commission particularly of the pro-forma respondent no. 10 resorted to by the petitioner in showing that the pro-forma respondent no. 10 did not declare before the authorities a substantial portion of money as its commission is misleading and a travesty of truth. In the first place, in calculating the amount of commission earned on export freight by the pro-forma respondent no. 10 during the financial year 2010-2011, the petitioner used the gross freight figure, rather than the net freight figure, as stipulated in the Guidelines for Foreign Exchange Transactions. Since the gross freight figure comprising all sub-charges is always higher than the net freight figure which does not include the sub-charges, the petitioner's calculation of the pro-forma respondent no. 10's commission earning from export freight is overly inflated. Secondly, in calculating the amount of commission earned by the pro-forma respondent no. 10 from import freight, the petitioner, instead of taking into account the actual freight charged by the respondent no. 9 for imports and the

actual number of TEUs imported into Bangladesh by the respondent no. 9 during the financial year 2010-2011, wrongly took into account the average freight rate prevailing at the relevant time and also the average of all TEUs imported into Bangladesh by the respondent no. 9 during 2010-2011. It is pertinent to mention here that the pro-forma respondent no. 9 always decides its ocean freight on the basis of its own commercial consideration and justification and at times may be different from the ocean freight rate prevailing in the market. Therefore the figure reached by the petitioner as having been earned by the pro-forma respondent no. 10 as commission from import freight is anything but true. Further, the nature of the shipping agency business only requires the agent to remit money to its foreign principal when it is actually collected from customers locally as negotiated by the shipment contracts. A foreign principal will have to remit money from time to time to meet any payment including expenses and agency commission of its agent pursuant to its agency agreement. Bangladesh Bank being the concerned regulatory authority holds the responsibility of maintaining regulatory oversight on incoming as well as outgoing remittances. The pro-forma respondent no. 10 upon calculating its commission as per the Guidelines for Foreign Exchange Transactions prepares freight manifests for submission to Bangladesh Bank periodically through its authorized dealer, that is to say, HSBC, Bangladesh. HSBC, upon receiving such freight manifests from the pro-forma respondent no. 10, thoroughly scrutinizes the same in order to check its compliance with the applicable Rules, Regulations and/or Guidelines before sending them to Bangladesh Bank. Thereafter the Bangladesh Bank officials conduct audit based on the said freight manifests before granting its approval to the same. From the stringent nature of the aforesaid procedure, it is clear that had the pro-forma respondent no. 10 been

involved in any irregularities or illegalities as alleged by the petitioner giving reference to the paper-clippings (Annexures -‘A-1’-‘A-9’ to the Writ Petition), either the HSBC or Bangladesh Bank, with the help of their highly skilled and competent officials, would have by now identified the same.

Bangladesh Bank, upon becoming aware of the allegations brought by several newspapers including the New Age that the pro-forma respondent no. 9, in collaboration with the pro-forma respondent no. 10, had laundered US\$ 8,50,000 during the fiscal year 2010-2011, directed the HSBC to conduct a thorough inquiry into the affairs of the pro-forma respondent no. 10 and report its findings to Bangladesh Bank. Subsequently, the HSBC by its letter dated 16.04.2013 under Memo No. HSBC/SD/13/263 informed Bangladesh Bank that after a detailed inquiry into the records of the pro-forma respondent no. 10, it found no evidence of any such irregularities or illegalities. Therefore it is manifestly clear that the allegations brought by the petitioner by reference to the newspaper-clippings are false, fabricated and devoid of substance. The petitioner through his wrong calculation of the amount of commission earned by the pro-forma respondent no. 10 during the financial year 2010-2011 has tried to mislead the Court into believing that the pro-forma respondent no. 10, by way of under-declaring its commission, laundered vast sums of money out of the country. The Writ Petition is virtually predicated upon yellow journalism resorted to by the editors of the different newspapers as evidenced by Annexures- ‘A-1’-‘A-9’ to the Writ Petition.

The respondent no. 10 Continental Traders (BD) Limited, a Bangladeshi Agent of the Orient Overseas Container Line (OOCL), has filed an Affidavit-in-Compliance. The statements made by the respondent no. 9 in its Affidavit-in-Compliance are almost similar to those made by the respondent no. 10 in its

Affidavit-in-Compliance. So the statements made by the respondent no. 10 in its Affidavit-in-Compliance are not repeated here.

However, the respondent no. 10 has filed a Supplementary Affidavit to the effect that the Anti-Corruption Commission through its letter bearing Memo No. দুদক/বিঃ অনুঃ ও তদন্ত-১/মানিলাভারিং/৮১-২০১৩/১৭২২৭/১(৩) dated 09.06.2015 informed the Managing Director and Chief Executive Officer of the respondent no. 10-company Mr. Ahsan Iqbal Chowdhury that the inquiry pursuant to the complaint of money laundering brought against him was closed since there was no prima facie evidence to establish the same.

The respondent no. 11 is Hapag-Lloyd, a Germany-based company. The long and the short of its Affidavit-in-Compliance is as follows:

Neither Hapag-Lloyd nor any of its affiliates is an incorporated subsidiary company in Bangladesh. Hapag-Lloyd (respondent no. 11) does not have any shareholding interest in any company incorporated in this country. Therefore the remark that Hapag-Lloyd formed a subsidiary named H Cargo is misleading. Anyway, Hapag-Lloyd entered into an agency agreement with GBX Logistics Limited in 2012 under which GBX Logistics Limited has been performing its obligations as an agent of Hapag-Lloyd in Bangladesh. Bangladesh Bank by a letter dated 16.07.2013 accorded permission to GBX Logistics Limited (respondent no. 12) to act as an agent of Hapag-Lloyd in Bangladesh. On top of that, the Joint Commissioner, Chairman, Licensing Authority, Customs House, Chittagong by a letter dated 30.05.2013 issued permission to GBX Logistics Limited (respondent no. 12) to act as an agent of Hapag-Lloyd at the Chittagong Port. In Annexure-‘A-1’ to the Writ Petition, it is stated that Mr. Bevin Mack is working for GBX Logistics Limited despite the fact that he is the Deputy General Manager of a company in Sri Lanka. But Mr. Mack is not employed

either by Hapag-Lloyd or any of its affiliates and therefore the respondent no. 11 is not in a position to comment on this issue. However, Hapag-Lloyd is not involved in any illegal activities including evasion of tax, money laundering and graft and so on and so forth.

The respondent no. 12 GBX Logistics Limited is a Bangladeshi Agent of Germany-based Hapag-Lloyd. This respondent no. 12 has filed an Affidavit-in-Compliance which, in brief, is as follows:

The pro-forma respondent no. 12 (GBX Logistics Limited) is a Private Limited Company duly incorporated under the Companies Act, 1994. All the shareholders of the company are local and natural persons and citizens of Bangladesh. The pro-forma respondent no. 12 is an agent of Hapag-Lloyd in Bangladesh having a duly executed agency agreement dated 30.11.2012. It started acting as an agent of Hapag-Lloyd from 30.05.2013 upon obtaining due permission from all concerned authorities. It never provided any false or misleading information to any authority with a view to siphoning off foreign currency from Bangladesh. It did not violate any laws or rules relating to its shipping business. The pro-forma respondent no. 12 has no relationship whatsoever with the pro-forma respondent no. 13 (Aitken Spence Shipping Limited), a Sri Lankan Agent of Hapag-Lloyd. The respondent no. 12 (GBX Logistics Limited) is managed by its Board of Directors in accordance with the provisions of its Articles of Association and the relevant laws of Bangladesh. Mr. Bevin Mack is a mere employee of the pro-forma respondent no. 12 acting as its Chief Operating Officer in Bangladesh. The work permit of Mr. Bevin Mack was issued by the then Board of Investment of Bangladesh which was effective from 23<sup>rd</sup> June, 2013. As Mr. Bevin Mack is a full-time employee of GBX Logistics Limited, this respondent is not aware whether Mr. Bevin Mack is

employed by any other company around the world. Anyway, GBX Logistics Limited, a Bangladeshi Agent of Germany-based Hapag-Lloyd, is not involved in any money laundering, evasion of tax, graft etc. as alleged.

The respondent no. 13 Aitken Spence Shipping Limited, a Sri Lankan Agent of Hapag-Lloyd has filed an Affidavit-in-Compliance. The tone and tenor of this Affidavit-in-Compliance runs as follows:

The name of the respondent no. 13 has been inserted in the Writ Petition with an ulterior motive as no one of the Annexures- 'A-1'- 'A-9' to the Writ Petition (which are paper-clippings) contains any remark/reference pertaining to this pro-forma respondent no. 13. The pro-forma respondent no. 13 is a company incorporated in Sri Lanka and it does not have any business/commercial relationship with any entity in Bangladesh. In particular, this pro-forma respondent no. 13 has no relationship with the respondent no. 12 in any manner whatsoever. Mr. Bevin Mack previously worked for this pro-forma respondent no. 13, that is to say, Aitken Spence Shipping Limited. Thereafter Mr. Bevin Mack was offered employment by the pro-forma respondent no. 12 and therefore he made an application to the pro-forma respondent no. 13 for leave without pay with effect from 01.05.2013 and the management of the pro-forma respondent no. 13 allowed such leave without pay to Mr. Bevin Mack. Accordingly since 01.05.2013, Mr. Bevin Mack has not been in the pay roll of the pro-forma respondent no. 13. Anyway, the pro-forma respondent no. 13 is not involved in any illegal activities including tax evasion, money laundering, graft etc.

The respondent no. 14 Etihad Cristal Cargo of Etihad Airways based in Abu Dhabi, United Arab Emirates (UAE) has filed an Affidavit-in-Compliance in this Writ Petition. The gist of this Affidavit-in-Compliance is as under:

Etihad appointed GSA Cargo as its General Sales and Service Agent (GSSA) within the geographic territory of Bangladesh by entering into a valid and legally enforceable contract in the form of a 'Cargo General Sales Agent and Service Agency Agreement' on 01.03.2006. The Agency Agreement was renewed from time to time and ultimately its duration was provisionally extended by way of an Extension Agreement. Etihad being an International Airline having global reputation maintains independent relationships with different conglomerates all over the world and the appointments of its GSSAs cover specific geographic territories that are expressly stated in the legally enforceable contracts executed between Etihad and its agents. While GSA Cargo Limited acts as the agent of Etihad in the geographic territory of Bangladesh, the pro-forma respondent no. 16 Speed Air Cargo Net (Pvt.) Limited acts as the agent of Etihad in the geographic territory of Sri Lanka and Male. Its role as an agent of Etihad is strictly confined to Sri Lanka and Male and in no way coincides with that of GSA Cargo Limited in Bangladesh. In the premises, the statement that the pro-forma respondent no. 16 (Speed Air Cargo Net (Pvt.) Limited) of Sri Lanka is "apparently the actual agent of pro-forma respondent no. 14 in Bangladesh" is false and misleading. The newspaper-clippings annexed to the Writ Petition in this regard are ill-founded and based on conjectures, surmises, inferences and speculations. GSA Cargo Limited is not only a genuine cargo agent of Etihad in Bangladesh, but also it is the only Cargo GSSA of Etihad in the country. Therefore Etihad strongly denies any accusation as to the appointment of any sham agent in Bangladesh or having any foreign or extra-territorial agent of any type for the geographic territory of Bangladesh. Etihad requires its local GSSA in Bangladesh, that is to say, GSA Cargo Limited to obtain necessary permission under Section 18A of the Foreign Exchange

Regulation Act, 1947 from Bangladesh Bank and to keep the same up-to-date so as to ensure that the said Act is duly complied with. This respondent (respondent no. 14) maintains requisite permission from the appropriate Governmental Authorities in due compliance with all applicable provisions at all times. So any connotations with regard to the involvement of Etihad in money laundering and tax evasion, either on its own or in collaboration with any other entity, by means of using a web of companies and individuals or any other devices are manifestly misleading. The news reports annexed by the petitioner to the Writ Petition neither bring nor establish any specific allegations against Etihad as regards its involvement in money laundering or tax evasion. Those news reports do not also unveil any specific allegations or evidence to exemplify that Etihad has been paying only a part of the commission to its local agent and laundering the rest amount outside the country. Etihad has been paying to its local agent in full the precise amount of commission agreed upon in the agency agreement and has not concealed any freight earned or commission paid and declared under the Foreign Exchange Regulation Act, 1947 and the Income Tax Ordinance, 1984.

Etihad being an international conglomerate has been conducting its business worldwide including Bangladesh with integrity, transparency and having regard to the laws of the respective countries. It was not a party to any inquiry procedure purportedly carried out by BFIU. However, Etihad recently received a letter bearing Memo No. ACC/S. Inq & Investigation-1/M.L.P/81-2013/26098 dated 03.09.2014 from the Special Inquiry and Investigation Unit-1 of the Anti-Corruption Commission requesting co-operation from it by way of providing relevant documents for proper inquiry into the allegations levelled against Mr. Helal Uddin Akbar, Managing Director of GSA Cargo Limited for conducting its business by breaching the Foreign Exchange Regulation Act. As

part of its endeavour to co-operate with the Anti-Corruption Commission in this respect, Etihad has been maintaining correspondences with the Anti-Corruption Commission and duly forwarded all the relevant documents to the said Commission as sought for. Etihad maintains a transparent and methodical system for transfer of all funds payable to it as the Principal and ensures due compliance with the laws, regulations and guidelines applicable to it on this account. The mechanism for transferring any fund from its GSSA in Bangladesh, namely, GSA Cargo Limited to Etihad in Abu Dhabi is closely scrutinized at all times. Etihad further maintains a meticulous internal accounting and information management system with the help of a computerized database maintained in Oracle so as to store and retrieve its accounting information with accuracy and efficiency. The said information management system, which is regularly updated and upgraded, further ensures that transfer of any fund takes place in a transparent and methodical system after it duly matches with the relevant invoice. Etihad being the pro-forma respondent no. 14 of the instant Writ Petition conforms to the relevant laws and regulations of Bangladesh in the course of its operation in Bangladesh and strictly adheres to the guidelines applicable to it. It always ensures that funds received are properly accounted for and taxes are duly paid. Etihad has no information about any known business tie between GSA Cargo Limited that is acting as its agent in Bangladesh and Speed Air Cargo Net (Pvt.) Limited which is its agent in Sri Lanka and Male. Mr. I. M. Shumaiz as referred to in paragraph 35 of the Writ Petition is not an employee of Etihad in Abu Dhabi or its Dhaka Branch Office. Lastly, as the petitioner has no sufficient interest in the matter, the Writ Petition is not maintainable and the same is an abuse of the process of the Court.

The respondent no. 15 GSA Cargo Limited is a Bangladeshi Agent of Etihad Cristal Cargo of Etihad Airways. The respondent no. 15 has filed an Affidavit-of-Clarification. The contents of the Affidavit-of-Clarification are, briefly, as follows:

The pro-forma respondent no. 15 (GSA Cargo Limited) is a 100% Bangladeshi owned company incorporated on 14.03.2006 with the office of the Registrar of Joint Stock Companies and Firms, Bangladesh under the Companies Act, 1994 and it represents Etihad Cristal Cargo of Etihad Airways, the pro-forma respondent no. 14 of the Writ Petition. As GSSA of Etihad, the respondent no. 15 has been engaged in transportation of air cargo in accordance with the relevant tariffs, rules, regulations and documentations provided by the pro-forma respondent no. 14 in order to promote air cargo business in Bangladesh. The pro-forma respondent no. 15 has appointed a renowned audit firm of Bangladesh to regularly audit the accounts of the company. It pays 100% applicable taxes as per audited report every year. In the greater interest of business, the pro-forma respondent no. 15 recruited one Sri Lankan national, namely, Mr. Dumindu Chaminda Amarathunge and appointed him as Senior Cargo Manager. After 2(two) years of service, Mr. Amarathunge resigned from the pro-forma respondent no. 15. The pro-forma respondent no. 15 does not have any business relationship with Mr. Sunil Malawana mentioned in the Writ Petition and the paper-clippings. The pro-forma respondent no. 15 also recruited another Sri Lankan national Mr. Iqbal Mohamed Shumaiz as Cargo Manager. Previously he worked with Speed Air Cargo Net (Pvt.) Limited (respondent no. 16) and after his resignation therefrom, he was appointed as Cargo Manager of GSA Cargo Limited. After the departure of Mr. Iqbal Mohamed Shumaiz from

Speed Air Cargo Net (Pvt.) Limited (respondent no. 16), the management of the company erroneously transferred Mr. Shumaiz's Provident Fund to his Sri Lankan CPF without his knowledge. After being requested by Mr. Shumaiz, the respondent no. 16 rectified the error by a letter dated 06.10.2014. The pro-forma respondent no. 15 runs its business following all the necessary rules and laws of the land and regularly pays all taxes and Government revenue. The allegations raised in the newspaper-clippings against the respondent no. 15 are far from truth and are designed to undermine the goodwill of the company.

The respondent no. 16 Speed Air Cargo Net (Pvt.) Limited is a Sri Lankan Agent of Etihad Cristal Cargo of Etihad Airways. The respondent no. 16 has filed an Affidavit-of-Clarification in this Court the contents of which are, in brief, run as under:

The respondent no. 16 Speed Air Cargo Net (Pvt.) Limited has a licence agreement with the respondent no. 14 Etihad Cristal Cargo of Etihad Airways based in Abu Dhabi, United Arab Emirates to act as its General Sales Agent (GSA) within the territory of Sri Lanka. The respondent no. 16, which is a company incorporated in Sri Lanka, has never conducted any transaction, financial or otherwise, with any person or entity in Bangladesh. The respondent no. 15 GSA Cargo Limited is the General Sales Agent of the respondent no. 14 in Bangladesh. The Managing Director of the respondent no. 16 or its shareholders are not acquainted with any person, named, Dumindu Amarathunge as alleged in paragraph 3 of the news report dated 12.02.2013 (Annexure-'H' to the Writ Petition). However, Mr. I. M. Shumazi, a Sri Lankan national is a former employee of the respondent no. 16. The respondent no. 16 has no business connection with any person/entity in Bangladesh. The character

of the respondent no. 16 has been unnecessarily assassinated in the Writ Petition.

The respondent no. 17 Allport Cargo Services based in the United Kingdom has filed an Affidavit-of-Clarification. The statements that have been made therein are, briefly, as follows:

The pro-forma respondent no. 17 is not a shipping company/agent. It is running its business as a freight forwarding agent and as such the allegation of paying minimum commission of 5% is misconstrued and does not relate to the pro-forma respondent no. 17 in any way. The pro-forma respondent no. 17 is a Cargo Logistic Company incorporated in the United Kingdom (UK). For the purpose of flourishing its business of Air Freight Agents, Cargo Agents, Cargo Forwarders etc., it entered into joint ventures with 2(two) companies, namely, Bengal Airlift Limited and Speedmark Air Transportation (Pvt.) Limited, Singapore. So presently the respondent no. 17 Allport Cargo Services is owned by 3(three) shareholding companies, namely, Bengal Airlift Limited, Bangladesh, Speedmark Air Transportation (Pvt.) Limited, Singapore and the pro-forma respondent no. 17. "The Daily Ittefaq" and "The Daily Independent" published false and fabricated news reports against Allport Cargo Services on 01.02.2009 and 10.06.2013 respectively. The respondent no. 17 Allport issued rejoinders against both the news items to those newspapers and the same were published therein accordingly. The pro-forma respondent no. 17 has never been involved in any tax evasion or money laundering from or to Bangladesh with any domestic or foreign company; rather it has been paying a considerable amount of tax and vat to the Government of Bangladesh every year.

The respondent no. 18, Editor of "The Daily Ittefaq", has filed an Affidavit-in-Compliance in this Writ Petition. In a nutshell, the subject matter of

the Affidavit-in-Compliance of the respondent no. 18 is that on the basis of some secret information and investigative journalism, the news report (Annexure-‘A-1’ to the Writ Petition) was published in “The Daily Ittefaq” on 11.06.2013 and he bona fide believed the contents of Annexure-‘A-1’ to the Writ Petition to be true.

The respondent no. 21 is the Editor of “The Business Digest”. The gist of his Affidavit-in-Compliance is that on the basis of a tip-off and having ascertained the truth of the news report (Annexure-‘A-4’ to the Writ Petition) diligently, it was published in “The Business Digest” on 25.10.2012.

The respondent no. 24 is the Editor of “The Daily Janata”. The sum and substance of his Affidavit-in-Compliance is that “The Daily Janata” dated 21.10.2012 (Annexure-‘A-7’ to the Writ Petition) published a news item under the caption- “রাজধানীতে হুন্ডি ব্যবসায়ী চক্র সক্রিয়” on the basis of some information gleaned from the law-enforcing apparatus and 2(two) hundi businessmen, namely, Md. Mosharaf Hossain and Md. Shah Alam who were tracked down by the Rapid Action Battalion (RAB) in front of Fatema Traders at Moyeen Road under Police Station Kafrul, Dhaka on 23<sup>rd</sup> August, 2010. This news item was published in the interest of the society as a whole.

The added respondent no. 26 is Bangladesh Shipping Agents Association Limited represented by its Chairman Mr. Ahsanul Haque Chowdhury. This respondent has filed an Affidavit-of-Facts in this Writ Petition. The facts as stated therein are summarized below:

The added respondent no. 26 is a trade body having 431 members both licensed and registered under the Trade Organizations Ordinance, 1961 and the Companies Act, 1994 with a view to promoting the highest standard of business methods relating to the occupation of shipping agents without prejudicing the

national interest. One Advocate Mr. Motiur Rahman lodged a complaint dated 10.01.2017 with the Chairman of the added respondent no. 26, namely, Mr. Ahsanul Haque Chowdhury about the alleged money laundering activities of the respondent no. 12 GBX Logistics Limited, a Bangladeshi Agent of Germany-based Hapag-Lloyd. In consequence, the added respondent no. 26, in consideration of our national interest, formed an Inquiry Committee and the Inquiry Committee held the inquiry and submitted its report to it. The news reports published in various national dailies annexed to the Writ Petition as Annexures- 'A-1'-'A-9' to the Writ Petition are seriously prejudicial to the reputation of the community of shipping agents as a whole. The respondent no. 26 does not wish to take any blame for the alleged conduct of a few members of the Bangladesh Shipping Agents Association against whom serious allegations of money laundering have been brought. The respondent no. 26 being one of the leading trade organizations in the country prays for issuance of necessary directions upon the respondent nos. 1-7 for inspection and examination of suspicious monetary transactions of the concerned shipping agents relating to their shipping business in Bangladesh and for appropriate legal actions against them, if deemed necessary, within the purview of the relevant laws of Bangladesh.

As against the Affidavit-of-Facts filed on behalf of the added respondent no. 26, the respondent no. 12 GBX Logistics Limited has filed an Affidavit-in-Reply the contents of which are, briefly, as follows:

The respondent no. 12 has been made a party in this Writ Petition by the petitioner at the instance and behest of the business competitors of the respondent no. 12. The respondent no. 12 and one MGH Group are involved in similar shipping agencyship business of foreign companies in Bangladesh. Mr.

Ahsanul Haque Chowdhury who represents the added respondent no. 26 is a Director of MGH Group. In his capacity as Director of MGH Group, he has made some untrue and fabricated allegations in the Affidavit-of-Facts under the umbrella of the added respondent no. 26. As a Member of the Bangladesh Shipping Agents Association Limited, the respondent no. 12 has access to the records of the Association. The alleged complaint dated 10.01.2017 lodged by one Advocate Mr. Motiur Rahman is a product of backstage maneuvers of Mr. Ahsanul Haque Chowdhury, one of the Directors of the business competitor of the respondent no. 12. The complaint was lodged mala fide in order to cause damage to the reputation and goodwill of the respondent no. 12. The alleged report of the Inquiry Committee is misconceived, misleading and indeed designed to undermine the reputation of the respondent no. 12 in the estimation of the people.

At the outset, Mr. M. Quamrul Haque Siddique, learned Advocate appearing in person, submits that he is an Advocate of the Supreme Court of Bangladesh and after having noticed the news items as evidenced by Annexures- 'A-1'- 'A-9' to the Writ Petition purporting to expose the commission of the offences of money laundering, tax evasion and graft by some of the respondents, he has invoked the writ jurisdiction of the High Court Division under Article 102 of the Constitution and thereby drawn the attention of this Court to the commission of those criminal offences for appropriate directives and actions.

Mr. M. Quamrul Haque Siddique also submits that it is the solemn duty of the Anti-Corruption Commission, Bangladesh Bank and National Board of Revenue to combat the graft, money laundering and tax evasion of the respondents concerned and the commission of those criminal offences as indicated by Annexures- 'A-1'- 'A-9' to the Writ Petition are undoubtedly public

wrongs or injuries and as a conscious citizen of Bangladesh, he has filed the Writ Petition on behalf of himself and the people of Bangladesh in order to save the national economy from ruination and given this scenario, he has ventilated the grievances of the citizens of Bangladesh by way of coming up with this Writ Petition under Article 102 of the Constitution and as such the Writ Petition is maintainable.

Mr. M. Quamrul Haque Siddique further submits that by drawing the attention of the Court to the alleged offences of money laundering, graft and tax evasion, he has discharged his constitutional duty and this being the landscape, the petitioner can not be shown the door and in this perspective, the Writ Petition is competent.

Mr. M. Quamrul Haque Siddique next submits that after perusing the Writ Petition and the Annexures annexed thereto and hearing the respondents and perusing their Affidavits, this Court will take necessary appropriate steps vis-à-vis the offences of money laundering, graft and tax evasion allegedly committed by the respondents concerned.

Per contra, Mr. Shamim Khaled Ahmed, learned Advocate appearing on behalf of the respondent no. 2, contends that the office note of BFIU dated 16.02.2017 (Annexure- '2' to the Affidavit-in-Opposition) indicates that Bangladesh Bank did not find any prima facie evidence of money laundering by any of the respondents concerned, though some of the documents of Bangladesh Bank were transmitted to the Anti-Corruption Commission for information and necessary action.

Mr. Shamim Khaled Ahmed also contends that as BFIU did not find any prima facie proof of money laundering against any of the respondents

concerned, it washed its hands of the matter and now it is up to the direction of the Court to pass any appropriate directives in this connection.

Mr. Md. Khurshid Alam Khan, learned Advocate appearing on behalf of the respondent no. 4, argues that the Anti-Corruption Commission appointed 2(two) Inquiry Officers to inquire into the alleged offences committed by the respondents concerned as highlighted in the paper-clippings (Annexures- 'A-1'- 'A-9' to the Writ Petition); but those allegations were not prima facie proved during inquiry and hence the same were disposed of as not proved.

Mr. Md. Khurshid Alam Khan also argues that if new materials are forthcoming in the future relating to the implication of the respondents concerned in money laundering or graft, the Anti-Corruption Commission will embark upon a fresh inquiry thereinto and do the needful.

Mr. M. Saquibuzzaman, learned Advocate appearing on behalf of the respondent nos. 9 and 10, submits that the respondent nos. 9 and 10, that is to say, the OOCL and the Continental Traders (BD) Limited, a Bangladeshi Agent of the OOCL, are not engaged in any money laundering or graft and that has been substantiated by the report of the Anti-Corruption Commission and considered from this standpoint, the Rule is liable to be discharged.

Mr. M. Saquibuzzaman also submits that the instant Writ Petition in the nature of a Public Interest Litigation (PIL) is not maintainable inasmuch as the petitioner admittedly has no connection with any shipping business in Bangladesh and in that view of the matter, the petitioner is a mere interloper or a busybody and on this count alone, the Rule should be discharged.

Mr. Md. Ramzan Ali Sikder, learned Advocate appearing on behalf of the respondent no. 11, namely, Hapag-Lloyd, contends that Hapag-Lloyd does not have any shareholding interest in any company incorporated in Bangladesh; but

Hapag-Lloyd, however, entered into an agency agreement with GBX Logistics Limited in 2012 under which GBX Logistics Limited has been discharging its duties and obligations as an agent of Hapag-Lloyd in Bangladesh and Hapag-Lloyd is not involved in any unlawful activities including money laundering, graft and tax evasion.

Mr. Md. Asaduzzaman, learned Advocate appearing on behalf of the respondent nos. 12 and 13, namely, GBX Logistics Limited and Aitken Spence Shipping Limited, submits that the petitioner has no locus standi to file the Writ Petition in view of the ‘ratios’ enunciated in the cases of *Dr. Mohiuddin Farooque...Vs...Bangladesh*, 49 DLR (AD) 1 (popularly known as BELA’s Case); *Bangladesh Bank ...Vs...Professor Mozaffar Ahmed and others*, 22 BLD (AD) 41 and *National Board of Revenue...Vs...Abu Saeed Khan and others*, 18 BLC (AD) 116 and on this sole ground, the Rule is liable to be discharged.

Mr. Md. Asaduzzaman also submits that admittedly the Anti-Corruption Commission and Bangladesh Bank in their respective inquiries did not find any prima facie truth of the allegations levelled against the respondents concerned and as such after submission of their reports on oath in this Writ Petition, the Rule has necessarily become infructuous.

Mr. Md. Asaduzzaman further submits that the Writ Petition has been filed to serve the interest of some vested quarters and the respondent no. 26 Bangladesh Shipping Agents Association Limited is virtually a name-lender and this respondent no. 26 has been set up by those vested quarters in order to malign the respondent nos. 12 and 13 and to cause damage to their goodwill out of business rivalry.

Mr. Md. Asaduzzaman next submits that the Editor of “The Daily Ittefaq” (respondent no. 18) has signally failed to substantiate the allegations that were

brought against the respondent no. 12 as evidenced by Annexure-‘A-1’ dated 11.06.2013 to the Writ Petition.

Mr. Abdullah Al Hady, learned Advocate appearing on behalf of the respondent no. 14 Etihad Cristal Cargo of Etihad Airways based in Abu Dhabi, United Arab Emirates, contends that he has filed an Affidavit-in-Compliance controverting the allegations that were levelled against his client.

Mr. Muhammad Saifullah Mamun, learned Advocate appearing for the respondent nos. 15 (GSA Cargo Limited) and 17 (Allport Cargo Services Limited), argues that he has filed two separate Affidavits-of-Clarification on their behalf in this Writ Petition and from the papers on record, it is ex-facie clear that no inquiry was carried out against the respondent no. 17 and the allegations brought against the respondent no. 15 GSA Cargo Limited, a Bangladeshi Agent of Etihad Cristal Cargo of Etihad Airways, were not prima facie proved as per the reports of the Anti Corruption Commission and Bangladesh Bank and by that reason, the Rule is liable to be discharged.

Mr. M. K. Rahman, learned Advocate appearing on behalf of the respondent no. 16, contends that the respondent no. 16 Speed Air Cargo Net (Pvt.) Limited is a Sri Lankan Agent of Etihad Cristal Cargo of Etihad Airways and the respondent no. 16 has been unnecessarily harassed because of yellow journalism resorted to by the newspapers and the news-clippings contained in Annexures- ‘A-1’-‘A-9’ to the Writ Petition were prima facie negated by the reports of the Anti-Corruption Commission and Bangladesh Bank and Speed Air Cargo Net (Pvt.) Limited has no direct business relationship with any person or entity in Bangladesh and in such a posture of things, the Rule should be discharged.

Mr. Md. Omar Farook, learned Advocate appearing on behalf of the respondent no. 18 Editor of “The Daily Ittefaq”, argues that on the basis of some confidential information and investigative journalism, the news item was published in “The Daily Ittefaq” as is apparent from Annexure-‘A-1’ dated 11.06.2013 to the Writ Petition.

Although the respondent no. 21, Editor of “The Business Digest” and the respondent no. 24, Editor of “The Daily Janata” have filed Affidavits-in-Compliance separately; but their learned Advocates have not turned up before this Court in order to make submissions in support of their respective Affidavits.

Mr. Md. Abdul Qaium, learned Advocate appearing on behalf of the respondent no. 26 Bangladesh Shipping Agents Association Limited represented by its Chairman Mr. Ahasanul Haque Chowdhury, submits that he supports the case of the petitioner and the Writ Petition is maintainable in view of the decisions in the cases of *Inland Revenue Commissioners...Vs...National Federation of Self-Employed and Small Business Ltd., 1982 AC 617* and *Ekushey Television Ltd. and others...Vs...Dr. Chowdhury Mahmood Hasan & others, 22 BLD (AD) 163*.

Mr. Md. Abdul Qaium also submits that the Bangladesh Shipping Agents Association Limited is an association of shipping agents and this company looks after the welfare, business interest and reputation of all the shipping agents of Bangladesh and should the respondent no. 12 has committed any offence of money laundering or graft or tax evasion, it should be meted out condign punishment in national interest.

Mr. Md. Abdul Qaium further submits that in the facts and circumstances of the case, necessary directions may be given to the Anti-Corruption Commission, National Board of Revenue and Bangladesh Bank to make in-

depth inquiries into the allegations brought against the respondents concerned with a view to generating confidence in the people and the stake-holders about the working modalities of various shipping companies including the respondent no. 12 GBX Logistics Limited.

Mr. Md. Abdul Qaium next submits that Mr. Ahasanul Haque Chowdhury is not a business rival of the respondent no. 12, but both of them are engaged in shipping business according to their competence, efficiency and performance and this being the panorama, there is no question of mud-slinging at each other.

Mr. Md. Abdul Qaium lastly submits that in order to revamp the national economy of the country and in greater public interest for sustenance of the rule of law, all the money launderers, tax evaders and other offenders must be brought within the ambit of law and in this respect, the Anti-Corruption Commission, National Board of Revenue and Bangladesh Bank have some definitive and specific roles to play.

We have heard the submissions of the learned Advocates, namely, Messrs. M. Quamrul Haque Siddique, Shamim Khaled Ahmed, Md. Khurshid Alam Khan, M. Saquibuzzaman, Mr. Md. Ramzan Ali Sikder, Md. Asaduzzaman, Abdullah Al Hady, Muhammad Saifullah Mamun, M. K. Rahman, Md. Omar Farook and Md. Abdul Qaium and perused the Writ Petition, Affidavits-in-Opposition, Affidavits-in-Compliance, Affidavits-of-Clarification and Affidavit-of-Facts and relevant Annexures annexed thereto.

In the facts and circumstances of the case and in view of the contentions and the counter-contentions of the learned Advocates on the question of maintainability of the Writ Petition under Article 102 of the Constitution, we take up this issue first for adjudication.

Our Constitution is undeniably the supreme law of the land. In other words, the Constitution is the ‘suprema lex’ of the country. Under Article 102 of the Constitution except for an application for habeas corpus or quo warranto, a Writ Petition can be filed by a ‘person aggrieved’. Thus in order to have locus standi to invoke the writ jurisdiction of the High Court Division, an applicant has to show that he is an aggrieved party in an application for certiorari, mandamus or prohibition.

The leading English case on locus standi is *Ex parte Sidebotham*, (1880) 14 Ch. D. 458 where the Court held that a person aggrieved is a man—

“who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongly deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something.”

The same view was taken in subsequent cases. The Pakistani and Indian Courts were greatly influenced by the English decision.

In the case of *Tariq Transport Company, Lahore...Vs....Sargodha-Bhera Bus Service, Sargodha and others reported in 11 DLR (SC) 140*, the Supreme Court of Pakistan observed:

“...a person seeking judicial review must show that he has a direct personal interest in the act which he challenges before his prayer for review is entertained.”

That Writ Petition was filed under Article 170 of the Constitution of Pakistan, 1956. The same view was taken in respect of locus standi under Article 98 of the Constitution of Pakistan, 1962. Therefore, an association, though registered, did

not have any locus standi to vindicate the personal or individual grievance of its members.

But in the case of *Mian Fazal Din.....Vs....Lahore Improvement Trust reported in 21 DLR(SC) 225*, the Pakistan Supreme Court took somewhat a liberal view stating—

“...the right considered sufficient for maintaining a proceeding of this nature is not necessarily a right in the strict juristic sense; but it is enough if the applicant discloses that he had a personal interest in the performance of the legal duty, which if not performed or performed in a manner not permitted by law, would result in the loss of some personal benefit or advantage or the curtailment of a privilege or liberty or franchise.”

The Indian Supreme Court also followed the English decisions in the matter of standing both for the enforcement of fundamental rights and for other constitutional remedies.

The traditional view of locus standi has an adverse effect on the rule of law. Schwartz and Wade commented in “Legal Control of Government” (1972 edition) at page 291:

“Restrictive rules about standing are in general inimical to a healthy system of administrative law. If a person with a good case is turned away, merely because he is not sufficiently affected personally, that means that some government

agency is left free to violate the law, and that is contrary to public interest.”

With the increase of governmental functions, the English Courts found the necessity of liberalizing the standing rule to preserve the integrity of the rule of law. When a public-spirited citizen challenged the policy of the police department not to prosecute the gaming clubs violating the gaming law, the Court heard him, though no clear-cut and definitive answer to the standing question was given (*R.V. Metropolitan Police Commissioner ex P. Blackburn* [1968] 1 All E. R. 763). The Court also heard Mr. Blackburn challenging the action of the Government in joining the European Common Market (*Blackburn v. Attorney-General* [1971] 2 All E. R. 1380). Again, Mr. Blackburn was accorded standing in enforcing the public duty owed by the police and Greater London Council in respect of exhibition of pornographic films (*R.V. Metropolitan Police Commissioner ex P. Blackburn* [1973] All E.R. 324). In all the cases mentioned above, the duty owed by the public authorities was to the general public and not to an individual or to a determinate class of persons and the applicants were found to have locus standi as they had ‘sufficient interest’ in the performance of the public duty.

In India, the concept of public interest litigation (public-spirited citizens bringing matters of great public importance) was initiated by Mr. V.R. Krishna Iyer, J in the case of *Mumbai Kamgar Sabha, Bombay...Vs.... M/s. Abdulbhai and others reported in AIR 1976 SC 1455*. However, a definite jurisprudential basis was laid down in the case of *S. P. Gupta and others Vs. President of India and others (AIR 1982 SC 149)* where several Advocates of different Bar Associations of India challenged the action of the Government in transferring

some Judges of the High Courts. In that case, in according standing to the petitioners, Justice Bhagwati observed:

“Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is, by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application... seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.”

In the case of *Bangladesh Sangbadpatra Parishad...Vs...Bangladesh and others (43 DLR (AD) 126)*, the Association of Newspaper-owners challenged an award given by the Wage Board and the High Court Division turned down the writ petition holding that the Association had no locus standi. The Appellate Division upheld the finding of the High Court Division. Dealing with the Indian decisions regarding public interest litigation, the Appellate Division observed:

“... In our Constitution, the petitioner seeking enforcement of a fundamental right or

constitutional remedies must be a 'person aggrieved'. Our Constitution is not at *pari materia* with the Indian Constitution on this point. The Indian Constitution, either in Article 32 or in Article 226, has not mentioned who can apply for enforcement of fundamental rights and constitutional remedies. The Indian Courts only honour a tradition in requiring that the petitioner must be an 'aggrieved person'. The emergence of *pro bono publico* litigation in India, that is litigation at the instance of a public-spirited citizen espousing causes of others, has been facilitated by the absence of any constitutional provision as to who can apply for a writ. In England, various tests were applied. Sometimes it was said that a person must be 'aggrieved' or he must have 'a specific legal right' or he must have 'sufficient interest'. Now after the introduction of the new Rules of the Supreme Court, Order 53 Rule 3, any person can apply for 'judicial review' in England under the Supreme Court Act, 1981 if he has 'sufficient interest'. Therefore the decisions of the Indian jurisdiction on public interest litigations are hardly apt in our situation. We must confine ourselves to asking whether the petitioner is an

‘aggrieved person’, a phrase which has received a meaning and a dimension over the years.”

In that case, public interest litigation was not involved. There was no difficulty on the part of the newspaper-owners to challenge the award themselves. So the Appellate Division denied standing to the Association of Newspaper-owners.

In the case of *Bangladesh Retired Government Employees’ Welfare Association....Vs....Bangladesh* (46 DLR (HCD) 426), the High Court Division accepted the standing of the said Association holding—

“Since the Association has an interest in ventilating the common grievance of all its members who are retired Government employees, in our view, this Association is a ‘person aggrieved’...”

In the case of *Kazi Mukhlesur Rahman.....Vs....Bangladesh and another reported in 26 DLR (AD) 44* (commonly known as Kazi Mukhlesur Rahman’s Case), it was held:

“It appears to us that the question of locus standi does not involve the Court’s jurisdiction to hear a person but of the competency of the person to claim a hearing, so that the question is one of discretion which the Court exercises upon due consideration of the facts and circumstances of each case.”

Article 102 of our Constitution speaks about ‘person aggrieved’. What is the meaning of this expression? The Constitution has not defined the expression,

nor has it mentioned 'personally aggrieved person'. An expression occurring in the Constitution can not be interpreted out of context or only by reference to the decisions of foreign jurisdictions where the constitutional dispensations are different from ours. In interpreting the expression 'person aggrieved', it can not be overlooked that the English Courts which introduced the restrictive rule of standing vastly shifted from their traditional view which was ultimately changed by legislation. The expression has to be given a meaning in the context of the scheme and objectives of the Constitution and in the light of the purpose behind the grant of the right to the individuals and the power to the Court. Any interpretation which undermines the scheme or objectives of the Constitution, or defeats the purpose for which the jurisdiction is created is to be discarded. It has to be noted that the framers of the Constitution envisioned a society in which the rule of law, fundamental human rights and freedom, equality and justice (political, economic and social) would be secured for all citizens. They spoke about their vision in the Preamble of the Constitution in no uncertain terms. To give full effect to the rule of law, substantive provision has been made in Article 7 which states that all powers in the Republic shall be exercised only under, and by the authority of, the Constitution. The vision as to the society has been restated in Article 8 and elaborated in other Articles of Part II. Article 8(2) specifically states that the principles of State policy set down in Part II will be fundamental to the governance of Bangladesh. To ensure the fundamental human rights, freedom, equality and justice, the Constitution has guaranteed a host of rights in Part III as fundamental rights. And to ensure that the mandate of the Constitution is obeyed, the High Court Division has been given the wide power of judicial review. In this background, can the expression 'person aggrieved' be given a meaning in consonance with the traditional view of 'locus

standi' and thereby producing a result deprecated by Schwartz and Wade as inimical to a healthy system of administrative law and contrary to public interest? The Appellate Division has answered the question in the negative in the case of *Dr. Mohiuddin Farooque...Vs... Bangladesh, 49 DLR (AD) 1* (popularly known as BELA's Case).

The expression 'person aggrieved' means a person who even without being personally affected has sufficient interest in the matter in dispute. When a public functionary has a public duty owed to the public in general, every citizen has sufficient interest in the performance of that public duty.

In BELA's Case, his Lordship Mr. Justice Mostafa Kamal of the Appellate Division held:

“We now proceed to say how we interpret Article 102 as a whole. We do not give much importance to the dictionary meaning or punctuation of the words 'any person aggrieved'. Article 102 of our Constitution is not an isolated island standing above or beyond the sea-level of the other provisions of the Constitution. It is a part of the over-all scheme, objectives and purposes of the Constitution. And its interpretation is inextricably linked with the (i) emergence of Bangladesh and framing of its Constitution, (ii) the Preamble and Article 7, (iii) Fundamental Principles of State Policy, (iv) Fundamental Rights and (v) the other provisions of the Constitution.”

The Constitution, historically and in real terms, is a manifestation of what is called “the People’s Power”. The people of Bangladesh are, therefore, central, as opposed to ornamental, to the framing of the Constitution. It was further held in BELA’s Case:

“The Supreme Court being a vehicle, a medium or mechanism devised by the Constitution for the exercise of the judicial power of the people on behalf of the people, the people will always remain the focal point of concern of the Supreme Court while dispensing justice or propounding any judicial theory or interpreting any provision of the Constitution. Viewed in this context, interpreting the words “any person aggrieved” meaning only and exclusively individuals and excluding the consideration of people as a collective and consolidated personality will be a stand taken against the Constitution. There is no question of enlarging locus standi or legislation by Court. The enlargement is writ large on the face of the Constitution.”

Where there is a written Constitution and an independent judiciary and the wrongs suffered by the people are capable of being raised and ventilated publicly in a Court of law, there is bound to be greater respect for the rule of

law. The Preamble of our Constitution really contemplates a society where there will be unflinching respect for the rule of law and the welfare of the citizens.

In the decision in the case of *Ekushey Television Ltd. and others.....Vs....Dr. Chowhdury Mahmood Hasan & others reported in 54 DLR (AD) 130* (popularly known as the ETV Case), it was held:

“What is meant by ‘sufficient interest’ is basically a question of fact and law which shall have to be decided by the Court. None of the fundamental rights like rule of law is subject to mechanical measurement. They are measured in our human institutions i.e. the Courts and by human beings i.e. the Judges, by applying law. Therefore, there will always be an element of discretion to be used by the Court in giving standing to the petitioner. From the above, it appears that the Courts of this jurisdiction have shifted their position to a great extent from the traditional rule of standing which confines access to the judicial process only to those to whom legal injuries are caused or legal wrong is done. The narrow confines within which the rule of standing was imprisoned for long years have been broken and a new dimension is being given to the doctrine of locus standi.”

In the ETV Case (supra), it was further held in paragraph 74:

“74. It must be remembered here that it is not possible to lay down in clear and precise terms what is required to give petitioner locus standi when public injury or public wrong is involved. Locus standi is not a case of jurisdiction of the Court, but a case of discretion of the Court, which discretion has to be exercised on consideration of facts and law points involved in each case, as already pointed out in the case of Kazi Mukhlesur Rahman. As a matter of prudence and not a rule of law, the Court may confine its exercise of discretion, taking into consideration the facts, the nature of the public wrong or public injury, the extent of its seriousness and the relief claimed. Therefore, the concern shown by the Bar, that giving locus standi to the petitioner will open the floodgates, and the Court will soon be overburdened with cases, does not hold good. The discretion to open the gates will always be with the Court, which discretion will only be exercised within the bounds mentioned above.”

Article 102 is inextricably linked with the genesis of the Constitution and can not be construed independently of the scheme and objectives of the Constitution, particularly those explicated in the preamble and fundamental principles of State policy.

It is axiomatic that judicial review is the soul of the Judiciary in a written Constitution. To the extent that fundamental rights are not available to any provision of a disciplinary law (Article 45), certain laws are specifically excluded from the purview of judicial review (Articles 47 and 47A) and certain authorities are not amenable to judicial review (Article 102(5) ), the power of judicial review is constitutionally restricted. These constitutional restrictions aside, the horizon of judicial review is being expanded through judicial activism with the passage of time facilitating the citizens' access to justice. A great duty is cast upon the Lawyers and Judges of the Apex Court of Bangladesh for onward march of our constitutional journey to its desired destination.

Anyway, in the case of *Bangladesh Bank...Vs...Professor Mozaffar Ahmed and others reported in 22 BLD (AD) 41* relied upon by Mr. Md. Assaduzzaman, it has been observed that the Writ Petition has been filed just to protect the alleged interest of the intending promoters of banking companies, who are not less fortunate persons. It has not been alleged that this writ-petitioner has any connection with any existing bank. Therefore his status can not be construed as status of an aggrieved person as contemplated under Article 102 of the Constitution. Invoking this 'ratio' of the decision reported in 22 BLD (AD) 41, Mr. Md. Asaduzzaman has emphatically contended that the present writ-petitioner, though a lawyer of high standing of the Supreme Court of Bangladesh, has no sufficient interest in the subject matter of the Rule and for taking necessary actions against the perpetrators of alleged money laundering, graft and tax evasion, the statutory bodies such as Bangladesh Bank, Anti-Corruption Commission and National Board of Revenue are already in place and those statutory bodies can effectively deal with such offences, if any, without

any directive from this Court and such being the position, the Writ Petition can not be maintained under Article 102 of the Constitution.

Indisputably the petitioner Mr. M. Quamrul Haque Siddique is a lawyer of high standing of this Court. As a lawyer of the Supreme Court of Bangladesh, he is a conscious citizen of the country. As the statutory bodies, namely, Bangladesh Bank, Anti-Corruption Commission and National Board of Revenue did not appear to have taken any steps on the basis of the paper-clippings as evidenced by Annexures- 'A-1'- 'A-9' to the Writ Petition, he has just drawn the attention of this Court to the perpetration of the crimes reported upon by way of filing the Writ Petition. What we are driving at boils down to this: perpetration of criminal offences like money laundering, graft and tax evasion are, no doubt, public injuries or public wrongs. It goes without saying that when a public functionary has a public duty or owes a duty to the public in general, every citizen has sufficient interest in the performance of that public duty. So it necessarily follows that the writ-petitioner Mr. M. Quamrul Haque Siddique has sufficient interest in seeing that the perpetrators of money laundering, graft and tax evasion etc. are exposed and brought to book. He has, it transpires, has filed the Writ Petition on behalf of the citizens of the country as well as on his own behalf. So the sufficiency of interest of the writ-petitioner Mr. M. Quamrul Haque Siddique can not be sneezed at at all.

As to the other decision in the case of the *National Board of Revenue...Vs...Abu Saeed Khan and others reported in 18 BLC (AD) 116* adverted to by Mr. Md. Asaduzzaman, it has been clearly, categorically and unequivocally stated therein that before entertaining a petition under Article 102 of the Constitution, the Court will have to decide the extent of sufficiency of interest and the fitness of the person invoking the discretionary jurisdiction.

Besides, it has also been held in the decision that the Court which is considering the question of bona fides in a particular case will have to decide as to why the affected party has not come before it and if it finds no satisfactory reason for non-appearance of such affected party, it may refuse to entertain the petition. It has further been held in the decision that the Court is under an obligation to guard that the filing of a Public Interest Litigation (PIL) does not convert into a publicity interest litigation or a private interest litigation.

Reverting to the case in hand, the writ-petitioner, as already observed, has sufficient interest in the matter and his fitness for invocation of the discretionary jurisdiction of the High Court Division under Article 102 of the Constitution can not be objected to, regard being had to the facts and circumstances of the case. The alleged inaction or failure of the Anti-Corruption Commission, National Board of Revenue and Bangladesh Bank in relation to Annexures- ‘A-1’-‘A-9’ to the Writ Petition can be brought to the notice of the Court by any citizen of Bangladesh and the writ-petitioner has precisely done that in this case. By no stretch of imagination, it can be said that the instant Writ Petition is a publicity interest litigation or a private interest litigation. In such a situation, our considered view is that the case of *National Board of Revenue...Vs...Abu Saeed Khan and others reported in 18 BLC (AD) 116* is not a bar to the invocation of the writ jurisdiction of the High Court Division under Article 102 of the Constitution by the petitioner.

In the case of *Inland Revenue Commissioners...Vs...National Federation of Self-Employed and Small Business Ltd.*, 1982 AC 617 referred to by Mr. Md. Abdul Qaium, it was spelt out at page 644:

“It would, in my view, be a grave lacuna in our system of public law if a pressure group,

like the federation, or even a single public-spirited taxpayer, were prevented by outdated technical rules of locus standi from bringing the matter to the attention of the Court to vindicate the rule of law and get the unlawful conduct stopped.”

As an Advocate of the Supreme Court of Bangladesh, the writ-petitioner has undoubtedly a stake in the establishment of the rule of law in the country. By the way, it may be recalled that the rule of law is one of the basic structures of the Constitution as found by the Appellate Division in the Eighth Amendment Case (*Anwar Hossain Chowdhury and others...Vs...Bangladesh and others, 1989 BLD (Spl) 1*). It is the mandate of the Constitution that there must be rule of law in the country. As the writ-petitioner has sufficient interest in the establishment of the rule of law through prevention of money laundering, graft, tax evasion etc. and punishment of the perpetrators of those crimes, we find him competent enough to claim a hearing from this Court as found by the Appellate Division in Moklesur Rahman’s Case (supra). Over and above, in the ETV Case, it has been formulated that there is always an element of discretion in the matter of granting standing to the petitioner. From the facts and circumstances of the present case before us, it transpires that the petitioner, as an Advocate of the Supreme Court of Bangladesh, is very much concerned with the establishment of the rule of law in the country. Against this backdrop, the petitioner Mr. M. Quamrul Haque Siddique can not be stigmatized as a busybody or an interloper. Given this scenario, we can not deny his standing in filing the present Writ Petition before the High Court Division under Article 102 of the Constitution. Accordingly, we find that the Writ Petition is maintainable.

As a natural corollary, the submissions of Mr. Md. Asaduzzaman and others on the question of non-maintainability of the Writ Petition stand negated.

It is a truism that the publication of the news items in various national dailies as evidenced by Annexures- ‘A-1’-‘A-9’ to the Writ Petition have prompted the writ-petitioner to file the Writ Petition because of the alleged inaction/failure of the Anti-Corruption Commission, Bangladesh Bank and National Board of Revenue in curbing the alleged offences of money laundering, graft, tax evasion etc. It appears from the Affidavit-in-Opposition filed by the learned Advocate Mr. Shamim Khaled Ahmed on behalf of Bangladesh Bank that BFIU did not sit idle over the matter. The relevant office note of BFIU dated 16.02.2017 (Annexure- ‘2’ to the Affidavit-in-Opposition) runs as follows:

“এ ইউনিট কর্তৃক ইতোপূর্বে প্রেরিত রিট পিটিশনের দফাওয়ারী জবাবে রিটে উল্লিখিত অভিযোগের বিষয়ে কোন তদন্ত সম্পাদিত হয়নি মর্মে উল্লেখ করা হয়েছে। অভিযোগের বিষয়ে প্রাথমিকভাবে ৪টি ব্যাংকে ৩৩টি হিসাবের মাধ্যমে লেনদেন পরিচালনার তথ্য সংগ্রহ করা হয়। হিসাবসমূহে অধিকাংশ লেনদেন নগদ ও ক্লিয়ারিং এর মাধ্যমে সম্পাদিত হয়েছে। হিসাববিবরণী পর্যালোচনায় রিটের অভিযোগের বিষয়টি প্রমাণ করার মতো প্রয়োজনীয় তথ্য পাওয়া যায় না। আলোচ্য রিট পিটিশনের কতিপয় বিবাদীগণের ক্ষেত্রে রিটে উল্লিখিত অভিযোগ সংশ্লিষ্ট বিষয় দুর্নীতি দমন কমিশনের অনুসন্ধান/তদন্তাধীন থাকায় তাদের চাহিদার প্রেক্ষিতে যাচিত তথ্যাদি প্রেরণ করা হয়েছে। বিভিন্ন শিপিং ও এয়ারলাইন্স কোম্পানি এবং তাদের এজেন্ট কর্তৃক মানি লন্ডারিং প্রতিরোধ

আইন, ২০১২, ফরেন এক্সচেঞ্জ রেগুলেশন অ্যাক্ট, ১৯৪৭ ও গাইডলাইন্স ফর ফরেন এক্সচেঞ্জ ট্রানজেকশন এর ব্যত্যয় ঘটিয়ে বিদেশে অর্থ পাচারসহ বিভিন্ন অনিয়ম করছে মর্মে রিটে উল্লেখ থাকায় অভিযুক্ত প্রতিষ্ঠানসমূহ যথাযথভাবে অনুমোদন গ্রহণ ও কার্যক্রম সম্পাদন করছে কিনা তথা রিটে উল্লিখিত অনিয়মসমূহ সংঘটিত হয়েছে কিনা তা যাচাইপূর্বক এ ইউনিটকে অবহিত করার জন্য বৈদেশিক মুদ্রা নীতি বিভাগ, ফরেন এক্সচেঞ্জ অপারেশন ডিপার্টমেন্ট, বৈদেশিক মুদ্রা পরিদর্শন বিভাগ ও বৈদেশিক মুদ্রা বিনিয়োগ বিভাগকে অনুরোধ করা হয়। উক্ত বিভাগসমূহ হতে প্রাপ্ত জবাব হতে রিটে উল্লিখিত প্রতিষ্ঠানসমূহের বিষয়ে উল্লেখযোগ্য অনিয়মের তথ্য পাওয়া যায় না।

উপর্যুক্ত বিষয়াবলী বিবেচনায় আলোচ্য রিটের বিষয়ে এ ইউনিটের করণীয় কিছু আছে কিনা তা স্পষ্ট নয় মর্মে এ ইউনিটের ৩০/১২/২০১৫ তারিখের নোটিং এ উল্লেখ করা হয়। সে প্রেক্ষিতে উক্ত নোটিং এ বাংলাদেশ ব্যাংকের বিভাগসমূহ কর্তৃক প্রদত্ত মতামত ও তথ্যাদি আইন বিভাগকে সরবরাহপূর্বক আলোচ্য রিটের বিষয়ে কিছু করণীয় আছে কিনা, থাকলে সে মোতাবেক পরবর্তী কার্যক্রম গ্রহণের জন্য অনুরোধ করা হয়। পরবর্তীতে আইনজীবীর যাচনা মোতাবেক বিভাগীয় সিলমোহরসহ উক্ত বিভাগসমূহের মতামত আলাদা শীটে তা আইন বিভাগে সরবরাহ করা হয়।

সার্বিকভাবে আলোচ্য রিট পিটিশনে উল্লেখিত অভিযোগের বিষয়ে এ ইউনিট কর্তৃক তদন্ত করা হয়েছে মর্মে রিটে উল্লেখ থাকলেও এ ইউনিট কর্তৃক এ সংক্রান্ত কোন তদন্ত করা হয়নি।

এ ইউনিট কর্তৃক রিটে উল্লেখিত কতিপয় প্রতিষ্ঠানের ক্ষেত্রে প্রাথমিকভাবে সংগৃহীত হিসাবের লেনদেন হতে অভিযোগের বিষয়ে প্রমাণ করার মতো প্রয়োজনীয় তথ্য পাওয়া যায়নি। রিট পিটিশনের কতিপয় বিবাদীগণের ক্ষেত্রে রিটে উল্লেখিত অভিযোগ সংশ্লিষ্ট বিষয়ে দুর্নীতি দমন কমিশনের অনুসন্ধান/তদন্তাধীন থাকায় তাদের চাহিদার প্রেক্ষিতে যাচিত তথ্যাদি প্রেরণ করা হয়েছে। বাংলাদেশ ব্যাংকের সংশ্লিষ্ট বিভাগসমূহে রিটে উল্লেখিত অভিযোগের ব্যাপারে উল্লেখযোগ্য অনিয়মের কোন তথ্য পাওয়া যায়নি। এপ্রেক্ষিতে রিটে উল্লেখিত অভিযোগের বিষয়ে আপাততঃ এ ইউনিটের করণীয় কিছু আছে বলে প্রতীয়মান হয় না।”

From the above office note in Annexure-‘2’ to the Affidavit-in-Opposition filed by Bangladesh Bank, it leaves no room for doubt that BFIU did not find any prima facie proof of money laundering as alleged in the paper-clippings to the Writ Petition.

A reference to the Affidavit-in-Opposition filed by the learned Advocate Mr. Md. Khurshid Alam Khan on behalf of the respondent no. 4 shows that the Anti-Corruption Commission appointed 2(two) Inquiry Officers to inquire into the allegations referred to in the paper-clippings to the Writ Petition and the Inquiry Officers submitted their respective reports dated 23.04.2015 and dated 19.05.2015 (Annexures- ‘I’ and ‘II’ respectively to the Affidavit-in-Opposition). However, it is palpably evident from Annexure-‘I’ to the Affidavit-in-Opposition of the respondent no. 4 that the alleged offences of money laundering and graft were not prima facie proved. It will be worthwhile if we

quote the relevant parts of Annexure-‘I’ dated 23.04.2015 to the Affidavit-in-Opposition of the respondent no. 4 verbatim:

“অনুসন্ধানকালে সংশ্লিষ্ট রেকর্ডপত্রাদি পর্যালোচনায় জানা যায় যে, জনাব হেলাল উদ্দিন আকবরের নামে প্রাইম ব্যাংক লি:, গুলশান শাখায় একাউন্ট নং-১১৮২১০৭০০০২৮৭৬, মিসেস সাইদা খানমের নামে এবি ব্যাংক লি:, নিউ এলিফ্যান্ট রোড শাখায় একাউন্ট নং ৪০০৬-২৯৪৪৪৬-৩০১, জনাব হেলাল উদ্দিন আকবর এবং মিসেস সাঈদা খানম এর যৌথ নামে প্রাইম ব্যাংক লি:, গুলশান শাখায় একাউন্ট নং ১১৮২১০৬০০১৯৬৩৬ ও এবি ব্যাংক লি:, ধানমন্ডি শাখায় একাউন্ট নং ৪০২১-০৫০৫২৮-৩০০, মিসেস সাঈদা খানম এবং তাঁর কন্যা জান্নাতুল ফিরদৌস আকবর এর যৌথ নামে এবি ব্যাংক লি:, গুলশান শাখায় একাউন্ট নং ৪০১৯-৪৮৯০০৪-৩০০, মিসেস সাঈদা খানম এবং তাঁর কন্যা নূরতাজ হেলাল আকবর এর যৌথ নামে এবি ব্যাংক লি:, ধানমন্ডি শাখায় একাউন্ট নং ৪০২১-২১২৩৫৪-৩০০ এবং মিসেস সাঈদা খানম এবং তাঁর কন্যা সামা হেলাল দেওয়ান এর যৌথ নামে এবি ব্যাংক লি:, ধানমন্ডি শাখায় একাউন্ট নং ৪০২১-০১৯৯৩৬-৩০০ রয়েছে। উল্লিখিত একাউন্টগুলোর স্টেটমেন্ট পর্যালোচনায় একাউন্টগুলোতে সন্দেহজনক লেনদেনের বা একাউন্টগুলো থেকে দেশের বাইরে টাকা স্থানান্তরের প্রমাণ পাওয়া যায়নি।

অনুসন্ধানকালে দুর্নীতি দমন কমিশনের স্মারক নং-দুদক/বি অনু: ও তদন্ত- ১/২০৪৩৪, তারিখ- ০৭/০৭/২০১৪ মূলে জিএসএ কার্গো লিমিটেডের বিরুদ্ধে উত্থাপিত অভিযোগের

বিষয়ে বাংলাদেশ ব্যাংকের তদন্ত প্রতিবেদন ও সংশ্লিষ্ট রেকর্ডপত্রাদি সরবরাহের জন্য অধিযাচন পত্র প্রেরণ করা হয়।

তদপ্রেক্ষিত বাংলাদেশ ব্যাংক, প্রধান কার্যালয়, ঢাকা'র এর স্মারক নং- বিএফআইইউ (সিএইচআইই)-০৯(২৪)/২০১৪-২৮৩১, তারিখ- ১৭/০৯/২০১৪ মূলে বিএফআইইউ (বাংলাদেশ ফিন্যানশিয়াল ইনটেলিজেন্স ইউনিট) এর যুগ্ম-পরিচালক জনাব মাহবুবুল আলম কর্তৃক প্রেরিত পত্রে উল্লেখ করা হয় যে, বিএফআইইউ থেকে জিএসএ কার্গো লিমিটেডের বিরুদ্ধে মানিলভারিং সংক্রান্ত অভিযোগের বিষয়ে কোন তদন্ত অনুষ্ঠিত হয়নি। তবে বাংলাদেশ ব্যাংক, প্রধান কার্যালয়, ঢাকা'র এর স্মারক নং- বিএফআইইউ (সিএইচআইই)-০৯(২৪)/২০১৪-৩৭০৯, তারিখ- ২৪/১২/২০১৪ মূলে বিএফআইইউ এর যুগ্ম-পরিচালক জনাব মাহবুবুল আলম কর্তৃক জিএসএ কার্গো লিমিটেডের আর্থিক লেনদেন সংক্রান্ত তথ্যাদি ব্যাংক থেকে সংগ্রহপূর্বক প্রেরণ করা হয়।

অনুসন্ধানকালে বিএফআইইউ কর্তৃক সরবরাহকৃত রেকর্ডপত্রাদি পর্যালোচনায় জিএসএ কার্গো লিমিটেডের বিরুদ্ধে স্থাপিত মানিলভারিং সংক্রান্ত অভিযোগের প্রমাণ পাওয়া যায়নি।

অনুসন্ধানকালে বাংলাদেশ ব্যাংকসহ অন্যান্য উৎস থেকে সংগৃহীত সংশ্লিষ্ট রেকর্ডপত্রাদি পর্যালোচনায় জানা যায় যে, স্পীডমার্ক ট্রান্সপোর্টেশন বিডি লিমিটেড বাংলাদেশ কোম্পানীজ আইন, ১৯৯৪ এর অধীনে রেজিস্ট্রার অব জয়েন্ট স্টক কোম্পানীজ এন্ড ফার্মস, বাংলাদেশ কর্তৃক নিবন্ধিত একটি যৌথ মালিকানাধীন (Joint Venture) লিমিটেড

কোম্পানী। উক্ত কোম্পানীর একটি অংশীদারী (শেয়ারহোল্ডিং) কোম্পানী অলপোর্ট কার্গো সার্ভিসেস লিমিটেড (ইউ. কে.)। উক্ত কোম্পানী আইনানুযায়ী ব্যবসায় পরিচালনা করেছে। কোম্পানীর ব্যাংক একাউন্টে জমাকৃত অর্থের সিংহভাগই ক্লিয়ারিং এর মাধ্যমে জমা হয়েছে এবং একাউন্টটি থেকে দেশের বাইরে টাকা প্রেরণের প্রমাণ পাওয়া যায়নি। অপরদিকে ইউনাইটেড এভিয়েশন এন্টারপ্রাইজ লিমিটেড নামক প্রতিষ্ঠানটিও বাংলাদেশ কোম্পানীজ আইন, ১৯৯৪ এর অধীনে রেজিস্ট্রার অব জয়েন্ট স্টক কোম্পানীজ এন্ড ফার্মস, বাংলাদেশ কর্তৃক নিবন্ধিত একটি কোম্পানী। প্রতিষ্ঠানটির ব্যাংক একাউন্টে জমাকৃত অর্থের সিংহভাগই ক্লিয়ারিং এর মাধ্যমে জমা হয়েছে এবং একাউন্টটি থেকে দেশের বাইরে টাকা প্রেরণের প্রমাণ পাওয়া যায়নি। মি. সুনীল মালাওয়ানার সংগে স্পীড মার্ক ট্রান্সপোর্টেশন বা অল পোর্ট বা জিএসএ কার্গো লিমিটেডের কোন ব্যবসায়িক সম্পর্ক খুঁজে পাওয়া যায়নি। ফলে জনাব রেজাউর রহমান, জনাব আব্দুল মান্নান এবং মি. সুনীল মালাওয়ানা স্পীড মার্ক ট্রান্সপোর্টেশন এবং অলপোর্টকে ব্যবহার করে বাংলাদেশ থেকে জিএসএ কমিশনের অর্থ পাচার করছেন মর্মে অভিযোগ সঠিক নয়।

অপরদিকে অনুসন্ধানকালে সংশ্লিষ্ট রেকর্ডপত্রাদি পর্যালোচনায় জানা যায় যে, কন্টিনেন্টাল ট্রেডার্স (বিডি) লিমিটেড হংকং ভিত্তিক শিপিং কোম্পানী ওরিয়েন্ট ওভারসীজ কনটেইনার লাইন এর এজেন্ট। উক্ত কোম্পানীর স্বত্বাধিকারী জনাব আহসান ইকবাল চৌধুরী ও তাঁর স্ত্রী মিসেস সাতওয়াত

সাফিনাজ চৌধুরী। কোম্পানীটির বিরুদ্ধে বাংলাদেশ ব্যাংকের তদন্ত প্রতিবেদনের বরাতে খবরের কাগজে অভিযোগ প্রকাশিত হলেও বাংলাদেশ ব্যাংক থেকে প্রেরিত পত্র পর্যালোচনায় জানা যায় যে, কন্টিনেন্টাল ট্রেডার্স (বিডি) লিমিটেডের বিরুদ্ধে বাংলাদেশ ব্যাংক কর্তৃক কোন তদন্ত অনুষ্ঠিত হয়নি। বাংলাদেশ ব্যাংক বা গোয়েন্দা সংস্থার তদন্তের বরাত দিয়ে প্রকাশিত “২০১০-২০১১ অর্থ বছরে কমিশন হিসেবে কন্টিনেন্টাল ট্রেডার্স (বিডি) লিমিটেডকে ১৩.৫ কোটি টাকা পরিশোধ করেছে। কিন্তু ট্যাক্স ডকুমেন্টস ও হিসাব অনুযায়ী দেখা যায় মাত্র ৬.৭ কোটি টাকা পরিশোধ করা হয়েছে” মর্মে অভিযোগও সঠিক নয়। কেননা সংশ্লিষ্ট রেকর্ডপত্রাদি পর্যালোচনায় প্রমাণ পাওয়া যায় যে, ওরিয়েন্ট ওভারসীস কন্টেইনার লাইন কর্তৃক ২০১০-২০১১ অর্থ বছরে কমিশন হিসেবে কন্টিনেন্টাল ট্রেডার্স (বিডি) লিমিটেডকে ১১,৩৬,১১,৪৬০.৫৬ টাকা পরিশোধ করা হয়েছে এবং কোম্পানীর আয়কর নথিসহ সংশ্লিষ্টসকল রেকর্ডপত্রে তা উল্লেখ করা হয়েছে। ফলে ২০১০-২০১১ অর্থ বছরে ওরিয়েন্ট ওভারসীস কন্টেইনার লাইন তাদের বাংলাদেশী এজেন্ট এর সহায়তায় ১.৭ মিলিয়ন ডলার লভ্যারিং করেছে মর্মে সঠিক নয়। অনুসন্ধানকালে প্রমাণ পাওয়া যায় যে, কন্টিনেন্টাল ট্রেডার্স (বিডি) লিমিটেড কোম্পানী আয়কর নথিতে ভেসেল অপারেশন এবং কন্টেইনার হেডেলিং সংক্রান্ত ব্যয় কোম্পানীর ওভারহেড এক্সপেনসেস হিসেবে প্রদর্শন করেছে। তবে ফরেন এক্সচেঞ্জ নীতিমালায় ভেসেল অপারেশন এবং কন্টেইনার হেডেলিং সংক্রান্ত ব্যয় মাদার কোম্পানীর হিসাবে প্রদর্শন করতে হবে মর্মে নির্দেশনা নেই। ফলে পত্রিকায় প্রকাশিত এ

খবরটিও সঠিক নয়। কোম্পানীর কমিশন প্রাপ্তির রেকর্ডপত্রসহ সংশ্লিষ্ট অন্যান্য রেকর্ডপত্র এবং আয়কর নথি পর্যালোচনায় কন্টিনেন্টাল ট্রেডার্স (বিডি) লিমিটেড এর বিরুদ্ধে মানিলভারিং এর অভিযোগের সত্যতা পাওয়া যায়নি। অনুসন্ধানকালে আরো জানা যায় যে, হিউম্যান এনভায়রনমেন্ট রাইটস সোসাইটি (হারস) এর পরিচালক (অর্থ) জনাব হুমায়ুন কবির কন্টিনেন্টাল ট্রেডার্স (বিডি) লিমিটেড মানিলভারিং-এ জড়িত মর্মে অভিযোগ উত্থাপন করে কোম্পানীটির ব্যবসায় স্থায়ীভাবে নিষেধাজ্ঞা আরোপের দাবীতে মাননীয় যুগ্ম জেলা জজ, ১ম আদালত, ঢাকায় গত ২০/০৬/২০১৩ তারিখে দেওয়ানী মোকদ্দমা নং- ৬৮৬/২০১৩ দায়ের করেন। উক্ত মামলায় অন্যান্যদের সহিত মামনীয় চেয়ারম্যান, দুর্নীতি দমন কমিশনকে Defendants (বিবাদী) করা হয়। অবশ্য উক্ত দেওয়ানী মোকাদ্দমা বিজ্ঞ আদালত কর্তৃক গত ১৮/৯/২০১৪ তারিখের রায়ে খারিজ করে দেয়া হয়েছে। পরবর্তীতে মানিলভারিং এর অভিযোগে কন্টিনেন্টাল ট্রেডার্স (বিডি) লিমিটেডের বিরুদ্ধে জনৈক কামরুল হক সিদ্দিকী কর্তৃক গত ০২/০৬/২০১৪ তারিখে মহামান্য হাইকোর্টে রীট পিটিশন নং- ৫৫৭৯ /২০১৪ দায়ের করা হয়। উক্ত রীট পিটিশনের পরিপ্রেক্ষিতে মহামান্য হাইকোর্টের নির্দেশে দুদক কর্তৃক অনুসন্ধানাধীন হুবহু একই অভিযোগ সংশ্লিষ্ট তথ্যাদি/রেকর্ডপত্রাদি কন্টিনেন্টাল ট্রেডার্স (বিডি) লিমিটেড ও ওরিয়েন্ট ওভারসীজ কনটেইনার লাইন এর বাংলাদেশ অফিস কর্তৃক ইতোমধ্যে মহামান্য হাইকোর্টে দাখিল করা হয়েছে।”

The inquiry report dated 19.05.2015 is Annexure-‘II’ to the Affidavit-in-Opposition filed by the respondent no. 4. The relevant paragraphs of that report are as under:

“অনুসন্ধানকালে অভিযোগ প্রেরণকারী তথা বাংলাদেশ সুপ্রীম কোর্টের এডভোকেট জনাব এম. কামরুল হক সিদ্দিকীর বক্তব্য গ্রহণ করা হয়। বক্তব্যে তিনি জানান, তিনি আলোচ্য অভিযোগ বিষয়ে বিভিন্ন পত্রিকায় প্রকাশিত রিপোর্ট একত্রিত করে দুর্নীতি দমন কমিশনে প্রেরণ করেছেন। কিন্তু অভিযোগ প্রমাণে সহায়ক কোন তথ্য উপাত্ত তার কাছে নেই মর্মে তিনি দাবী করেন। অর্থাৎ অভিযোগ বিষয়ে কোন প্রমাণপত্র তার কাছে পাওয়া যায়নি।

আলোচ্য অভিযোগ অনুসন্ধানকালে প্রাপ্ত রেকর্ডপত্র পর্যালোচনায় দেখা যায় যে, কন্টিনেন্টাল ট্রেডার্স বাংলাদেশ লি. ও অন্যান্য শিপিং কোম্পানি কর্তৃক বিদেশে টাকা পাচার/মানি লভারিং সংক্রান্ত আলোচ্য অভিযোগের বিষয়ে বাংলাদেশ ফাইন্যান্সিয়াল ইন্টেলিজেন্স ইউনিট (BFIU) কর্তৃক কোন প্রতিবেদন প্রণয়ন করা হয়নি। অর্থাৎ পত্রিকান্তরে প্রকাশিত খবর সঠিক নয়। এ ছাড়া অনুসন্ধানকালে কন্টিনেন্টাল ট্রেডার্স বাংলাদেশ লি. থেকে সংগৃহীত রেকর্ডপত্র পর্যালোচনা করেও অভিযোগ প্রমাণের সহায়ক তথ্য পাওয়া যায়নি।

উল্লেখ্য যে, আলোচ্য অভিযোগ সংক্রান্তে কন্টিনেন্টাল ট্রেডার্স বাংলাদেশ লি. ও অন্যান্য শিপিং কোম্পানি কর্তৃক Foreign Exchange Regulation Act লঙ্ঘন করে ব্যবসা পরিচালনার মাধ্যমে বিদেশে অর্থ পাচারের অভিযোগ প্রমাণিত না হওয়ায় (২) নং সুদ্রোক্ত নথির (দুদক/বিঃ অনুঃ ও তদন্ত-

১/মা. ল. প্র./ ৮১-২০১৩) অনুসন্ধান কর্মকর্তা জনাব মোঃ নাসির উদ্দিন, উপপরিচালক, বিশেষ অনুসন্ধান ও তদন্ত-১ গত ২৩/৪/২০১৫ খ্রি. তারিখে নথিভুক্তির সুপারিশসহ আপনার দপ্তরে অনুসন্ধান প্রতিবেদন দাখিল করেছেন। এমতাবস্থায় (১) ও (২) নং সূত্রোক্ত নথির আলোচ্য অভিযোগের বিষয় একই হওয়ায় অত্র নথির অভিযোগ (২) নং সূত্রোক্ত নথির সাথে সংযুক্ত করে সদয় সিদ্ধান্ত গ্রহণের সুপারিশসহ অত্র অনুসন্ধান প্রতিবেদন সবিনয় দাখিল করা হলো।”

What is noticeable is that the Anti-Corruption Commission disposed of the matter by keeping the same with the record for not getting any prima facie proof of the commission of the alleged offences as evidenced by Annexure- ‘III’ to the Affidavit-in-Opposition of the respondent no.4.

The upshot of the above discussion is that both the Anti-Corruption Commission and Bangladesh Bank by their respective Affidavits-in-Opposition and the reports annexed thereto have clinched the matter for the time being. In other words, no action is called for on the basis of the paper-clippings (Annexures- ‘A-1’-‘A-9’ to the Writ Petition) at the moment. Of course, the clinching of the matter both by the Anti-Corruption Commission and Bangladesh Bank for the time being will not preclude them from undertaking further inquiries into any offences of money laundering and graft. If new credible materials transpire at a subsequent stage involving the concerned respondents and others, any interested parties, if so advised, may assist the Anti-Corruption Commission, Bangladesh Bank and National Board of Revenue in unearthing and unfolding the commission of offences such as money

laundering, graft, tax evasion in futuro. Those statutory bodies are always at liberty to prevent the commission of such offences and take appropriate legal steps against the perpetrators of those offences.

A reference to the Affidavit-in-Compliance filed by the respondent no. 24 Editor of “The Daily Janata” indicates that two persons, namely, Md. Mosharaf Hossain and Md. Shah Alam were hunted down by the Rapid Action Battalion (RAB) in connection with illegal hundi business and that news was published in “The Daily Janata” dated 21.10.2012 under the caption “রাজধানীতে হুন্ডি ব্যবসায়ী চক্র সক্রিয়”. But it does not transpire from the record that either the arrestee Md. Mosharaf Hossain or Md. Shah Alam is in any way connected with the respondent no. 9 Orient Overseas Container Line (OOCL), respondent no. 10 Continental Traders (BD) Limited, respondent no. 12 GBX Logistics Limited, respondent no. 13 Aitken Spence Shipping Limited, respondent no. 14 Etihad Cristal Cargo of Etihad Airways, respondent no. 15 GSA Cargo Limited and respondent no. 16 Speed Air Cargo Net (Pvt.) Limited. In other words, their involvement with any of these companies as per the record is not forthcoming before us. However, if those two persons, namely, Md. Mosharaf Hossain and Md. Shah Alam are found to be involved in illegal hundi business as alleged, they can not get off scot-free. The appropriate agencies must take necessary legal steps to that effect.

In the facts and circumstances of the case and with the observations made in the body of the judgment, the Rule is discharged without any order as to costs.

**J. B. M. HASSAN, J:**

I agree.