

16 SCOB [2022] HCD 151

HIGH COURT DIVISION

(STATUTORY ORIGINAL JURISDICTION)

Company Matter No. 342 of 2018

Md. Shahbuddin Alam

..... Petitioner

-Versus-

Mr. Mahbubey Alam, Senior Advocate
with
Ms. Farhana Ershad Chowdhury,
Advocate

Bangladesh Bank and others

.... Respondents

.....For the respondent no. 1
Mr. Samir Sattar, Advocate
.....For the respondent no. 4
Mr. Shafiqul Kabir Khan, Advocate
.....For the respondent no. 6

Mr. Shah Monjurul Hoque with
Mr. Palash Shendra Roy and
Dr. Syeda Nasrin, Advocates

.....For the Petitioner

The 21th May, 2019

Present:

Mr. Justice Muhammad Khurshid Alam Sarkar

Editors' Note:

The petitioner is the Managing Director and shareholder of a Borrower-Company, which borrowed money from a lender Bank. But due to failure of regular payment of the loan money by the Borrower-Company, it accrued a huge amount of loan liability. For rescheduling, the petitioner agreed to deposit a certain amount of money as down payment but did not deposit it fully. In view of such situation, the lender Bank issued a letter to the Borrower-Company represented by petitioner requesting him to deposit rest of the down payment as per Bangladesh Bank requirement contained in Bangladesh Bank Rescheduling Guidelines. But the petitioner did not take any positive step regarding payment of the said down payment. Under such circumstances, the Bangladesh Bank served a notice upon the petitioner asking him to repay the loan availed by the Borrower-Company mentioned in the said notice by and within 2 (two) months with a threat that, in default, the post of the petitioner as a Director of the Mercantile Bank would stand vacated as per Section 17 of the Banking Companies Act. The petitioner then filed an application under section 17(8) of the Banking Companies Act, 1991 read with section 43 of the Companies Act, 1994 in respect of his directorship and shares in the Mercantile Bank Ltd and challenged the propriety and legality of termination of his directorship in the said Bank. The High Court Division after elaborate discussion of the relevant provisions of the Banking Companies Act, 1991 and the Artharin Adalat Ain, 2003 dismissed the petition stating that the directorship of any scheduled bank shall vacant when a director takes loan for himself or stands as a guarantor of another borrower. The court also differentiated between the provisions of Section 17 of the Banking Companies Act and of Section 5 of the Artharin Adalat Ain. The court imposed an exemplary cost for abusing the process of the Court upon the petitioner.

Key Words:

Section 17(8) of the Banking Companies Act, 1991; Section 43 of the Companies Act, 1994; Section 3, 5 and 6 of the Artharin Adalat Ain 2003; Bangladesh Bank Rescheduling Guidelines; Directorship; guarantor; borrower

Section 17 of the Banking Companies Act:

The directorship of any scheduled Bank shall be vacant on the following events; (i) if a Director of a Scheduled Bank does not pay the loan, or interest thereof, taken by him from any Bank/Financial Institutions, (ii) when a Director of any scheduled Bank places him/herself as a guarantor to any loan taken by a third person and the said Director of the scheduled Bank fails to repay the loan money after receiving notice from the Bangladesh Bank, and (iii) if a Director of any scheduled Bank fails to carry out/complete the duty and responsibility undertaken by him. In other words, when a Director of any scheduled Bank either takes loan for himself or stands as a guarantor of another loanee, and if the loan remains unpaid despite issuance of notice by the Bangladesh Bank under Section 17 of the Banking Companies Act, his/her directorship may be vacated without exhausting the formalities set out in sub-Sections (2) & (3) of Section 17 of the Banking Companies Act. ... (Para 17)

Section 17 of the Banking Companies Act:

It is to be noticed from the language employed in sub-Sections 1, 2 & 3 of Section 17 of the Banking Companies Act that vacancy of directorship occurs the moment any of the events enumerated in clauses (a) to (c) of sub-Section 1 of Section 17 of the Banking Companies Act takes place, for, neither any of the sub-Sections of Section 17 of the Banking Companies Act nor any other provisions of the Banking Companies Act seek to halt the proceedings under Section 17 of the Banking Companies Act on the plea of filing a representation to the lender Bank or to the Bangladesh Bank or to any other authority. ... (Para 19)

The submissions advanced by the learned Advocate for the petitioner that the petitioner being not the loanee, that is to say that the petitioner being merely a guarantor of the loanee, his directorship in a scheduled Bank should not be taken away by invoking the provisions of Section 17 of the Banking Companies Act, is completely misconceived. The laws herald very stoutly that a Director of any scheduled Bank whenever would be found to be either as the 'defaulter loanee' or as the 'defaulter guarantor', proceedings against the aforesaid Director under Section 17 of the Banking Companies Act would be initiated. ... (Para 20)

Section 17 of the Banking Companies Act and Section 5 of the Artharin Adalat Ain:

The provisions of Section 17 of the Banking Companies Act and the provisions of Section 5 of the Artharin Ain provide completely different course of actions for the 'defaulter loanee' and 'defaulter guarantor'. In other words, while the provisions of Section 17 of the Banking Companies Act aims at vacating the directorship of a person of a scheduled Bank, Section 5 of the Artharin strategies about recovery of outstanding loan from the borrower, mortgagor and guarantor. Thus, the submissions of the learned Advocate for the petitioner that without going for recovery of loan by invoking the provisions of the Artharin Ain from the Borrower-company at first, commencement of any proceedings under Section 17 of the Banking Companies Act is not legal, appears to me to be completely without any substance. ... (Para 21)

JUDGMENT

Muhammad Khurshid Alam Sarkar, J:

1. By filing this application under Section 17(8) of the Banking Companies Act, 1991 (Banking Companies Act) read with Section 43 of the Companies Act, 1994 (briefly, the

Companies Act), Md. Shahbuddin Alam (the petitioner) prays for setting aside the proceedings and all orders, decisions made in the proceedings under Section 17 of the Banking Companies Act initiated by the respondent nos. 1-5 against the petitioner in respect of his directorship and shares in the Mercantile Bank Ltd (the respondent no.6) vide memo no. BRPD(R-2)651/9(26)Ga/2018-6676 dated 10.09.2018 issued under the signature of the respondent no. 2. The petitioner also challenges the propriety and legality of the termination of the directorship of the petitioner in the Mercantile Bank Ltd and, thereby, allowing the petitioner to remain as the Director of the Mercantile Bank Ltd.

2. In the petition, it is averred that the petitioner is a businessman, and a Director and shareholder of the Mercantile Bank Limited, which is a banking company incorporated under the Banking Companies Act. He is holding, as of the date, 1,21,83,522 shares of Tk. 10.00 (ten) each in the capital of the Mercantile Bank Limited. The petitioner is also the Managing Director and shareholder in the capital of the respondent no. 7 (hereinafter referred to as the 'Borrower-Company'), which is also a company limited by shares and incorporated under the Companies Act. The respondent no. 1 is the Bangladesh Bank, which is established as the central Bank by the Bangladesh Bank Order, 1972 and the regulatory body of all banking companies in Bangladesh. The respondent nos. 2 and 3 are the responsible officials of the Banking Regulation and Policy Department (BRPD) of the Bangladesh Bank and the respondent no. 4 (hereinafter referred to either as the One Bank or the lender Bank) is a banking company regulated under the Banking Companies Act and the respondent no. 5 is the responsible official of the Khatungonj Branch of the respondent no. 4. In the course of business, the respondent no. 4 through its Khatungonj Branch, Chattogram sanctioned various credit facilities viz, Time Loan, Term Loan, SLC/CLC/ Acceptance, LTR, BG, etc., in favour of the Borrower-Company upon obtaining adequate securities vide different sanction letters. The said facilities were from time to time renewed, reviewed, converted and rescheduled, as and when the situation warranted. Lastly, under a review/restructuring arrangement vide Sanction Letter dated 29.09.2016, the following arrangements were made by the respondent no. 4; a) the liabilities of the Borrower-Company under Time Loan and OD were converted into a Term Loan of TK. 21.13 crore, b) existing Term Loan liability of Tk. 20.39 crore was reviewed, and c) existing SLC/ULC/Acceptance, Time Loan, LTR, BG facilities were cancelled.

3. Thereafter, the Borrower-Company from time to time requested the lender Bank to sanction new credit line and, thereby, to facilitate the Borrower-Company to repay the aforesaid stuck-up liabilities smoothly. However, despite repeated persuasions, the lender Bank did not extend any kind of co-operation whatsoever to the Borrower-Company. Besides, the lender Bank refrained from opening any L/C which caused a huge setback in continuing its regular business. Since the company's business fully depends upon import from abroad/local market by way of opening the L/C, the stoppage of opening any new L/C facility by the lender Bank placed the business of the Borrower-Company in complete deadlock. Recently, time and again, the Borrower-Company vide its letters dated 14.02.2018, 13.03.2018, 28.03.2018, 23.04.2018, 16.05.2018, 27.06.2018, 23.07.2018 requested the lender Bank either to re-fix its liability waiving interest and allow 2(two) years' time to repay the loan, or to reschedule the liability for adjustment purpose. At the same time, the Borrower-Company requested the lender Bank to sanction fresh working capital. In order to approve the said proposal, the Borrower-Company paid off Tk. 1.40 crore as down payment. Although the lender Bank on principle agreed to reschedule the liability of the Borrower-Company, nonetheless, without paying any heed to the business dilemma of the Borrower-Company, they put preconditions to pay additional Tk. 2.35 crore as down payment and to

provide with additional security in the form of mortgage. In such situation, the Borrower-Company vide its letter dated 27.08.2018 requested the lender Bank to fix its liability as of 20.07.2018 and provide its Board approval as to the agreed rescheduling in order to facilitate the Borrower-Company to pay the balance down payment. The said representation of the Borrower-Company is still pending for consideration and decision by the lender Bank.

4. It is stated that while the Borrower-Company has been in active negotiation with the lender Bank with regard to the re-scheduling and/or adjustment of the liabilities as aforesaid, at an utter dismay, on 24.09.2018 the petitioner received the impugned Memo No. BRPD(R-2)651/9(26)Ga/2018-6676 dated 10.09.2018 from the respondent no. 1 under the signature of the respondent no. 3 intimating the notice dated 16.08.2018 of the lender Bank under Section 17 of the Banking Companies Act asking the petitioner to repay the loan availed by the Borrower-Company mentioned in the said notice by and within 2 (two) months with a threat that, in default, the post of the petitioner as a Director of the Mercantile Bank would stand vacated as per Section 17 of the Banking Companies Act. The petitioner submitted his representation in writing to the respondent no. 1 on 09.10.2018, i.e. within the period prescribed by Section 17(2) of the Banking Companies Act having categorically explained the situation and his legal standing in respect of the contents of the notice issued by the lender Bank with a humble request not to proceed with the proceeding under Section 17 of the Banking Companies Act. The petitioner also requested (a) to advise the respondent no. 3 to rescind its notice dated 16.08.2018, and (b) to direct the lender Bank to provide its Board approval as to the agreed rescheduling to pay off the Borrower-Company's liability smoothly. The respondent no. 1 received the said representation on 09.10.2018 and meanwhile, 15 (fifteen) days had already elapsed, but they did not give any decision within the time prescribed by Section 17(3) of the Banking Companies Act. In such situation, the petitioner filed Writ Petition no. 13846 of 2018 in the High Court Division challenging the legality of the Memo no. BRPD(R-2)651/9(26)Ga/2018-6676 dated 10.09.2018 and hearing of the motion is yet to be concluded. However, the petitioner, after being advised that it was a misconceived application, has decided not to proceed with the aforesaid Writ Petition 13846 of 2018 and filed the instant application before the Company Bench.

5. By filing two separate affidavits-in-opposition, the Bangladesh Bank (the respondent no.1) and the One Bank Ltd, the lender Bank (the respondent no. 4) are contesting this matter. Their common contentions are that the petitioner is the Managing Director and shareholder of the Borrower-Company, which borrowed money from the lender Bank through different credit facilities and also by furnishing various securities in favour of the lender Bank. But due to failure of regular payment of the loan money by the Borrower-Company, it accrued a huge amount of loan liability. In such a stagnant situation, the petitioner, in a meeting held on 09.07.2018 with the lender Bank, agreed to deposit Tk. 2.35 crore as down payment which is only 5% against the petitioner's loan outstanding of 46.37 crore as on 30.06.2018 and accepting the said meeting as successful negotiation, the lender Bank issued letter dated 17.07.2018 requesting the petitioner to deposit the said down payment and to complete mortgage formalities of 38 decimals of land as agreed earlier. But the respondent no. 4 received only Tk. 0.45 crore through PO on 25.07.2018. In view of such situation, the lender Bank issued a letter under memo dated 31.07.2018 to the Borrower-Company represented by the Managing Director (petitioner) requesting him to deposit rest of the down payment of Tk. 2.54 crore at the earliest as per Bangladesh Bank requirement contained in Bangladesh Bank Rescheduling Guidelines, failing which the Bank would be constrained to take necessary legal action against the petitioner. But the petitioner did not take any positive step regarding payment of the said down payment and, under the circumstances, the Bangladesh Bank

served the notice as per provision of Section 17 of the Banking Companies Act upon the petitioner vide Memo No. BPRD(R-2)651/9(26) Ga/2018-6676 dated 10.09.2018 having enclosed the notice dated 16.08.2018 issued by the lender Bank. It is stated that the petitioner having received the said notice on 24.09.2018 issued an acknowledgment receipt which has been duly forwarded by the respondent no.6 (Mercantile Bank Ltd.) to the respondent no.1 through memo dated 25.09.2018.

6. Thereafter, the petitioner submitted his representation in writing to the respondent no. 1 on 09.10.2018 which was duly received by the respondent no. 1 on 09.10.2018. Having received the said representation of the petitioner, the Bangladesh Bank informed the lender Bank about the said reply and sought further clarification about the service of notice under Section 17 of the Banking Companies Act. The lender Bank then under Memo dated 21.10.2018 furnished its explanation regarding service of notice under Section 17 of the said Act. Thereafter, the Bangladesh Bank gave its decision on 29.10.2018. Having received the said notice dated 29.10.2018 through Chittagong Central Jail Authority, the petitioner acknowledged receipt of the letter on 13.11.2018 and the said receipt has been forwarded by the Mercantile Bank under the memo dated 20.11.2018 to the Bangladesh Bank for taking necessary measures. Thereafter, the lender Bank issued the letter dated 22.11.2018 requesting Bangladesh Bank to take a decision commensurate with the notice served by the said Bank through Bangladesh Bank upon the petitioner as per law. Subsequently, Bangladesh Bank issued a letter under Memo dated 29.11.2018 upon the petitioner imitating that the post of the petitioner as a Director of the respondent no.6 stood vacated as per Section 17 of the Banking Companies Act with effect from 24.11.2018 and Section 17(5) of the Banking Companies Act shall come into effect to realize the dues of the lender Bank.

7. Mr. Shah Manjurul Haque, the learned Advocate appearing for the petitioner takes me through Section 17 of the Banking Companies Act and submits that the proceedings under Section 17 of the Banking Companies Act being a recovery process, the petitioner should not be removed from the position of the Director of the Mercantile Bank. In an effort to substantiate his above count of submissions, he places Sections 3 & 5 of the Artharin Adalat Ain, 2003 (henceforth would be referred to as the Artharin Ain) and submits that Section 3 of the Artharin Ain heralds that the provisions of the Artharin Ain shall prevail over any other law including the Banking Companies Act and Section 5 of the Artharin Ain provides that all recovery process for recovery of loan of any financial institution must be commenced through filing of the Artharin Suit in the Artharin Adalat established under the Artharin Ain and, as such, the lender Bank cannot commence recovery process under Section 17 of the Banking Companies Act, instead of commencing recovery process under the Artharin Ain.

8. Mr. Haque then contends that evidently the proceeding is started centering around the loan taken by the Borrower-Company. He emphatically contends that the loan is not taken by this petitioner; he is merely a guarantor. By placing the provisions of Section 6(5) of the of the Artharin Ain, he submits that the commencement of the proceedings under Section 17 of the Bank Companies Act in order to recover the aforesaid loan from the petitioner is a nullity inasmuch as Section 6(5) of the Artharin Ain makes it mandatory that in any Artharin Suit the principal debtor's asset shall be attracted first in recovering the loan and then the assets of the third-party mortgagor and thereafter the assets of the third-party guarantor will be attracted and, accordingly, in the present scenario, the Borrower-Company being the principal debtor, the Suit for recovery of money through filing the Artharin Suit to be filed against the Borrower-Company at first and, as such, at the moment there is no scope to attract the assets of the petitioner in recovering the loan of the said Borrower-Company.

9. He submits that the impugned proceedings under Section 17 of the Banking Companies Act have been commenced on the ground that the Borrower-Company is the interested concern (স্বার্থ সংশ্লিষ্ট প্রতিষ্ঠান) of the petitioner, but the said ground does not come within the purview of Section 17 of the Banking Companies Act. He further submits that the Banking Companies Act was enacted by the Parliament in the year 1991 and the Artharin Ain has been passed by the Parliament in the year 2003 and, therefore, after enactment of the Artharin Ain containing mandatory recovery process in Section 5, the recovery process contained in Section 17 of the Banking Companies Act has become a residuary process and, as such, it cannot be invoked without first exhausting the mandatory recovery process under Section 5 of the Artharin Ain. By making the above submissions, the learned Advocate for the petitioner prays for allowing this application.

10. Mr. Mahbubey Alam, the learned Senior Advocate appearing for the respondent no.1 before this Court, submits that, since the petitioner is the Managing Director and shareholder of the Borrower-Company and since the petitioner stood as the guarantor by furnishing various securities in favour of the lender Bank, the liability having not been paid by the petitioner, the respondent no.1 lawfully commenced a proceeding under Section 17 of the Banking Companies Act against the petitioner in respect of his directorship and shares in the respondent no. 6-Bank.

11. Mr. Alam, the learned Senior Advocate appearing for the respondent no.1, then takes me through sub-Sections (1) to (5) of Section 17 of the Banking Companies Act and submits that these provisions are relating to vacation of the office of the Directors of the scheduled Banks in Bangladesh and, that is why, the present proceeding has been initiated as an independent proceeding and it does not have any nexus with the provisions of the Artharin Ain. By referring to the case of Abdullah Ahsan Vs Bangladesh Bank 20 BLD 2000 (AD) 260, he submits that our Apex Court has laid down the *ratio* that Section 17 of the Banking Companies Act deals with vacating the office of Director of the Bank in the event of non-payment of outstanding loan taken by the director himself or non-payment of loan by a borrower for whom the Director of a Bank has stood as a guarantor and this has nothing to do with the proceedings for realization of the outstanding loan liability.

12. Against the contention advanced by the learned Advocate of the petitioner that Bangladesh Bank did not give its decision upon the petitioner's representation under Section 17(2) of the Banking Companies Act within the statutory period as provided in Section 17(3) of said Act, the learned Senior Advocate submits that respondent no.1 gave its decision on 29.10.2018, which is well within the prescribed period of receiving of the representation of the petitioner as per Section 17(3) of the Banking Companies Act.

13. In adverting to the arguments made by the learned Advocate of the petitioner to the effect that after enactment of the Artharin Ain containing mandatory recovery process in Section 5, the recovery process contained in Section 17 of the Banking Companies Act has become a residuary process, the learned Senior Advocate for the respondent no.1 submits that Section 17 of the Banking Companies Act does not contradict or contravene or infringe any provision of the Artharin Ain. He submits that the liability having not been paid by the petitioner, the amount due to the lender Bank shall be realized by adjusting share value of the petitioner and the amount which would remain due after the adjustment shall be regarded as public due and thus shall be recovered by filing proceedings under Public Demands Recovery

Act, 1913 (PDR Act). By making the aforesaid submissions, the learned Senior Advocate for the respondent no.1 prays for dismissing the instant petition with an exemplary costs.

14. After perusing the instant petition and affidavits-in-opposition with their annexures, hearing the learned Advocates for both the sides, it transpires that, factually, there is no issue to be adjudicated upon in this case, except the issue that the petitioner's latest application dated 09.10.2018 has not been replied by the respondent no.1. However, upon carrying out a scrutiny of the papers annexed by the respondent no.1, it appears to me that the Bangladesh Bank upon receiving the aforesaid letter dated 09.10.2018 forwarded the same to the lender Bank and, thereafter, upon receiving the explanation from the lender Bank the same was communicated to the petitioner who was in jail at that relevant point of time. It further appears to me that the lender Bank and the Bangladesh Bank, thereafter, dealt with the representation of the petitioner within the time prescribed in the Banking Companies Act. Therefore, the statements made by the petitioner that proceeding under Section 17 of the Banking Companies Act has been initiated without disposing of the petitioner's latest application, appears to me to be untrue.

15. And, upon reading the relevant statutory laws as well as the case laws placed before this Court in an endeavour by the parties to apply the same into the facts of this case, it appears to this Court that the following legal issues are to be adjudicated upon by this Court; (i) when a shareholder-cum-Director of a scheduled Bank stands as a guarantor of a Borrower-Company, whether his directorship in a scheduled Bank is liable to be vacated due to the Borrower-Company's failure to pay off the loan, (ii) whether the respondent nos. 1-4 were competent to commence proceedings under Section 17 of the Banking Companies Act without first going for recovery of loan from the Borrower-Company invoking the provisions of Artharin Ain.

16. For adjudication upon the above issues, it would be useful if I can be familiar with the provisions of Section 17 of the Banking Companies Act which are as follows;

17. Vacation of office of director.- (1) If any director of a banking company fails to-
(a) pay any advance or loan received from the said banking company or any other banking company or any financial institution or any installment thereof or interests thereon, or

(b) pay any amount due from him on account of any guarantee given by him, or

(c) accomplish any duty to be accomplished by him and the responsibility for which he has undertaken in writing,

and the said banking company or financial institution directs him by a notice through the Bangladesh Bank to pay the said advances, loans, installments, interests or guaranteed money or to accomplish the said duties and he fails to make such payments and accomplish those duties within two months after receipt of the direction, the office of director shall stand vacant with the expiry of the said period.

(2) Whoever has received a notice under sub-section (1) may, within thirty days from the receipt of the notice, send, in writing, his statements on the relevant subject, if any, to the Bangladesh Bank, and also transmit a copy thereof to the banking company or financial institution, as the case may be.

(3) The Bangladesh Bank shall, within fifteen days from the receipt of the statement under sub-section (2), give its decision thereon.

(4) The decision of the Bangladesh Bank made under sub-section (3) shall be final.

(5) Where the office of a director falls vacant under this section, the amount due to the banking company concerned shall be realised by adjusting the share value of the

person who was director against the office fallen vacant and the amount which still remains due after such adjustment shall be deemed to be public demand and be recoverable under the Public Demands Recovery Act, 1913.

(6) Where the office of a director of a banking company or financial institution falls vacant under this section, the person who was the director against the office fallen vacant, shall not be eligible to become director of the said banking company or financial institution or any other banking company or financial institution within a period of one year from the date of full payment of the dues to the concerned banking company or financial institution.

(7) If a director of any banking company receives a notice under sub-section (1), he shall not transfer any share held in his name in the company wherein he was engaged as a director until payment of all his dues to the concerned bank or financial institution.

(8) No action, order or decision taken under this section shall be called in question in any court or tribunal other than the court having jurisdiction under Section 3 of the Companies Act, 1994. (underlined by me)

17. From a plain reading of the provisions of clauses (a) to (c) of sub-Section 1 of Section 17 of the Banking Companies Act, my simple understanding is that the directorship of any scheduled Bank shall be vacant on the following events; (i) if a Director of a Scheduled Bank does not pay the loan, or interest thereof, taken by him from any Bank/Financial Institutions, (ii) when a Director of any scheduled Bank places him/herself as a guarantor to any loan taken by a third person and the said Director of the scheduled Bank fails to repay the loan money after receiving notice from the Bangladesh Bank, and (iii) if a Director of any scheduled Bank fails to carry out/complete the duty and responsibility undertaken by him. In other words, when a Director of any scheduled Bank either takes loan for himself or stands as a guarantor of another loanee, and if the loan remains unpaid despite issuance of notice by the Bangladesh Bank under Section 17 of the Banking Companies Act, his/her directorship may be vacated without exhausting the formalities set out in sub-Sections (2) & (3) of Section 17 of the Banking Companies Act.

18. To put the provisions of Section 17(1)(b) of the Banking Companies Act more specifically, all that this Court records here are that after issuance of notice to the defaulter Bank-Director, who has stood as a guarantor of a Borrower-Company or for a third party, when the Bangladesh Bank asks the defaulter-Bank Director to pay the loan and if the loan is not paid within two months, then the office of the defaulter-Bank Director falls vacated. Although there is a provision in sub-Section (2) of Section 17 of the Banking Companies Act to allow 30 days time to explain the Bank Director's position, but the vacancy of the office of the Bank Director shall take place, after two months of receipt of the notice under Section 17(1) of the Banking Companies Act, whether or not the Bangladesh Bank timely deals with the application of the defaulter-Bank Director's written representation filed under Section 17(2) of the Banking Companies Act.

19. After being acquainted with the provisions of Section 17 of the Banking Companies Act, I may now take up the first legal issue as framed by me hereinabove, namely, whether directorship/office of the petitioner, who is a shareholder-cum-Director of a scheduled Bank and having stood as a guarantor of the Borrower-Company has failed to pay off the loan of the Borrower-Company, is liable to be vacated. Upon meticulously going through the annexures appended to the instant application and its affidavits-in-opposition, it transpires that after issuance of notice by the lender Bank through the Bangladesh Bank to the petitioner

(who has placed himself as the guarantor for the loan taken by the Borrower-Company) for paying off the loan taken by the Borrower-Company (for whom the petitioner has stood as guarantor), the petitioner admittedly failed to pay off the Borrower-Company's loan and, consequently, after two months of receipt of the aforesaid notice, the petitioner's office of Director has fallen vacant. Although the petitioner made a written representation under sub-Section (2) of Section 17 of the Banking Companies Act within time explaining his position, the petitioner's explanation were found to be unsatisfactory by the lender Bank and the Bangladesh Bank (respondent nos. 1-4) and, accordingly, the Bangladesh Bank rejected the petitioner's representation within the time stipulated in sub-Section (3) of Section 17 of the Banking Companies Act. The decision given by the Bangladesh Bank being final, the law would obviously take its own course under Section 17(5) of the Banking Companies Act. It is to be noticed from the language employed in sub-Sections 1, 2 & 3 of Section 17 of the Banking Companies Act that vacancy of directorship occurs the moment any of the events enumerated in clauses (a) to (c) of sub-Section 1 of Section 17 of the Banking Companies Act takes place, for, neither any of the sub-Sections of Section 17 of the Banking Companies Act nor any other provisions of the Banking Companies Act seek to halt the proceedings under Section 17 of the Banking Companies Act on the plea of filing a representation to the lender Bank or to the Bangladesh Bank or to any other authority.

20. From a bare reading of the provisions of Section 17 of the Banking Companies Act, it appears to me that the wordings and expressions of the law are so unambiguous that anyone with ordinary prudence would be able to understand the meaning of the provisions of Section 17 of the Banking Companies Act and, therefore, the submissions advanced by the learned Advocate for the petitioner that the petitioner being not the loanee, that is to say that the petitioner being merely a guarantor of the loanee, his directorship in a scheduled Bank should not be taken away by invoking the provisions of Section 17 of the Banking Companies Act, is completely misconceived. The laws herald very stoutly that a Director of any scheduled Bank whenever would be found to be either as the 'defaulter loanee' or as the 'defaulter guarantor', proceedings against the aforesaid Director under Section 17 of the Banking Companies Act would be initiated.

21. Now, let me take up the second issue, namely, whether the respondent nos. 1-4 were competent to commence proceedings under Section 17 of the Banking Companies Act without first going for recovery of the loan from the 'Borrower-Company' invoking the provision of the Artharin Ain. For adjudication upon this issue, I have read the Preamble and other relevant provisions of the Artharin Ain and, side by side, that of the Banking Companies Act and it appears to me that the scheme of these two statutes are distinct and, further, the provisions of Section 17 of the Banking Companies Act and the provisions of Section 5 of the Artharin Ain provide completely different course of actions for the 'defaulter loanee' and 'defaulter guarantor'. In other words, while the provisions of Section 17 of the Banking Companies Act aims at vacating the directorship of a person of a scheduled Bank, Section 5 of the Artharin strategies about recovery of outstanding loan from the borrower, mortgagor and guarantor. Thus, the submissions of the learned Advocate for the petitioner that without going for recovery of loan by invoking the provisions of the Artharin Ain from the Borrower-company at first, commencement of any proceedings under Section 17 of the Banking Companies Act is not legal, appears to me to be completely without any substance.

22. With the above findings of fact and examination of legal issues, this matter is liable to be dismissed with an exemplary costs of Tk. 10,00,000/- (ten lacs).

23. Before parting with this Judgment, I find it pertinent to record the reasoning for slapping a cost of Tk. 10,00,000/- in dismissing this matter. At the time of admission of this matter, this Court was not inclined to admit it making an observation in the open-Court that interpretations on Section 17 of the Banking Companies Act has been given by this Court on numerous occasions against the ‘defaulter loanee’ or the ‘defaulter guarantor’, and, therefore, there being no issue to be examined by this Court by admitting an application under Section 17 of the Banking Companies Act, admission of this matter shall simply add a case to the huge backlog of works of this Court causing wastage of its invaluable working hours. Nevertheless, the learned Advocate for the petitioner was persistently insisting upon this Court by putting his best effort to pursue this Court that there are some nexus with the provisions of Artharin Ain and the provisions of Section 17 of the Banking Companies Act and for examination of the aforesaid issue the matter should be admitted. Against the aforesaid backdrop, this Court admitted the matter with a verbal condition that the petitioner may be given an opportunity to place his case at length on the condition that upon hearing the learned Advocate for the petitioner, if this Court expresses its views against the petitioner, it shall be the duty for the petitioner not to proceed with this matter and shall non-prosecute the same at his own initiative and, further, if the learned Advocate finds any difficulty to non-prosecute this matter, at that event a cost Tk. 10,00,000/- (ten lacs) shall be slapped upon the petitioner.

24. With the above preconditions this matter was admitted and the learned Advocate for the petitioner was allowed to make his submissions as lengthy as he wished and eventually when he was informed by this Court that this case is going to be dismissed with a cost of Tk. 10,00,000/- as this Court found no substance in the instant matter, the petitioner opted to receive a detailed Judgment. The petitioner’s above attitude amply suggests that he is adamant to squander further time of the Apex Court, even at the expense of paying an exemplary costs, wherefrom it transpires that the petitioner’s option of invocation of Section 17 of the Banking Companies Act is nothing but clearly a deliberate step of abusing the process of this Court and, thus, this Court is of the view that the petitioner deserves to be slapped with an exemplary cost.

25. In the light of the *ratio* laid down hereinabove, I find no substance in the instant matter.

26. In the result, the Company Matter No. 342 of 2018 is dismissed with a cost of Tk. 10,00,000/- (ten lacs) to be paid by the petitioner in the national exchequer by way of submitting Treasury Challan within 30 (thirty) days. The interim Orders and Direction passed by this Court at the time of admission of this matter is hereby vacated.