IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION,

(STATUTORY ORIGINAL JURISDICTION)

Arbitration Application No.26 of 2016.

IN THE MATTER OF:

An application under section 20 of the Arbitration Act, 2001.

And

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An application under section 20 of the Arbitration Act, 2001.

And

In the matter of:

Jeacon Garments Limited and another.

-------Petitioners.

-Versus-

Secretary General BGMEA Arbitration,
Bangladesh Garments Manufacturers & Exporters Association (BGMEA)and another.

------- Respondents.

Mr. Md. Reazul Hasan Shohag, Advocate

------- For the Petitioners.

Mr. Imtiaz Moinul Islam, Advocate with
Mr. Swapnil Bhattacharya, Advocate

------- For the Respondent No.1.

The 25th Day of August, 2025.

Present:

Mr. Justice Md. Toufiq Inam

This judgment stems from an application under Section 20 of the Arbitration Act, 2001 (hereinafter "the Act, 2001"), filed by the petitioners, Jeacon Garments Limited and Concord Fashion Export Limited. The petitioners seek a judicial determination on the

jurisdiction of the Bangladesh Garments Manufacturers and Exporters Association (BGMEA), respondent no. 1, to conduct arbitration proceedings initiated by respondent no. 2 in the absence of any written arbitration agreement between the parties. Upon admission of the application, this Court, by way of an interim order, restrained respondent no. 1 from proceeding with the impugned arbitration until disposal of the substantive matter.

Respondent no. 2, having raised a commercial dispute with the petitioners regarding the supply of pocketing fabrics, submitted a "Request for Arbitration" on 18.06.2016 to respondent no. 1, BGMEA, requesting the initiation of arbitration proceedings against the petitioners, despite the absence of any arbitration agreement between the parties. Following receipt of this request, BGMEA, by email dated 19.06.2016, forwarded the said Request for Arbitration to the petitioners, along with a list of arbitrators empaneled by BGMEA and a copy of the BGMEA Arbitration Rules 2016. The email further conveyed that respondent no. 2 had proposed Mr. Syed Sadek Ahmed as the sole arbitrator and drew the petitioners' attention to Article 8 of the Rules regarding the appointment of arbitrators.

Petitioners contend that no agreement, either general or specific, exists between the parties to resolve disputes through arbitration, let alone under the auspices of BGMEA. In response, respondent no. 1,

the Secretary General of BGMEA, has sought dismissal of the application on the ground that the arbitral tribunal has already decided on its jurisdiction, and that any challenge should be brought only after the final award, under Section 42 of the Act.

Due to the timing of the email, which was received just prior to the Eid holidays, the petitioners were unable to promptly consult their legal counsel. Consequently, on 26.06.2016, the Executive Director (Commercial Affairs) of the petitioner companies wrote to respondent No. 1 seeking a one-month extension to deliberate on the proposed arbitration. In that letter, the petitioners indicated their willingness to nominate an arbitrator from the BGMEA panel, other than the one nominated by respondent No. 2, and further stated that, as *Eid-ul-Fitr* was imminent, they would review the documents and obtain legal advice shortly. However, upon due consideration of respondent No. 2's Request for Arbitration, the BGMEA Arbitration Rules 2016, and the Arbitration Act, 2001, the petitioners, by a subsequent letter dated 02.07.2016, informed respondent No. 1 that, in the absence of any arbitration agreement between the parties, or any agreement to refer disputes to BGMEA arbitration, the BGMEA Arbitration Committee lacked jurisdiction under both the BGMEA Rules and the Act, 2001 to initiate, conduct, or administer arbitration in the matter. Accordingly, the petitioners requested respondent No. 1 to terminate the purported arbitral proceedings.

Nonetheless, by an email dated 30.07.2016, respondent no. 1 informed the petitioners that the BGMEA Arbitration Committee had appointed Mr. Shakhawat Hossain, Managing Director of Rishal Garments Ltd, as an arbitrator to decide the jurisdictional issue and scheduled a hearing on the petitioners' jurisdictional objection for 10.08.2016. In the absence of any arbitration agreement, either to resolve disputes through arbitration or to refer such disputes to BGMEA, the BGMEA Arbitration Committee had no lawful authority to appoint an arbitrator, either to adjudicate the dispute or to determine its own jurisdiction. The petitioners, therefore, refrained from participating in the jurisdictional hearing, as the appointee could not lawfully constitute a "tribunal" within the meaning of Article 11 of the BGMEA Arbitration Rules or Section 17 of the Act, 2001, nor under the general principle of "*kompetenz-kompetenz"* in arbitration law.

Nevertheless, on 10.08.2016, Mr. Shakhawat Hossain, assuming to act as an arbitrator and purporting to exercise jurisdiction, held that the petitioners, by virtue of their membership in BGMEA, had *ipso facto* submitted to arbitration under its auspices. Based on this premise, he held that BGMEA had ample jurisdiction to proceed with the arbitration. Relying on this determination, respondent no. 1 scheduled 18.08.2016 for submission of a statement of claim by respondent no. 2.The petitioners apprehend that the purported proceedings will continue *ex parte* and result in adverse, unauthorized determinations,

despite the complete absence of legal authority. Accordingly, the petitioners are compelled to invoke the jurisdiction of this Court under Section 20 of the Act, 2001, seeking a determination on the jurisdictional question, namely, whether respondent no. 1 can validly arbitrate the dispute in the absence of an arbitration agreement between the petitioners and respondent no. 2, or any agreement to refer the matter to BGMEA arbitration under the 2016 Rules.

This matter has been placed before this Court for final disposal pursuant to an administrative order of the Hon'ble Chief Justice. On the second day of hearing, respondent no. 1, the Secretary General of BGMEA, filed a separate application seeking dismissal of the main application on the ground of maintainability, contending that the arbitral tribunal had already assumed jurisdiction and that any challenge thereto should be brought only after the final award, under Section 42 of the Arbitration Act.

Mr. Md. Reazul Hasan, learned counsel for the petitioners, submits that no arbitration agreement, whether general or specific, exists between the parties for resolution of disputes through arbitration, let alone under the auspices of BGMEA. Elaborating on his submissions, he contends that the jurisdictional dispute first arose on 10.08.2016, when the BGMEA tribunal erroneously rejected the petitioners' objection to its jurisdiction and proceeded to assume authority over

the matter. The petitioners, acting promptly and in good faith, filed the present application at the earliest opportunity, thereby fulfilling the requirement of filing “without unreasonable delay” as mandated under Section 20(2)(kha) of the Arbitration Act, 2001.

Mr. Hasan further submits that a judicial determination under Section 20(1)(ka) of the Act is necessary to prevent the parties from incurring futile legal and other expenses in an arbitral process that is inherently without jurisdiction. He argues that the absence of any arbitration agreement between the petitioners and respondent no. 2 fundamentally precludes any lawful arbitral reference. Sections 3(4), 9, and 10 of the Act, 2001 collectively underscore that a valid and enforceable arbitration agreement is a mandatory precondition to arbitrability, one which is wholly absent in the present case.

Counsel also refers to Article 1(3) of the BGMEA Arbitration Rules, 2016, which explicitly states that the Rules shall apply only when the parties have entered into a written arbitration agreement agreeing to submit disputes to arbitration administered by BGMEA. Article 2(2) reinforces this requirement by employing terms such as “submit to arbitration under the Rules” and “agreeing to arbitration under the Rules.” In the absence of such express agreement, BGMEA’s claim to jurisdiction is manifestly untenable, and any assumption of jurisdiction by the arbitral tribunal is patently without lawful

authority.He further argues that the very existence and authority of an arbitral tribunal derive solely from a valid arbitration agreement. In the absence of such agreement, BGMEA, as a third-party trade association, lacks any lawful standing to compel arbitration or unilaterally assert jurisdiction over a dispute between private parties.

He concludes that since the BGMEA Arbitration Rules, 2016 are not applicable in the absence of an agreement, the appointment of an arbitrator by BGMEA and the arbitrator's purported ruling on jurisdiction are both void ab initio. Although Section 20(4) of the Act, 2001 allows arbitral proceedings to continue during the pendency of a jurisdictional challenge, such continuation is necessarily contingent upon the existence of a valid arbitration agreement and a properly constituted tribunal, both of which are lacking in the present case.

Per contra, Mr. Imtiaz Moinul Islam, the learned counsel appearing for respondent no. 1, i.e., the BGMEA Tribunal itself, instead of filing any affidavit-in-reply, has submitted an application praying for dismissal of the present arbitration application filed under Section 20 of theAct, 2001. Hesubmits that the application is legally misconceived and barred under Section 19 of the Act, 2001. Referring to Section 19(4) of the Act, he argues that once the arbitral tribunal has decided on its jurisdiction, it is statutorily mandated to proceed with the arbitration and render a final Award. According to him, the

only available remedy for the petitioners, who allege the non-existence of any arbitration agreement, is to seek setting aside of the Award under Section 42 of the Act.

He points out that the grounds for challenging an arbitral award are exhaustively enumerated under Section 43(1)(ka), (kha), (ga), (gha), and (uma) of the Act, which include the ground of "non-existence of an arbitration agreement." Allowing the present application under Section 20, he argues, would render the legislative purpose of Section 19(4) nugatory and thereby defeat the cohesive statutory framework of the Act.

He further contends that, as both parties are regular members of BGMEA, the Association's Memorandum of Association [clause 3(j)] and Articles of Association [clause 11(v)] empower it to resolve disputes between members. Relying on Section 22(1) of the Companies Act, 1994-which provides that *"the memorandum and articles shall, when registered, bind the company and the members hereof to the same extent as if they had been signed by each member and contained a covenant on the part of each member, his heirs and legal representatives, to observe all the provisions of the memorandum and articles, subject to the provisions of this Act",* he submits that a statutory arbitration clause arises automatically by virtue of membership. He further argues that, through Annexure-C

dated 26.06.2016, the petitioner, upon notification by BGMEA, agreed to nominate an arbitrator from the BGMEA panel other than the one proposed by respondent no. 2, thereby, in his submission, manifesting unequivocal consent to submit the dispute to BGMEA arbitration.

Mr. Imtiaz further contends that the application suffers from undue delay and is in clear violation of Section 20(2)(kha), which mandates that such applications be made without unreasonable delay. He argues that the relevant window for approaching the Court existed only between the issuance of the tribunal's notice for hearing on jurisdiction (10.08.2016) and the conclusion of the said hearing on the same day. Having failed to act within this limited timeframe, and especially after the tribunal ruled on its own jurisdiction, the petitioners' recourse to Section 20 stands implicitly barred under the framework of Section 19.

He also submits that the petitioners' invocation of Section 20 runs contrary to the object and purpose of Section 20(2)(ka), which emphasizes the need for expeditious resolution of disputes. Rather than furthering this goal, the present proceedings have resulted in prolonged litigation. Mr. Imtiaz notes that BGMEA-administered arbitrations are ordinarily concluded within three months, whereas the instant matter has remained pending before this Court for several

years, with the added likelihood of appellate and review proceedings. Such delay, he argues, is wholly incompatible with the legislative intent behind Section 20.

Finally, Mr. Imtiaz argues that the present application also undermines the cost-efficiency rationale embedded in Section 20(2)(ka). The BGMEA arbitration process, he submits, is highly economical, involving a nominal fee of Tk. 10,000 covering both filing and award issuance, without imposing any additional burden on the respondent (i.e., the petitioner herein). By contrast, these Court proceedings have entailed substantial litigation expenses, thereby defeating the statutory objective of economy and efficiency that Section 20 is designed to

This Court has carefully considered the application filed under Section 20 of the Arbitration Act, 2001, as well as the application made by learned counsel for respondent no. 1 (BGMEA) to dismiss the same on the ground of a legal bar under Section 19 of the Act.The principal objection raised by Mr. Imtiaz Moinul Islam, learned counsel for respondent no. 1, is that the present application under Section 20 is not maintainable in view of Section 19(4). It is submitted that once an arbitral tribunal has rendered its decision on jurisdiction, the law mandates it to proceed with the hearing and

ultimately deliver an award, and the aggrieved party may then challenge the award under Section 42 read with Section 43 of the Act.

Two questions arise: (i) whether this Court may entertain an application under Section 20 to decide the BGMEA tribunal's jurisdiction before an award; and, if so, (ii) whether BGMEA can lawfully administer arbitration between respondent no. 2 and the petitioners in the absence of any arbitration agreement (general, specific, or incorporating the BGMEA Rules 2016).

It is essential to distinguish between Section 19(4) and Section 20 of the Arbitration Act, 2001. Section 19(4) proceeds on the presumption that a valid arbitration agreement is in existence and that an arbitral tribunal has been duly constituted. Its function is confined to the post-constitution stage, limiting the scope of judicial intervention requiring parties to raise jurisdictional objections within the arbitral process itself. In that context, Section 19(4) serves as a procedural safeguard against premature judicial interference, preserving the autonomy of the arbitral process.

Section 20, on the other hand, addresses a threshold and jurisdictional question-whether, in law, there exists any arbitration agreement between the parties at all. Where no such agreement is established, the very foundation of arbitral jurisdiction is absent. In such cases, the

Court's intervention is not barred by Section 19(4), for the latter cannot operate in a vacuum or validate proceedings lacking contractual consent. Section 20 thus operates as a substantive safeguard, ensuring that arbitration cannot be imposed without a valid and binding agreement, thereby upholding the principle of party autonomy which lies at the core of arbitration law.

Section 20 is a special statutory provision conferring jurisdiction on this Court to determine whether an arbitral tribunal has jurisdiction, particularly in the absence of an arbitration agreement, a *sine qua non* for any arbitral proceeding. Where the existence or validity of an arbitration agreement is denied, as here, Section 20 operates independently and is not barred by Section 19(4). The absence of an arbitration agreement in this case renders the tribunal's assumption of jurisdiction legally unfounded. A tribunal cannot be the judge of its own jurisdiction when its very formation is in dispute. Thus, the application under Section 20 is not only maintainable but necessary to prevent continuation of an unauthorized proceeding initiated unilaterally and without contractual or statutory basis.

Section 19 relates to objections raised before a tribunal. It cannot be read in isolation so as to defeat Section 20, which is a remedial mechanism before the Court. If legislative intent were to bar judicial scrutiny once a tribunal ruled on jurisdiction, Section 20 would be

rendered otiose, an interpretation the Court cannot accept. Harmonious construction requires that Section 20 remain available to address cases where the tribunal's authority is challenged ab initio.In *bKash Limited vs. Moinul Alam*, reported in 77 DLR (2025) 251, it was held that Section 20 of the Arbitration Act empowers the High Court Division to determine any question relating to the jurisdiction of an arbitral tribunal, and that this authority is an independent power conferred upon the Court.

The respondent's argument that the petition was not filed "without unreasonable delay" as required under Section 20(2)(kha) also fails. The petitioners were notified of arbitration on 19.06.2016; the jurisdictional hearing was held on 10.08.2016; and the present application followed promptly after the tribunal wrongly assumed jurisdiction. This demonstrates diligence and satisfies Section 20(2)(kha).Similarly, reliance on the "cost-saving" objective of Section 20(2)(ka) is misplaced. That provision is designed to prevent wasted expense in a forum without jurisdiction. Allowing BGMEA to proceed without an arbitration agreement would produce: (i) proceedings in excess of jurisdiction; (ii) an award rendered without lawful authority; and (iii) an inevitable set-aside application under Section 42. Section 20 exists precisely to interrupt such futile processes at the threshold. Judicial intervention is also justified under Section 20(2)(ga) since the very existence of jurisdiction is in issue.

Thus, the Section 20(2) criteria are met:

1. Substantial cost-savings (s.20(2)(ka)): a pre-award decision avoids a futile arbitration and a subsequent set-aside.

2. No unreasonable delay (s.20(2)(kha)): petitioners objected promptly after the 10.08.2016 rulingon jurisdiction.

3. Good reason (s.20(2)(ga)): the case concerns existence of arbitral jurisdiction, justifying judicial intervention.

Turning to BGMEA's Rules, an institutional rule cannot override statutory requirements. The Arbitration Act requires a written arbitration agreement as the foundation of jurisdiction. Articles 1(3) and 2(2) of the BGMEA Rules themselves require this too. Mere BGMEA membership does not create an arbitration agreement within Sections 9 and 10 of the Act. The tribunal's reliance on membership was flawed. Arbitration must be consensual. Section 2(n) defines an arbitration agreement as an agreement to submit disputes to arbitration. No agreement between the petitioners and respondent no. 2 contains such a clause, nor is there any separate submission agreement or written record of consent. BGMEA itself circulates model clauses for members to insert in contracts, a recognition that membership alone is insufficient. Where the existence of an arbitration agreement itself is in dispute, the proper remedy lies under

Section 20, and the bar under Section 19(4) has no application. Judicial intervention at this stage is necessary to prevent an arbitral tribunal from exercising jurisdiction without lawful authority.

The reliance placed by learned counsel for respondent no. 1 on Section 22(1) of the Companies Act, 1994, read with BGMEA's Memorandum clause 3(j) and Articles clause 11(v), to contend that membership *ipso facto* creates a binding arbitration agreement, is misconceived. Section 22(1) renders the memorandum and articles binding between the company and its members, these provisions operate only within the internal governance framework of the company. They cannot, by implication, extend to create contractual arbitration agreements *inter se* among members, absent compliance with Sections 9 and 10 of the Arbitration Act, 2001, which mandate a written arbitration agreement as the foundation of arbitral jurisdiction. Courts have consistently held that the statutory binding force of articles under company law cannot be equated with consensual submission to arbitration under arbitration law. A company articles bind members only in matters of internal regulation but cannot override general law or manufacture independent contractual rights. Similarly, the shareholders' arrangements not incorporated into a written arbitration agreement cannot be enforced merely by reference to articles. English law, followed in this jurisdiction, is also clear that the articles constitute a statutory contract limited to corporate

governance and do not, without more, constitute an arbitration agreement among members. To hold otherwise would collapse the essential distinction between corporate governance obligations and contractual arbitration consent. Accordingly, BGMEA's constitution may regulate its internal affairs, but it cannot displace the mandatory requirement of a written arbitration agreement between disputants under the Act, 2001.The BGMEA Rules cannot manufacture consent. Trade-association dispute resolution is valuable, but it must rest on party consent. BGMEA's own practice of urging members to insert express clauses in contracts underlines this. Absence of such a clause, BGMEA lacks jurisdiction to compel arbitration.

The petitioners also did not waive their objections. The 26.06.2016 letter merely sought time and tentatively mooted a nomination; on 02.07.2016, they clearly objected that no arbitration agreement existed and they never appeared before it. Section 6 treats a party as waiving objections only if it proceeds without undue delay; here the petitioners objected promptly. Section 19(5) further preserves the right to challenge jurisdiction even if an arbitrator is appointed. Section 17 permits a tribunal to rule on its own jurisdiction, but this presupposes a tribunal constituted under an arbitration agreement. In the absence of any such agreement, BGMEA could not unilaterally appoint Mr. Shakhawat Hossain as arbitrator. His 10.08.2016 ruling that jurisdiction arose "by virtue of membership" is therefore a nullity.

Respondent No. 1's reliance on Section 19(4) is misconceived. Section 19(4) merely ensures procedural continuity where an arbitral tribunal has been validly constituted; it does not confer legitimacy on proceedings that lack any lawful foundation. To compel parties to undergo a full arbitration and award in the absence of an arbitration agreement would frustrate the very object of Section 20 and erode the principle of party autonomy, the cornerstone of arbitration. Where no arbitration agreement exists, the jurisdictional basis of arbitration is wholly absent, and Section 19(4) cannot be invoked to shield such proceedings from judicial scrutiny. Thus, while Section 19(4) serves as a procedural bar against premature judicial interference in arbitrations founded on existing agreements, Section 20 operates as a substantive safeguard, independently empowering the Court to intervene where arbitration has been wrongfully invoked without consent or without a valid agreement.

Findings of this Court are summarized below:

A) Where the very existence of an arbitration agreement is in dispute, the appropriate remedy lies under Section 20, and the bar contained in Section 19(4) has no application. Judicial intervention at this threshold stage is necessary to prevent an arbitral tribunal from exercising jurisdiction without lawful authority.

B) The application under Section 20 is maintainable notwithstanding the respondent's reliance on Section 19(4). While Section 19(4) serves as a procedural bar against premature judicial interference in arbitrations founded on existing agreements, Section 20 operates as a substantive safeguard, independently empowering the Court to intervene where arbitration has been wrongfully invoked without consent or without a valid agreement.

C) No written arbitration agreement exists between the petitioners and respondent no. 2, as mandated by Sections 9 and 10 of the Arbitration Act, 2001. While Section 22(1) of the Companies Act, 1994, read with BGMEA's Memorandum [clause 3(j)] and Articles [clause 11(v)], renders the memorandum and articles binding between the company and its members, these provisions operate solely within the internal governance framework of the company. Mere membership in BGMEA cannot substitute for a valid arbitration agreement, and neither its Rules nor its Articles can be construed as creating or manufacturing consent to arbitrate disputes between members.

D) The BGMEA tribunal's jurisdiction cannot rest on membership or association rules alone. Arbitration is consensual in nature, and BGMEA's unilateral appointment

of an arbitrator, in the absence of an agreement, is without lawful authority.

E) The requirements under Section 20(2) stand satisfied. Intervention at this stage avoids futile arbitration and an inevitable setting aside of the award; no unreasonable delay has occurred, as the petitioners objected promptly after the tribunal's ruling; and the very question of arbitral jurisdiction provides good reason for judicial intervention.

F) The petitioners have not waived their right to object. Their correspondence consistently records their challenge to jurisdiction. Sections 6 and 19(5) of the Act preserve the right to contest jurisdiction even after the appointment of an arbitrator.

G) The tribunal's decision dated 10.08.2016, purporting to assume jurisdiction "by virtue of membership," is a nullity. Without an arbitration agreement, there can be no valid tribunal, and any ruling rendered is without legal effect.

H) The Rules and Articles of BGMEA cannot override the mandatory requirements of the Arbitration Act. Institutional rules have effect only when parties have expressly agreed to arbitration.

In view of the foregoing discussions and reasons, it is ordered that-

i) The application under Section 20 is **allowed**.

ii) It is **declared** that no arbitration agreement exists between the petitioners and respondent no. 2, whether generally or referring disputes to BGMEA arbitration under the BGMEA Arbitration Rules 2016.

iii) It is **further declared** that the BGMEA Arbitration Committee lacked lawful authority to appoint any arbitrator or to constitute any tribunal in this matter; the purported ruling dated 10.08.2016 on jurisdiction is **void and of no legal effect**.

iv) Respondent no. 1 is hereby **restrained** from proceeding with, administering, or otherwise conducting the purported arbitration between the parties arising out of respondent no. 2's "Request for Arbitration" dated 18.06.2016.

v) Respondent no. 1's application to dismiss this proceeding on the basis of Section 19(4) is **rejected**.

Let a copy of this judgment and order be sent to respondent No. 1, BGMEA, for due compliance.

(Justice Md. Toufiq Inam)

Ashraf/ABO.