

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

**Arbitration Application No. 01 of 2019.**

**IN THE MATTER OF:**

An application under Section 12 of the Arbitration  
Act, 2001.

And

**IN THE MATTER OF:**

Q. Mobile Ltd.

----- Petitioner.

-Versus-

Huawei Device (Hong Kong) Co. Limited and another.

----- Respondents.

Mr. Nakib Saiful Islam, Advocate with  
Mr. Md. Iktearul Islam Mollick, Advocate  
Mr. Nazmul Hasan Rubel, Advocate and  
Mr. Pannu Khan, Advocate

----- For the Petitioner.

Mr. Chowdhury Mokimuddin KJ Ali, Advocate with  
Mr. Syfuzzaman, Advocate

----- For the Respondents.

**Heard On: 23.07.2025; 30.07.2025.**

**And**

**Judgment Delivered On: 4<sup>th</sup> Day of August 2025.**

*Present:*

**Mr. Justice Md. Toufiq Inam**

This application under Section 12 of the Arbitration Act, 2001 has been filed by the petitioner, Q. Mobile Ltd., seeking appointment of an arbitrator to resolve disputes arising between the petitioner and the opposite party, Huawei Device (Hong Kong) Co. Ltd., pursuant to an arbitration clause contained in a written agreement dated 13.08.2013.

The brief facts, as stated by the petitioner, are that Q. Mobile Ltd. entered into an agreement dated 13.08.2013 (Annexure-A) with the respondent for the marketing of Huawei products within the territory of Bangladesh. The said agreement was for a term of one year commencing from 14.08.2013 and included an arbitration clause (Clause 29) which stipulates that any dispute arising out of or in connection with the agreement shall be resolved through arbitration in Dhaka, Bangladesh, and in the English language.

The petitioner contends that, subsequently, on 26.06.2014, a Memorandum of Understanding (MoU) was prepared between the parties whereby it was agreed that the petitioner would be entitled to certain rebates upon achieving specific sales targets. Although the petitioner claims to have met such targets, the respondent allegedly failed to honour its commitment to pay the rebate.

Following non-payment, the petitioner made repeated demands via email correspondence. In one such response, the opposite party acknowledged the existence of the MoU and admitted that local representatives of both parties had worked on it. However, the respondent stated that the MoU was never formally executed or approved by its management and thus could not be treated as binding.

Thereafter, the petitioner served a notice proposing the appointment of an arbitrator to resolve the dispute. In response, by email dated 19.12.2016, the respondent denied the applicability of the arbitration clause, contending that the MoU had not been signed and, therefore, did not give rise to any enforceable agreement or arbitration obligation.

Through this application, the petitioner seeks the appointment of Mr. Justice ABM Altaf Hossain, former Justice of the High Court

Division, as its nominated arbitrator under Section 12 of the Arbitration Act, 2001, and prays that the Court either direct the respondent to appoint its nominee arbitrator or, in default, appoint one on its behalf.

The respondent has contested the application by filing an affidavit-in-reply, asserting that the dispute in question does not arise out of the agreement dated 13.08.2013, which contains the arbitration clause, but rather out of the MoU dated 26.06.2014, which was never executed and contains no arbitration clause.

Mr. Nakib Saiful Islam, learned Advocate for the petitioner, submits that the MoU was a continuation and operational extension of the agreement dated 13.08.2013 and that the obligations under the MoU are intrinsically linked to the performance of the principal agreement. Therefore, any dispute arising from the MoU is, in substance, a dispute connected with the original agreement and falls within the ambit of Clause 29.

He further submits that the parties had, in fact, acted upon the MoU, and the email correspondences from the respondent amount to an acknowledgment of the MoU and its connection to the original agreement. He emphasizes that Clause 29 provides for arbitration of “all disputes arising out of or in connection with” the agreement, and such language must be interpreted broadly in line with settled principles of commercial arbitration.

He also argues that the MoU, though unsigned, constitutes a business arrangement arising from the pre-existing contractual and economic relationship between the parties, and was prepared during the subsistence of the original agreement. The rebate arrangement under

the MoU was contingent upon sales performance under the original agreement. Therefore, the arbitration clause in the original agreement remains applicable to this dispute.

Per contra, Mr. Syfuzzaman, learned Advocate appearing for the respondent, contends that the present dispute does not originate from the agreement dated 13.08.2013, but from the MoU dated 26.06.2014, which was never signed or approved by the respondent's management. As such, the MoU lacks binding force and is not enforceable either independently or as part of the original agreement.

He further argues that since the MoU does not contain an arbitration clause, no arbitration can be initiated in respect of any dispute arising there under. The respondent also refers to its email dated 29.12.2016, expressly denying the applicability of the arbitration clause and declining to appoint an arbitrator. The invocation of the arbitration clause from the principal agreement in relation to a separate and unsigned MoU is, according to the respondent, legally misconceived.

Having heard the learned Advocates for both parties and upon perusal of the materials on record, this Court finds that the dispute raised by the petitioner relates to the performance of obligations under the agreement dated 13.08.2013, which contains a valid arbitration clause (Clause 29). Though the MoU dated 26.06.2014 was not formally signed, it was prepared during the subsistence of the original agreement and pertained to the same business relationship.

The email correspondences exchanged between the parties demonstrate acknowledgment of the MoU and the rebate arrangement, thereby evidencing a connection between the dispute and the original agreement.

It is a settled principle that arbitration clauses in commercial agreements are to be construed liberally so as to give effect to the parties' intention to arbitrate disputes. Clause 29 of the agreement provides that "all disputes arising out of or in connection with" the agreement shall be resolved through arbitration. The phrase "in connection with" has wide import and is not confined to disputes strictly arising within the four corners of the agreement.

In the present case, the MoU, although unsigned, was admittedly discussed and partially acted upon. The rebate mechanism under the MoU was premised on the fulfilment of sales targets under the distribution agreement. Therefore, the MoU cannot be divorced from the principal agreement, and the dispute is directly related to its performance.

Furthermore, Section 9 of the Arbitration Act, 2001 recognizes that an arbitration agreement may be found in a contract, a document having contractual force, or any separate agreement. Even if the MoU is treated as a separate understanding, its close nexus to the principal agreement, both in terms of subject matter and economic context, renders the arbitration clause applicable.

The parties' conduct, including acknowledgment of the MoU and the absence of any alternative dispute resolution mechanism, indicates that disputes such as the present one were intended to be resolved under the arbitration clause of the principal agreement.

This court is of the considered view that where a dispute arises from a subsequent arrangement that is intrinsically linked to the performance of a principal agreement containing a valid arbitration clause, and where the parties have acknowledged and acted upon such subsequent arrangement, the arbitration clause in the principal agreement extends

to cover such disputes, notwithstanding the absence of formal execution of the subsequent document.

Accordingly, this Court holds that the dispute is arbitrable and falls within the scope of Clause 29 of the agreement dated 13.08.2013, which forms the foundation of the commercial relationship between the parties.

In view of the above, the application under Section 12 of the Arbitration Act, 2001 is allowed on contest.

Let Mr. Justice ABM Altaf Hossain, former Justice of the High Court Division, be appointed as arbitrator on behalf of the petitioner. The respondent is directed to nominate its arbitrator within thirty (30) days from the date of this order, failing which the parties shall take necessary steps for constitution of the arbitral tribunal in accordance with law.

There shall be no order as to costs.

Let this order be communicated at once.

**(Justice Md. Toufiq Inam)**

Ashraf/ABO.