In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Present

Madam Justice Kashefa Hussain

And

Madam Justice Kazi Zinat Hoque

Writ Petition No. 3134 of 2021

In the matter of:

An application under Article 102(2) of the Constitution of the People's Republic of Bangladesh.

-And-

In the matter of:

Mr. Fazle Mahbub, son of Mahbubul Alam, Proprietor of M/S "Turbo Machinery Services Bangaldesh", 431/1 Tejgaon Industrial Area, Dhaka-1208.

……. Petitioner.

Vs.

Government of Banglaesh and others.

……Respondents.

Mr. Masud Hasan, Advocate with

Mr. S.M. Zahurul Islam, Advocate with

Md. Mizanur Rahman, Advocate

…..for the petitioners

Ms. Nusrat Jahan, Advocate

.... for the respondent No. 2

Heard on: 07.02.2023, 08.02.2023, 14.02.2023, 22.02.2023, 28.02.2023 and judgment on: 05.03.2023.

Kashefa Hussain, J:

Supplementary affidavit do form part of the main petition.

Rule nisi was issued calling upon the respondents to show cause as to why the Notice bearing memo No. 36.93.0000.024.14.002.18.24 dated 04.02.2020 issued in the name of

respondent No. 2 under signature of the respondent No. 6 cancelling the contract and debarring the petitioner's proprietorship concern namely M/S. "Turbo Machinery Services Bangladesh" from participation in all the purchase activities for the next 02 (two) years (Annexure-H to the writ petition) and non-payment of the outstanding dues to Tk. 1,84,90,000/- by the respondents to the petitioner in accordance with the contract should not be declared to have been done without lawful authority and of no legal effect and/or such other or further orders passed as to this court may seem fit and proper.

The sole petitioner MR. Fazle Mahbub is son of MahbubulAlam, Proprietor of M/S "Turbo Machinery Services Bangladesh", 431/1 Tejgaon Industrial Area, Dhaka-1208 is a citizen of Bangladesh.

The respondent No. 1 is the Secretary, Ministry of Industries, Shilpa Bhaban, 91 Motijheel Commercial Area, Dhaka, the respondent No. 2 is the Chairman, Bangladesh Steel and Engineering Corporation, BSEC Bhavan, 102 Kazi Nazrul Islam Avenue, Kawran Bazar, Dhaka, the respondent No. 3 is the Director (Planning and Development), Bangladesh Steel and Engineering Corporation, BSEC Bhaban, 102, Kazi Nazrul Islam Avenue, Kawran Bazar, Dhaka, the respondent No. 4 is the Project Director, Feasibility Study of Environment friendly Ship Re-Cycling Industry at TaltuliUpazila in Borguna District, BSEC Bhavan, 102 Kazi Nazrul Islam Avenue, Dhaka, the respondent No. 5 is the Director, Central Procumbent Technical Sher-E-Bangla (CPTU) Sher-E-Bangla Nagar, Dhaka-1207,

the respondent No.6 is the BivagioProdhan, Bangladesh Steel and Engineering Corporation, BSEC Bhavan, 102 Kazi Nazrul Islam Avenue, Kawran Bazar, Dhaka and the Respondent No.7 is the Executive Director, Institute of Water Modelling, Block No. H, Sector-15, Uttara, Dhaka.

The petitioner's case inter alia is that the petitioner is a local agent of Zentech Engineering Company which is engaged in many consultancy activities throughout the world in the field of port and harbor structure, fixed and floating offshore structure, marine and ocean terminal, onshore plant, vessel, sub-sea pipeline etc. as well as have a lots of experts with design experience of variable shipyard of drydock, shipway, ship lifting system of mega block yard and the petitioner as a local agent entrusted with the contract administration and management at the assignment location and had the authority to conduct all business for and on behlaf of the Zentech Engineering Company Ltd. Participated in Expression of Interest (EoI) Ref. No. Barguna/SR/001/2019, floated by the Project Director of " Feasibility study of Environment Friendly Ship Recycling Industry of TaltaliUpazilla in Barguna District" and thereafter the petitioner and other 3(three) companies was short listed to participate as a consultancy firm in the said project. Then the Project Director on 09.04.2019 issued letter of invitation to the petitioner for submitting their proposal as specified in the Request for Proposal (RFP) and accordingly the petitioner submitted technical and financial proposal based on (RFP) and accordingly the petitioner submitted technical and

financial proposal based on RFP on 20.05.2019 and then the proposal was evaluated by the Technical Evaluation Committee (TEC) and recommended to execute contract with the petitioner for an amount of Tk. 4,62,25,000/- including Vat and Tax as per government Rules and thereafter the procuring entity signed contract agreement with the petitioner on 17.06.2019 for completion of the said project. That the petitioner being the highest scorer for completion of the said Project as stated aforesaid submitted the required documents and was awarded the work order for the same. Thereafter the petitioner submitted inception report on 26.06.2019 for which the petitioner was paid 20% (92,45,000/-) for the contractual money and subsequently the petitioner submitted draft report on 14.11.2019 and he was paid 40% (1,84,90,000/-) of the contractual money. That the petitioner after signing agreement with the Project Director visited the Project area and started the feasibility study by a kick -off meeting on 26.06.2019. That the petitioner submitted final survey report on 26.12.2019 and pursuant to the report the petitioner submitted final report invoice on 29.12.2019. Subsequently, the final report has been accepted by the Committee headed by Khaled Mamun Chowdhury, Director (Production and Engineering) on 08.01.2020. That the Procuring Entity issued a notice dated 28.06.2020 to clarify the deficiencies which was subsequently replied by the consultancy firm on 03.07.2020. That the Ministry of Industry formed a committee headed by Mr. Anis-Ul Haque Bhuiyan, Director (Economy), BSEC on 029.06.2020 for scrutinizing the process of appointment of consultancy firm and payment of bill and

accordingly the committee after verifying the matter submitted a report on 28.06.2020. That the consultancy firm submitted survey report on 23.12.2020 and it was sent to Institute of Water Modeler (IWM) for taking expert opinion but without considering the relevant facts submitted a manipulated report on 20.01.202. That without issuance of any prior notice on 04.02.2021 the respondent No.6 vide letter bearing memo No. 36.93.0000.024.14.002.18.24 cancelled the contract and debarred the petitioner i.e., Turbo Machinery Services Bangladesh from participation in all the purchase activities for the next 2(two) years. That as per contract the client is Project Director and as per GCC clause 60 of the contact only the project director has the authority to cancel the contract. The respondent No. 06 i.e. Bivagio Prodhan was appointed as project director on 16.02.2021 but in the instant case the respondent No.6 prior to his appointment as the Project Director cancelled the contract on 04.02.2021 which appears to be an action taken without having the authority to do so and as such it is liable to be declared illegal, arbitrary, without lawful authority and beyond its jurisdiction. That after receiving the said cancelling of the contract and debarring order dated 04.02.2021, the petitioner of the petitioner's firm on 17.02.2021 and 07.03.2021 made representations to the Hon'ble Minister, Ministry of Industry and to the Project Director respectively requesting to withdraw the debarring order dated 04.02.2021, but till today there is no reply from them to the said representations. That the final report has been accepted by the Procuring Entity and there is no objection raised by the authority within 60 days as per Clause 53 of the contract for clarification of

report hence it is deemed that the report has been accepted and as such the debarring notice issued by the respondent is malafide and ill motive which is liable to be declared illegal. Being aggrieved by the arbitrary and unlawful conduct of the respondents the petitioner was constrained to file the instant writ petition.

Learned Advocate Mr. Masud Hasan along with Mr. S.M Zahurul Islam, learned Advocate along with Mr. Md. Mizanur Rahman, Learned Advocate appeared for the petitioner while learned Advocate Ms. Nusrat Jahan appeared for the respondent No. 2.

Learned Advocate for the petitioner submits that the cancellation of the contract and the debarring of the petitioner's propritership for a period of 2(two) years and non-payment of the outstanding dues of the petitioner such conduct of the respondents is totally unlawful and illegal. He agitates that the respondents did not afford the petitioner due process which he is entitled to under the provisions of Public Procurement Ain, 2006 and Public Procurement Rules, 2008 including his constitutional right guaranteed under the constitution. He continues that the respondents thereby violated the principles of the relevant rules and laws including the provisions of the Constitution. He submits that the respondents without issuing show cause notice to him terminated the contract and therefore such termination of the contract is unlawful.

Upon elaborating his submissions he argued that no show cause notice was issued so far as it relates to the debarment of the petitioner's company for a period of 2 (two)years. He next takes us to

the impugned order of termination and debarment which is annexure-H of the writ petition. Annexure-H is the impugned order of termination and debarment for a period of two years. He points out to Annexure-H and asserts that Annexure-H was issued without lawful authority particularly since it was issued without the jurisdiction of the authority who signed the said order dated 04.02.2021. He argued that Annexure-H was issued by one Md. ShakawatHossen who is the বিভাগীয়প্রধান (অতিরিক্ত দায়িত্ব). He argues that the authority of the বিভাগীয়প্রধান (অতিরিক্ত দায়িত্ব) "Additional Charge" relying upon a delegated responsibility is not contemplated under the provisions of Public Procurement Act, 2006 read with the Public Procurement Rules, 2008. He submits that the authorised person who is empowered to issue an order of nature of termination, cancellation, debarment whatsoever such authorised officer is the relevant project director and not any other officer. He argues that in the absence of signature of the relevant authority such delegated power is not contemplated under the provisions of Public Procurement Act, 2006 read with the Public Procurement Rules, 2008. He submits that therefore the order being issued by a person without lawful authority to issue such order, consequently the order is null and void ab-initio.

In the course of his argument on the jurisdictional issue of the authority he takes us to the provisions of Rule 127 (3) and 127 (4) of the Public Procurement Act, 2006 read with the Public Procurement Rules, 2008. He assails that the relevant rules suggest that the competent authority to cancel the contract or termination or

debarment whatsoever is the Project Director and not any other delegated authority.

Next he submits that the authority acted totally unlawfully in not making payment of their dues given that the petitioner completed the task conferred upon him and submitted the final report pursuant to the proper survey as per the terms of the contract.

He takes us to Annexure-D of the writ petition and points out that it is evident from Annexure-D that the petitioner had completed the task and duly submitted the final report as per the terms of contract and agreement with the respondents. He agitates that as per the terms of the contract/ agreement it is the respondent's lawful duty to pay their dues pursuant to submission of the final report. He contends that however the respondents whimsically and arbitrarily did not pay the dues the payment of which is a fundamental right of the petitioner guaranteed under several provisions of the constitution.

At one stage of his arguments, this bench draws attention of the petitioner to annexure-2 of the affidavit in opposition. By way of Annexure-2 the respondents showed that show cause notice was duly issued upon the petitioner before terminating the contract. In reply the petitioner contended that although show cause notice was issued but however pursuant to the show cause notice the contractual time of 28 days notices as per the terms and agreement between the petitioner and the respondents such contractual 28 days time was not afforded to the petitioner. He contends that 28 day of time as per the

contract not being afforded the respondents violated the terms of the contract.

There was a query from the bench as to the issue being essentially a matter to be referred to arbitration as per the relevant laws including the issue of contractual time of 28 days not being afforded to the petitioner. He takes us to chapter 2 Rule 4 of the Public Procurement Act, 2006. From Rule 4 he points out that in case of any purchase by tender notice by the government the relevant part of the relevant deed shall be considered as part of CPTU and schedule-1 and shall constitute part of the standard document as contemplated in section 4 of the Public Procurement Act, 2006. He argues that therefore the question of resorting to arbitration does not arise since the contractual deed itself is a part of a public document. Relying on the law he submits that Rule 4 of the Public Procurement Act, 2006 contemplates that a contractual deed shall form a part of a public document and shall come within the purview of the provisions of the Public Procurement Act, 2006. In this context he argues that therefore if there is a violation of the terms of a contract including violation of the stipulated time to issue notice whatsoever such cases also constitute a part of the law and is inseparable from the provisions of law. He submits that therefore the contract agreement being inseparable from the provisions of the Public Procurement Act, 2006 such matter is not referable to arbitration and the writ petitioner is entitled to be heard under Article 102 by way of the instant writ petition. He concludes his submission upon

assertion that the Rule bears merit ought to be made absolute for ends of justice.

On the other hand learned Advocate for the respondent No.2 by way of affidavit in opposition vehemently opposes the Rule. She controverts the petitioners' contention of show cause notice not being issued upon the petitioner. By way of her contention she takes us to Annexure-2 of the affidavit in opposition. From Annexure -2 of the affidavit in opposition she specifically points out that show cause notice was duly issued upon the petitioner by the respondents by notice dated 27.01.2021 issuing notice to terminate the contract. She submits that therefore the petitioner's contention that show cause notice was not issued is not correct.

Next she submits against the contention of the petitioner that the impugned order which is Annexure-H was issued without lawful authority. On the jurisdictional issue raised by the petitioner she takes us to the relevant Rule being Rule 127(3) and 127(4) of the Public Procurement Rules, 2008. She points out to rule 127 (3) of the Public Procurement Rules, 2008 and argues us that Rule 127(3) read with the proviso 127(4) expressly contemplate that the (ক্রয়কারী) purchaser has the authority to issue any appropriate order by way of order of cancellation of contract debarment etc. She submits that ক্রয়কারী (purchaser) is a wide broad term with a wide meaning and confers power to any competent officer to issue an appropriate order. She continues that the word ক্রয়কারী (purchaser) calls for a liberal construction and implies any competent officer who may issue

such order. She contends that the petitioner's contention that the concerned Project Director is the only competent authority to issue such orders is not correct. She further points out that the intention of the law is evident from the language Rule 127(3) and 127(4).

Next she controverts the contention of the petitioner against his claim of non payment of outstanding dues despite submission of the final report. She takes us to Annexure – D2. Relying thereupon she pursuades that from Annexure-D2 it is evident that no finality was contemplated by the respondents against the report. She continues that the respondents did not at any point acknowledge the report to be a final report. She further continues that it was only a recommendation সুপারিশ made by the respondents and does not contemplate the finality of the report. She takes us to the latter part of Annexure-D2 and submits that it is evident from the use of the term সুপারিশ that the respondents did not make any decision on the finality of the report nor did it finally accept it to be a final report. She points out that therefore the petitioners contention and claim of non payment of his dues is totally incorrect give that the respondents did not accept the petitioner's report as a final report.

In pursuance of the submissions made by the learned counsel respondent No. 2 that Annexure-D2 is not a final report but a recommendation only, this bench query made a query as to why the respondents did not acknowledge the report as a final report. The learned counsel for the respondents makes some factual submissions

including that the report is tainted and makes claims of irregularity and illegality including by the previous project director.

Relying on her assertions she contends that therefore the contract agreement being inseparable from the provisions of the Public Procurement Act, 2006 such matter is referable to arbitration forum. She cites a decision in the case of ShahiibazarPower Company Ltd. Vs. Bangladesh and others reported in 8 (SCOB) 2016HCD. Next she attempts to controvert on the contention of the petitioner regarding the 28 days time not being afforded to him and therefore being in violation of the contract obligations amounting to violation of fundamental rights of the petitioner. Upon controverting she asserts that the issue of 28 days time as per the terms of the contract is totally part of the terms and conditions of the contract between the petitioner and the respondents. She argues that against such contractual issue writ petition does not lie rather the petitioner ought to have resorted to the forum of arbitration arising out of the contract.

She next submits that the contractual period of 180 days which automatically expired, therefore after the time of expiry it is evident that the contract also expired and the Rule became infractuous. Relying on her submission of the Rule being infractuous she cites a decision in the case Mallikpur Fisherman Co-operative Society Ltd. Vs. The Secretary reported in 15 BLD (AD) (1995) 241 . She draws an analogy between this case and the principle held by our Apex Court judgment the 15 BLD (AD) (1995) 241 and points out that the

principle held therein Apex Court and in the instant case amounts to the same. She contends that the underlying principle is that upon expiry of a contract arising out of lease matter or whatsoever the contract becomes infractuous. She concludes her submissions upon assertion that the Rule bears no merit ought to be discharged for ends of justice.

We have heard the learned Advocates for both sides, perused the application and the materials before us. The petitioner's initial contention is that no show cause notice was issued upon him. However from Annexure-2 of the affidavit in opposition it is evident that show cause notice was issued upon the petitioner by notice dated 27.01.2021. Hence it appears that the petitioner's contention that show cause notice was not issued is not correct.

Next we have concentrated on the jurisdictional issue raised by the petitioner regarding the authority. The petitioner raised contention that the concerned officer does not have the authority to issue the impugned order. It is the petitioner's further contention that any order of termination / cancellation / debarment etc. of such nature such order may be issued only be the relevant authority and which authority is the concerned Project Director. To access the petitioner's contention, we have drawn ourselves to Rule 127(3) and 127(4) of the Public Procurement Rules, 2008. The relevant portion of Rule 127(3) and 127(4) of the Public Procurement Rules, 2008 is reproduced hereunder:

"১২৭(৩) : যদি কোন দুর্নীতি, প্রতারণা, চক্রান্ত বা জবরদস্তিমূলক কার্যে কোন ব্যক্তি জড়িত হয়, তাহা হইলে ক্রয়কারী উক্ত কর্মকান্ডে জড়িত হওয়া বা থাকার বিষয়ে লিখিতভাবে ব্যাখ্যা প্রদানের জন্য সংশ্লিষ্ট ব্যক্তিকে নির্দেশ প্রদান করিবে ।

১২৭(৪): কারন দর্শানোর পরিপ্রেক্ষিতে সংশ্লিষ্ট ব্যক্তি বাপ্রতিষ্ঠানের প্রদত্ত ব্যাখ্যা ক্রয়কারী কার্যালয় প্রধান কর্তৃক গ্রহণযোগ্য না হইলে, ক্রয়কারী-*****তবে শর্ত থাকে যে, কোন ব্যক্তি, ঠিকাদার, সরবরাহকারী বা পরামর্শক কর্তৃক চুক্তির কোন মৌলিক শর্ত ভঙ্গ করিবার কারনে ক্রয়কারী চুক্তি বাতিলকরিলে, ক্রয়কারী নিজস্ব বিবেচনায় সংশ্লিষ্ট ব্যক্তিকে ১ (এক) বৎসর অথবা অনধিক ২ (দুই) বৎসরের জন্য ক্রয়কারী কার্যালয় প্রধান (HOPE) এর অনুমোদনক্রমে উক্ত ক্রয়কারীর এবং অন্য সকল ক্রয়কারীর ক্রয় কার্যক্রমে অংশগ্রহণে অযোগ্য ঘোষণা করিতে পারিবে ।"

Upon careful perusal of the Rules it appears that the rules significantly enough contemplate that the ক্রয়কারী (purchaser) is the authority who may pass appropriate order or may delegate to others who may issue the appropriate order. It must be borne in mind that the provision of the Public Procurement Rules, 2008 is a special statutory enactment to serve a particular purpose. It goes without saying that it is a settled principle that special enactment by way of Rules whatsoever such rules must be strictly construed. It goes without saying that the word ক্রয়কারী calls for a broad construction. By the word ক্রয়কারী (purchaser) it means any competent officer related to the purchasing authority. The respondents are evidently ক্রয়কারী

'purchasers' from the petitioner and it is essentially a contractual agreement they entered into as parties.

It is pertinent to note that both in Rules 127(3) and 127(4) significantly the word ক্রয়কারী only has been used. We are of the considered view that the intention of those enacting these rules by using the word 'purchaser' ক্রয়কারী it implies that any competent officer who is concerned with the project may issue appropriate order or orders. It is also noted that the word ক্রয়কারী has been used several times and not once. Moreover by no stretch of imagination can it be assumed that the word ক্রয়কারী may imply only one officer from the whole institution. The entire organization being a juristic person any competent officer is the ক্রয়কারী purchaser and may issue appropriate orders. On this issue we are of the considered view that the respondents did not commit any illegality and the impugned order was issued by the proper and competent authority.

Next we have examined the contention raised by the petitioner that inspite of the petitioner having submitted final report and which the respondents having accepted nevertheless the petitioner was never paid the dues. We have examined Annexure- D2 of the writ petition and drawn upon clause 4.0 of the Annexure -D2 which is reproduced hereunder :

> "৪.০ পরামর্শক প্রতিষ্ঠান কর্তৃক দাখিলকৃত চূড়ান্ত সম্ভাব্যতা সমীক্ষা প্রতিবেদন কমিটি পুঙ্খনাপুঙ্খভাবে পরীক্ষা করেন ও বিস্তারিত আলোচনা করা হয় এবং প্রতিবেদনটি যথাযথ পাওয়ায় গ্রহণ করার বিষয়ে সর্বসম্মতিক্রমে নিম্নরূপ সুপারিশ গ্রহণ করা হয়-

সুপারিশ : পরামর্শক প্রতিষ্ঠান কর্তৃক দাখিলকৃত চুড়ান্ত সম্ভাব্যতা সমীক্ষা প্রতিবেদনে জাহাজ পুনঃপক্রিয়াজাতকরণ শিল্প স্থাপনের লক্ষ্যে সকল বিষয় যথাযথভাবে সংযোজন করায় সম্ভাব্যতা সমীক্ষা প্রতিবেদন গ্রহণ করা যেতে পারে ।"

It is transpires that the word সুপারিশ (recommendation) has been used in clause 4.0 of Annexure-D2.The word সুপারিশ (recommendation) by its very nature cannot be interpreted to imply any finality on any decision whatsoever. Therefore in this case also word সুপারিশ(recommendation) certainly does not confer any finality on acceptance of the report. Ultimately inspite of the recommendation the final report was not given by the respondents in writ jurisdiction. It may be reiterated that Annexure-D3 is only a recommendation and does not reflect any final decision of the respondents. Therefore the contention of the petitioner that the respondents refrained making payment of the petitioners' dues despite the final report is also not correct.

Another contention of the petitioner is that as per the terms of the contract, 28 days notice must be served to the petitioner before any order of termination or cancellation or debarment whatsoever may be issued. The petitioner contended that inspite of express term in the contract of agreement the respondents did not abide by the terms of the contract and issued a notice affording only 7(seven) days time. On this contention, there was a query from this bench on the forum of arbitration being available as per the terms of the contract and also as per the Public procurement Act, 2006 read with

the Public Procurement Rules, 2008. The petitioner controverted by drawing us to Rule 4 of the Public Procurement Act, 2006 which is reproduced below:

> (৪) ক্রয় সংক্রান্ত দলিল এবং উহাতে অন্তর্ভুক্ত বিবরণদি ।- (১ কোন সরকারি ক্রয়ের ক্ষেত্রে প্রাক- যোগ্যতা, দরপত্র বা প্রস্তাব দাখিলের অনুরোধ সম্বলিত দলিল সিপিটিইউ কর্তৃক জারীকৃত এবং তফসিল-১ (Schedule-1) বর্ণিত আদর্শ দলিলসমূহ (Standard Documents) অনুযায়ী হইতে হইবে ।

It is the petitioner's contention that Section 4 of the Act of 2006 contemplate that all agreements shall constitute part of the deed issued by CPTU and as per schedule-1 shall form part of the standard document as contemplated in Section 4. The petitioner further contended that therefore any agreement between any purchaser and any other person whatsoever shall constitute part of Section 4 and form of the standard document by CPTU. According to the petitioner, therefore the contractual agreement is inseparable from the provisions of Public Procurement Act, 2006 read with the Public Procurement Rules, 2008 and consequently the forum of arbitration is not relevant so far as the petitioner is concerned.

We are of the considered view that such contention of the petitioner that no contractual agreement following the provisions of Public Procurement Act, 2006 read with Public Procurement Rules, 2008 may be referred to arbitration such proposition of the petitioner amounts to absurdity. We are of the considered view that whatever the contention of the petitioner may be including the contention

against the 7 days time only afforded to the petitioner in the show cause notice inspite of the contractual agreement stipulating 28 days time, such issues may be referred to arbitration which is part of the contractual agreement. The petitioner's contention is further absurd since Rule 42 of the Public Procurement Rules of 2008 clearly contemplate the forum of arbitration.

We have drawn our attention to Annexure-6 of the supplementary affidavit which is the contractual agreement executed between the petitioner and the respondents. We have particularly drawn our attention to clause 71.2 of the contractual agreement which is reproduced below :

"71.2 Arbitration:

(a) If the parties are unable to reach a settlement within twenty eight (28) days of the first written correspondence on the matter of disagreement, then either party may give notice to the other party of its intention to commence arbitration.

(b) Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Services under the Contract. Arbitration proceedings shall be conducted in accordance with the Arbitration Act (Act No. 1 of

2001) of Bangladesh as at present in force at the location specified in the PCC.

(c) Notwithstanding any reference to arbitration herein

(i) the parties shall continue to perform their respective obligations under the Contract unless they otherwiseagree; and

(ii) the Client shall pay the Consultant any monies due the consultant."

Therefore it is clear that in case of any allegation of violation of any terms and condition of any contract by either party to the contract the matter is referable to arbitration. Under the provisions of Public Procurement Act, 2006 read with Rule 42 of the Public Procurement Rules, 2008 any dispute arising out of a contract such matter may be referred to arbitration.

Under the facts and circumstances and discussions made above we do not find any merits in this Rule.

In the result, the Rule is discharged without any order as to costs.

Communicate this judgment at once.

Kazi Zinat Hoque, J:

I agree.

Arif(B.O)