IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)

First Miscellaneous Appeal No. 116 of 2024
with
(Civil Rule No. 23 (FM) of 2024)

In the matter of:

Sinha Power Generation Company Limited, having its registered office at Mohakhali Tower (13th Floor), 82 Mohakhali Commercial Area, Dhaka-1212 represented by its Managing Director, namely, Arifur Rahman Sinha.

… Appellant-petitioner

-Versus-

Bangladesh Power Development Board (BPDB) represented by its Chairman having office at Wapda Building, 1st Floor, Motijheel C/A, Dhaka-1000.

…Respondent-opposite party

Mr. Fida M. Kamal, Senior Advocate with
Mr. Md. Golam Ahmed and
Mr. Mahdin Choudhury, Advocates

…For the appellant-petitioner

Mr. Mohammad Imtiaz Farooq with
Mr. Farabi Tushib and
Mr. Drhobo Chakra Borty, Advocates

....For the respondent-opposite party

Heard on 05.11.2024, 25.11.2024, 27.11.2024, 01.12.2024 and 02.12.2024.
Judgment on 18.12.2024

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

Since the point of law and facts so figured in the appeal as well as rule are intertwined they have heard together and are being disposed of with this common judgment.

This appeal is directed against the judgment and order dated 23.11.2023 passed by the learned Senior District Judge, Dhaka in Arbitration Miscellaneous Case No. 214 of 2021 allowing the case so filed by the respondent, as petitioner namely, Bangladesh Power Development Board (shortly, BPDB) under section 42 read with section 43 of Arbitration Act, 2001 for setting aside the Award dated 06.05.2021 passed by a three member Arbitral Tribunal.

The salient facts leading to preferring this appeal are:

The present appellant as claimant filed the aforementioned Miscellaneous Case No. 214 of 2021 stating *inter alia* that, it is a private company limited by shares and incorporated under the Companies Act, 1994 while the respondent-opposite party, BPDB is a statutory body represented by its Chairman. The government decided to establish a 50MW rental power plant at Amnura, Chapai Nawabganj on rental basis and accordingly the appellant-petitioner submitted a proposal and after careful examination of the same submitted by the appellant-petitioner, the respondent-opposite party-BPDB issued a Notification of Award (NOA) bearing No. 840 BPDB (Sectt.)/Dev/175/2009 dated 19.06.2010 in favour of the appellant-petitioner-company with certain terms and conditions. After issuance of notification of Award, the appellant-petitioner furnished performance security deposit in the form of bank guarantee being Bank Guarantee No. OBL/PB/BG/095/2010 dated

22.06.2010 for an amount of USD 47,70,000 (US Dollar Forty-Seven Lac and Seventy Thousand) equivalent to taka 33,24,69,000/- (taka Thirty-Three Crore Twenty-Four Lac Sixty-Nine Thousand) only in favour of the respondent-opposite party, BPDB. After that the BPDB entered into a contract with the appellant-petitioner on 15.07.2010 for setting up 50MW Rental Power Plant for supplying electricity for 5(five) years. As per sub-Article 96 of Article 1 of the Contract dated 15.07.2010, the 'Required Commercial Operation Date (RCOD)' was fixed at 270 days from the date of execution of the Contract while Article 8.1 provides, if the Commercial Operation Date (COD) has not been occurred in terms of RCOD, then such date will not be extended in accordance with the Contract and as a consequence of any Force Majeure event, and the delay is attributable to the Rental Power Company, the appellant-petitioner-company shall pay BPDB as liquidated damages for delays, a sum of USD 500 per MW per day or fraction thereof while as per Article 1(108), site is defined to mean 4 acres of land at Amnura, Chapai Nawabganj to be allotted to the appellant-petitioner-company by the respondent, BPDB in "as is" condition to construct the power plant and as per Article 23.1 of the Contract, BPDB shall provide a site for the project in "as is" condition with 30 days from the date of execution of the contract that is by 14.08.2010. The respondent, BPDB accordingly fixed a site at Amnura, Chapai Nawabganj though the land actually belonged to Bangladesh Railway and Bangladesh Railway did not reveal to this appellant-petitioner that the site was leased out to different local people by

granting agricultural licence for certain period and on 15.07.2010, the proposed ‘site’ was only measured and demarcated in presence of the appellant-petitioner-company and respondent-opposite party, BPDB as well as Bangladesh Railway. But the possession of the same could not be actually delivered to the appellant-petitioner-company. It has further been stated that, as per Article 23.1 of the Contract, the respondent-opposite party, BPDB is supposed to provide the ‘site’ for the project in ‘as is’ condition no later than 30 (thirty) days from the execution of Contract but BPDB only measured and demarcated the ‘site’ and did not hand over the same to the appellant-petitioner-company. However, the appellant-petitioner-company with a view to expedite preliminary works of the project, such as, topographical survey, soil test for foundation, test boring for deep tube well and earth resistance measurement etc. deployed its few workers on 20.07.2010 and while such incidental works were going on, the appellant-petitioner by letter dated 31.07.2010 informed the BPDB for obtaining clearance from the Directorate of Environment, then Licence from Energy Regulatory Commission and Licence from the Directorate of Explosive to prepare the final lay out plan of the power plant to secure syndication of loan and to start physical construction work. In reply to that letter, BPDB sent a reply on 05.08.2010 with a request to return the same by signing it and upon receiving the said latter, the claimant-appellant signed the paper of alleged handing over and taking over on 07.08.2010 and thereafter was waiting for title document of the project site for effective handing over of possession. Then on 11.08.2010, the appellant-petitioner submitted

the layout plan but meantime, there arose an unavoidable situation as the lessees of the land (lease obtained from Bangladesh Railway) started to resist the appellant-petitioner from doing anything there and the project site went out of control on 17.08.2010. Finding no other alternative, the appellant-petitioner was compelled to withdraw its work forces from the project site and accordingly served a notice of "Force Majeure" to the BPDB stating overall situation vide its letter dated 18.08.2010. However, after receiving the notice of "Force Majeure", the BPDB did not take any step to deliver uninterrupted physical possession of the land in favour of the appellant-petitioner rather by letter dated 19.08.2010 denied all dispute about the state of the land and requested the claimant to proceed with the works.

Thereafter, the appellant-petitioner by a letter dated 26.08.2010 requested the residential engineer of BPDB, Chapai Nawabganj for supplying the detailed particulars of the land yet BPDB failed to provide such information. Ultimately Bangladesh Railway cancelled the leases on 02.09.2010 and directed its concerned Surveyor to take possession of the land by 07.09.2010. On the other hand, the Chief Estate Officer (West), Bangladesh Railway, Rajshahi vide Memo dated 01.03.2011 directed its Divisional Estate Officer, Pakshi to execute an agreement for lease of land with BPDB and handover the site in its favour. Then the Railway authority executed lease agreement in favour of BPDB in respect of the land of Power Plant Project only on 07.10.2012 and since then the appellant-petitioner came under the obligation for starting the construction of the plant and go into commercial operation of the project

by 270 days. It has further been stated that, BPDB failed to provide standby letter of credit to the claimant-appellant within 25 business days following signing of the contract and did not provide standby letter of credit in favour of the appellant-petitioner by 19.04.2011. In spite of not receiving the land of the project site duly, the appellant-petitioner took all necessary steps that is, import of heavy machineries for the power plant from South Korea which arrived at Mongla Port after a delay of 25 days. However, due to dry season, the navigability of river Jamuna decreased but as the appellant-petitioner was under pressure, they informed the matter explaining the total situation in detail to BPDB vide its letter dated 07.03.2011 for rescheduleing the RCOD. The appellant-petitioner sent a letter of force majeure vide letter No. SPGCL/2011/03/153 dated 21.03.2011 but BPDB without considering the issue of force majeure, rejected the request of the appellant-petitioner of rescheduling RCOD vide letter dated 27.03.2011 with a direction to achieve COD as per the provisions of the Contract. However, the respondent-opposite party, BPDB vide another letter dated 05.04.2011 refused to consider "Force Majeure" event and for that the appellant-petitioner sent another letter dated 07.04.2011 to reconsider the prevalent situation of "Force Majeure" and to resolve the matter under Article 19.2 of the Contract dated 15.07.2010. However, the appellant-petitioner all of a sudden, received a copy of endorsement of a Memo dated 27.04.2011 from the respondent, BPDB, addressed to One Bank Limited asking for partial encashment of USD 3,75,000 (US Dollar Three Lac Seventy-Five Thousand) out of the total bank guarantee of USD

47,70,000 (US Dollar Forty-Seven Lac and Seventy Thousand). After receiving the said letter dated 27.04.2011 from BPDB for encashment of the bank guarantee, the appellant-petitioner vide its letter dated 02.05.2011 reminded BPDB that it failed to perform its responsibilities under the contract and requested to cancel the operation of the letter dated 27.04.2011 but BPDB did not respond to it rather it continue its pressure upon One Bank Limited for encashment of bank guarantee vide another letter dated 02.05.2011 though it earlier issued letter for that purpose on 27.04.2011. In the aforesaid situation, the appellant-petitioner filed an application under section 7Ka of the Arbitration Act, 2001 being Arbitration Application No. 11 of 2011 before the High Court Division and this court upon hearing the parties, passed an order of interim injunction on 16.05.2011 restraining the operation of encashment of the bank guarantee till disposal of the said Arbitration Application. After that, the appellant-petitioner issued a letter on 28.06.2011 proposing the BPDB for amicable settlement of the dispute with a condition that no “liquidated damages” would be deducted from the performance security deposit of the appellant-petitioner assurance given by the BPDB on 13.07.2011. After that, the appellant-petitioner did not proceed with the said Arbitration Application No. 11 of 2011 on the ground that the parties are trying to settle the dispute amicably out of court. However, BPDB without complying Article 19.2 of the Contract which provides for amicable settlement or arbitration, it on 04.09.2011 partially encashed the bank guarantee to the tune of USD 3,75,000. Then BPDB on 22.02.2012 sent a letter to the appellant-petitioner informing it

(the appellant-petitioner) that RCOD was 11.04.2011 and the appellant-petitioner achieved COD on 13.01.2012 causing a delay of 276 days and calculated liquidated damages at USD 69,00,000 and after deducting the encashed liquidated damages, it stood at USD 65,25,000. However, in response to that letter, the appellant-petitioner sent a letter of request to the respondent on 18.03.2012 for waiving 276 days delay till the issue is settled. The appellant-petitioner sent another letter of request on 14.05.2012 requesting BPDB not to deduct liquidated damaged from monthly bill till the issue is settled. The appellant-petitioner vide another letter dated 18.06.2012 requested BPDB not to deduct any amount from the running monthly bills on account of liquidated damages for the delay till settlement of the issue. However, in spite of such request, the BPDB vide letter dated 18.06.2012 notified of deduction of a total sum of USD 24,55,478.81 from the nine months invoices of rental bill. Thereafter, the appellant-petitioner vide its letter dated 06.02.2013 requested BPDB for extending the period of RCOD but as it did not pay any heed to the request, the appellant-petitioner then on 17.02.2013 issued a 'notice of Arbitration' to BPDB confirming appointment of Mr. Mir Md. Awlad Hossain, retired District and Sessions Judge as its Arbitrator and requested BPDB to appoint an Arbitrator on its behalf. Yet, BPDB did not respond to that notice rather it continued its effort to deduct liquidated damages from the monthly invoices of the appellant-petitioner's rental bill compelling the appellant-petitioner to file an application under section 7Ka of the Arbitration Act before the learned District Judge, Dhaka and the learned District Judge, Dhaka then issued

a show cause notice upon BPDB as to why restrain order would not be passed. However, challenging the issuance of that show cause notice only, the claimant-appellant then filed a civil revision being Civil Revision No. 627 of 2013 before the High Court Division and upon hearing the parties, the court issued a rule on 10.03.2013 and also passed an order of injunction. Subsequently, on 09.11.2014, the said order of injunction was extended till disposal of the rule. However, against that interim order dated 10.03.2013, the respondent, BPDB preferred a Civil Petition for Leave to Appeal No. 1185 of 2013 before the Appellate Division and the said Appeal was heard on 13.06.2013 by the Judge-in-Chamber and ultimately on 28.05.2013, the Full Court disposed of the said Civil Petition for Leave to Appeal sending the matter to the High Court Division directing it to dispose of the matter on merit. Meantime, the appellant-petitioner filed an application under section 12 of the Arbitration Act before the learned District Judge, Dhaka for appointing arbitrator for the respondent, BPDB and after hearing the parties, the learned Judge passed an order appointing Mr. Mir Md. Awlad Hossain (retired District Judge), Mr. A.K.M. Fazlul Karim (retired District Judge) as Arbitrators for the appellant, Sinha Power Generation Company Limited and the respondent, BPDB respectively. Thereafter, on 12.11.2014, the said two Arbitrators unanimously decided to appoint Mr. Justice Md. Awlad Ali, former Judge of the High Court Division as Chairman to the Arbitral Tribunal and obtained his consent to that effect on 21.11.2014.

In the arbitration proceeding (initiated vide Arbitration Case No. 02 of 2014), the appellant-petitioner as claimant prayed for an award for a declaration to the effect that, it has not committed any breach of the contract executed on 15.07.2010 innot commencing commercial operation within the contracted period and as such the claim on account of liquidated damages claimed by the respondent is arbitrary and not binding upon it **and** also for a declaration that the Memo dated 27.04.2011 issued by the respondent-opposite party, BPDB for encashment of USD 3,75,000 from performance security deposit is illegal, arbitrary and the BPDB is liable to refund the deducted sum of USD 3,75,000 equivalent to BDT 2,76,00,000/- with 20% interest to the claimant from the date of encashment dated 04.09.2011 till realization **and** further declaration that the appellant-petitioner is entitled to get total sum of BDT 69,91,30,743/80 from the respondent-opposite party with 20% interest per annum with effect from 01.03.2015 till realization.

The Arbitral Tribunal however after considering the "Statement of Claim" filed by the appellant and that of the "Statement of Defence" submitted by the respondent and the documents produced by both the parties passed the award on 06.05.2021 declaring that the claimant has not committed any breach of the Contract furnished on 15.07.2010 with regard to commencing Commercial Operation of the power plant nor it committed any delay in commissioning the power plant on 13.01.2012 under the Contract dated 15.07.2010 and the Memo dated 27.04.2011 issued by the respondent, BPDB for encashment of performance security deposit is illegal, arbitrary, unlawful and not binding upon the claimant-

appellant. The majority arbitrators of the Arbitral Tribunal also declared that the amount realized by encashing the performance guarantee by the respondent, BPDB amounting to USD 3,75,000 is not permissible and deduction from the monthly invoices amounting to USD 24,55,478.81 is unjustified and therefore, the respondent, BPDB is liable to refund the deducted sum of USD 3,75,000 equivalent to BDT 2,76,00,000/- to the claimant-appellant-petitioner with 15% interest per annum from 04.09.2011 till realization to the claimant and the respondent, BPDB is also liable to refund USD 24,55,478.81 equivalent to BDT 20,62,60,220/04 along with 15% interest per annum thereon from the date of deductions till the realization to the claimant both within 60(sixty) days from the date of delivery of award. However, the Chairman of the Arbitral Tribunal though held the same view of the majority arbitrators about the above claims of the claimant, except for imposing interest on the claim amount and that of time limit for payment of the awarded amount and by waiving the interest he (the Chairman of the Arbitral Tribunal) asked to pay the awarded amount within one year from the date of delivery of the award.

Being aggrieved by and dissatisfied with the said Award dated 06.05.2021, the respondent, BPDB as petitioner then filed Arbitration Miscellaneous Case No. 214 of 2021 before the learned District Judge, Dhaka under section 42 read with section 43 of the Arbitration Act, 2001 for setting aside the Award. The appellant-petitioner as respondent contested the Arbitration Miscellaneous Case by filing a written statement annexing relevant documents. However, after hearing the

parties and perusing the materials on record, the learned Senior District Judge, Dhaka vide judgment and order dated 23.11.2023 passed the impugned judgment and thereby set aside the Arbitral Award dated 06.05.2021 passed in Arbitration Tribunal Case No. 02 of 2014.

Feeling aggrieved with the said judgment, the respondent-opposite party to the said Miscellaneous Case as appellant then preferred this appeal.

After preferring the appeal, the appellant also filed an application for stay of the operation of the impugned judgment and also injunction and this court vide order dated 20.01.2021 issued rule and stayed the operation of the impugned judgment dated 23.11.2023 for 2(two) months which was extended till disposal of the rule on 31.03.2024 and that rule then gave rise to Civil Rule No. 23(FM) of 2024.

Mr. Fida M. Kamal, learned senior counsel together with Mr. Md. Golam Ahmed and Mr. Mahdin Choudhury, the learned counsels appearing for the appellant-petitioner upon taking us to the impugned judgment and all the documents annexed with the application filed for stay and injunction vis-à-vis relevant provision so laid down in Arbitration Act, 2001 at the very outset submits that the Arbitral Tribunal's findings were base on a fair and thorough evaluation of the contract and the evidence and there was no indication of illegality or violation of fundamental legal principles as the Arbitral Tribunal rightly determined that the respondent breached the contract by failing to fulfill its contractual obligations, which led to delays in achieving the RCOD, and that delays were not attributable to the claimant-appellant and the

respondent misinterpreted the contractual terms by wrongly asserting that it was the claimant-appellant's responsibility to remove the defective title of the respondent, BPDB, in the project site, based on the phrase "as is" in Article 23.1 of the Contract.

The learned counsel also contends that the Arbitral Tribunal did not exceed its authority, as claimed by the respondent, BPDB however, the learned Senior District Judge overlooked this and set aside the Arbitral Award dated 06.05.2021 by its judgment and order dated 23.11.2023 citing in the finding that *"...it appears that the site was made available in part and the claimant-appellant was aware at the time of discussion and as well as at the time of executing the contract between them that the site could be made available in part..."* itself is an admission that possession was made in part whereas the BPDB claiming that full possession was delivered on 15.07.2010.

The learned counsel further submits that the learned Senior District Judge set aside the award on vague and unsubstantiated grounds, claiming it was "opposed to public policy", "in conflict with basic morality and justice", and "contrary to the law of the country" though the assertions lack any concrete support and the Arbitral Tribunal's findings were entirely consistent with the contract and the Arbitration Act, 2001 and there was no evidence of bias, misconduct, or any disregard for the law through the respondent, BPDB did not claim so.

The learned counsel goes on to submit that the respondent, BPDB has argued that the co-arbitrators have prepared the Award without any deliberation with the Chairman of the Arbitral Tribunal and merely

shared it with him for his signature and also stated that the Chairman dissented on several points and hence such lack of deliberation among the arbitrators at the time of the passing the award which resulted in the Arbitral Tribunal's failure to act 'fairly and impartiality' that constitutes a clear violation of section 23(3) of the Arbitration Act, 2001- which is not true as the Award is a unanimous Award and the Chairman delivered a brief judgment stating that *"...I have gone through the award passed by the learned co-arbitrators and I intend to express different view with regard to the award in respect of imposing interest and time limitation for payment of the awarded amount only, stating some material facts, however, I agree with the other portion of the award."* And then the Chairman Justice Md. Awlad Ali went on to explain why the interest shall not be imposed on the respondent and respondent shall be given 1(one) year time from making payment to the claimant.

To supplement the said submission, the learned counsel then contends that a plain reading of the order sheet reveals that from the start of the arbitral proceedings, every decision was unanimous and obtained through deliberation among all the arbitrators and moreover, the order no. 28 dated 20.02.2018 in Arbitration Case No. 02 of 2014 stated, *"The Arbitration Tribunal sat today, both parties appeared before the Arbitration Tribunal with their learned counsel. The hearing of the case No. 2 is concluded. The date of the award will be communicated to the parties in due course."* which indicates that the award was not immediately declared or the decision was not made rather the Arbitration

Tribunal announced the date for the delivery of the award to 12.10.2019 by order no. 30 which was as follows:

> *"Order No. 30*
>
> *09.10.2019*
>
> *The Award is prepared on requisite stamp paper and it will be delivered on 12.10.2019 at 7.00 PM at 69/1, Outer Circular Road, Moghbazar, Dhaka-1217. The parties are directed to appear before the Tribunal on the said date to receive the copy of the Award.*
>
> *Communicate the order to the parties…"*

In regard to the decision cited by the respondent in the case of Saudi Airlines-Vs-Saudi Services Co. reported in 15 BLC (AD) 2010 is completely delivered on different set of facts, as in that case, one of the three arbitrators was not involved in the deliberation process before passing the Award as explained in paragraph no. 19 to the judgment and from the plain reading of the proceeding, it appears that one of the arbitrators was excused totally from the process of deliberation and was neither consulted not given any opportunity to express his vies by the two other member of the Arbitral Tribunal before making and signing the Award and hence the Appellate Division found that the High Court has property set aside the Award but in the instant case, it is clear from the order no. 30 dated 09.10.2019 that the Chairman and other two arbitrators signed the order and no one raised any objection, hence deliberation process was completed and thereby the Saudi Airlines case is not applicable at all in the instant case.

In regard to delivery of actual possession, the learned counsel then submits that the learned Senior District Judge in his judgment and order dated 23.11.2023 failed to consider the findings of the Arbitral Tribunal in Arbitration Case No. 02 of 2014 as the Arbitral Tribunal in its award dated 06.05.2021 referred to the correspondence made between the contract parties, the lease agreement signed between the respondent and Bangladesh Railways, letters of BPDB and Bangladesh Railways and the statements of the claimant and respondent's witness to substantiate its conclusion that the project site was not delivered to the claimant-appellant within 30(thirty) days from the execution of the contract, as required under Article 23.1 of the Contract and such failure to hand over possession within the stipulated period constitutes a clear violation of the contract and is directly attributable to BPDB for failing to achieve the RCOD within 270 days from signing the contract and the Senior District Judge by overlooking these findings and the evidence presented, erred in law in setting aside the Arbitral Tribunal's award.

In reference to the interpretation of Article 23.1 of the Contract, the learned counsel then submits that it is evident that the word 'as is' does not mean without having any title and exclusive possession over the site land by BPDB, the claimant will search for any dispute regarding the said site land and further necessary investigation means to soil test making boundary, or any other acts to be done for setting up power generation plant and ever the lease agreement signed between Bangladesh Railway and BPDB further supports this position, expressly states that BPDB would bear the compensation paid by the railway to the

lessees which clearly indicates that lessees were in possession of the project site at the time of signing the contract (Annexure-'C' series to the supplementary-affidavit) as well as when the purported handover document was executed and therefore, BPDB's failure to fulfill its contractual duty to ensure the site free from such encumbrances directly contributed delays in achieving RCOD and breaches of contract followed.

The learned counsel further submits that the respondent, BPDB claimed that arbitral award is patently illegal as the Arbitral Tribunal misinterpreted Article 23.1 of the Contract as it did not mention that BPDB must have title over the land site while handing it over. But in this regard, the Arbitral Tribunal rightly interpreted that according to Article 23.1 the respondent could not have transferred the land site while it did not have title of the property as it would violate the common law rule *"Nemo dat quod non habet"* which means "no one can give what they do not have" and hence the Award is not at all patently illegal.

In regard to delay in issuing Standby Letter of Credit as enshrined in Article 13.2(f)(i) of the said Contract dated 15.07.2010 it is clear obligation on the respondent, BPDB to issue the Standby Letter of Credit to the claimant-appellant within 25 business days from the execution of the said Contract when R.W. 1 admitted that BPDB issued the Standby Letter of Credit after 253 days of the execution of the contract and the claimant-appellant in paragraph no. 16 of the "Statement of Claim" dated 03.03.2015, mentioned the importance of the Standby Letter of Credit for obtaining credit facilities from financial institutions and

performing allied works requiring significant monetary investment and also claimed that the absence of the Standby Letter of Credit hindered the claimant-appellant's ability to achieve finance and caused delays in opening Letters of Credit (LC) which was necessary for importing plants and machinery from South Korea.

Insofar as regards to imposition of interest rate, the learned counsel submits that the Arbitral Tribunal explicitly imposed an interest rate of 15% which falls within the Tribunal's legal authority under the Arbitration Act and the learned Arbitrators are empowered to impose such penalty for default to ensure justice so demands and finally prays for allowing the appeal and making the rule absolute.

In contrast, Mr. Mohammad Imtiaz Farooq, the learned counsel appearing for the respondent-opposite party by filing a counter-affidavit and supplementary-affidavit and taking us through all the documents so appeared therewith and those of the documents annexed with the appeal vis-à-vis application for stay filed by the appellant at the very onset submits that section 43 of the Arbitration Act outlines the grounds for setting aside an arbitral award, empowering the court (District Judge) or the High Court Division to intervene if the award contradicts public policy and public policy, as defined by the Appellate Division in *Saudi Arabian Airlines Corporation-Vs-Bangladesh Services Company Limited* includes the principle of "patent illegality" and the concept of "public policy" as a ground for setting aside arbitral awards has also been elaborated in several judgments includes *Chittagong Port Authority-Vs-Ananda Shipyard and Slipways Ltd.*, where it was held that enforcement

of an award can be denied if it contravenes the fundamental policy of Bangladeshi Law, the interests of Bangladesh, justice or morality, or if it is patently illegal where the court also emphasized that laws must align with public interest, and awards that exceed contractual terms are patently illegal and similarly, in *Saudi Arabian Airlines Corporation-Vs-Bangladesh Services Company Ltd.* case, the Appellate Division defined "patent illegality" as blatant errors and on the face of the award that contravenes statutory laws vis-à-vis the contract terms.

The learned counsel by taking us to Article 1(108) of the Contract dated 15.07.2010 then submits that Article 1(108) defines 'site' as "site means 04 (four) acres of land at Amnura, Chapainababganj, Bangladesh to be allotted to the Rental Power Company by BPDB in 'as is' condition, on which the facility will be located." when Article 23.1 (Delivery of Site) states that "BPDB will provide the Site for the project in 'as is' condition no letter than 30 days from the execution of the contract, so the terms clearly state that the site shall be provided "as is" and understood the Sinha Power just like any other Rental Power Company is expected to be responsible and due diligent regarding all necessary investigation of the site and it was also apparent from the reading of the contractual terms that the BPDB will hand over the possession of site "as is" Sinha Power shall be due diligent in examining the site along with making the site fit for its purpose.

The learned counsel to supplement the said submission further contends that the learned arbitrators misconstrued the term "as is" condition, failing to provide a reasonable explanation and diverging

from the contract terms by concluding that "it was the contractual duty of BPDB to handover vacant possession of the project site by evicting the lessees" and therefore, the arbitrators most unreasonably shifted the burden upon BPDB, completely misinterpreting the terms of the contract as an arbitral award must align with the contract terms, and any interpretation that no reasonable person could constitutes "patent illegality" violating Bangladesh's public policy under section 43(b)(iii) of the Arbitration Act, 2001 and the learned District Judge, Dhaka has rightly intervened, holding that the arbitrators' findings violated the express stipulations of Article 23.1 and Article 1(108) of the Contract.

The learned counsel then submits that BPDB through a letter dated 05.08.2010, shared the 'Handover-Takeover' document with Sinha Power which was signed by Sinha Power's representative on 07.08.2010 including a handwritten admission confirming taking site possession as of 15.07.2010 and letters dated 31.07.2010 and 18.08.2010 along with the Statement of Claim, further confirms Sinha Power's acknowledgment of getting physical possession of the site and all these documents, submitted to the tribunal as Annexure-'D(i)', 'D(ii)' and 'H' of the Statement of Claim, show no objections raised by Sinha Power regarding the handwritten admission in the 'Handover-Takeover' document.

The learned counsel then adds that despite the availability of these records, the tribunal clearly disregarded them, stated that the possession recorded in Annexure-D(ii) was merely "symbolic" and in this regard, the learned counsel referred a decision in the case of *Government of*

Bangladesh and others-Vs-Aminul Haq reported in 72 DLR (AD) 246 where Appellate Division emphasized that arbitrators must consider the evidence submitted before them stating further that failing to do so, renders the award invalid and this principle also aligns with the Supreme Court of India's landmark judgment in the case of *Associate Builders-Vs-Delhi Development Authority*, where patent illegality was defined as a clear and unambiguous error no reasonable person could make.

The learned counsel goes on to refer another decision in the case of *Delhi Metro Rail Corporation Ltd.-Vs- Delhi Airport Metro Express Pvt. Ltd.* where the court outlined that arbitral decisions must be fair, reasonable, and not perverse and an award is perverse if it disregards vital evidence relies on irrelevant material or breaches principles of natural justice and these cases collectively highlight the necessity of evidence-based reasoning and strict adherence to contractual and statutory boundaries in arbitral awards and therefore, the finding of the learned arbitrators award has been judiciously interfered by the learned District Judge, Dhaka stating that "any misinterpretation of a well settle principle of law or misreading and not consideration of evidence amount to an act against public policy".

In regard to not entertaining the Force Majeure, the learned counsel submits that Article 16.1(c)(i)(c) defines Force Majeure through Sinha Power argued that BPDB would be entitled to liquidated damages only if no Force Majeure event had occurred and therefore, Force Majeure was a critical issue that required adjudication, along with a reasoned determination of whether it was applicable in the present case

and although the award acknowledges the existence of this vital clause, but it fails assess the applicability of Force Majeure and whether it impacted the enforceability of liquidated damages and the reasoning behind their determination, remains absent completely.

To supplement the said submission, the learned counsel then adds that Sinha Power invoked Force Majeure through notices to BPDB requesting rescheduling of the RCOD and in its Statement of Claim, Sinha Power attributed delays to BPDB's failure to acquire land timely and Force Majeure events, citing transportation issues, the dry season, and hydraulic failure when the Statement of Claim explicitly linked Sinha Power's claim for non-deduction of liquidated damages to these delays and events. However, the arbitrators overlooked the Force Majeure provisions and the core issues, concluding erroneously that no delay or breach was attributable to Sinha Power in achieving RCOD or COD under the contract dated 15.07.2010.

The learned counsel next submits that the arbitral tribunal's award is fundamentally flawed due to its failure to provide any reasoning on the application of the Force Majeure clause under Article 16.1(c)(i)(c), a key issue raised by Sinha Power and despite acknowledgement the existence of this clause, the Tribunal neither analyzed whether the conditions for invoking Force Majeure were met nor addressed the claimant's arguments that its contractual obligations were hindered by circumstances beyond its control. This omission violates the Tribunal's duty to adjudicate all core issues and provide clear reasoning, a requirement enshrined in Section 38(3) of the Arbitration Act, 2001 and

it also emphasized in the case M/S Dyna Technologies Pvt. Ltd.-Vs-M/S Crompton Greaves Ltd., where the Supreme Court of India held that a reasoned award must be proper, intelligible, and adequate. Neglecting to examine such a critical issue breaches the principles of natural justice, undermines transparency and fairness, and renders the award patently illegal and legally deficient.

The learned counsel further maintains that, as per Article 13.2(f)(i)(A) of the Contract, BPDB must issue a Standby Letter of Credit (LC) converting two months' rental payments, payable upon demand in case of BPDB's non-payment when the bills fall due, which is completely unrelated in the construction phase of the project. However, despite this clear provision, the arbitrators wrongly concluded that the delay in achieving COD was caused by BPDB's failure to open the Standby LC, which is patently illegal, as it contravenes the contract's explicit terms and fails to provide reasons, violating Section 38(3) of the Arbitration Act.

The learned counsel also contends that the Tribunal also failed to address the applicability of Section 73 of the Contract Act, 1872 which stipulates, those damages for a breach of contract are recoverable only if they arise naturally from the breach or were in the reasonable contemplation of both parties at the time of contract formation and if no causal link is established between the breach and the alleged damages, the claimant cannot recover such damages and the learned District Judge, Dhaka has thus lawfully intervened the award for being "contrary and

inconsistent with the terms of the agreement between the parties and opposed to the law of the contrary."

In regard to non-deliberation amongst the Arbitrators, the learned counsel then contends that the dissenting view of the Chairman of the Tribunal clearly substantiates that the other learned two Co-arbitrators prepared the award without any deliberation with the Chairman and merely shared it with him for this signature and this lack of deliberation among the arbitrators during the passing of the award resulted in the tribunal failing to act "fairly and impartially" constituting a clear violation of Section 23(3) of the Act, 2001.

The learned counsel in that regard supplement his submission asserting that by order no. 28 dated 20.02.2018 it noted that, the hearing of Case No. 2 (the instant matter) was concluded and surprisingly order no. 30 dated 09.10.2019 states that *"The Award is prepared on requisite stamp paper,"* which clearly manifests a lack of deliberation among the arbitrators before passing the award which goes on to prove the absence of deliberation during the decision-making process and consequently, the award dated 06.05.2021 was issued in contravention of the law, rendering it patently illegal.

Giving reference to the decision in *Saudi Arabian Airlines Corporation-Vs-Saudi Bangladesh Services Company Limited reported in 15 BLC (AD) 186* where the Appellate Division emphasizes that courts must uphold justice, as public policy demands fairness in arbitration proceedings and an arbitral award can be challenged if it is found to be "obnoxious to the sense of justice" based on established

legal principles, whether due to the conduct of the arbitrators or the nature of the award itself when justice must be the ultimate goal, and any departure from fairness or transparency undermines the legitimacy of the award.

In that decision, it was further held that *"it was incumbent upon the arbitrators to make it manifest that there was discussion between the arbitrators before the award was made..."* but in the instant case, it becomes apparent that no deliberations took place amongst the arbitrators and exclusion of any arbitrator from the deliberative process violates the fundamental requirement of collective decision-making rendering the award contrary to "**public policy**" which is patently illegal.

With those submissions, the learned counsel finally prays for dismissing the appeal and discharging the rule.

Be that as it may, we have considered the submission of the learned senior counsel for the appellant-petitioner and those of the learned counsels for the respondent-opposite party, perused the memorandum of appeal and the impugned judgment and order annexed therewith. Together, we have also very meticulously gone through the application for stay and the documents appended therewith filed by the appellant vis-à-vis the counter-affidavit, supplementary-affidavit and those of the documents of the respondent.

At the very outset, it is worthwhile to mention here that we are going to dispose of this appeal that has been preferred under section 48(ka) of the Arbitration Act, 2001 challenging the judgment and order passed by the learned District Judge, Dhaka who set aside the award

dated 06.05.2021 exercising authority bestowed upon him in section 43 of the said Act as well.

In section 43 of the Act, there have been set out two sets of grounds basing on which a District Judge has been empowered to set aside an award. In clause (ka) to section 43, there provides certain grounds through which an aggrieved party can resort to the provision of sections 42 and 43 of the Act to set aside an award but he/she has to present proof (প্রমান উপস্থাপন) in support of assertion on which the court may set aside an award while section 43(kha) refers to certain satisfactions of the court enabling it to set aside an award as well. From the submission placed at the bar, we don't find any dispute about eligibility of the respondent in placing the application for setting aside the award basing the grounds that comes within the ambit of section 43(ka) of the Act. On the other hand, in section 43(kha) there have been four counts of satisfaction relying on which the court can set aside an Award. In view of the submission placed by the learned counsel for the respondent, it turns out that the learned District Judge has exercised his jurisdiction having been satisfied that Award is prima facie opposed to the law in force in Bangladesh and with the public policy as laid out in clause (আ) and (ই) of section 43(kha) of the Act. At this, we feel it expedient to reproduce those very two clauses here:

> "৪৩(খ) আদালত কিংবা ক্ষেত্রমত, হাইকোর্ট বিভাগ এই মর্মে সন্তুষ্ট হয় □-
>
> (আ) সালিসী রোয়েদাদ দৃশ্যতঃ বাংলাদেশে প্রচলিত কোন আইনের পরিপন্থী;

(ই) সালিসী রোয়েদাদ বাংলাদেশের জননীতির পরিপন্থী”.

For that obvious reason, in adjudicating the instant appeal, we would like to embark on the discussion and observation keeping ourselves within the ambit of those two provisions and then examine whether the learned District Judge took resort to the said provision while set aside the Award. In such a legal panorama, we only take into account of the core submissions of the learned counsels that aligns with those two legal provisions. Because, though we are disposing of the appeal but in doing so, we can only examine whether the learned District Judge has committed any illegality exercising his satisfaction on taking into account of clause (আ) and (ই) of section 43(kha) of the Act. It is now a settled proposition that, while setting aside an Award, under the provision of Arbitration Act, a District Judge cannot act as an appellate authority rather his/her authority is very limited as outlined above having no scope to take any factual aspect for arriving at a decision so do this court.

The learned senior counsel for the appellant literally encompasses his submission basing on certain clauses of Contract penned on 15.07.2010 especially Article 23.1 of the Contract which speaks about the delivery of possession of the project site and since the respondent (herein referred as BPDB) failed to act on its part, the appellant then rightly issued a notice of Force Majeure to the respondent as outlined in clause 16.1 of the Contract and therefore, the respondent is not entitled to any liquidated damages for not meeting the Commercial Operation

Date (COD) by the Required Commercial Operation Date (RCOD) as provided in clause 8.1 of the Contract. But that very assertion of the appellant has been robustly assailed by the learned counsel for the respondent by taking us through Article 1(108), Article 23.1 of the Contract and the letter dated 07.08.2010 jointly signed by the appellant and respondent (Annexure-8 to the counter-affidavit) and then maintains that since in view of those two clauses of the contract, the appellant took possession of the project site by signing the document on 07.08.2010 that is, within 21 days of the Contract dated 15.07.2010, there happened no Force Majeure for the appellant that entitled it to any refund as prayed in the prayers made in its Statement of Claim (Annexure- 17 to the counter-affidavit).

However, this core point has to be addressed because if the appellant has been able to prove its case of Force Majeure, then the respondent will not be entitled to any liquidated damage let alone to deduct it from the performance bank guarantee vis-à-vis monthly bill invoices.

From the submission placed by the learned counsel for the appellant, we don't find any contrary view with regard to taking over possession of the project site on 07.08.2010 endorsing the conditions as provided in Articles 1(108), 23.1 of the Contract. So it is unbelievable that, the appellant got formal possession only on 07.10.2012 and then go into commercial operation of the project by 270 days therefrom. So under no circumstances, can the respondent take into account of Force Majeure and thereby rightly refused to consider the case of Force

Majeure by its letter dated 05.04.2011 vis-à-vis reschedule RCOD vide letter dated 27.03.2011 and thus perfectly invoked the condition as enunciated in Article 8 of the Contract by issuing letter dated 27.04.2011 for encashing performance security and partial encashment of the performance guarantee to the tune of USD 3,75,000 and deducted from monthly bill invoice amounting to USD 24,55,478.81 on account of delay in achieving COD.

In this regard, we have gone through the impugned judgment and find that the learned District Judge has rightly addressed that core issue and negated the alleged assertion of the appellant when the Arbitral Tribunal has utterly failed to adjudicate the issue of 'Force Majeure' in the light of the evidence and materials on record placed before it. Simply put, if the appellant cannot prove the case of Force Majeure and fails to achieve COD and as the appellant cannot get RCOD rescheduled, then definitely the respondent will claim liquidated damage as per Article 8.1 of the Contract to be recoverable either from the bank guarantee or from the monthly bill invoices. So we don't find any illegality in claiming liquidated damage and if there occurs no illegality on the part of respondent, then the appellant cannot get refund of the deducted sum let alone claim interest thereon as sought in prayer nos. III and IV of the statement of claim when admittedly it caused delay of 276 days in achieving COD as on 13.01.2012.

Aside from that, now let us examine as to whether the Award passed in favour of the appellant is opposed to the law being in force in Bangladesh as enshrined in section 43(kha)(আ) of the Act, and the

learned District Judge has at all adjudicated the said legal issue. On going through the Award (appeared at page 126 of the application for stay), we find the majority arbitrators amongst others, made the said Award in following term:

> *"and therefore, the respondent, BPDB is liable to be refunded $ 3,75,000 equivalent to BDT 2,76,00,000/- (Taka Two Crore Seventy Six Lac only) along with 15% interest per annum from 04.09.2011 to till realization to the Claimant and the respondent, BPDB is also liable to be refunded $ 24,55,478.81 equivalent to BDT 20,62,60,220/04 (Taka Twenty Crore Sixty-Two Lac Sixty Thousand Two Hundred Twenty only) along with 15% interest per annum thereon from the date of deductions to till realization to the Claimant, within 60(sixty) days from the date of the delivery of Award."*

On going through the impugned judgment (page 105 of the memorandum of appeal), we further find that the learned District Judge has in clear term asserted that *"The impugned Award is passed in contravention and opposed to section 38(6)(kha) of the Arbitration Act, 2001 and with non-application of mind and is ex facie contrary to the provisions of law and documents produce before the tribunal as well as evidence led by both the parties."*

Now let us peruse to what has been laid out in section 38(6)(kha) of the Act which is as follows:

"৩৮(৬) পক্ষগণের দ্বারা অন্যভাবে সাব্যস্ত না হইলে-

(খ) রোয়েদাদে অন্যভাবে আদেশ প্রদত্ত না হইলে, রোয়েদাদ প্রদত্ত হওয়ার তারিখ হইতে অর্থ পরিশোধের তারিখ পর্যন্ত সময়কালের জন্য সালিসী রোয়েদাদ দ্বারা □ অর্থ পরিশোধের জন্য আদেশ প্রদান করা হইবে উক্ত অর্থের সহিত প্রচলিত ব্যাংক হার অপেক্ষা ২% অধিক বাৎসরিক হারে সুদ প্রদেয় হইবে।

ব্যাখ্যা।- এই উপ-ধারার "ব্যাংক হার" অর্থে বাংলাদেশ ব্যাংক কর্তৃক সময় সময় নির্ধারিত সুদের হারকে বুঝাইবে।"

On going through the prayer so made in the statement of claim by the appellant (page 193 of the counter-affidavit), we find that the appellant claimed taka 2,76,00,000/- with 20% interest while the Arbitrators granted 15% of the refunded amount of taka 20,62,60,220/04 to be realized by 60 days which we find to be totally perverse one as nothing has been assigned about the basis of such imposition of interest when section 38(6)(kha) clearly stipulates to impose interest 2% above the Bank rate and what would be the bank rate has also been explained in the "**explanation**" to that clause (kha). So what was the 'bank rate' at the prevailing time of passing the Award has not been there in the Award which manifests sheer whim of the Arbitrator over logic while imposing interest. Further, on the face of such abrupt imposition of interest, it alternatively proves that it has aimed to please the appellant though we clearly find the claim made by the appellant bears no basis as discussed and observed above. Further, there has been no legal sanction even to fix the time limit to pay the awarded amount as if, the Tribunal is acting as a court even then the Arbitral Tribunal has whimsically set 60 days for

making such payment which is also opposed to the law as perfectly found by the learned District Judge.

Now let us examine as to whether the Arbitral Award is in conflict with the "public policy" of Bangladesh as envisages in clause (ইই) of section 43(kha) of the Act and how far the respondent became successful in providing the said legal proposition and the learned District Judge could address the issue finding the Award contrary to the public policy of Bangladesh.

In that case, Mr. Imtiaz Farooq, the learned counsel for the respondent has placed his reliance in the decision in the case of *Saudi Arabian Airlines Corporation-Vs-Bangladesh Services Company Limited reported in 73 DLR (AD) 277=15 BLC (AD) 186* and takes us through paragraph no. 19 thereof where it has been held by their Lordship that:

> *"In the present case the arbitral tribunal was compose of three arbitrators and it was incumbent upon the arbitrators to make it manifest that there was discussion between the arbitrators before the award was made but from the plain reading of the proceedings it appears that one of the arbitrators was excluded totally from the process of deliberation before the award was made."*

The learned counsel on that point of violating public policy by the Arbitral Tribunal also refers to another decision on the case of *Chittagong Port Authority-Vs-Ananda Shipyard and Slipways Ltd.*

reported in 63 DLR (AD) 226 and referred paragraphs 37 and 38 thereof where it was also held that:

> *"**37.** Public Policy of Bangladesh means the principles and standard regarded by legislature or by Court as being of fundamental concern to the state and whole of the society. Thus an award to be refused, as being contrary to public interest if it is contrary to-*
>
> *(i) Fundamental policy of Bangladesh Law*
>
> *(ii) Interest of Bangladesh*
>
> *(iii) Justice or morality*
>
> *(iv) In addition, if it is patently illegal*
>
> ***38.** In the instant appeal it appears that the 2nd party Chittagong Port Authority floated the tender for consideration and delivery of 2(two) fast patrol boats in terms of tender document. 6(six) bidders including the first party participated in the bid. First party's offer became responsive. Contract agreement and work order was issued in favour of 1st party. Pursuant to contract agreement first party submitted the performance bond, thereafter 1st party took 50% advance of the contract price 2nd party CPA is an autonomous statutory body which operates Chittagong sea port of the country. CPA floated tender for construction and delivery*

of 2(two) Nos. of fast patrol boats for Bangladesh Coast Guard for security and patrolling the see area of Bangladesh from its own found i.e. from public found. Since question of financial interest of state of seriously involved in the instant case, thus 2nd party in the policy making and functioning transparency is desired. Thus, the 2nd party must be in favour of public policy.

In Halsbury's laws of India Vol. 21 P-302 it has been stated about the consideration of public interest. "It is a basic legal policy that the law should be interpreted in consonance with public interest. While reading the statute as a whole, the Courts should strive to avoid adopting construction which goes against the public as well as all enactments are presumed to for the public benefit".

It has stated by Bennion in his statutory interpretation 5th ed. p-792 that it implies first that a person shall not be allowed to benefit from his own wrong and secondly, that where a grant is in general terms there always an implied provision that its not include anything which is unlawful or immoral."

Basing on those two decisions, the learned counsel then contends that an Award can be denied if it runs counter to the fundamental policy of Bangladesh, the interest of Bangladesh, justice or morality are found to have violated.

However, Mr. Fida M. Kamal, the learned senior counsel for the appellant on that count contends that the decision reported in 15 BLC (AD) 186 has completely delivered on different set of facts and by referring to the order no. 30 dated 09.10.2019, the learned counsel rather submits that the Chairman and other two arbitrators while signed the order, no one raised any objection which revealed that "deliberation" process was rightly completed and the decision cited by the respondent is thus not applicable in the case.

But we are not in agreement with the assertion of the learned senior counsel for the appellant, on the face of the Award itself. Firstly, the Arbitral Tribunal vide order no. 28 dated 20.02.2018 (in Arbitration Case No. 02 of 2014) passed following order:

> *"**Order No. 28***
>
> ***20.02.2018***
>
> *The Arbitration Tribunal sat today, both parties appeared before the Arbitration Tribunal with their learned counsel. The hearing of the case No. 2 is concluded. The date of the award will be communicated to the parties in due course."*

when in order no. 30 dated 09.10.2019 (i.e. after more than

1 year and 8 month of earlier order), it passed following order:

*"**Order No. 30***

09.10.2019

The Award is prepared on requisite stamp paper and it will be delivered on 12.10.2019 at 7.00 PM at 69/1, Outer Circular Road, Moghbazar, Dhaka-1217. The parties are directed to appear before the Tribunal on the said date to receive the copy of the Award.

Communicate the order to the parties…"

On top of that, the Chairman started in his dissenting view by initiating the sentence *"I have gone through the award passed by the learned Co-arbitrators and I intend to express different view with regard to the award in respect of imposing interest and time limitation for payment of the awarded amount only, stating some material facts, however I agree with the other portion of the award."*

All those factum clearly indicates that no deliberation had at all been occurred among the arbitrators before passing the Award. Further, had there been any deliberation among them, the Chairman would not have disagreed on the imposition of interest on the refunded amount of the appellant and that of the time limit of passing awarded amount which is also clear proof of not having any deliberation before pronouncing the Award and thus such act of non-deliberation is clear testament that the Award declared is completely opposed to the public policy and the decision referred to that effect reported in 15 BLC (AD) 156 and 63

DLR (AD) 226 is completely applicable in the facts and circumstance of the instant case.

Then again, the Award so passed by the Arbitral Tribunal is also contrary to the express provision of section 23(3) of the Act which speaks that "২৩। (৩) সালিসী ট্রাইব্যুনাল সালিসী কার্যধারা পরিচালনার ক্ষেত্রে, কার্যবিধি ও সাক্ষ্য বিষয়ে সিদ্ধান্ত গ্রহণে এবং উহার উপর অর্পিত অন্য সকল ক্ষমতা প্রয়োগে ন্যায়সংগত, পক্ষপাতহীনভাবে দায়িত্ব পালন করিবে।"

If we take into account of that express provision, we explicitly find that the impugned Award was not passed by the Arbitral Tribunal fairly and impractically in exercising powers conferred upon them and the learned District Judge in the impugned judgment has rightly found so who also held that *"Records also reveal that the learned Arbitral Tribunal acted beyond its jurisdiction in traveling beyond the terms of contract as well as law of the country which were fundamental in any claim based on it. Here it may be noted that opposed to public policy includes any decision by the learned Arbitral Tribunal without following the existing law of the country or traveling beyond the terms of the contract."*

Even though the learned counsel referred a slew of decisions in support of his assertion but since those are not found to be compatible with the provision of section 43(kha) of the Act, we are thus refrained from discussing so in the judgment. In any view of the matter, we don't find any cogent ground advanced by he learned senior counsel for the appellant calling for set aside the impugned judgment.

Regard being had to the above discussion, observation and reasoning set forth above, we don't find any illegality in the impugned judgment that warrants any interference.

Resultantly, the appeal is dismissed however without any order as to costs. Consequently, the judgment and order passed by the learned District Judge in Arbitration Miscellaneous Case No. 214 of 2021 is thus affirmed.

Since the appeal is dismissed, the connected rule being Civil Rule No. 23(FM) of 2024 is hereby discharged.

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this judgment be communicated to the court concerned forthwith.

Md. Bashir Ullah, J.

I agree.

Abdul Kuddus/**B.O.**