

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

Present:

Mr. Justice Md. Toufiq Inam

Arbitration Appeal No. 08 of 2025.

IN THE MATTER OF:

An Appeal under section 48(c) of the
Arbitration Act, 2001.

And

IN THE MATTER OF:

South Express Ltd.,
.....Award Holder/Appellant.

-Versus-

Madina Enterprise and another
..... Award Debtor-Respondents.

Mr. Mohiuddin Abdul Kadir, Advocate with
Mr. Md. Al-Amin Sarker,
Mrs. Zinia Amin,
Mr. Noor Mohammad Mozumder Roni, and
Mr. Md. Taukir Ahmed, Advocates
.....For the Award Holder/Appellant.

Mr. Imran A. Siddique, Senior Advocate
with
Mr. M.A. Saiful Rahman, and
Mrs. Umma Salma, Advocates
..... For the Award Debtor-Respondents.

Judgment Delivered On 09th July, 2026.

Md. Toufiq Inam, J

1. This appeal arises from Order No. 25 dated 08.01.2024 passed by the learned District Judge, Dhaka, in Money Execution Case No. 15 of 2018, whereby the learned Judge declined to recognize and enforce the foreign arbitral award

dated 29.11.2015, purported to annul the said award, and, as a consequence, dismissed the execution proceeding.

2. The facts, giving rise to the present appeal, in brief, are that the parties entered into a Memorandum of Agreement (MOA) dated 10.05.2015 for the sale and purchase of the vessel M.V. Fengli-1. Clause 15 of the MOA contained an arbitration agreement providing that any dispute arising out of or in connection with the agreement would be referred to arbitration in London. Subsequently, disputes arose between the parties. According to the Appellant, it was compelled, under duress and without any lawful consideration, to execute Addendum No. 1 to the MOA, whereby the agreed sale price of the vessel was reduced, and to deliver the vessel at the reduced price. Consequently, the Appellant invoked the arbitration agreement and commenced arbitral proceedings in London.
3. Despite having been duly notified, the Respondents failed to appoint their arbitrator within the stipulated time. Consequently, in accordance with section 17 of the UK Arbitration Act 1996, Mr. Graham Clark validly assumed jurisdiction as the Sole Arbitrator. The Respondents were duly notified of the arbitral proceedings and were represented through solicitors; however, they failed to participate effectively in the proceedings. Upon conclusion of the arbitration, the Sole Arbitrator rendered and published the Final Award on 29.11.2015. It is an admitted position that the Award has never been challenged, set

aside, or suspended before any competent court in England, the seat of the arbitration.

4. Thereafter, the Appellant instituted Money Execution Case No. 15 of 2018 under section 45 of the Arbitration Act, 2001 seeking recognition and enforcement of the said foreign arbitral award. By Order No. 25 dated 08.01.2024, the learned District Judge, Dhaka refused to recognize and enforce the foreign arbitral award, purported to set aside the Award, and consequently dismissed the execution case. Being aggrieved by and dissatisfied with the said order, the Appellant has preferred the present appeal.

Submissions of the Appellant

5. Mr. Mohiuddin Abdul Kadir, learned Advocate for the appellant, submits that the learned District Judge acted beyond the limited jurisdiction conferred by sections 45 and 46 of the Arbitration Act, 2001 in refusing recognition and enforcement of the foreign arbitral award, purporting to set aside the Award, and dismissing the execution case. According to him, the impugned order is contrary to the Arbitration Act, 2001 and the settled principles governing the recognition and enforcement of foreign arbitral awards.
6. He submits that the finding that the Sole Arbitrator was not appointed in accordance with Clause 15 of the Memorandum of Agreement and sections 15 to 18 of the UK Arbitration Act 1996 is wholly erroneous. He contends that the respondents admittedly received notice of arbitration but failed to appoint their arbitrator within the

prescribed time. Consequently, under section 17 of the UK Arbitration Act 1996, Mr. Graham Clark validly assumed office as Sole Arbitrator. The respondents, despite engaging HFW Solicitors, chose not to participate in the proceedings and never challenged the Tribunal's jurisdiction before the English courts. Reliance is placed on *Minermet S.p.A. v. Lucky Field Shipping Co. Ltd* [2004} EWHC 729 (Comm).

7. He further submits that the learned Judge's finding regarding the improper constitution of the Tribunal and absence of notice is contrary to the respondents' own pleadings, wherein they admitted receiving the Notice of Arbitration, engaging solicitors and failing to appoint an arbitrator. The learned Judge, according to him, assigned no legal or factual basis for reaching a contrary conclusion.
8. Assailing the finding on public policy, learned Advocate submits that the learned Judge failed to identify any principle of Bangladeshi public policy which would be violated by enforcement of the Award. He argues that Bangladesh, as a Contracting State to the New York Convention, has adopted a legislative policy favouring the recognition and enforcement of foreign arbitral awards and that the public policy exception under section 46(1)(b)(ii) must therefore receive a narrow construction.
9. He next submits that the appellant fully complied with section 45 of the Arbitration Act, 2001 by filing the authenticated copy of the Award, the arbitration agreement and all supporting documents prescribed under section

45(2). He contends that the Act contemplates a composite proceeding for recognition and enforcement and does not require separate applications.

10. He further submits that the learned District Judge exceeded the scope of section 46 by reappraising the merits of the Award, reassessing the evidence and questioning the findings of the Tribunal. According to him, an enforcing court is not competent to sit in appeal over a foreign arbitral award or substitute its own conclusions for those of the Tribunal.
11. Mr. Kadir also submits that the learned District Judge acted wholly without jurisdiction in purporting to set aside the foreign arbitral award. Under the Arbitration Act, 2001, Bangladeshi courts are empowered only to recognize and enforce, or refuse recognition and enforcement of, a foreign arbitral award. The power to annul such an award lies exclusively with the courts of the seat of arbitration.
12. He further contends that the respondents' objection regarding the drafting defects in Clause 15 is misconceived. According to him, the parties' intention to submit disputes to arbitration in London is unmistakable, and the Sole Arbitrator rightly construed the clause by giving effect to that intention. He also submits that, under English law, the obligation to attempt an amicable settlement is not an enforceable condition precedent to arbitration. Reliance is placed on *Russell on Arbitration* P.130, paragraph 4-037, *Paul Smith Ltd. v. H&S International* (1991) 2 *Lloyds*

Report 127, Itex Shipping Pte. Ltd. v. China Ocean Shipping Co. (1989) 2 Lloyds Rep 522 and Demerara Distilleries (P) Ltd. v. Demerara Distillers Ltd.

13. In conclusion, learned Advocate submits that none of the grounds enumerated in section 46 of the Arbitration Act, 2001 has been established and, therefore, the impugned order is liable to be set aside and the foreign arbitral award recognized and enforced.

Submissions of Respondent No. 1

14. Per contra, Mr. Imran A. Siddiq, learned Senior Advocate appearing for Respondent No. 1 supports the impugned order and submits that the learned District Judge rightly refused recognition and enforcement of the foreign arbitral award. According to him, the Award is unenforceable under section 46 of the Arbitration Act, 2001 and the appeal is liable to be dismissed.

15. He submits that the constitution of the Arbitral Tribunal was not in accordance with the arbitration agreement, thereby attracting section 46(1)(a)(v) of the Arbitration Act, 2001. Referring to Clause 15 of the Memorandum of Agreement, he contends that the parties had expressly agreed to attempt an ‘amicable settlement’ before referring any dispute to arbitration. Since the appellant invoked arbitration without complying with this mandatory pre-arbitral requirement, the arbitral proceedings were initiated in breach of the agreed procedure. In support, he relies upon *Genesis System Ltd. v. Clapp & Mayne Inc.*, *International Research Corp PLC v.*

Lufthansa Systems Asia Pacific Pte. Ltd., Nirman Sindia v. Indal Electromelts Ltd. and Orissa Power Transmission Corporation Ltd. v. Ranjit Singh and Co.

16. He next submits that enforcement of the Award would be contrary to the public policy of Bangladesh within the meaning of section 46(1)(b)(ii) of the Act. According to him, the agreed multi-tier dispute resolution mechanism was intended to promote efficient and economical resolution of commercial disputes, and its complete disregard by the appellant defeats the contractual bargain between the parties. Reliance is placed on *United Group Rail Services Ltd. v. Rail Corporation New South Wales* and *Emirates Trading Agency LLC v. Prime Mineral Exports Private Ltd.*

17. He further submits that the arbitration clause is incapable of performance as it refers to a non-existent governing law ("Federal Maritime Law of the London") and a non-existent arbitral institution ("Society of Maritime Arbitrators in UK"). He contends that the Sole Arbitrator exceeded his authority by substituting English law and the Rules of the London Maritime Arbitrators Association (LMAA) in place of the contractual provisions, thereby effectively rewriting the parties' agreement. In support, he relies upon *Klöckner Pentaplast Gmb H & Co KG v. Advance Technology (HK) Co. Ltd.* and *Grand Ocean & Williams Co. Ltd. v. Huaxicun Offshore Engineering Co. Ltd.*

18. He further submits that the appellant failed to satisfy the mandatory requirements of sections 45 and 46 of the

Arbitration Act, 2001 and that the learned District Judge rightly refused recognition and enforcement of the Award. According to him, the findings recorded by the learned Judge are supported by the materials on record and disclose no error of law or jurisdiction warranting interference by this Court.

19. In conclusion, learned Advocate submits that the impugned order was passed in accordance with the Arbitration Act, 2001 and the settled principles governing enforcement of foreign arbitral awards. He, therefore, prays that the appeal be dismissed with costs and the order of the learned District Judge be affirmed.

20. On the above facts, the principal issues before the appellate court are not whether the award is correct on the merits, but whether the learned District Judge remained within the narrow jurisdiction conferred by sections 45 and 46 of the Arbitration Act, 2001, which substantially incorporate the enforcement regime of the New York Convention, 1958. A strong appellate reasoning should therefore emphasize the limited scope of judicial review at the enforcement stage and the distinction between refusal of enforcement and annulment of a foreign award. Section 3(2) of the Act 2001 delineates the Court's **extra-territorial enforcement jurisdiction** in relation to foreign arbitral awards. Through sections 45 and 46, the Court is empowered to recognize, enforce or refuse enforcement of foreign arbitral awards in accordance with the New York Convention framework embodied in the Act. These provisions do not confer

supervisory authority over the conduct of foreign arbitrations; rather, it enables domestic courts to determine the enforceability of foreign awards within Bangladesh.

I. Scope of inquiry under Sections 45 and 46

21. At the outset, it must be borne in mind that proceedings under sections 45 and 46 of the Arbitration Act, 2001 are not appellate proceedings against a foreign arbitral award. A Bangladeshi court exercising jurisdiction under these provisions does not sit in appeal over the findings of the arbitral tribunal. Its jurisdiction is confined to determining whether any of the limited and exhaustive grounds enumerated in section 46 have been established by the party resisting enforcement. Unless one or more of those statutory grounds are affirmatively proved, the Court is under a legal obligation to recognize and enforce the foreign arbitral award.

22. This legislative policy is a direct reflection of Bangladesh's obligations under the New York Convention, 1958, which proceeds on the fundamental principle that foreign arbitral awards are to be enforced save in exceptional circumstances. Consequently, the grounds contained in section 46 must receive a narrow and restrictive interpretation and cannot be expanded by judicial innovation.

II. District Judge exceeded jurisdiction

23. Having examined the impugned order, this Court finds that the learned District Judge travelled far beyond the limited

jurisdiction conferred by section 46. Instead of confining himself to the statutory grounds for refusal of enforcement, he embarked upon a detailed examination of the correctness of the arbitral proceedings, the findings of fact, the interpretation of the contract, and even the legal conclusions reached by the Sole Arbitrator.

24. The observations that the Arbitrator committed "mistakes of law", "mistakes of fact", "exceeded his lawful authority", or failed to act "competently or professionally" unmistakably demonstrate that the learned Judge undertook an appellate review of the Award. Such an exercise is wholly foreign to section 46. Whether the Arbitrator correctly interpreted the contract, correctly appreciated the evidence, or correctly applied English law were matters falling exclusively within the jurisdiction of the supervisory courts of the seat of arbitration. They are not grounds available to an enforcing court under the Arbitration Act, 2001.

III. No jurisdiction to set aside a foreign award

25. Even more fundamentally, the learned District Judge purported to "set aside" the foreign arbitral award. Such a course was plainly beyond his jurisdiction. The Arbitration Act, 2001 nowhere confers power upon Bangladeshi courts to annul or set aside a foreign arbitral award. Sections 45 and 46 merely empower the Court either—to recognize and enforce the award; or to refuse recognition and enforcement upon proof of one of the statutory grounds.

26. The power of annulment belongs exclusively to the courts exercising supervisory jurisdiction at the seat of arbitration. Since the present arbitration was seated in London, only the competent courts of England possessed authority to set aside the Award. The impugned order, insofar as it purports to annul the Award itself, is therefore without jurisdiction and a nullity.

IV. Composition of the Tribunal

27. The learned District Judge further held that the composition of the Tribunal was contrary to the agreement of the parties and that no proper notice had been given. This finding is contrary to the admitted materials on record. The respondents themselves admitted receiving notice of arbitration. They also admitted engaging English solicitors, namely HFW, to represent them. Equally undisputed is the fact that they failed to appoint their arbitrator within the prescribed period.

28. Once that occurred, section 17 of the UK Arbitration Act 1996 empowered the claimant's nominated arbitrator to proceed as Sole Arbitrator. More importantly, the Sole Arbitrator specifically ruled upon his own jurisdiction and recorded the circumstances leading to his appointment. The respondents never challenged that ruling before any competent English court. Having elected not to invoke the remedies available under the curial law, the respondents cannot invite an enforcing court in Bangladesh to reopen jurisdictional questions already determined by the tribunal.

V. Pre-arbitral amicable settlement

29. The respondents have strongly argued that arbitration was commenced without first attempting ‘amicable settlement’. This contention cannot be accepted for several independent reasons.

Firstly, Clause 15 does not prescribe any definite procedure, time frame or objective mechanism governing such negotiations.

Secondly, the arbitration was expressly agreed to be seated in London. Consequently, questions concerning the procedural validity of commencement of arbitration fall to be determined by the curial law governing the arbitration, namely English law.

Thirdly, the Sole Arbitrator considered the issue and nevertheless assumed jurisdiction. That jurisdictional determination attained finality when it was never challenged before the English courts.

Fourthly, even assuming there existed some procedural irregularity regarding commencement of arbitration, such issue cannot justify an extensive merits review by an enforcing court beyond the parameters of section 46.

VI. Alleged defect in the arbitration clause

30. The respondents have also argued that because the agreement referred to "Federal Maritime Law of the London" and the "Society of Maritime Arbitrators in UK",

the arbitration clause was incapable of performance. This submission also lacks substance. Commercial contracts are interpreted so as to give business efficacy to the parties' evident intention rather than defeat it by reason of drafting imperfections. The parties unequivocally agreed that disputes would be resolved by arbitration in London before three arbitrators.

31. The references to non-existent expressions were carefully analysed by the Sole Arbitrator, who concluded that they were obvious drafting errors and that the parties unmistakably intended an English seated maritime arbitration. This interpretation gives effect to the parties' commercial intention. To hold otherwise would invalidate the entire arbitration agreement merely because of obvious drafting inaccuracies—a result contrary to the settled pro-arbitration approach adopted internationally.

VII. Public policy

32. The learned District Judge further held that enforcement would be contrary to the public policy of Bangladesh. However, the judgment contains no discussion whatsoever identifying what principle of Bangladeshi public policy would be violated. Merely reproducing the expression "public policy" cannot satisfy section 46.
33. The public policy exception is reserved for exceptional cases involving fraud, corruption, denial of natural justice,

or violations of the forum's most fundamental legal principles. No such circumstance has been demonstrated here.

34. On the contrary, Bangladesh, by incorporating the New York Convention into the Arbitration Act, 2001, has adopted a legislative policy favouring recognition and enforcement of foreign arbitral awards. That policy would itself be undermined if enforcement were refused without any legally sustainable ground.

VIII. Compliance with Section 45

35. The learned District Judge further erred in holding that no proper petition under section 45 had been filed. The record unmistakably shows that the appellant instituted Money Execution Case No. 15 of 2018 under section 45 and produced: 1) the authenticated copy of the Award; 2) the arbitration agreement; and 3) the documents proving that the Award was a foreign arbitral. These are precisely the documents required under section 45(2). The Act nowhere requires two separate proceedings—one for recognition and another for execution. The learned Judge therefore imported into the statute a procedural requirement which the legislature never enacted.
36. This court is of the view that since the respondents admittedly received notice of the arbitral proceedings, failed to appoint their arbitrator within the stipulated time, participated through solicitors without challenging the tribunal's jurisdiction before the competent English court,

and since no ground under section 46 of the Arbitration Act, 2001 was established, the learned District Judge exceeded his jurisdiction by reappraising the merits of the award, holding that the arbitrator committed errors of fact and law, and purporting to set aside the foreign arbitral award. The impugned order, therefore, cannot be sustained and the Award is entitled to recognition and enforcement under section 45 of the Arbitration Act, 2001.

IX. Conclusion

37. Viewed from any angle, the impugned order cannot be sustained. The learned District Judge misconceived the scope of sections 45 and 46 of the Arbitration Act, 2001, assumed an appellate jurisdiction over a foreign arbitral award which the statute does not confer, purported to set aside an award over which he had no supervisory authority, relied upon findings unsupported by the record, and refused enforcement without establishing any of the limited statutory grounds recognised by section 46.
38. The impugned order, therefore, suffers from patent errors of law, jurisdictional overreach and material illegality warranting interference by this Court. The foreign arbitral award dated 29.11.2015 is accordingly entitled to recognition and enforcement under section 45 of the Arbitration Act, 2001, and the order dated 08.01.2024 passed by the learned District Judge is liable to be set aside.
39. Accordingly-
 - a) The appeal is allowed.

- b) The judgment and order No. 25 dated 08.01.2024 passed by the learned District Judge, Dhaka, in Money Execution Case No. 15 of 2018 is hereby set aside.
- c) It is declared that the learned District Judge exceeded the jurisdiction conferred by sections 45 and 46 of the Arbitration Act, 2001 in purporting to set aside the foreign arbitral award dated 29.11.2015. The said part of the impugned order is without lawful authority and of no legal effect.
- d) This Court further holds that none of the statutory grounds contemplated under section 46 of the Arbitration Act, 2001 for refusing recognition or enforcement of a foreign arbitral award has been established by the respondents. Consequently, the foreign arbitral award dated 29.11.2015 rendered by the Sole Arbitrator, Mr. Graham Clark, London, is entitled to recognition and enforcement under section 45 of the Arbitration Act, 2001.
- e) The foreign arbitral award dated 29.11.2015 is hereby recognized and declared enforceable in Bangladesh and shall be deemed to be a decree of the Court within the meaning of the Arbitration Act, 2001.
- f) Money Execution Case No. 15 of 2018 is restored to its original file. The Executing Court shall proceed with the execution of the foreign arbitral

award in accordance with law and shall take all consequential steps for realization of the award amount together with such interest, costs and other amounts as are recoverable under the Award.

40. The parties shall bear their own costs of this appeal.
41. Let a copy of this judgment along with the lower court records be transmitted to the learned District Judge, Dhaka, forthwith for information and necessary action.

(Justice Md. Toufiq Inam)

Ashraf/ABO.