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

Present:

Mr. Justice Md. Toufiq Inam

Arbitration Application No. 36 of 2025.
[Arising out of an application under Section 7A of the Arbitration Act, 2001.]

with

Arbitration Application No. 44 of 2025.
[Arising out of an application under Section 12 of the Arbitration Act, 2001.]

And

IN THE MATTER OF:

Bangladesh Textile Mills Association (BTMA).

.......Petitioner.

-Versus-

Chan Chao International Co. Ltd. and others.

.... Respondents.

Mr. Kazi Akhtar Hosain, Advocate with
Mr. Mustafizur Rahman Shakil,
Mr. Shahrukh Kabir Bhuiyan,
Mr. Tasbir Sharif,
Mr. Zahangir Alam, and
Mr. Md. Mosiur Rahman, Advocates

.........For the petitioner.
(In both applications)

Mr. Ashraful Hadi, Advocate with
Mr. Md. Fazla Hossain, Advocate

.... For the Respondent No. 2.
(In both applications)

with

Arbitration Application No. 45 of 2025.
[Arising out of an application under Section 20(1) of the Arbitration Act, 2001.]

And

IN THE MATTER OF:

Yorkers Trade and Marketing Service Co. Lid.,

.......Petitioner.

-Versus-

Bangladesh Textile Mills Association (BTMA) and others.

.... Respondents.

Mr. Ashraful Hadi, Advocate with
Mr. Md. Fazla Hossain, Advocate.

.........For the Petitioner.

Mr. Kazi Akhtar Hosain, Advocate with
Mr. Mustafizur Rahman Shakil,
Mr. Shahrukh Kabir Bhuiyan,
Mr. Tasbir Sharif,
Mr. Zahangir Alam, and
Mr. Md. Mosiur Rahman, Advocates

.... For the Respondents.

Judgment Delivered On 07.07.2026.

Md. Toufiq Inam, J.

The petitioner filed two applications, namely- (i) Arbitration Application No. 36 of 2025 under section 7A of the Arbitration Act 2001 (“the Act”) seeking interim measures in aid of arbitration, and (ii) Arbitration Application No. 44 of 2025 under section 12 of the Act for the appointment of a sole arbitrator; while the Respondent No. 2 instituted an application, (iii) being Arbitration Application No. 45 of 2025, under section 20(1) of the Act, challenging the jurisdiction of the arbitral proceeding.

As all three applications arise out of the same transaction and involve interconnected questions of fact and law, they were heard together and are being disposed of by this common judgment.

Petitioner's Case

The petitioner's case, in brief, is that the petitioner, Bangladesh Textile Mills Association (BTMA), has, for over two decades, jointly organized the Dhaka International Textile and Garment Machinery Exhibition (DTG) with respondent No. 2 and its predecessors. Following negotiations during 2024, the parties entered into a Co-operation Agreement dated 16.01.2025 governing the organization of DTG until 2031. Although the execution page remained unsigned, the petitioner asserts that the parties accepted and acted upon the agreement by jointly organizing DTG 2025, performing their respective obligations and making royalty payments thereunder, thereby demonstrating a concluded commercial relationship and a binding contract.

According to the petitioner, after enjoying the benefits of the agreement and successfully completing DTG 2025, the respondents, by emails dated 12.04.2025 and 02.05.2025, unlawfully sought to terminate the agreement and proceeded to organize future editions of DTG excluding the petitioner, thereby infringing its contractual rights and appropriating the goodwill jointly built over the years. Since the Co-operation Agreement contains an arbitration clause providing for resolution of disputes by a sole arbitrator seated in Bangladesh, the petitioner issued a Notice of Arbitration dated 03.09.2025. The respondents, however, denied the existence of the agreement and challenged the jurisdiction of the Arbitral Proceeding instead of participating in the arbitral process.

The petitioner contends that the arbitration agreement exists within the meaning of sections 9 and 10 of the Act, and that questions relating to its validity or enforceability are matters falling within the jurisdiction of the Arbitral Tribunal under the principle of *kompetenz-kompetenz*. It is further contended that the parties' subsequent conduct, particularly the successful organization of DTG 2025 and the payments made by respondent No. 2, unmistakably establishes consensus *ad idem* and acceptance of the agreement notwithstanding the absence of formal execution.

The petitioner also alleges that the respondents, by invoking section 20(1) of the Act to challenge the jurisdiction of the Arbitral Tribunal, have themselves acknowledged the existence of an arbitration agreement and are estopped from contending otherwise. On these premises, the petitioner seeks interim protection under section 7A of the Act to preserve the subject matter of the arbitration, confirmation of the ad interim order already granted by this Court, rejection of the respondents' application under section 20(1), and appointment of a sole arbitrator under section 12 of the Act. At the time of admission, and during pendency of Arbitration Application No. 36 of 2025, this Court passed ad interim protective orders.

Respondents' Case

The respondents' case, in brief, is that no concluded Co-operation Agreement dated 16.01.2025 ever came into existence between the parties. According to them, the document relied upon by the petitioner was merely an unsigned draft circulated during negotiations and was never executed by the authorized representatives of either party. The parties continued negotiating several essential commercial terms, including royalty, VAT, taxation, sponsorship, ownership of the DTG brand and other contractual obligations, and no consensus was ever reached. The respondents contend that the contemporaneous correspondence, particularly the petitioner's own letter dated 02.03.2025 acknowledging that the "Final Agreement is yet to be signed" and the subsequent email dated 13.05.2025 inviting further discussions on the proposed agreement, conclusively establishes that negotiations continued long after 16.01.2025.

The respondents further contend that the draft agreement itself expressly provided that it would "take effect upon signing by both parties," yet the execution page remained unsigned by the designated signatories. The signatures appearing on the earlier pages merely acknowledged the circulating draft and did not constitute execution of the agreement. It is also their case that Mr. Akai Lin had no authority to execute any agreement on behalf of respondent No. 2 and that the earlier Co-operation Agreement executed in 2007, unlike the present draft, had been duly signed by the parties.

According to the respondents, the successful organization of DTG 2025 and the payment of US$300,000 were not made pursuant to any concluded agreement but were temporary and without-prejudice ad-hoc commercial arrangements adopted to ensure that the scheduled exhibition could proceed without disruption while negotiations remained ongoing. Such commercial performance, it is argued, cannot create contractual obligations or an arbitration agreement where none otherwise existed.

The respondents further state that immediately upon receipt of the Notice of Arbitration dated 03.09.2025, respondent No. 2, by its reply dated 08.09.2025, denied the existence of any arbitration agreement, objected to the nomination of the arbitrator and thereafter filed Arbitration Application No. 45 of 2025 under section 20(1) of the Act challenging the jurisdiction of the arbitral proceeding. They contend that the very existence of an arbitration agreement is a jurisdictional fact which this Court must determine before exercising powers under sections 7A and 12 of the Act and that the doctrine of competence-competence cannot be invoked to create arbitral jurisdiction where no arbitration agreement has ever come into existence.

Petitioner's Submissions

Mr. Kazi Akhtar Hossain, learned Advocate appearing for the petitioner, submits that the petitioner, Bangladesh Textile Mills Association (BTMA), has, for over two decades, jointly organized the Dhaka International Textile and Garment Machinery Exhibition (DTG) with respondent No. 2 and its predecessors. Owing to changes in the regulatory regime relating to VAT, taxation and royalty, the parties negotiated a fresh Co-operation Agreement and, following respondent No. 2's agreement in principle by email dated 27.10.2024, executed the Co-operation Agreement dated 16.01.2025 governing DTG until 2031. Acting there under, the petitioner obtained all governmental approvals, DTG 2025 was successfully held from 20.02.2025 to 23.02.2025, and respondent No. 2 paid the agreed royalty, thereby demonstrating that the parties accepted, acted upon and substantially performed the agreement. However, after deriving the benefits there from, the respondents, by emails dated 12.04.2025 and 02.05.2025, purported to terminate the agreement and sought to organize future editions of DTG excluding the petitioner, prompting the petitioner to issue a Notice of Arbitration dated 03.09.2025 in terms of Clause (vii) of Part V of the Co-operation Agreement. Instead of participating in the arbitral proceedings, the respondents denied the existence of the agreement and challenged the jurisdiction of the arbitral proceeding.

He further submits that the respondents, by invoking section 20(1) of the Act, have themselves acknowledged the existence of the arbitration agreement and cannot simultaneously dispute it. He argues that an application under section 20 presupposes the constitution of an Arbitral Tribunal, whereas the mere issuance of a notice under section 27 does not amount to its constitution. He further contends that the dispute arises out of an international commercial transaction and that this Court is competent under sections 7A and 12 of the Act to grant interim protection and appoint an arbitrator. Referring to sections 9(2)(c), 10 and 17(a) of the Act, he submits that the Court is only required to ascertain the existence of an arbitration agreement, which may be established by the exchange of correspondence and the parties' subsequent conduct, while questions relating to its validity or enforceability fall within the jurisdiction of the Arbitral Tribunal under the principle of *kompetenz-kompetenz*.

He further argues that the conduct of the parties unmistakably demonstrates a consensus *ad idem* and a concluded commercial relationship. Pursuant to the Co-operation Agreement, the parties jointly organized the DTG Exhibition 2025, performed their respective contractual obligations and respondent No. 2 paid the royalty contemplated under the commercial arrangement. Such subsequent performance, according to him, objectively manifests the parties' intention to be bound and establishes a legal relationship irrespective of whether every formality of execution was completed. The absence of an express reference to the Co-operation Agreement in the payment documents does not detract from the commercial reality that the payments were made in implementation of the parties' contractual arrangement. He submits that contractual assent may be inferred not only from signatures but equally from the conduct of the parties evidencing acceptance and performance.

He further contends that even assuming that certain commercial issues, such as royalty, taxation or other ancillary matters, remained open for further discussion, the respondents cannot, after having acted upon the agreement, deny the existence of the arbitration clause. The arbitration agreement is a distinct and autonomous covenant reflecting the parties' common intention to resolve disputes through arbitration, and cannot be repudiated merely because disagreements subsequently arose regarding the performance or commercial terms of the principal contract.

Relying upon *Corona Fashion Limited vs. Milestone Clothing Resources LLC*, reported in 71 DLR 106, learned Advocate submits that, at this stage, the Court is only required to ascertain the existence of an arbitration agreement and not to adjudicate upon its validity or enforceability, those questions being matters for the Arbitral Tribunal.He further relies upon *Reveille Independent LLC v. Anotech International (UK) Ltd.* [2016] EWCA Civ 443, wherein it was held that a binding contract may arise from the parties' conduct and acceptance of the terms embodied in an unsigned draft agreement, notwithstanding the absence of formal execution, where the conduct objectively demonstrates an intention to be bound.

Placing further reliance upon *Govind Rubber Ltd. vs. Louis Dreyfus Commodities Asia Pte. Ltd.*, (2015) 1 AD (SC) 301, learned Advocate submits that the Court must objectively examine the correspondence and conduct of the parties to ascertain whether there was a meeting of minds giving rise to a binding contractual relationship. He also refers to *Cox and Kings Ltd. vs. SAP India Pvt. Ltd. & Ors.*, 306 (2024) DLT 162, in support of the proposition that questions relating to the existence and scope of the arbitration agreement should ordinarily be left to the arbitral process unless the Court finds, on the face of the record, that no arbitration agreement exists at all. On the strength of the aforesaid submissions, learned Advocate prays that Arbitration Application Nos. 36 and 44 of 2025 be allowed, the ad interim order be confirmed, the respondents' objection as to maintainability and Arbitration Application No. 45 of 2025 under section 20(1) be rejected, and a sole arbitrator be appointed in accordance with the arbitration agreement.

Respondents' Contentions

Conversely, Mr. Ashraful Hadi, learned Advocate appearing for respondent Nos. 1-3, opposes both applications and supports Arbitration Application No. 45 of 2025 filed under section 20(1) of the Act. At the outset, he submits that the entire foundation of the petitioner's case rests upon the purported Co-operation Agreement dated 16.01.2025, which, according to the respondents, was never executed and never matured into a concluded and binding contract. Consequently, no valid arbitration agreement ever came into existence so as to attract the provisions of the Act.

He submits that although negotiations for a fresh Co-operation Agreement continued throughout 2024 and early 2025, the parties never reached consensus on several essential commercial terms, including sponsorship fees, royalty, VAT, taxation, ownership of the DTG brand, intellectual property rights and other commercial obligations. Numerous drafts, comments and counter-proposals were exchanged, but no final consensus was ever reached. The document dated 16.01.2025 relied upon by the petitioner was nothing more than an unsigned draft circulated during negotiations. He submits that Mr. Akai Lin, who attended the meeting on 15.01.2025, had expressly informed the petitioner that he possessed no authority to execute any agreement on behalf of respondent No. 2. Although the draft bears the initials of Mr. Akai Lin and Mr. Kurshed Alam on the first three pages, those initials merely acknowledged the ‘draft’ under discussion and cannot amount to execution of the agreement.

More importantly, the execution page, which specifically contemplated execution by Mr. Showkat Aziz Russell, President of BTMA, and Ms. Judy Wang, President of respondent No. 2, admittedly remained unsigned. Even the petitioner's authorised representative, Mr. Abdullah Al Mamun, whose authority appears from Annexure-7(A) to the affidavit-in-opposition, did not execute the document. Referring to the earlier Co-operation Agreement executed in 2007, learned Advocate submits that, unlike the present draft, the previous agreement bore the signatures of the authorised representatives of both parties, thereby evidencing a concluded contract. Significantly, that agreement did not contain any arbitration clause.

He further submits that, since DTG 2025 was imminent and postponement of the exhibition would have caused serious commercial disruption, respondent No. 2, on a purely ad hoc and without-prejudice basis, agreed to make certain donation payments to the petitioner pending continuation of the negotiations. Accordingly, a total sum of US$300,000 was paid during January and February 2025. Those payments, according to him, were not made pursuant to any concluded agreement but merely as a temporary commercial arrangement to facilitate the successful holding of DTG 2025.

Mr. Hadi argues that the contemporaneous correspondence completely demolishes the petitioner's present case. In particular, the petitioner's own letter dated 02.03.2025 expressly acknowledged that the "Final Agreement is yet to be signed" and further stated that, pursuant to the decision of BTMA's Board, the Co-operation Agreement would have to be signed by the first week of April 2025. According to him, this constitutes a clear admission that no binding agreement had come into existence on 16.01.2025. He further points out that General Condition (v) under Part V of the draft Co-operation Agreement itself expressly provides that "the agreement takes effect upon signing by both parties for the next seven years (2025–2031)." Therefore, when the document itself makes formal execution a condition precedent to its coming into force, and the parties admittedly never signed the execution page, no enforceable contract could have arisen. The subsequent correspondence reinforces this position. By emails dated 12.04.2025 and 02.05.2025, respondent No. 2 informed the petitioner that it was unwilling to proceed with the proposed contractual arrangement because of unresolved commercial differences. Even thereafter, by email dated 13.05.2025 (Annexure-12 to the affidavit-in-opposition), Brigadier General Zakir (Retd.), representing the petitioner, requested Mr. Akai Lin to visit Dhaka "to discuss relevant clauses of the Co-operation Agreement." According to him, this correspondence unequivocally demonstrates that negotiations were continuing even in May 2025, long after the alleged agreement dated 16.01.2025, thereby negativing the petitioner's assertion that a concluded contract had already come into existence.

He further submits that the Notice of Arbitration dated 03.09.2025 was founded solely upon the unsigned draft agreement. By reply dated 08.09.2025, respondent No. 2 immediately denied the existence of any executed agreement, objected to the nomination of the proposed arbitrator and disputed the very jurisdiction of the arbitral tribunal. Thereafter, respondent No. 2 instituted Arbitration Application No. 45 of 2025 under section 20(1) of the Arbitration Act challenging the Tribunal's jurisdiction. Emphasising a purposive interpretation of the Arbitration Act, learned Advocate submits that once arbitral proceedings are deemed to have commenced under section 27 upon issuance of the notice of arbitration, the jurisdiction conferred by section 20 simultaneously becomes operative. Consequently, where the very existence of the arbitration agreement is disputed, this Court is fully competent, in the exercise of its supervisory jurisdiction under section 20, to determine the jurisdictional objection instead of compelling the parties to proceed before a tribunal whose authority is itself seriously challenged.

Developing his legal submissions, he contends that the existence of a valid arbitration agreement is the sine qua non for invoking the jurisdiction of this Court under sections 7A and 12 of the Act. Arbitration is entirely consensual and derives its authority exclusively from the agreement of the parties. Unless the parties are *ad idem* on all essential terms and a concluded contract comes into existence, no arbitration clause can be enforced. The correspondence exchanged between the parties, according to him, reveals nothing more than continuing negotiations, repeated offers and counter-offers, and unresolved commercial differences.

Placing reliance upon *Jamuna BohumukhiSamabaya Samity Ltd. vs. AKM Saiful Islam* (Lex/BDHC/0666/2025), *Jeacon Garments Ltd. vs. BGMEA Arbitration* (34 BLD 91) and *AIR 1999 SC 504*, Mr. Hadi submits that an arbitration agreement cannot be imported, implied or inferred in the absence of a concluded contract embodying such a clause. Where the parties themselves have consciously withheld execution of the proposed agreement, the Court cannot compel them to arbitrate by implying consent contrary to the objective evidence.

Discussion, Findings and Reasons

Having heard the learned Advocates for the respective parties at length, perused the pleadings, affidavits, contemporaneous correspondence, the draft Co-operation Agreement dated 16.01.2025 and the authorities cited by the parties, this Court finds that the controversy raises a fundamental jurisdictional issue under the Arbitration Act, 2001. The principal question for determination is whether the petitioner has established the existence of a legally recognizable arbitration agreement so as to invoke the jurisdiction of this Court under sections 7A and 12 of the Act.

The respondents have consistently maintained that the alleged Co-operation Agreement dated 16.01.2025 never matured into a concluded contract because it remained unsigned by the parties in the manner contemplated therein. According to them, the document was merely a "draft" circulated during negotiations and, consequently, the arbitration clause contained therein never acquired legal existence. The petitioner, on the other hand, contends that notwithstanding the absence of signatures on the execution page, the parties accepted and acted upon the agreement by jointly organizing DTG 2025, performing their respective obligations and making payments contemplated under the commercial arrangement. The issue, therefore, is not merely whether an arbitration clause appears in the draft document, but whether that clause ever became part of a concluded agreement binding upon the parties.

Arbitration, unlike adjudication before ordinary civil courts, is founded entirely upon consent. The jurisdiction of an arbitral tribunal does not arise from statute alone but from the voluntary agreement of the parties to submit their disputes to arbitration. The Act merely furnishes the statutory framework within which such consensual dispute resolution is recognised and enforced. It neither creates an obligation to arbitrate nor empowers the Court to compel arbitration in the absence of the parties' consent. Thus, the existence of an arbitration agreement constitutes the jurisdictional foundation upon which every arbitral proceeding rests.

This principle is reflected in section 2(k) of the Act, which defines an "arbitration agreement" as an agreement by the parties to submit disputes to arbitration. Significantly, the Act does not define the expression "agreement". That expression must, therefore, receive its ordinary legal meaning under the general law of contract. In law, an agreement comes into existence only when there is an offer, an unconditional acceptance, consensus *ad idem* on all essential terms and an intention to create legal relations. Negotiations, exchange of draft documents, proposals and counter-proposals, however extensive, remain no more than steps in the process of contract formation unless they culminate in a concluded bargain.

The petitioner has argued that this Court is only required to ascertain the "existence" of an arbitration agreement and not its "validity", which, according to the petitioner, falls within the exclusive jurisdiction of the Arbitral Tribunal under section 20 of the Act. There can be no quarrel with the proposition that modern arbitration law recognises a distinction between the existence of an arbitration agreement and questions relating to its validity, enforceability or scope. However, the present case concerns not the validity of an existing arbitration agreement but its very formation. The respondents do not contend that the arbitration agreement is void or unenforceable;

they deny that any arbitration agreement ever came into existence. The distinction is fundamental. Questions concerning the validity of an existing arbitration agreement may appropriately be left to the Arbitral Tribunal. Whether an arbitration agreement was ever concluded at all is a jurisdictional fact which the Court must determine before exercising powers under sections 7A or 12.

The Court must therefore examine the objective evidence to ascertain whether the parties reached a concluded consensus. In doing so, greater evidentiary weight must ordinarily be attached to contemporaneous documents generated during the negotiations than to subsequent assertions made after disputes have arisen. Such documents best reflect the parties' actual intention at the relevant time.

Upon examining the documentary evidence, this Court finds that negotiations between the parties continued well beyond 16.01.2025. The correspondence exchanged thereafter discloses continuing discussions regarding royalty, VAT, taxation, sponsorship, intellectual property rights and other essential commercial terms. More importantly, the petitioner's own letter dated 02.03.2025 expressly records that the "Final Agreement is yet to be signed" and further states that, pursuant to the decision of BTMA's Board, the agreement was expected to be executed in the first week of April 2025. Subsequently, by email dated 13.05.2025, the petitioner's representative again requested respondent No. 2 to visit Dhaka to discuss the relevant clauses of the proposed Co-operation Agreement. These contemporaneous communications are wholly inconsistent with the petitioner's present assertion that the agreement had already become binding on 16.01.2025.An agreement comes into existence only where there is an offer, an unqualified acceptance, consensus ad idem upon the essential terms and an intention to create legal relations. Mere negotiations, proposals, counter-proposals or circulation of draft documents do not create contractual obligations. They merely constitute steps in the process leading to a contract, which may or may not ultimately be concluded.

The distinction between negotiations and a concluded contract is of fundamental importance. Commercial parties are free to negotiate, revise, reject or modify proposed terms until they finally manifest an unequivocal intention to be bound. Courts cannot convert negotiations into a contract merely because discussions were extensive or because one party subsequently believed that an agreement ought to have been concluded. The law recognizes objective manifestations of mutual assent, not unilateral expectations.

The contemporaneous correspondence placed before this Court unmistakably demonstrates that, even after the alleged Co-operation Agreement dated 16.01.2025 was prepared, negotiations between the parties continued on several material commercial issues, including royalty, taxation, sponsorship, intellectual property rights and other essential terms governing their future relationship. More significantly, the correspondence relied upon by both parties contains repeated references indicating that the "final agreement" was yet to be signed. Such contemporaneous communications, emanating during the course of negotiations themselves, constitute the most reliable evidence of the parties' intention. They are wholly inconsistent with the petitioner's present assertion that a binding agreement had already come into existence.

The draft agreement itself reinforces the same conclusion. General Condition (v) of Part V expressly stipulates that the agreement "takes effect upon signing by both parties for the next seven years (2025–2031)." The parties thus consciously made formal execution a condition precedent to the commencement of their contractual obligations. Where sophisticated commercial entities expressly prescribe the manner in which their agreement is to become operative, the Court cannot disregard that contractual mechanism and substitute another mode of acceptance merely because disputes subsequently arise.

The significance of the unsigned execution page cannot therefore be understated. Although the first three pages bear the signatures of Mr. Akai Lin and Mr. Kurshed Alam, those signatures appear only upon the circulating draft. The execution page specifically required execution by Mr. Showkat Aziz Russell, President of BTMA, and Ms. Judy Wang, President of respondent No. 2. Admittedly, neither signed the document. Even the petitioner's authorised representative, Mr. Abdullah Al Mamun, did not execute it. In the absence of signatures by the very persons designated by the parties to execute the agreement, the Court cannot infer that the agreement nevertheless became operative.

The petitioner has sought to overcome this difficulty by relying upon the subsequent conduct of the parties, particularly the successful organisation of DTG 2025 and the payment of US$300,000 by respondent No. 2. It is true that subsequent conduct may, in an appropriate case, furnish evidence of a concluded contract notwithstanding the absence of formal execution. However, such conduct must unequivocally demonstrate that both parties intended to dispense with the requirement of execution. In the present case, the contemporaneous correspondence demonstrates precisely the opposite. Throughout the relevant period the parties continued to negotiate and repeatedly acknowledged that the final agreement remained unsigned. The subsequent commercial dealings are therefore equally capable of being explained as ad-hoc business arrangements pending completion of negotiations, as asserted by the respondents. Such conduct cannot override the express contractual provision that the agreement would become effective only upon signing by both parties.

The authorities relied upon by the petitioner do not advance its case. The decision in *Corona Fashion Limited vs. Milestone Clothing Resources LLC* recognises that, at the stage of appointment of an arbitrator, the Court is ordinarily concerned with the existence of an arbitration agreement rather than its validity. That principle, however, presupposes the existence of a prima facie arbitration agreement. It does not authorise the Court to disregard objective documentary evidence demonstrating that no concluded agreement ever came into existence.

Similarly, the decision in *Reveille Independent LLC v. Anotech International (UK) Ltd.* recognises that an unsigned draft may, in appropriate circumstances, become binding through subsequent conduct. However, that principle applies only where the conduct objectively manifests an intention to waive formal execution. Here, the parties repeatedly affirmed that the agreement was yet to be signed and expressly provided that it would become effective only upon execution. The factual foundation upon which *Reveille* proceeded is therefore absent in the present case.

The decisions in *Govind Rubber Ltd. vs. Louis Dreyfus Commodities Asia Pte. Ltd.* and *Cox & Kings Ltd. vs. SAP India Pvt. Ltd.* also do not assist the petitioner. Those authorities emphasise that the Court must ascertain whether there was a genuine meeting of minds before referring parties to arbitration. Applying that very principle, this Court finds that the contemporaneous documents reveal continuing negotiations rather than concluded consensus.

Nor can the petitioner derive assistance from the doctrines of separability and competence-competence. The doctrine of separability presupposes the existence of an arbitration agreement capable of surviving challenges to the principal contract. Likewise, competence-competence merely empowers an arbitral tribunal to determine objections concerning its jurisdiction where a prima facie arbitration agreement exists. Neither doctrine authorises the Court or the tribunal to create an arbitration agreement where none has ever come into existence. The jurisdiction of an arbitral tribunal cannot arise in a legal vacuum.

Equally untenable is the submission that the respondents, by filing an application under section 20 of the Arbitration Act, have acknowledged the existence of an arbitration agreement. The statutory right to challenge the jurisdiction of the arbitral proceeding necessarily proceeds on the premise that a party may appear before the tribunal solely for the purpose of disputing its jurisdiction. To hold that invocation of section 20 amounts to an admission of jurisdiction would render the statutory remedy wholly illusory and defeat the legislative intent underlying that provision.

Upon an overall evaluation of the pleadings, documentary evidence and contemporaneous correspondence, this Court is satisfied that the alleged Co-operation Agreement dated 16.01.2025 remained an unsigned draft and never matured into a concluded and binding contract. The parties themselves expressly stipulated in General

Condition (v) of Part V that the agreement would "take effect upon signing by both parties", thereby making formal execution a condition precedent to its coming into force. Admittedly, the execution page remained unsigned by the designated signatories, and the contemporaneous correspondence, particularly the petitioner's own letter acknowledging that the "Final Agreement is yet to be signed", unmistakably demonstrates that negotiations continued well beyond 16.01.2025. In these circumstances, the subsequent organisation of DTG 2025 and the payments made by respondent No. 2 are equally consistent with ad-hoc commercial arrangements and cannot override the parties' expressed intention or establish a concluded contract.

This Court accordingly holds that where parties expressly make execution a condition precedent to the effectiveness of their agreement, and such execution never takes place nor is shown to have been mutually waived, no concluded contract comes into existence in the eye of law. The Court cannot infer or create contractual consensus from subsequent commercial dealings where the parties themselves contemplated that their legal relationship would commence only upon formal execution. Consequently, the arbitration clause contained in the unsigned draft never acquired an independent legal existence capable of conferring arbitral jurisdiction. In the absence of a valid arbitration agreement, the jurisdiction of this Court under sections 7A and 12 of the Act cannot be invoked.

For the reasons discussed above, this Court is unable to accept the petitioner's contention that a valid and enforceable arbitration agreement came into existence between the parties. The materials on record, particularly the contemporaneous correspondence exchanged between the parties, the admitted absence of execution of the Co-operation Agreement dated 16.01.2025 by the authorised signatories, and the express stipulation contained in General Condition (v) of Part V that “the agreement would take effect only upon signing by both parties”, unmistakably establish that the document never matured into a concluded contract.

This Court is, therefore, satisfied that the petitioner has failed to establish the jurisdictional fact upon which the exercise of powers under sections 7A and 12 of the Act depends. In the absence of a concluded contract, no arbitration agreement ever acquired legal existence. Consequently, there was no legal foundation for the commencement of arbitration proceedings, for the appointment of an arbitrator, or for the grant of interim measures in aid of arbitration.

The petitioner has contended that section 20 cannot be invoked unless an arbitral tribunal has already been formally constituted and that the issuance of a Notice of Arbitration under section 27 does not amount to the constitution of the tribunal. This submission, though attractive at first glance, does not withstand a purposive reading of the Act. Section 20 embodies the legislative recognition of the principle of *kompetenz-kompetenz*, enabling objections relating to the jurisdiction of the arbitral tribunal, including objections concerning the existence or validity of the arbitration agreement, to be determined at the earliest possible stage. The object of the provision is to prevent parties from being compelled to participate in arbitral proceedings where the very jurisdiction of the tribunal is fundamentally disputed.

The contention that this Court is precluded from deciding the issue until an arbitral tribunal is formally constituted cannot be accepted. Although section 20 embodies the principle of *kompetenz-kompetenz*, that principle is neither absolute nor intended to exclude the supervisory jurisdiction of the Court in every case. It presupposes the existence of a prima facie arbitration agreement from which the arbitral tribunal derives its authority. Where the very existence of the arbitration agreement is in dispute, and that issue is directly raised before this Court in proceedings under sections 7A, 12 and 20 of the Act, the Court is not divested of its jurisdiction to determine the foundational question upon which the tribunal's competence itself depends.

To hold otherwise would produce an anomalous and legally unsustainable result. It would require the parties first to constitute an arbitral tribunal whose jurisdiction is itself under serious challenge, merely to enable that tribunal to determine whether it possesses jurisdiction. Such an interpretation would elevate procedural form over substantive justice, frustrate the legislative object underlying section 20, and permit a claimant, by the unilateral issuance of a notice of arbitration, to compel the opposite party to participate in arbitral proceedings even where the very foundation of arbitration, namely, the parties' consent, is absent. The law cannot countenance a situation where jurisdiction is assumed first and examined later, when the jurisdictional fact itself is the existence of the arbitration agreement. In such circumstances, once all the parties are before the Court and the jurisdictional issue is squarely raised, it is both competent and incumbent upon the Court to determine that issue. If the Court concludes that no arbitration agreement ever came into existence, the arbitral proceedings are rendered without lawful authority *ab initio*. In such a case, there is no justification for insisting upon the constitution or continuation of a tribunal that lacks jurisdiction from its inception, as doing so would only result in unnecessary expenditure of time and costs.

In the present case, all parties have appeared before this Court and have invited a determination on the existence of the arbitration agreement and the jurisdiction of the arbitral process. The very issues raised in the respondents' application under section 20 are inseparably connected with the questions arising in the petitioner's applications under sections 7A and 12. Having held that no concluded contract and, consequently, no arbitration agreement ever came into existence, this Court cannot ignore that finding and nevertheless direct the parties to proceed before an arbitral tribunal whose jurisdiction has no legal foundation. Once the Court determines that the arbitral proceedings were initiated in the absence of a valid arbitration agreement, the proceedings become incompetent from their inception and no useful purpose would be served by remitting the parties to a tribunal devoid of jurisdiction. The arbitral proceedings initiated pursuant to the Notice of Arbitration dated 03.09.2025, having been commenced without the existence of a valid arbitration agreement, are without lawful authority and are liable to be declared without jurisdiction. Accordingly, the objection raised by respondent No. 2 under section 20 of the Arbitration Act, 2001 is well-founded and must succeed.

Decision & Order

Accordingly, Arbitration Application No. 36 of 2025 under section 7A of the Arbitration Act, 2001 and Arbitration Application No. 44 of 2025 under section 12 of the Act are dismissed. The ad interim order earlier granted by this Court stands recalled and vacated.

Arbitration Application No. 45 of 2025 filed under section 20(1) of the Arbitration Act, 2001 is allowed. The arbitral proceedings initiated pursuant to the Notice of Arbitration dated 03.09.2025, having been commenced without the existence of a valid arbitration agreement, are without lawful authority and are liable to be declared without jurisdiction.

There shall, however, be no order as to costs.

(Justice Md. Toufiq Inam)

Ashraf/ABO.