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

Present:

Mr. Justice Md. Toufiq Inam

Arbitration Application No. 07 of 2026.

An application under Section 7A of the Arbitration Act, 2001.

And

IN THE MATTER OF:

SVC Jhilmil Residential BD Limited

.......Petitioner.

-Versus-

Rajdhani Unnayan Kartipakkha (RAJUK), represented by its Chairman, RAJUK Bhaban, RAJUK Avenue, Dhaka 1000 and others.
.... Respondents.

Mr. Masood R. Sobhan, Senior Advocate with
Mr.Sheikh Mohammad Morshed, Senior Advocate with
Mr. Md. Kamal Hossain Mehazi,
Mr. Md. Fuad Hassan Khan, and
Ms. Jennifer Mymoon Billah,
Ms. Jusmin Sultana,
Md. Shahadat Hossain, Advocates
.........For the petitioner.

Mr. Md. Ruhul Quddus Kazal, Attorney General, with
Mr. Mohammad Arshadur Rouf, Additional Attorney General, with
Mr. Omar Sadat, Senior Advocate
.... For the Respondent No. 1.

The 12th July 2026.

Md. Toufiq Inam, J.

1. By this application under section 7A of the Arbitration Act, 2001 (“the Act 2001), the petitioner seeks, *inter alia*, admission of the application and interim measures restraining the respondent from terminating the contract and from encashing the bank guarantee pending arbitration.

The Background Facts

2. The petitioner is a project company incorporated for implementation of the project titled *"Construction of High-Rise Residential Apartment Buildings for Low and Middle-Income Groups at Jhilmil Residential Project, Dhaka"* under a Public-Private Partnership (PPP) arrangement. According to the petitioner, it is substantially owned and controlled by foreign entities, namely BNG Global Holdings SDN BHD, Malaysia and Jiangxi Construction Engineering (Group) Corporation Ltd., China, and the dispute accordingly constitutes an international commercial arbitration within the meaning of section 2(c)(iii) of the Act, 2001.

3. Pursuant to an Invitation for Bid dated 25.01.2017 issued by Rajdhani Unnayan Kartripakkha (RAJUK) under the Public Procurement Guidelines for PPP Projects, 2016, the bid submitted by the petitioner's major shareholder was accepted and a Letter of Award was issued on 14.10.2017. Thereafter, on 16.11.2017, the parties executed the PPP Contract for implementation of the project.The petitioner contends that, under the PPP Contract, the performance bank guarantee was to

become operative from the "Appointed Date", that is, the date on which all conditions precedent were fulfilled or waived. Although the petitioner fulfilled its contractual obligations and satisfied the conditions precedent on its part, the respondent allegedly failed to perform its reciprocal obligations, including the appointment of the Independent Panel, with the result that the Appointed Date never occurred. Nevertheless, at the insistence of the respondent, the petitioner furnished the aforesaid bank guarantee on 22.07.2018 for Tk.1,000,000,000/-, which has since been periodically extended and presently remains valid until 21.07.2026.

4. According to the petitioner, it invested substantial foreign equity in the project and completed various preparatory works, including soil investigations, sub-structural and architectural designs, and other site development activities. The implementation of the project, however, was delayed due to the COVID-19 pandemic and disputes subsequently arose regarding the parties' respective obligations under the PPP Contract. While the petitioner was requesting the respondent to proceed with implementation of the project and appoint the Independent Panel, the respondent, by notice dated 18.02.2024, alleged non-fulfilment of the conditions precedent. The petitioner denied those allegations, asserting that it was the respondent who had failed to discharge its contractual obligations. Thereafter, by letter dated 29.01.2025, the respondent informed the petitioner that no decision could be taken as the matter had become *sub judice* because of the pendency of Writ Petition No. 13170 of 2024.

5. The petitioner further alleges that it has recently learnt from reliable sources that the respondent is contemplating encashment of the bank guarantee without lawful authority and without prior notice. Clause 31.3.1 of the PPP Contract provides that all disputes arising out of or in connection with the contract shall be resolved by arbitration under the Act, 2001, while clause 31.3.2 designates Singapore as the juridical seat of arbitration. In pursuance of the arbitration agreement, the petitioner appointed its nominee arbitrator on 15.04.2026 and initiated the arbitral process. Pending constitution of the arbitral tribunal and the arbitral proceedings, the petitioner has invoked the jurisdiction of this Court under section 7A of the Arbitration Act, 2001 seeking interim protection against encashment of the bank guarantee.

Threshold Question

6. Atthe very threshold, Mr. Md. Ruhul Quddus Kazal, learned Attorney General appearing for RAJUK- respondent No. 1, raises a preliminary objection as to the maintainability of the present application. He submits that the issue is no longer *res integra* in view of the majority decision of the Larger Bench in *Accom Travels and Tours v. Oman Air SAOC*, reported in 27 BLC 596, wherein it was held that sections 7, 7A and 10 of the Act, 2001 are inapplicable to foreign-seated arbitrations, except that interim measures under section 7A may be granted only at the stage of enforcement of a foreign arbitral award. Since the arbitration agreement in the present case designates Singapore as the juridical seat of arbitration, the learned Attorney General contends that the present application under section 7A is not

maintainable and that the said decision of the Larger Bench is binding upon this Court.

7. He further submits that, even otherwise, the petitioner is not entitled to any interim protection as the prima facie case and balance of convenience and inconvenience does not lie in its favour. According to him, the petitioner is merely a sham or special-purpose company having no substantial assets or independent financial standing, whereas the performance bank guarantee was furnished to secure the petitioner's contractual obligations under the PPP Contract. He argues that any restraint upon its encashment would seriously prejudice the public interest and the implementation of the project, while no irreparable loss would be caused to the petitioner if the contractual mechanism is allowed to operate in accordance with its terms.

Petitioner’s Standpoints

8. In reply, Mr. Masood R. Sobhan and Mr. Sheikh Mohammad Morshed, learned Senior Advocates appearing for the petitioner, submit that the majority decision of the Larger Bench in *Accom* is contrary to the legislative object underlying the Arbitration Act, 2001. He contends that, by introducing section 7A through the Amendment Act of 19.02.2004, the Legislature consciously empowered the Court to grant interim measures before or during arbitral proceedings or until enforcement of the award. According to the learned Senior Advocate, section 7A confers only a limited ancillary and protective jurisdiction to preserve the subject matter of the dispute and does not amount to the exercise of supervisory jurisdiction over the arbitral

proceedings. He therefore argues that an application under section 7A is maintainable notwithstanding that the parties have chosen a foreign seat of arbitration, and that the contrary view adopted by the Larger Bench, confining the operation of section 7A to domestically seated arbitrations (except at the stage of enforcement of a foreign award), is founded upon an erroneous interpretation of the legislative scheme of the Act.

9. They submit that the majority decision of the Larger Bench in *Accom* no longer represents the prevailing law, having been rendered *per incuriam*. He contends that the Larger Bench reached its conclusion without considering the binding decisions of the Appellate Division in *Mosharaf Composite Textile Mills Ltd. v. ECOM Agroindustrial Corp. Ltd.*, reported in 4 SCOB (2015) AD 28, and the subsequent judgment dated 11.07.2017 passed in Civil Review Petition No. 213 of 2015. In the review judgment, the Appellate Division expressly held that *Unicol Bangladesh Ltd. v. Maxwell Engineering Works Ltd.*, 56 DLR (AD) 166, stood pro tanto overruled. Since the majority decision in *Accom* was founded substantially upon *Unicol* without noticing or considering the binding pronouncements in *ECOM*, the very jurisprudential foundation of the decision, according to the learned Senior Advocate, stands displaced. He therefore submits that *Accom* was rendered *per incuriam*, no longer represents the prevailing law on the subject, and consequently does not bind this Court.

10. It is submitted that the decisions of the Appellate Division in *ECOM* recognise that the choice of a foreign arbitral seat does not, by itself, exclude the jurisdiction of the courts of Bangladesh to render judicial assistance under the Arbitration

Act, 2001. In support of this proposition, he also relies upon *Crown Maritime Co. Ltd. v. Royal Boskalis Westminster NV, 16 BLC 140*, wherein this Court held that section 7A may be invoked in aid of a foreign-seated arbitration for preservation of assets situated within Bangladesh. He further contends that modern international arbitration jurisprudence recognises the jurisdiction of national courts to grant interim protective measures in support of foreign-seated arbitrations where the assets or property requiring protection are located within the forum State. He also refers to the proceedings before the Appellate Division in *Italian Thai Development Public Company Limited v. The Export-Import Bank of India* (Civil Petition for Leave to Appeal No. 1828 of 2024, judgment dated 01.09.2024), wherein interim protection was continued until the first sitting of the arbitral tribunal in Singapore. According to him, although the Appellate Division did not finally determine the scope of section 7A, it did not affirm the restrictive interpretation adopted by the High Court Division, thereby leaving the question open for determination in an appropriate case. On these grounds, he submits that this Court possesses jurisdiction under section 7A to grant interim protection in aid of the foreign-seated arbitration and accordingly prays for allowing the application.

11. On the merits, the learned Senior Advocates submit that the petitioner has already invested substantial foreign capital in implementation of the project and that serious disputes have arisen regarding fulfilment of the conditions precedent, appointment of the Independent Panel, reciprocal contractual obligations of the parties, and the delay occasioned by

supervening events, including the COVID-19 pandemic. According to them, the petitioner has raised substantial and bona fide issues as to whether the contractual obligations, including the bank guarantee, ever became operative in the absence of the "Appointed Date" and whether the respondent's own failure to perform its reciprocal obligations prevented the occurrence of that event. They further submit that, in accordance with the arbitration agreement, the petitioner has already appointed its nominee arbitrator on 15.04.2026 and initiated the arbitral process. The relief sought from this Court is, therefore, of a limited and temporary nature. The petitioner does not seek adjudication of the parties' contractual rights or interference with the merits of the dispute. It merely seeks preservation of the status quo by restraining encashment of the bank guarantee until the arbitral tribunal at the agreed foreign seat is constituted and assumes jurisdiction, whereupon it may seek appropriate interim measures from the tribunal itself.

Respondent’s Contentions

12. Mr. Mohammad Arshadur Rouf, learned Additional Attorney General and Mr.Omar Sadat, learned Senior Advocate appearing for the respondent No1, oppose the application and submit that Article 25 of the agreement expressly empowers the respondent to terminate the contract upon the occurrence of the defaults specified therein. An order restraining termination would, in effect, prevent the respondent from exercising a contractual right expressly reserved under the agreement. Granting such relief would amount to rewriting the contract and prejudging the merits of the dispute.

13. They further argue that similarly a bank guarantee constitutes an independent and autonomous contract between the issuing bank and the beneficiary. Courts should not interfere with its invocation except in exceptional cases of established fraud of an egregious nature vitiating the underlying transaction or where encashment would result in irretrievable injustice. Mere disputes that have arisen under the principal contract do not furnish a valid ground to restrain encashment.

14. They also submit that the choice of a foreign seat carries with it the consequence that supervisory jurisdiction vests exclusively in the courts of the seat, and permitting recourse to section 7A would impermissibly extend the territorial operation of the Arbitration Act beyond the limits prescribed by section 3. They, therefore, pray that the application be rejected.

Discussion and Reasoning

15. As the preliminary objection goes to the very root of the maintainability of the present application and centres upon the correctness, scope and applicability of the Larger Bench decision in *Accom*, it is necessary to notice the principles laid down therein. By a majority of 2:1, the Larger Bench held that by virtue of sections 3(1) and 3(2) of the Arbitration Act, 2001, the provisions of the Act, other than sections 45, 46 and 47, are inapplicable where the seat of arbitration is outside Bangladesh. Consequently, sections 7, 7A and 10 have no application to foreign-seated arbitrations, except that interim measures under section 7A may be granted only at the stage of enforcement of a foreign arbitral award. Nevertheless, despite the inapplicability of section 10, the civil court ought to have stayed the suit in the

exercise of its inherent jurisdiction under section 151of the Code of Civil Procedure ("CPC"), and referred the parties to arbitration in accordance with their arbitration agreement.

16. The principal question that falls for determination is whether an application under section 7A of the Act, 2001 is maintainable where the parties have agreed to a foreign seat of arbitration. The resolution of this question depends upon the proper construction of section 7A read together with the scheme, object and legislative purpose of the Act, 2001. It is well settled that a statutory provision must not be construed in isolation. Every provision is to be interpreted in the context of the statute as a whole so that each part is given meaningful effect and the legislative purpose is advanced rather than defeated.

17. Having heard the learned Advocates for the parties and considered the decisions cited by the parties, together with the subsequent development in the Appellate Division, this Court considers it appropriate to examine the issues under the following heads before expressing its views.

<u>I. Effect of the Non-Obstante Clauses in Sections 7 and 7A</u>

18. By the Arbitration (Amendment) Act, 2004 (Act No. II of 2004), which came into force on 19.02.2004, Parliament inserted section 7A into the Arbitration Act, 2001, thereby creating an independent statutory jurisdiction in the High Court Division to grant interim measures. Section 7A was inserted in the Act 2001 on 19.02.2004 as-

"[৭ক। (১) ধারা ৭-এ যাহা কিছুই থাকুকনা কেন, পক্ষগণ ভিন্ন ভাবে সম্মত হইলে, কোন পক্ষের আবেদনের প্রেক্ষিতে সালিসী কার্যধারা চলাকালীন কিংবা তৎপূর্বে অথবা ধারা ৪৪ বা ৪৫ এর অধীন সালিসী রোয়েদাদ কার্যধারা চলাকালীন কিংবা তৎপূর্বে অথবা ধারা ৪৪ বা ৪৫ এর অধীন সালিসী রোয়েদাদ কার্যকর নাহওয়া পর্যন্ত আন্তর্জাতিক বাণিজ্যিক সালিসের ক্ষেত্রে হাইকোর্ট বিভাগ এবং অন্যান্য সালিসের ক্ষেত্রে আদালত নিম্নবর্ণিত বিষয়ে আদেশ প্রদান করিতে পারিবে, যথাঃ-

...."

19. The non-obstante clauses employed in sections 7 and 7A are materially different and must be given their due significance. Section 7 opens with the words, **"Notwithstanding anything contained in any other law for the time being in force,"** thereby giving the Arbitration Act, 2001 overriding effect over all other laws governing judicial proceedings. Section 7A, however, does not override "any other law"; instead, it begins with the words, **"Notwithstanding anything contained in section 7."** By specifically overriding section 7 itself, Parliament created an express exception to the general jurisdictional scheme contained in that provision.

20. The legislative intent is therefore clear. While section 7 embodies the general principle of limited judicial intervention in matters covered by an arbitration agreement, section 7A preserves a distinct and independent jurisdiction of the High Court Division to grant interim protective measures. Had Parliament intended section 7A to be controlled entirely by section 7, there was no necessity to commence the provision with an “overriding clause.” The opening words of section 7A indicate that the jurisdiction conferred therein is exceptional

and self-contained, enabling the Court to grant interim relief in aid of arbitration notwithstanding the general limitations contained in section 7. Any interpretation that renders the non-obstante clause in section 7A redundant would be contrary to the settled principle that every word employed by the legislature must, so far as possible, be given meaning and effect.

II. Legislative Intent Behind the Introduction of Section 7A

21. The language of section 7A clearly demonstrates that Parliament intended to create a jurisdiction distinct from the Court's supervisory powers over arbitration. The provision begins with a non-obstante clause and authorises the High Court Division to grant interim measures **"before or during continuance of the proceedings or until enforcement of the award under section 44 or 45."** Read as a whole, section 7A confers a continuous protective jurisdiction extending from the period before the commencement of arbitral proceedings, throughout the arbitration, and continuing until the award is enforced. The reference to section 45 is particularly significant, for that provision deals exclusively with the recognition and enforcement of foreign arbitral awards. Parliament therefore expressly contemplated that interim protection may be required in Bangladesh even where the arbitration is seated abroad.

22. The nature of the jurisdiction conferred by section 7A is equally significant. Unlike sections 12, 15 and 16 of the Act, which empower the Court to appoint, remove or substitute arbitrators and thereby exercise supervisory jurisdiction over the arbitral process, section 7A neither authorises the Court to regulate the

conduct of arbitration nor to determine the merits of the dispute. Its function is purely ancillary and protective. It enables the Court to preserve the subject matter of the dispute, maintain the status quo, secure assets and prevent irreparable prejudice until the arbitral tribunal is constituted, or, if already constituted, is in a position to grant appropriate relief. In exercising jurisdiction under section 7A, the Court neither supplants the arbitral tribunal nor assumes control over the arbitration; it merely safeguards the efficacy of the arbitral process.

23. This reflects the well-recognised distinction between **supervisory jurisdiction** and **supportive jurisdiction** in modern arbitration law. Supervisory jurisdiction concerns matters such as the constitution of the tribunal, challenges to its jurisdiction, procedural supervision and the setting aside of awards, and ordinarily belongs to the courts of the juridical seat. Supportive jurisdiction, by contrast, assists the arbitral process by preserving assets, maintaining the status quo or securing evidence without interfering with the tribunal's authority or adjudicating the parties' substantive rights. Section 7A embodies this latter jurisdiction. It is designed to ensure that the arbitral proceedings, and the eventual award, are not rendered ineffective by the dissipation of assets or alteration of the status quo.

24. The practical purpose of section 7A reinforces this interpretation. In a foreign-seated arbitration, the need for interim protection may arise before the arbitral tribunal is constituted, during the arbitral proceedings, or after the award has been rendered but before it is recognised and enforced in

Bangladesh under section 45. During any of these stages, assets situated within Bangladesh may be dissipated or transferred, thereby frustrating the enforcement of the eventual foreign award. By empowering the High Court Division to grant interim measures until enforcement under section 45, Parliament ensured that effective judicial assistance remains available throughout the life cycle of the arbitral process without conferring supervisory control over the foreign arbitration itself.

III. The Significance of the Preamble of the Act, 2001

25. The object of section 7A becomes clearer when it is read in the light of the Preamble to the Arbitration Act, 2001. Unlike the repealed Arbitration Act, 1940, which was enacted merely to consolidate and amend the law relating to arbitration in Bangladesh, the 2001 Act has a much wider legislative purpose. Its Preamble states that the Act is intended to consolidate and amend the law relating to domestic arbitration, international commercial arbitration, the recognition and enforcement of foreign arbitral awards, and matters connected therewith. Thus, Parliament deliberately expanded the scope of the legislation beyond domestic arbitrations to embrace international commercial arbitration and the enforcement of foreign awards. The expression "and matters connected therewith" further indicates that the Act was intended not only to regulate arbitral proceedings seated in Bangladesh but also to provide judicial assistance wherever necessary to ensure that arbitration remains an effective dispute resolution mechanism.

26. This legislative shift is reflected in section 7A. Unlike the 1940 Act, which was based upon extensive judicial supervision of arbitration, the 2001 Act adopts the modern approach of limited judicial intervention coupled with judicial support. Section 7A does not confer supervisory jurisdiction over the arbitral proceedings. Its purpose is to enable the Court to preserve the subject matter of the dispute, protect the rights of the parties and ensure that the arbitral process is not rendered ineffective before the tribunal can act or before the award is enforced. Interpreting section 7A as a provision intended to support, rather than supervise, arbitration is therefore consistent not only with the language of the section itself but also with the broader legislative objective reflected in the Preamble of the Arbitration Act, 2001.

IV. Whether Section 3 Excludes the Operation of Section 7A

27. The principal question is whether section 3 of the Arbitration Act, 2001 excludes the operation of section 7A where the juridical seat of arbitration is outside Bangladesh. Section 3 undoubtedly prescribes the general territorial application of the Act by providing that it applies where the place of arbitration is in Bangladesh, subject to the exceptions contained in sub-section (2). However, section 3 cannot be construed in isolation. It must be read harmoniously with the substantive provisions of the Act so that each provision is given its intended operation. It is a settled principle of statutory interpretation that a general provision should not be construed so as to defeat or render ineffective a later and more specific provision enacted by Parliament.

28. Properly construed, section 3 does not itself confer or withdraw judicial jurisdiction. Rather, it defines the territorial reach of the Act. The Court's jurisdiction is conferred by the substantive provisions of the Act, including sections 7A, 10, 12, 15, 16, 42, 45 and 46. The question, therefore, is not what section 3 says in isolation, but how it is to be reconciled with the specific jurisdiction created by section 7A.

29. If section 3 were interpreted as absolutely excluding the operation of section 7A whenever the arbitration is seated outside Bangladesh, the express words employed by Parliament in section 7A—"ধারা৪৪বা৪৫এরঅধীনসালিসীরোয়েদাদকার্যকরনাহওয়াপর্যন্ত" ("until enforcement of the award under section 44 or 45")—would be deprived of any practical effect. Section 45 deals exclusively with the recognition and enforcement of foreign arbitral awards. Parliament could not have expressly referred to section 45 if it intended section 7A to remain wholly inapplicable throughout the life of a foreign-seated arbitration. Such a construction would render the reference to section 45 largely redundant, contrary to the settled principle that every word employed by Parliament must, so far as possible, be given meaning and effect.

30. In the respectful view of this Court, the more harmonious reconciliation of the two provisions is that section 3 lays down the general territorial application of the Act, whereas section 7A creates a limited and independent protective jurisdiction of the High Court Division. That jurisdiction extends to three stages of the arbitral process, namely: (i) before the commencement of

arbitral proceedings; (ii) during the pendency of the arbitral proceedings; and (iii) after the award has been made until its enforcement, including the enforcement of a foreign arbitral award under section 45. In exercising jurisdiction under section 7A, the High Court Division neither supervises nor interferes with the foreign arbitral proceedings. Its role is confined to preserving the subject matter of the dispute and maintaining the efficacy of the arbitral process so that the eventual award is not rendered nugatory by the dissipation of assets or alteration of the status quo.

31. This interpretation is reinforced by the nature of the jurisdiction conferred under different provisions of the Act. Supervisory jurisdiction under sections 12, 15 and 16 naturally follows the juridical seat because those provisions regulate the arbitral process itself. Enforcement jurisdiction under sections 42 to 46 depends upon whether the award is domestic or foreign. Section 7A, however, serves a fundamentally different legislative purpose. It confers a supportive jurisdiction designed to preserve property or rights within Bangladesh so that the arbitral proceedings, wherever seated, are not frustrated. The location of the arbitration determines supervisory control; it does not necessarily preclude judicial assistance directed solely towards preserving the efficacy of the arbitral process.

V. Legislative Intent and Harmonious Construction of the Act

32. Having considered the rival submissions and the authorities cited at the parties, this Court is of the view that the controversy

cannot be resolved by reading section 3 in isolation. The Act, 2001 must be construed as a coherent and integrated legislative scheme in which every provision is given its proper meaning and effect. It is a settled principle of statutory interpretation that a statute should be read as a whole and that no provision should be construed in a manner that renders another provision redundant, ineffective or devoid of practical operation.

33. The legislative object of the Act is reflected in its Preamble, which declares that it was enacted to consolidate and amend the law relating to domestic arbitration, international commercial arbitration, the recognition and enforcement of foreign arbitral awards and matters connected therewith. Unlike the repealed Arbitration Act, 1940, the 2001 Act was designed to regulate not merely domestic arbitration but the broader framework of international commercial arbitration. Although the Preamble cannot control the plain words of the statute, it remains an important aid in ascertaining legislative intent where two constructions are reasonably possible.

34. The legislative history of section 7A reinforces that purpose. The Arbitration Act, 2001, as originally enacted, contained no provision empowering the Court to grant interim measures. Parliament consciously introduced section 7A by the Amendment Act of 2004, thereby conferring upon the High Court Division a limited jurisdiction to preserve the subject matter of arbitration before the commencement of proceedings, during their continuance and until enforcement of the award. The evident object of the amendment was to ensure that arbitral proceedings are not frustrated by the dissipation of assets or

alteration of the status quo before effective relief becomes available.

35. The language employed in section 7A is itself a compelling indicator of that legislative intent. Parliament authorised the High Court Division to grant interim measures **"before or during continuance of the proceedings or until enforcement of the award under section 44 or 45."** The express reference to section 45 is of particular significance because that provision deals exclusively with the recognition and enforcement of foreign arbitral awards. If section 7A were wholly inapplicable whenever the arbitration is seated outside Bangladesh, Parliament's specific reference to section 45 would serve little practical purpose. Such a construction would offend the settled principle that every word employed by the legislature must, so far as possible, be given meaning and effect.

36. The structure of the Act further demonstrates that Parliament has deliberately conferred different kinds of jurisdiction upon the Court. Sections 12, 15 and 16 confer supervisory jurisdiction over the arbitral process itself. Sections 42 to 46 regulate the recognition, enforcement and setting aside of arbitral awards. Section 7A, however, performs an altogether different function. It neither regulates the conduct of arbitration nor determines the merits of the dispute. Its purpose is confined to preserving assets, maintaining the status quo and protecting the efficacy of arbitration until the arbitral tribunal or the enforcing court is able to grant effective relief.

37. Once this distinction between supervisory jurisdiction and supportive jurisdiction is appreciated, the relationship between sections 3 and 7A becomes considerably clearer. Section 3 lays down the general territorial application of the Act. It does not, by itself, create or extinguish the substantive jurisdictions conferred elsewhere in the statute. Whether a particular provision is governed by the territorial limitation in section 3 necessarily depends upon the nature and purpose of the jurisdiction created by that provision. Supervisory powers ordinarily follow the juridical seat; supportive jurisdiction, however, may legitimately operate upon persons or property situated within Bangladesh without interfering with the foreign arbitral process.

38. This construction accords with the practical realities of international commercial arbitration. Commercial disputes frequently involve assets situated in jurisdictions other than the agreed arbitral seat. Unless the courts of the jurisdiction where those assets are located are able to grant temporary protective measures, the eventual award may become incapable of effective enforcement. An order under section 7A operates only upon persons or property within Bangladesh. It neither regulates the foreign arbitration, nor intrudes upon the tribunal's authority, nor determines any issue on the merits. It merely preserves the status quo until the arbitral tribunal is able to exercise its own jurisdiction or the award is enforced.

39. Accordingly, a harmonious construction of sections 3, 7A and 45 leads to the conclusion that section 3 defines the general territorial application of the Act, whereas section 7A creates a

limited, ancillary and protective jurisdiction enabling the High Court Division to preserve the subject matter of the dispute until the arbitral award, including a foreign award enforceable under section 45, is recognised and enforced in Bangladesh. Such an interpretation gives meaningful effect to every provision of the Act, advances the legislative object underlying the 2001 Act and preserves the distinction between judicial assistance and supervisory jurisdiction recognised in modern international arbitration law.

VI. The View in *Accom* and Its Restrictive Construction

40. Following *Unicol*, the jurisprudence of the High Court Division evolved along two distinct lines. One line of authority adopted a restrictive interpretation of the Arbitration Act, 2001 by treating *Unicol* as conclusively limiting the jurisdiction of the Bangladeshi courts in respect of foreign-seated arbitrations. In *Uzbekistan Airways*, the High Court Division, relying principally on *Unicol*, held that section 10 of the Act, 2001 was inapplicable where the seat of arbitration lay outside Bangladesh. The majority decision in *Accom* substantially followed the same approach. With profound respect, however, the majority appears to have accorded overriding significance to the territorial provision contained in section 3 of the Act without undertaking a separate examination of the language, purpose and legislative scheme of section 7A. The jurisdiction conferred by section 7A is neither supervisory nor interventionist. It does not regulate the conduct of the arbitral proceedings or interfere with the authority of the arbitral tribunal. Rather, it confers a limited and ancillary jurisdiction upon the High Court Division to preserve the subject matter of

the dispute so that the arbitral process and any eventual award are not rendered ineffective. Such protective jurisdiction is conceptually distinct from the supervisory jurisdiction exercised by the courts of the arbitral seat.

VII. Effect of the Overlooked Binding Decision

41. The Larger Bench in *Accom Travels and Tours v. Oman Air SAOC*, by a majority of 2:1, held that sections 7, 7A and 10 of the Arbitration Act, 2001 are inapplicable to foreign-seated arbitrations, except that interim measures under section 7A may be granted at the stage of enforcement of a foreign arbitral award. In arriving at that conclusion, the majority relied principally upon *Uzbekistan Airways*, 10 BLC 614, Civil Petition No. 1112 of 2005 and, ultimately, *Unicol Bangladesh Ltd. v. Maxwell Engineering Works Ltd.*, 56 DLR (AD) 166. However, the majority neither referred to nor considered the earlier binding decision of the Appellate Division in *Mosharaf Composite Textile Mills Ltd. v. ECOM Agroindustrial Corp. Ltd.*, reported in 4 SCOB (2015) AD 28. In *ECOM*, by judgment dated 20.06.2015, the Appellate Division affirmed the stay of a suit instituted in Bangladesh so as to enable arbitration already pending in Liverpool to proceed in accordance with the parties' arbitration agreement.

42. The legal position was clarified even further when the Appellate Division, in ECOM, while dismissing Civil Review Petition No. 213 of 2015 by judgment dated 11.07.2017, expressly considered *Unicol Bangladesh* and observed:

> "*The learned counsel has referred to a decision of this Court in Unicol Bangladesh Blocks Thirteen Vs Maxwell Engineering Works Ltd., 56 DLR (AD) 166 and submits that in that case similar question arose. ... This Court did not deal with section 34 of the Arbitration Act, 1940, which is not in resemblance with section 10 of the present Ain. Moreover, this Court by a four-member Bench has maintained the judgment of the High Court Division staying the further proceedings of the suit on the reasoning that the parties should proceed with the arbitration proceedings. In view of the above, this Court has* ***pro tanto overruled Unicol Bangladesh****."*
>
> **[Emphasis supplied by this Court]**

43. The expression **"pro tanto overruled"** signifies that an earlier decision is overruled only to the extent that it is inconsistent with the later decision and not in its entirety. Thus, by its review judgment in *ECOM*, the Appellate Division expressly displaced that part of *Unicol Bangladesh Ltd. v. Maxwell Engineering Works Ltd.*, 56 DLR (AD) 166, which held that section 10 of the Arbitration Act, 2001 was inapplicable to foreign-seated arbitrations. The remaining principles laid down in *Unicol*, insofar as they are not inconsistent with *ECOM*, continue to retain their precedential value.

44. The significance of this development cannot be overstated. When the Larger Bench rendered its decision in *Accom* on 12.12.2021, *Unicol* had already ceased, for more than four years, to be good law on the applicability of section 10 to foreign-seated arbitrations. Notwithstanding that position, the

majority substantially founded its reasoning upon *Unicol* without noticing either the Appellate Division's judgment in *ECOM* or its subsequent review judgment expressly holding that *Unicol* stood **pro tanto** overruled. Once the very proposition of law for which *Unicol* was relied upon had already been authoritatively displaced by the Appellate Division, its continued reliance as the principal foundation for interpreting section 10 became open to serious doubt. To that extent, the jurisprudential foundation of the majority's reasoning in *Accom* in relation to section 10 stood materially weakened.

45. The ratio of *ECOM* is clear and unequivocal. The Appellate Division upheld the application of section 10 of the Arbitration Act, 2001 to stay a suit instituted in Bangladesh in deference to arbitration proceedings already pending in Liverpool. In doing so, it did not treat the foreign set of arbitration as a bar to the exercise of judicial assistance under section 10. Nor did it consider section 3 or any other provision of the Arbitration Act as restricting the operation of section 10 merely because the arbitration was seated outside Bangladesh. The decision therefore necessarily rejects the proposition that section 10 is confined exclusively to domestic arbitrations.

46. The binding force of *ECOM* is beyond controversy. As observed by Mahmudul Islam in *Constitutional Law of Bangladesh*, a decision of the Appellate Division is binding under Article 111 of the Constitution when it "(a) decides a question of law, (b) is based on a principle of law, or (c) enunciates a principle of law." The interpretation placed by the

Appellate Division upon section 10 in *ECOM* is therefore a declaration of law binding upon all subordinate courts. Consequently, *Unicol* can no longer be cited as authority for the proposition that section 10 is inapplicable to foreign-seated arbitrations.

47. However, the omission to consider *ECOM* is significant because the majority judgment in *Accom* was founded substantially on *Unicol Bangladesh*, 56 DLR (AD) 166. The Larger Bench held that sections 7, 7A and 10 of the Arbitration Act, 2001 do not apply to foreign-seated arbitrations on the basis that section 3 confines the operation of Part I of the Act to arbitrations seated in Bangladesh. But before *Accom* was decided, the Appellate Division in *ECOM* had already upheld the application of section 10 to stay a suit in Bangladesh in favour of arbitration proceedings pending in Liverpool. This clearly shows that the existence of a foreign seat does not, by itself, exclude all forms of judicial intervention under the Arbitration Act.

48. The decisions in *ECOM* therefore represent an important development in the law. They demonstrate that the Arbitration Act, 2001 does not invariably make every form of judicial intervention dependent on the juridical seat of arbitration. Rather, they recognise that there is a distinction between the Court's supervisory jurisdiction over the arbitral process and its power to provide judicial assistance in support of arbitration. That distinction is directly relevant to the proper interpretation of section 7A. For this reason, the reasoning adopted in *Accom*

deserves reconsideration by a court of competent jurisdiction in an appropriate case.

VIII. Applicability of Section 151 CPC in Place of Section 10

49. Another aspect of the majority decision in *Accom* which requires careful consideration is its conclusion that, although sections 7, 7A and 10 of the Act, 2001 were held to be inapplicable to foreign-seated arbitrations, the Court could nevertheless stay the suit by invoking its inherent jurisdiction under section 151 CPC and refer the parties to arbitration in accordance with their arbitration agreement.

50. With profound respect, the majority reasoning in *Accom* appears to contain an inherent inconsistency. Having held that section 10, the special statutory provision governing the stay of judicial proceedings in favour of arbitration, is inapplicable to foreign-seated arbitrations, the majority nevertheless held that substantially the same relief could be granted by invoking the Court's inherent jurisdiction under section 151 CPC. Thus, while denying the applicability of section 10 to stay a suit in Bangladesh in aid of a foreign-seated arbitration, the judgment permitted the Court to achieve the very same result through its inherent powers. If Parliament, as understood in *Accom*, did not intend section 10 to apply to foreign-seated arbitrations, it is difficult to appreciate how the identical relief could nevertheless be granted under the general provisions of the CPC.

51. Such an approach raises a fundamental question of statutory interpretation. It is well settled that where Parliament has enacted a special statute governing a particular subject, the rights and remedies of the parties are to be determined within the framework of that statute. The inherent jurisdiction preserved by section 151 CPC is intended to supplement the law where no specific provision exists; it cannot ordinarily be invoked to circumvent, enlarge or achieve indirectly what the special statute is taken to prohibit directly. If the territorial limitation contained in section 3 excludes the operation of section 10, there appears to be no principled basis for avoiding that limitation by resorting to section 151. Conversely, if a suit may lawfully be stayed under section 151 in aid of a foreign-seated arbitration, it becomes difficult to explain why the same relief cannot be granted under section 10 itself, the very provision enacted by Parliament for that purpose.

52. The pronouncements of the Appellate Division in *ECOM* has recognised the applicability of section 10 to foreign-seated arbitrations and has held that *Unicol* stands **pro tanto** overruled. In that light, the necessity of resorting to section 151 disappears altogether. Where Parliament has provided a specific statutory mechanism, recourse to the Court's inherent jurisdiction should ordinarily be unnecessary. For these reasons, this Court is of the respectful view that the reliance placed in *Accom* upon section 151 introduces a doctrinal tension into its reasoning which, in the interests of coherence and certainty in the law, may merit authoritative reconsideration by a higher forum.

IX. Recent Development in the *Italian-Thai*Case

53. Moreover, recent development in the *Italian-Thai* case (Civil Petition for Leave to Appeal No. 1828 of 2024, judgment dated 01.09.2024) is also of considerable significance. Following the decision in *Accom*, the High Court Division dismissed another application under section 7A on the ground that the provision was inapplicable to a foreign-seated arbitration. However, when the matter came before the Appellate Division by way of Civil Petition for Leave to Appeal, the Appellate Division continued interim protection until the first session of the arbitral tribunal in Singapore. In this case, although our Appellate Division did not finally determine the scope of section 7A, nonetheless the petition was not dismissed on the basis that the High Court Division had correctly interpreted section 7A. Finally, it disposed of the matter as having become infructuous after the arbitral tribunal in Singapore had assumed jurisdiction in terms of section 7A(6). The Appellate Division thus consciously refrained from expressing any opinion on the correctness of the interpretation adopted by the High Court Division. Consequently, the question whether section 7A is available in aid of a foreign-seated arbitration remains open and has yet to be authoritatively determined by a reasoned pronouncement of the Appellate Division.

This Court's Respectful View

54. With the utmost respect to the majority decision in *Accom*, this Court finds itself, with great humility, unable to subscribe to the reasoning adopted therein. **This court is of the consideredview that sections 7, 7A and 10 of the Arbitration Act, 2001 are**

capable of operating in aid of arbitral proceedings even where the juridical seat of arbitration is outside Bangladesh. Those provisions, properly construed, are intended to facilitate and support the arbitral process by conferring limited judicial assistance, rather than to exercise supervisory jurisdiction over the arbitral proceedings themselves.

55. Viewed from that perspective, the invocation of section 151 CPC, as in *Accom*, in lieu of section 10 of the Arbitration Act, 2001 appears, with respect, to be neither necessary nor warranted. Where Parliament has provided a specific statutory mechanism under section 10 for the grant of the relief in question, recourse to the Court's inherent jurisdiction would ordinarily be inappropriate.

Binding Effect of the Larger Bench Decision

56. The foregoing discussion demonstrates that substantial questions have arisen regarding the proper interpretation of sections 3, 7A and 10 of the Arbitration Act, 2001, particularly in light of the subsequent decisions of the Appellate Division in the *ECOM* cases and the judicial approach reflected in the *Italian-Thai* matter. Those authorities appear to recognise that supportive judicial intervention in aid of arbitration is conceptually distinct from supervisory jurisdiction over arbitral proceedings and later enforcement and that such intervention may, in appropriate circumstances, coexist with the principle that supervisory jurisdiction ordinarily follows the arbitral seat.

57. This Court has also found considerable force in the petitioner's submission that section 7A creates a limited protective jurisdiction directed towards preserving the efficacy of arbitration and not towards supervising the arbitral process. Equally persuasive is the submission that a harmonious reading of the Arbitration Act, 2001, viewed in the light of its legislative history, Preamble and statutory scheme, may reasonably admit of an interpretation whereby interim measures under section 7A are available in aid of foreign-seated arbitrations in respect of persons or property situated within Bangladesh.

The Decision and Order

58. However, the fact that *Accom* did not consider *ECOM* does not authorise this Court to disregard the decision of the Larger Bench. The doctrine of precedent is founded not only upon the correctness of legal reasoning but also upon the necessity of maintaining certainty, consistency and institutional discipline in the administration of justice. Although this Court has, with utmost respect, expressed its reservations regarding certain aspects of the reasoning adopted by the majority in *Accom*, it is not open to a Single Bench to disregard or decline to follow a binding decision of a Larger Bench of the High Court Division on that ground alone. Whether *Accom* continues to represent the correct interpretation of sections 7A and 10, is a matter which can be authoritatively reconsidered only by the Appellate Division or by a Bench of co-equal or larger strength.

59. Accordingly, in faithful observance of the doctrine of *stare decisis* and the settled principles of judicial discipline governing Benches of coordinate jurisdiction, this Court remains bound by the majority decision in *Accom Travels and Tours v. Oman Air SAOC*. Since the arbitration agreement in the present case designates Singapore as the juridical seat of arbitration, the binding ratio laid down in *Accom* precludes the exercise of jurisdiction under section 7A of the Act, 2001.

60. Consequently, the present application is not maintainable and is rejected *in limine*, without entering into the merits of the controversy and without prejudice to the petitioner's right to pursue any remedy that may be available before the competent arbitral tribunal or any other forum in accordance with law.

(Justice Md. Toufiq Inam)

Ashraf/ABO.