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

Present:

Mr. Justice Md. Toufiq Inam

Arbitration Application No. 30 of 2026.

An application under Section 7A of the Arbitration Act, 2001, read with Section 151 of the Code of Civil Procedure, 1908.

And

IN THE MATTER OF:

Kochan Management Inc. (KMI),

.......Petitioner.

-Versus-

AIIM Ventures Limited (AVL) and others.

.... Respondents.

IN THE MATTER OF:

AIIM Ventures Limited (AVL), of address: Monem Business District, 111 Bir Uttam, CR Dutta Road, Dhaka-1205, represented by its Managing Director.

.... Respondent No.1-Applicant.

Mr. Md. Ruhul Quddus Kazal, Attorney General, with
Mr. Md. Mustafizur Rahman Khan, Senior Advocate
Mr. Mahin M. Rahman,
Mr. Tanjim Rafeed,
Mr. Ashiqur Rahman,Advocates

.... For the Respondent No. 1-Applicant.

Mr. Fida M. Kamal, Senior Advocate, with
Mr. Md. Aneek R. Haque, Senior Advocate
Mr. Saqeb Mahbub,
Mr. Sajid Hassan, and
Mr. Rifat Rahman, Advocates

.........For the petitioner.

The 27th July, 2026.

Md. Toufiq Inam, J.

This is an application filed at the instance of respondent No. 1, AIIM Venture Limited ("AVL"), seeking modification of the interim order previously passed by this Court by incorporating certain additional interim measures to facilitate the day-to-day operation of respondent No. 2 Company-ServicEngine (BD) Limited.

Pending disposal of the application under section 7A of the Arbitration Act, 2001, this Court, by its earlier order dated 09.06.2026, granted the following interim measures:

> **(a)** respondent No. 1 was restrained by an order of injunction from withdrawing, transferring, remitting or otherwise dealing with any funds lying in the bank accounts of respondent No. 2 Company, including but not limited to the accounts described in Schedule-1 and maintained with pro-forma respondent Nos. 4 to 6, except for payment of employee salaries, statutory dues and essential utility expenses;
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> **(b)** respondent No. 1 was directed to preserve and maintain all accounting records, books of account, financial data, electronic records and software systems relating to respondent No. 2 Company, including the Redbook accounting software and all associated databases, credentials, access logs, backups and supporting documents, and was restrained from

tampering with, altering, deleting, destroying or otherwise interfering with the integrity of such records; and

(c) pro-forma respondent No. 7 was directed to preserve, secure and maintain all accounting records, financial information and electronic data of respondent No. 2 Company stored in the Redbook accounting software and/or cloud platform and not to permit any alteration, deletion, destruction or impairment thereof during the subsistence of the order.

Mr. Md. Ruhul Quddus Kazal, learned Senior Advocate, appearing with Mr. Mustafizur Rahman Khan, learned Senior Advocates, and Mr. Mahin M. Rahman for the applicant-Respondent No. 1, in support of the present application seeking modification of the interim order dated 09.06.2026 by incorporation of additional interim preservation measures, submits that Respondent No. 1 has already responded to the notice invoking arbitration, appointed its nominee arbitrator and unequivocally expressed its willingness to have all disputes resolved through the agreed arbitral mechanism. He contends that the present application does not seek adjudication of the merits of the disputes but merely seeks modification of the interim arrangement to ensure that the business of Respondent No. 2 Company is not brought to a standstill pending arbitration.

Referring to Clause 2.4 of the Shareholders' Agreement, learned Senior Advocate submits that the petitioner, KMI expressly agreed to work exclusively with AVL so long as it remained a shareholder of Respondent No. 2 Company and further undertook that neither it nor its representatives or assignees would engage in any business in Bangladesh competing with or similar to that of the Company except through AVL. According to him, this demonstrates that the parties intended to operate as commercial partners and that continuity of the Company's business formed the foundation of their contractual relationship. He, however, alleges that KMI is itself engaged in a competing business in breach of the said covenant.

Placing reliance on Clause 2.6 of the Agreement, he further submits that AVL was contractually entrusted with the day-to-day management and operation of the Company, including procurement of facilities, equipment and personnel, and was authorised to take all operational decisions necessary for running the business, including management of the Company's assets and execution of documents relating thereto, subject to prior communication to KMI. It is, therefore, contended that the interim order has substantially curtailed the operational authority contractually vested in AVL and requires appropriate modification.

Referring next to Clause 2.9 of the Agreement, learned Senior Advocate submits that the parties agreed to jointly supervise overseas operations, including the delivery centre in El Salvador, and expressly stipulated that, irrespective of future geographical expansion, all revenues would continue to be invoiced from Bangladesh unless otherwise agreed in writing. According to him, these provisions underscore the parties' common intention to ensure uninterrupted business operations. He further submits that, by its letter dated 21.07.2026 addressed to Respondent No. 1, the petitioner acknowledged that any claim for losses or damages arising out of AVL's alleged breaches would be determined in arbitration. It is, therefore, contended that the present application under section 7A of the Arbitration Act, 2001 is not maintainable, as the petitioner has an adequate remedy in damages and any loss, if ultimately established, is compensable in monetary terms.

Opposing the application, Mr. Fida M. Kamal, learned Senior Advocate, appearing with Mr. Aneek R. Haque, Senior Advocate, Mr. Saqeb Mahbub, Mr. Sajid Hassan and Mr. Rifat Rahman, learned Advocates for the petitioner, submits that upon discovering the alleged financial irregularities and deficiencies in the management of Respondent No. 2 Company, the petitioner made bona fide efforts to resolve the disputes amicably. As those efforts failed, it invoked the arbitration agreement contained in Clause 4.2 of the Shareholders' Agreement by issuing a notice commencing arbitral proceedings. He submits that all disputes arising out of the Agreement now fall within the exclusive jurisdiction of the arbitral tribunal.

He further contends that several averments made in the present application constitute admissions which lend support to the petitioner's case. According to him, the respondents have acknowledged discrepancies relating to financial records, Director's Fund transactions, disputed corporate documents and serious disagreements concerning the management and accounts of the Company. These circumstances, he submits, reinforce the necessity of maintaining, rather than diluting, the existing interim safeguards. He further argues that the application effectively invites this Court to determine seriously disputed questions of fact without evidence and in advance of the arbitral tribunal, despite the absence of any disclosed counterclaim. The application, therefore, deserves to be rejected.

Having considered the rival submissions advanced by the learned Senior Advocates appearing for the respective parties, perused the pleadings and materials placed before the Court, and examined the scope and object of section 7A of the Arbitration Act, 2001, this Court is of the considered view that the jurisdiction conferred by section 7A is intended to facilitate, and not to supplant, the arbitral process. The Court is empowered to grant interim measures only for the purpose of preserving the subject matter of the arbitration, maintaining the existing legal and commercial status quo between the parties, and ensuring that the arbitral proceedings and any eventual award are not rendered nugatory. Such jurisdiction is protective and equitable in nature. It is not intended to determine the substantive rights of the parties, grant final relief, or prejudge issues that properly fall within the exclusive domain of the arbitral tribunal.

It appears from the record that the petitioner, KMI, and respondent No. 1, AVL, entered into a Shareholders' Agreement dated 22.11.2022 (Annexure-A2), governing their respective rights and obligations as shareholders and regulating the management and affairs of respondent No. 2 Company. Upon disputes arising between the parties, the petitioner invoked the arbitration agreement contained in Clause 4.2 of the Shareholders' Agreement by issuing a notice commencing arbitral proceedings. Respondent No. 1 responded to the said notice and appointed its nominee arbitrator. There is, therefore, no dispute that the parties have elected to resolve their disputes through arbitration in accordance with their contractual bargain.

The present application has been filed by respondent No. 1 seeking partial modification of the interim order dated 09.06.2026 by way of additional preservation orders. The relief sought is not for variation of the substantive rights of the parties but for appropriate directions regulating the conduct of the Company's business during the pendency of the arbitral proceedings so that the subject matter of the arbitration is preserved without unnecessarily impairing the Company's day-to-day operations.

The materials before the Court reveal that respondent No. 2 is an operating commercial enterprise carrying on an ongoing business. The preservation of such a business cannot be achieved merely by freezing its assets or prohibiting all financial transactions. A complete embargo on the operation of the Company's bank accounts or its ordinary commercial activities may result in disruption of its business, inability to discharge statutory obligations, non-payment of employees and service providers, deterioration of customer confidence and diminution of the commercial value of the enterprise itself. Such consequences would not preserve the subject matter of the arbitration but may instead frustrate it by eroding the very business which the parties ultimately seek to protect.

Conversely, unrestricted operation of the Company's finances during the pendency of the arbitration may give rise to the legitimate apprehension that assets may be dissipated or transactions undertaken which could prejudice the efficacy of the arbitral proceedings. It is, therefore, incumbent upon the Court to strike a balance between preserving the business as a going concern and ensuring that neither party is permitted to alter the financial or commercial position of the Company in a manner capable of defeating the arbitral process.

In the opinion of this Court, that balance can appropriately be achieved by permitting respondent No. 1 to utilise the Company's bank accounts exclusively for bona fide operational expenses incurred in the ordinary course of business, while simultaneously restraining transactions of an extraordinary nature, including distribution of profits, repayment of shareholder loans, related-party transactions, extraordinary capital expenditure or creation of encumbrances over the assets of the Company. The accompanying directions requiring maintenance of complete books of account, supporting vouchers and periodic disclosure to the petitioner constitute adequate safeguards to ensure transparency, accountability and continued judicial supervision pending constitution of the arbitral tribunal.

This Court also finds that Clause 2.9 of the Shareholders' Agreement expressly contemplates that all revenues generated from the business shall continue to be invoiced from Bangladesh unless otherwise agreed in writing by the parties. Continuation of the existing invoicing arrangement merely preserves the contractual mechanism voluntarily adopted by the parties. It neither creates any new contractual obligation nor confers any substantive advantage upon either side. Rather, it maintains the contractual and commercial status quo pending adjudication of the disputes by the arbitral tribunal and ensures that neither party unilaterally alters the agreed revenue structure during the pendency of the arbitration.

This Court is, therefore, satisfied that the additional preservation orders sought by respondent No. 1 constitute a limited and necessary supplementation of the interim order dated 09.06.2026. The directions are intended solely to preserve the subject matter of the arbitration, maintain the existing contractual and commercial status quo, protect respondent No. 2 as a going concern and ensure that the arbitral proceedings remain effective. They are proportionate to the circumstances of the case, protective in nature and do not amount to an adjudication of the merits of the disputes or confer any final relief upon either party. All questions relating to the rights and liabilities of the parties shall remain open for determination by the arbitral tribunal.

Accordingly, this Court considers it just and expedient, in exercise of the jurisdiction conferred by section 7A of the Arbitration Act, 2001, to supplement the interim order dated 09.06.2026 by incorporating the following additional preservation directions, which shall operate pending constitution of the Arbitral Tribunal or until further orders of this Court, whichever is earlier:

(d) Respondent No. 1 (AVL) shall be permitted to operate and utilise the bank accounts of Respondent No. 2 Company strictly for the purpose of meeting bona fide operational expenses incurred in the ordinary course of business, including but not limited to payment of salaries and employee benefits, office rent, utility bills, internet and communication charges, software licences and technology subscriptions, IT infrastructure expenses, procurement of equipment and consumables, maintenance charges, security and cleaning services, employee transportation, meals and catering expenses, generator and fuel expenses, professional, consultancy and legal fees, business development expenses, certification and regulatory compliance costs, vehicle-related expenses, statutory fees, taxes, VAT and other governmental dues, and such other expenditures as are directly connected with and reasonably necessary for preserving the business, operations and service delivery of Respondent No. 2 Company as a going concern.

Respondent No. 1 shall maintain complete books of account together with all supporting vouchers, invoices and records relating to every payment made pursuant to this order and shall furnish to the petitioner, within seven (7) days after the end of each calendar month, a statement of account accompanied by a summary of all payments and supporting particulars made during the preceding month.
However, Respondent No. 1 shall not, without prior leave of this Court or, after its constitution, without the permission of the Arbitral Tribunal:

(i) transfer or disburse any funds by way of dividend or distribution of profits;

(ii) repay any shareholder loan or make any payment to any shareholder or its affiliate otherwise than in the ordinary course of business;

(iii) enter into any related-party transaction;

(iv) incur any extraordinary capital expenditure;

(v) create any mortgage, charge, lien, security interest or other encumbrance over any asset, receivable or property of Respondent No. 2 Company; or

(vi) undertake any transaction outside the ordinary course of business.

(e) Both parties shall maintain the existing contractual invoicing arrangement. Accordingly, all revenues generated from the business of Respondent No. 2 Company shall continue to be invoiced by Respondent No. 2 in accordance with the existing contractual arrangement between the parties. Neither party shall transfer, divert or cause to be transferred or diverted such invoicing, revenues or receivables to any other entity or jurisdiction without prior leave of this Court or, after its constitution, such order as may be passed by the Arbitral Tribunal.

These directions are purely interim and preservative in nature and are intended solely to maintain the subject matter of the arbitration and the existing contractual and commercial status quo. Nothing contained herein shall be construed as expressing any opinion on the merits of the disputes between the parties or as conferring any substantive right upon either side.

Save as expressly supplemented herein, all other directions contained in the interim order dated 09.06.2026 shall remain unaltered and shall continue in full force and effect until further orders.

(Justice Md. Toufiq Inam)

Ashraf/ABO.