

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

WRIT PETITION NO. 6300 OF 2016

WITH

WRIT PETITION NO. 1699 OF 2015

WITH

WRIT PETITION NO. 61 OF 2016

AND

WRIT PETITION NO. 1607 OF 2016

IN THE MATTER OF:

Applications under Article 102 of the Constitution of the
People's Republic of Bangladesh.

-AND-

IN THE MATTER OF:

Association of Ship Recycling in Bangladesh, BBC
Bhaban, South Shitalpur, Shitakunda, Chittagong
represented by its President Md. Abul Kashem and another
.....Petitioners

-Versus-

The Government of Bangladesh represented by the
Secretary, Ministry of Commerce, Bangladesh Secretariat,
Dhaka and others

..... Respondents

(In Writ Petition No. 6300 of 2016)

-AND-

Mr. Nayeem Shah Imran, Managing Director of Bhatiary
Ship Breakers Ltd. and another

.....Petitioners

-Versus-

The Government of Bangladesh represented by the
Secretary, Ministry of Commerce, Bangladesh Secretariat,
Dhaka and others

.....Respondents

(In Writ Petition No. 1699 of 2015)

-AND-

Abu Taher, son of Abdul Hakim, President, Bangladesh
Ship Breakers' Association

.....Petitioner

-Versus-

The Government of Bangladesh represented by the Secretary, Ministry of Commerce, Bangladesh Secretariat, Dhaka and others

.....Respondents

(In Writ Petition No. 61 of 2016)

- AND -

Association of Ship Recycling in Bangladesh, BBC Bhaban, South Shitalpur, Shitakunda, Chittagong represented by its President Md. Abul Kashem and another

.....Petitioners

-Versus-

Government of the People's Republic of Bangladesh represented by the Secretary, Ministry of Industries, 91, Motijheel C/A, Dhaka and others

..... Respondents

(In Writ Petition No. 1607 of 2016)

Mr. Rokanuddin Mahmud with

Mr. Md. Shaharia Kabir, Advocates

.....For the petitioners in Writ Petition Nos. 6300 of 2016 and 1607 of 2016.

Mr. Murad Reza with

Mr. Mejbahur Rahman,

Ms. Samia Afroz Khan and

Ms. Sayeda Sharmin Esha, Advocates

....For the respondent no. 7 in Writ Petition No. 6300 of 2016 and the respondent no. 6 in Writ Petition No. 1607 of 2016.

Mr. Tanjib-ul Alam with

Mr. Mejbahur Rahman,

Ms. Samia Afroz Khan and

Ms. Sayeda Sharmin Esha, Advocates

....For the petitioners in Writ Petition Nos. 1699 of 2015 and 61 of 2016.

Mr. Rokanuddin Mahmud with

Mr. Md. Shaharia Kabir, Advocates

....For the respondent no. 5 in Writ Petition Nos. 1699 of 2015 and 61 of 2016.

Heard on 03.01.2017, 15.01.2017,
18.01.2017, 07.03.2017, 22.03.2017,
23.03.2017 and 29.03.2017.

Judgment on 05.04.2017 and 09.04.2017.

Present:

Mr. Justice Moyeenul Islam Chowdhury

-And-

Mr. Justice J. B. M. Hassan

MOYEENUL ISLAM CHOWDHURY, J:

As the facts and circumstances of Writ Petition Nos. 6300 of 2016, 1699 of 2015, 61 of 2016 and 1607 of 2016 are intertwined, they have been heard together and this consolidated judgment disposes of them all.

In Writ Petition No. 6300 of 2016, a Rule Nisi was issued calling upon the respondents to show cause as to why the Memo No. বাম/টিও-২/এ-১৭/৮৮(অংশ-৪)/৫৬ dated 25.02.2016 issued by the respondent no. 4 allowing the respondent no. 7 to continue with their business along with the petitioner-Association in violation of Section 3(2)(d) of the Trade Organizations Ordinance, 1961 and Rule 2(xvi) of the Ship Breaking and Recycling Rules, 2011 should not be declared to be without lawful authority and of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

The case of the petitioners, as set out in Writ Petition No. 6300 of 2016, in short, is as follows:

The petitioner no. 1 is a trade association under the name and style “Association of Ship Recycling in Bangladesh” (ASRB) and a trade body recognized both by the Ministry of Commerce and the Ministry of Industries. The petitioner no. 2 is the President of the petitioner no. 1-Association. Anyway, the Government framed the Ship Breaking and Recycling Rules, 2011 (hereinafter referred to as the Rules of 2011) for the purpose of effective management of the ship recycling industry in pursuance of the directives of the

Supreme Court of Bangladesh. The Rules of 2011 came into force on 12.12.2011. According to Rules 9 and 10 of the Rules of 2011, every scrap vessel imported is required to obtain a beaching permission from the Port Authority through the Ship Building and Ship Recycling Board (SBSRB). As per the provisions of Rule 52, before establishment of SBSRB by the Government, all functions of the board shall be performed directly by the Ministry of Industries. In order to obtain any beaching permission, every importer is required to submit his trade body's valid membership certificate and recommendation from SBSRB in accordance with Rules 9.6 and 10(d) of the Rules of 2011. The petitioner no. 1-Association has been formed with valid members who are carrying on ship recycling activities in the approved ship recycling yard in the ship recycling zone. The Ministry of Commerce vide letter bearing no. বাম/টিও-২/এ-৪১/২০১২/ dated 23.10.2014 recognized the petitioner no. 1-Association as a trade body and on the same date (23.10.2014), the self-same Ministry also issued a licence bearing no. 14/2014 in favour of the petitioner no. 2. Besides, the Ministry of Industries accorded recognition to the petitioner-Association vide Memo No. 36.00.0000.061.18.004.15-800 dated 20.12.2015. However, the respondent no. 7 (BSBA), though a trade organization formed by the ship breakers, failed to change its Memorandum of Association in conformity with the Rules of 2011. The respondent no. 7 by Memo No. বিএসবিএ/প্রশাসন/২০১৫/১১২ dated 27.07.2015 applied to the Ministry of Commerce to provide it with a Trade Organization Licence (T.O Licence) against its new name, that is to say, Bangladesh Ship Breakers and Recyclers Association (BSBRA). In reply to the above Memo of the respondent no. 7

dated 27.07.2015, the Ministry of Commerce by its Memo No. বাম/টিও-২/এ-১৭/৮৮(৪)/২৯৬ dated 24.08.2015 declined to provide the respondent no. 7 with any T. O Licence and requested it to submit an amended Memorandum of Association having been approved by the Company Court under Section 12(2) of the Companies Act, 1994. Anyway, the petitioner-Association has been legally formed and it has obtained necessary permission both from the Ministries of Commerce and Industries. On the other hand, the respondent no. 7 having no T.O Licence and due approval has been illegally working as a trade body.

The respondent no. 7 filed Writ Petition No. 61 of 2016 challenging the letter of approval of the respondent no. 1 in favour of the petitioner-Association bearing Memo No. 36.00.0000.061.18.004.15-800 dated 20.12.2015 and obtained a Rule Nisi along with a stay order. Thereafter the petitioner no. 2 filed Civil Petition For Leave To Appeal No. 223 of 2016 against the interim order of stay passed by the High Court Division in Writ Petition No. 61 of 2016 and the Appellate Division by its order dated 01.02.2016 stayed the operation of the stay order of the High Court Division till disposal of the Rule. Meanwhile, the Ministry of Commerce sent Memo No. বাম/টিও-২/এ-১৭/৮৮(অংশ-৪)/১৯ dated 26.01.2016 to the respondent no. 2 explaining all the material facts in respect of the respondent no. 7 and requested the respondent no. 2 to take legal action against the respondent no. 7; but the respondent no. 1 issued a beaching permission unlawfully after issuance of the Memo dated 26.01.2016. The petitioner no. 2 then filed Writ Petition No. 1607 of 2016 before the High Court Division for a direction upon the

respondents not to issue any beaching permission of the imported scrap vessels without any trade body's valid membership certificate as per Rules 9.6 and 10(d) of the Rules of 2011. The High Court Division issued a Rule Nisi and restrained the respondents by an interim order of injunction from granting any beaching permission to any person other than a member of the trade body as defined in the Rules of 2011 for a period of 6(six) months. As against the interim order dated 14.02.2016 passed by the High Court Division in Writ Petition No. 1607 of 2016, the respondent no. 7 filed Civil Petition For Leave To Appeal No. 516 of 2016 before the Appellate Division and the same was dismissed as being not pressed on 29.02.2016. However, the respondent no. 7 also filed Writ Petition No. 2156 of 2016 challenging the Memo No. বাম/টিও-২/এ-১৭/৮৮(অংশ-৪)/১৯ dated 26.01.2016 and obtained a Rule Nisi along with an interim order of stay. As against the interim order of stay dated 23.02.2016 passed by the High Court Division in Writ Petition No. 2156 of 2016, the petitioners filed Civil Petition For Leave To Appeal No. 1199 of 2016 before the Appellate Division and the same was heard by the Appellate Division on 09.05.2016 and the interim order of stay passed by the High Court Division was modified by the Appellate Division. At one stage, the respondent no. 4 illegally issued the Memo No. বাম/টিও-২/এ-১৭/৮৮(অংশ-৪)/৫৬ dated 25.02.2016 allowing the respondent no. 7 to continue with the business of ship recycling in violation of Section 3(2)(d) of the Trade Organizations Ordinance, 1961 (in short, the Ordinance of 1961) and Rule 2(xvi) of the Rules of 2011. Hence the Writ Petition.

The respondent no. 7 (BSBRA) has contested the Rule issued in Writ Petition No. 6300 of 2016 by filing an Affidavit-in-Opposition. The case of the respondent no. 7, as set out therein, in brief, runs as under:

It is denied that the petitioner no. 1-Association (ASRB) is recognized by the Ministry of Industries and the issuance of the trade licence in favour of the petitioner no. 1 is under challenge in Writ Petition No. 1699 of 2015. However, the petitioner no. 2, at the time of filing of Writ Petition No. 6300 of 2016, was a member of BSBRA and falsely claimed himself as the President of the petitioner no. 1-Association. Therefore the petitioner no. 2 had no lawful authority to file this Writ Petition as the President of ASRB. Due to strained relations between the petitioner no. 2 and some members of BSBRA, the petitioner no. 2 applied to the Ministry of Commerce for formation of ASRB in 2012. Subsequently the petitioner no. 2 resolved his differences with BSBRA. With an ulterior motive, he opted for this settlement with BSBRA so that BSBRA would renew his membership therewith and thus he could be a regular member of BSBRA. Further, as a member of BSBRA, he would be able to import scrap vessels for recycling. Accordingly, a Deed of Agreement was executed between BSBRA and the petitioner no. 2 on 02.02.2014. The petitioner no. 2, as the proposed President of ASRB, wrote a letter dated 02.02.2014 to the Ministry of Commerce that ASRB was formed due to differences of opinion with BSBRA and as the differences of opinion have been patched up, he is now withdrawing his application to obtain a T.O Licence in the name of ASRB. It was also mentioned in the said letter that the petitioner no. 2 would give his support for change of name of the respondent

no. 7 from Bangladesh Ship Breakers Association (BSBA) to Bangladesh Ship Breakers and Recyclers Association (BSBRA). A copy of that letter was also served upon the Ministry of Commerce and the Registrar of Joint Stock Companies and Firms (RJSC). However, the petitioner no. 2 sent an application dated 06.01.2014 to the Vice-President of ASRB stating that he could no longer carry on his duty as the President of ASRB. Hence pursuant to Article 7(ka) of the Articles of Association of ASRB, the petitioner no. 2 requested cancellation of his membership. Thereafter the Secretary of ASRB issued a notice dated 08.01.2014 for holding a Special Emergency Meeting on 18.01.2014 with the agenda item to accept the petitioner no. 2's resignation. The Special Emergency Meeting held on 18.01.2014 was presided over by one Mr. Mushfikul Shirat, Vice-President of ASRB. In that meeting, the resignation of the respondent no. 2 was accepted and it was decided that the same would be communicated to the Department of Trade Organizations and the Ministry of Commerce. Accordingly, ASRB's officiating President Mr. Mushfikul Shirat vide his letter dated 19.06.2014 informed the Director of Trade Organizations and the Ministry of Commerce of the resignation of the petitioner no. 2. At a subsequent stage, the Ministry of Commerce vide its Licence No. 14/2014 and Memo No. বাম/টিও-২/এ-৪১/২০১২/ both dated 23.10.2014 granted ASRB licence and permission for registration as a trade organization in the same industry. Within 6(six) months of registration of ASRB, that is to say, on 25.01.2015, ASRB's Executive Committee for the years 2015-2017 was formed and one Mr. Md. Abdul Kader was elected as the new President of ASRB. The petitioner no. 2 did not even participate in the election of the Executive

Committee of ASRB. Despite Mr. Mushfikul Shirat's letter dated 19.06.2014 informing the Ministry of Commerce of the petitioner no. 2's resignation and formation of the new Executive Committee of ASRB, the Ministry of Commerce issued a Memo bearing Reference No. বাম/টিও-২/এ-৪১/২০১২/৩২৫ dated 21.09.2015 illegally giving its decision that the petitioner no. 2 would conduct all the activities of ASRB as its President until the next election. Being aggrieved by this Memo dated 21.09.2015, ASRB being represented by its Secretary General filed Writ Petition No. 2395 of 2016. Upon hearing on 29.02.2016, the High Court Division issued a Rule Nisi and by an interim order, it stayed the operation of the impugned Memo bearing Reference No. বাম/টিও-২/এ-৪১/২০১২/৩২৫ dated 21.09.2015 for a period of 4(four) months. The petitioner no. 2 preferred Civil Petition For Leave To Appeal No. 849 of 2016 before the Appellate Division against the interim order of the High Court Division dated 29.02.2016 passed in Writ Petition No. 2395 of 2016 and the learned Judge-in-Chamber of the Appellate Division passed an order dated 16.03.2016 directing the parties to maintain status quo in respect of the office of the President of ASRB till 11.04.2016. The Civil Petition For Leave To Appeal No. 849 of 2016 was heard by the Full Court of the Appellate Division and the Full Court of that Division passed an order on 11.04.2016 directing the authority concerned to hold the election within 31.07.2016. The order of status quo passed by the learned Judge-in-Chamber on 16.03.2016 in Civil Petition For Leave To Appeal No. 849 of 2016 was effective up to 11.04.2016. On 11.04.2016, the Appellate Division did not pass any order staying the operation of the interim order of the High Court Division dated 29.02.2016 nor did it

extend the duration of the period of status quo passed by the learned Judge-in-Chamber. So the interim order of stay dated 29.02.2016 passed by the High Court Division is still in force; but the petitioner no. 2 is illegally purporting to act as the President of ASRB.

ASRB was not formed with valid members for carrying on ship recycling activities in the approved ship recycling yard in the ship recycling zone. On the contrary, BSBRA is incorporated and duly registered with the Registrar of Joint Stock Companies and Firms (RJSC) under the Companies Act in order to protect and promote the business interest of persons engaged in the Ship Breaking and Recycling Industry of Bangladesh. The respondent no. 5 (RJSC) registered BSBRA as a trade organization under Section 3 of the Ordinance of 1961 on 25.06.1984. BSBRA is well acknowledged as a Ship Breaking and Recycling Association by the Ministry of Commerce and the Ministry of Industries. BSBRA is being regulated by the Rules of 2011. Accordingly under the Rules of 2011, BSBRA is acknowledged to be the only trade body. By a Gazette Notification dated 27.01.2000, the Government recognized BSBRA as the legal representative of the Ship Breaking and Recycling Industry by stating that all the ship importers are required to apply to the Bangladesh Navy through it. Besides, the respondent nos. 1 and 2, the Ministry of Shipping, the Ministry of Environment, the Ministry of Labour and Manpower, Minimum Wages Board and Export Promotion Bureau and others by inviting BSBRA at various conferences, meetings and seminars and through different circulars established BSBRA as the only lawful trade organization representing the Ship Breaking and Recycling Industry of Bangladesh.

However, the Ministry of Commerce vide its Licence No. 14/2014 and Memo No. বাম/টিও-২/এ-৪১/২০১২/ both dated 23.10.2014 granted ASRB licence and permission for registration as a trade organization in complete disregard of the fact that the petitioner-Association was not formed with valid members. It appears from the Memorandum of Association of ASRB that ASRB was formed with 17 members and out of those 17 members, only 3 members have been carrying on ship recycling activities. Barring these 3 members, the majority members are not ship recyclers. Since the majority members do not have “Ship Recycling Yards” as per Rule 2(v) and “Authorized Ship Recycling Yards” as per Rule 2(ix) of the Rules of 2011, the formation of ASRB is manifestly illegal. Therefore it necessarily follows that ASRB was granted licence and registration unlawfully.

BSBRA filed Writ Petition No. 1699 of 2015 before the High Court Division challenging the approval letter of the respondent no. 1 in favour of the petitioner-Association bearing Memo dated 23.10.2014 inasmuch as conferring of a T.O Licence upon ASRB was a violation of Section 3(2)(d) of the Ordinance of 1961. That being so, the granting of licence and registration of ASRB is ex-facie unsustainable in law. Further, the Government published another Gazette Notification dated 18.04.2013 regarding the definitions of “Ship Recycler” and “Trade Body” and according to that notification, there may be more than one trade body as per the Rules of 2011; “তবে শর্ত থাকে যে, সরকার ঘোষিত জাহাজ ভাঙ্গা ও পুনঃপ্রক্রিয়াজাতকরণ এলাকায় স্থিত ন্যূনতম এক-তৃতীয়াংশ Ship Recycler সমন্বয়ে এরূপ Trade Body গঠিত হবে”. It is apparent from the Memorandum of Association of ASRB that it was not formed with one-third of

Ship Recyclers who carry on ship breaking, ship recycling and other related activities in the authorized ship recycling yard in the ship recycling zone and by that reason, it can not be termed as a valid trade body.

BSBA applied to the Deputy Registrar of Joint Stock Companies and Firms for change of its name to BSBRA. Eventually BSBRA filed an application under Sections 12 and 13 of the Companies Act, 1994 before the Company Bench of the High Court Division for amendment of the object clause of the Memorandum of Association of BSBRA. Upon hearing, the Company Bench passed its judgment on 10.08.2016 in favour of BSBRA confirming the proposed alteration/addition to the object clause of its Memorandum of Association. Subsequently in compliance with the said judgment of the Company Bench dated 10.08.2016, BSBRA applied to the RJSC, Chittagong on 16.10.2016 for registration of the amended Memorandum of Association and accordingly it was done. The petitioner no. 2 being aggrieved by the judgment dated 10.08.2016 passed by the Company Bench of the High Court Division in Company Matter No. 16 of 2016 filed Civil Petition For Leave To Appeal No. 2849 of 2016. Upon hearing on 20.11.2016, the Appellate Division dismissed the Civil Petition For Leave To Appeal No. 2849 of 2016. After the change of nomenclature from BSBA to BSBRA, BSBRA informed the Ministry of Commerce that it had changed its nomenclature by way of incorporation of ship recycling in the object clause of the Memorandum of Association. The Ministry of Commerce in its reply dated 24.08.2015 clearly stated that as BSBRA had obtained T. O Licence earlier, no new trade licence is required against the amended name, that is to say, BSBRA. BSBRA

has been successfully fulfilling its obligations since the very day of its incorporation (25.06.1984) and is still in operation and recognized by all.

BSBRA filed Writ Petition No. 61 of 2016 on the score that conferring of a T.O Licence upon ASRB was illegal. Upon the petitioner no. 2's request, the respondent no. 1 issued a letter dated 20.12.2016 permitting ASRB to import and recycle scrap vessels in violation of Section 3(2)(d) of the Ordinance of 1961 as well as Rule 2(xvi) of the Rules of 2011. The question as to whether BSBRA is a trade body or not has already been decided by the High Court Division by its judgment and order dated 05.06.2013 rendered in Writ Petition No. 16164 of 2012. Thereafter the petitioner no. 2 filed Civil Petition For Leave To Appeal No. 2298 of 2013 before the Appellate Division against the judgment and order dated 05.06.2013 passed in Writ Petition No. 16164 of 2012. On 29.08.2016, the Appellate Division dismissed the petition. Afterwards the petitioner no. 2 filed Civil Review Petition No. 540 of 2016 against the order of the Appellate Division dated 29.08.2016 dismissing the Civil Petition For Leave To Appeal No. 2298 of 2013. However, on 20.11.2016, the Appellate Division dismissed the Civil Review Petition No. 540 of 2016 as well. So it is crystal clear that the judgment and order dated 05.06.2013 passed by the High Court Division in Writ Petition No. 16164 of 2012 was upheld by the Appellate Division. Hence, according to the Rules of 2011 and as per the judgment and order dated 05.06.2013 passed by the High Court Division in Writ Petition No. 16164 of 2012, BSBRA is a valid trade body.

In the Supplementary Affidavit-in-Opposition dated 29.03.2017 filed on behalf of the respondent no. 7 (BSBRA), it has been stated that the Government by a Gazette Notification dated 20.10.2011 declared a Ship Breaking and Recycling Zone which includes North Solimpur, Bhatiary, Jahanabad, Shitalpur, South Sonaichori, Mid Sonaichori and North Sonaichori of Sitakundo Upazilla of Chittagong. The Department of Environment has a list of 154 members who have Ship Recycling Yards within the Ship Recycling Zone. It appears from the said list of 154 members that only 2 members of ASRB, namely, Mac Ship Builders, Proprietor Mr. Joynal Abedin and BBC Steel, Proprietor Mr. M. A. Kashem Raza have Ship Breaking Yards at serial nos. 31 and 34 respectively. Therefore, except these 2 members, the other members of ASRB do not have any “Ship Recycling Yards” as per Rule 2(v) and “Authorized Ship Recycling Yards” as per Rule 2(ix) and do not comply with the “Green Recycling Facilities” as per Rule 2(xxv). As the formation of ASRB was illegal, it was granted licence and registration illegally. As a natural corollary, the purported act of allowing the members of ASRB for importation of scrap vessels is illegal. Even after coming into force of the Rules of 2011, BSBRA has been acknowledged as a trade body and the Ministry of Industries has given permission to import scrap vessels and issued No Objection Certificates (NOCs) in favour of the members of BSBRA on regular basis which is evidenced by Annexure-‘21’ series.

In the Supplementary Affidavit dated 02.04.2017 filed on behalf of the petitioners, it has been averred that one Arfanul Hoque Nahid filed an application to the Director of Trade Organizations (DTO) claiming that Mr.

Md. Abul Kashem (petitioner no. 2) had resigned his post. On the other hand, the petitioner no. 2 also filed an application dated 28.06.2015 to the DTO claiming that some vested quarters by creating some forged documents had declared an Executive Committee of ASRB. After receiving both the applications, the DTO fixed 05.08.2015 for hearing at his office and accordingly both the parties were present on that date. After hearing, the DTO took a decision that Mr. Md. Abul Kashem would continue to function as the President/Convener of ASRB till holding of the next election of its Executive Committee. Afterwards the DTO vide his Memo No. বাম/টিও-২/এ-৪১/২০১২/৩২৫ dated 21.09.2015 informed all concerned of the said decision. As against the Memo No. বাম/টিও-২/এ-৪১/২০১২/৩২৫ dated 21.09.2015, Arfanul Hoque Nahid, General Secretary of the petitioner-Association, filed Writ Petition No. 2395 of 2016 in the High Court Division and the High Court Division issued a Rule Nisi along with an interim order of stay. According to the order dated 11.04.2016 passed by the Full Court of the Appellate Division in Civil Petition For Leave To Appeal No. 849 of 2016 arising out of the interim order passed in Writ Petition No. 2395 of 2016, the election of the Executive Committee of ASRB was held on 23.07.2016 and the petitioner no. 2 was elected as the President of ASRB. However, it is the claim of the respondent no. 7 (BSBRA) that the members of BSBRA are all ship recyclers and they have Ship Recycling Yards in the Ship Recycling Zone; but the petitioner no. 2 has obtained a list of members of BSBRA through its website and from that list, it appears that out of 151 members of BSBRA, only 25 members have Ship Recycling Yards and the rest are doing ship recycling business without any

Ship Recycling Yards. ASRB was duly incorporated under the Companies Act, 1994 and was licensed and recognized by the authority concerned as per the Rules of 2011. ASRB has as many as 76 valid members who have been carrying on ship recycling business in the Ship Recycling Zone.

In the Supplementary Affidavit-in-Opposition dated 04.04.2017 filed on behalf of the respondent no. 7 (BSBRA), it has been mentioned that all the members of BSBRA have Ship Breaking Yards within the Ship Recycling Zone. The petitioner no. 2 has committed a fraud upon the Court by submitting a fake list of 76 members of ASRB. At the time of formation of ASRB, there were only 17 members out of which 10 members were from different parts of the country, namely, Dhaka, Jamalpur, Narsingdi and Kishoreganj. But in that fake list, the names of those 10 founding-members of ASRB are not found. This clearly indicates that with a view to misleading the Court, the petitioners have generated the fake list of 76 members.

In Writ Petition No. 1607 of 2016 filed by ASRB and Mr. Md. Abul Kashem, a Rule Nisi was issued calling upon the respondents to show cause as to why they should not be directed not to issue any beaching permission of the imported scrap vessels without any trade body's valid membership certificate as per Rules 9.6 and 10(d) of the Rules of 2011 and/or such other or further order or orders passed as to this Court may seem fit and proper.

In Writ Petition No. 1699 of 2015 filed by Mr. Nayeem Shah Imran and Mr. Nuruddin Mohammad Jahangir Chowdhury, a Rule Nisi was issued calling upon the respondents to show cause as to why the impugned letter bearing Memo No. বায়/টিও-২/এ-৪১/২০১২/ dated 23.10.2014 (Annexure-'J' to the Writ

Petition), impugned Licence bearing No. 14/2014 dated 23.10.2014 (Annexure-‘J-1’ to the Writ Petition) and impugned Registration No. TO-875 registering ASRB with the RJSC (Annexure-‘M’ to the Writ Petition) as a company under Section 28 of the Companies Act, 1994 in pursuance of the impugned Licence No. 14/2014 dated 23.10.2014 should not be declared to be without lawful authority and of no legal effect and why the name of ASRB as registered with RJSC (Annexure-‘M’ to the Writ Petition) should not be directed to be expunged from the Registry and/or such other or further order or orders passed as to this Court may seem fit and proper.

In Writ Petition No. 61 of 2016 filed by Mr. Abu Taher, President of BSBRA, a Rule Nisi was issued calling upon the respondents to show cause as to why the impugned letter bearing Reference No. 36.00.0000.061.18.004.15-800 dated 20.12.2015 issued from the Ministry of Industries under the signature of the respondent no. 3 granting permission for importing scrap vessels and recycling activities to ASRB should not be declared to be without lawful authority and of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

It may be noted that the facts and circumstances of the Writ Petition Nos. 1607 of 2016, 1699 of 2015 and 61 of 2016 are almost similar to and identical with those of the Writ Petition No. 6300 of 2016.

At the outset, Mr. Rokanuddin Mahmud, learned Advocate appearing on behalf of the petitioners of the Writ Petition No. 6300 of 2016 and Writ Petition No. 1607 of 2016, submits that ASRB is a valid trade body within the meaning of Rule 2(xvi) of the Rules of 2011 and as a valid trade body having

been recognized by the Ministries of Commerce as well as Industries, it has been carrying on ship recycling activities as per law.

Mr. Rokanuddin Mahmud next submits that BSBRA has failed to comply with all the legal requirements to be a valid trade body and as such after amendment of the object clause of the Memorandum of Association of BSBRA, it applied for a T.O Licence from the Ministry of Commerce by a letter dated 27.07.2015 and it is evident from that letter (Annexure-‘F’ to the Writ Petition No. 6300 of 2016) that in order to carry on ship breaking and recycling activities, BSBRA is in dire need of a T.O Licence from the Ministry of Commerce and in that view of the matter, it can not be said that BSBRA has been carrying on its business smoothly since 25.06.1984.

Mr. Rokanuddin Mahmud also submits that as per Licence No. 14/2014 (Annexure-‘D’ to the Writ Petition No. 6300 of 2016) and Memo No. বাম/টিও-২/এ-৪১/২০১২/ (Annexure-‘D-1’ to the Writ Petition No. 6300 of 2016) both dated 23.10.2014, it is palpably clear that ASRB is both a trade organization and a trade body and in this perspective, ASRB is entitled to carry on ship breaking, recycling and other related activities in accordance with the provisions of the Rules of 2011.

Mr. Rokanuddin Mahmud further submits that ASRB has been formed validly according to law and as such its recognition by the competent authorities can not be questioned by any quarter.

Mr. Rokanuddin Mahmud next submits that some of the members of ASRB have Ship Recycling Yards in the Ship Recycling Zone and others carry on ship recycling activities on the basis of lease from the owners of those Ship

Recycling Yards and this being the posture of things, it can not be said at all that all the members of ASRB must have Ship Recycling Yards of their own in the Ship Recycling Zone.

Mr. Rokanuddin Mahmud further submits that the Writ Petition Nos. 6300 of 2016 and 1607 of 2016 are maintainable in that the petitioner no. 1(ASRB) is a juristic person and as a juristic person, it may sue and be sued, albeit ASRB has been additionally represented by its President Mr. Md. Abul Kashem and this representation of ASRB by its President Mr. Md. Abul Kashem is a superfluity at the most.

Mr. Rokanuddin Mahmud next submits that the election of the Executive Committee of ASRB was held on 23.07.2016 pursuant to the order of the Appellate Division dated 11.04.2016 passed in Civil Petition For Leave To Appeal No. 849 of 2016 and the incompetency, if any, of the petitioner no. 2 (Mr. Md. Abul Kashem) in prosecuting the Rules issued in the Writ Petition Nos. 6300 of 2016 and 1607 of 2016 stands cured by his election as the President of ASRB on 23.07.2016 and considered from this standpoint, both the Writ Petitions (Writ Petition Nos. 6300 of 2016 and 1607 of 2016) are maintainable.

Mr. Rokanuddin Mahmud further submits that the petitioner no. 2 filed Civil Petition For Leave To Appeal No. 2298 of 2013 before the Appellate Division against the judgment and order dated 05.06.2013 passed by the High Court Division in Writ Petition No. 16164 of 2012; but that Civil Petition For Leave To Appeal No. 2298 of 2013 was not disposed of on merit and this being the landscape, the judgment and order dated 05.06.2013 passed by the High

Court Division in Writ Petition No. 16164 of 2012 can not have any binding effect upon the petitioners of the Writ Petition Nos. 6300 of 2016 and 1607 of 2016.

Mr. Md. Shaharia Kabir, another learned Advocate appearing on behalf of the petitioners of the Writ Petition Nos. 6300 of 2016 and 1607 of 2016, argues that they have downloaded a list from the website of BSBRA and it transpires therefrom that out of 151 members of BSBRA, only 25 members have Ship Recycling Yards in the Ship Recycling Zone and the remaining members are doing their business without having any Ship Recycling Yards in the Ship Recycling Zone. In support of this argument, Mr. Md. Shaharia Kabir relies upon Annexures- 'R' and 'R-1' to the Supplementary Affidavit dated 02.04.2017 of the Writ Petition No. 6300 of 2016.

Per contra, Mr. Murad Reza and Mr. Mejbahur Rahman, learned Advocates appearing on behalf of the respondent no. 7 in the Writ Petition No. 6300 of 2016 and the respondent no. 6 in the Writ Petition No. 1607 of 2016 and Mr. Tanjib-ul Alam and Mr. Mejbahur Rahman, learned Advocates appearing on behalf of the petitioners in the Writ Petition Nos. 1699 of 2015 and 61 of 2016 emphatically contend that both the Writ Petitions, namely, Writ Petition No. 6300 of 2016 and Writ Petition No. 1607 of 2016 are not maintainable in view of the judgment and order dated 05.06.2013 rendered by the High Court Division in Writ Petition No. 16164 of 2012 having been affirmed by the Appellate Division by its order dated 29.08.2016 passed in Civil Petition For Leave To Appeal No. 2298 of 2013 and what is more, the

Civil Review Petition No. 540 of 2016, preferred at the instance of Mr. Md. Abul Kashem, was too dismissed on 20.11.2016.

Mr. Mejbahur Rahman next contends that the question as to whether BSBRA is a trade body or not has already been decided in the Writ Petition No. 16164 of 2012 and the judgment and order dated 05.06.2013 passed therein by the High Court Division was upheld by the Appellate Division both in the Civil Petition For Leave To Appeal No. 2298 of 2013 and the Civil Review Petition No. 540 of 2016 and as the Appellate Division has clinched the entire matter with regard to the character of BSBRA as a trade organization as well as a trade body, it does not now lie in the mouth of the petitioners of the Writ Petition Nos. 6300 of 2016 and 1607 of 2016 to say that BSBRA is neither a trade organization nor a trade body.

Mr. Mejbahur Rahman further contends that according to Section 3(2)(d) of the Ordinance of 1961, no licence shall be granted for registration under the Companies Act to a trade organization unless it is an association of trade or industry or of both, organized on all Bangladesh basis, to represent specific trades or industries or both with the exception that a licence for registration of such an association shall not be granted to more than one trade organization and as BSBRA has been carrying on ship breaking and recycling activities since 1984, there can not be any association other than BSBRA in the Ship Breaking and Recycling Industry of Bangladesh and consequently the question of labelling ASRB as a trade organization under the Ordinance of 1961 is out of the question.

Mr. Mejbahur Rahman also contends that although ASRB is a juristic person and it may sue and be sued, yet the fact remains that Mr. Md. Abul Kashem can not represent ASRB inasmuch as he was not the President thereof at the time of filing of the Writ Petition Nos. 6300 of 2016 and 1607 of 2016 on 30.05.2016 and 14.02.2016 respectively; rather at the time of filing of those two Writ Petitions, Mr. Md. Abul Kashem was a member of BSBRA.

Mr. Mejbahur Rahman next contends that no Affidavit-in-Opposition has been filed either in the Writ Petition No. 1699 of 2015 or in the Writ Petition No. 61 of 2016 opposing the Rules issued in those two Writ Petitions and as such the statements made in those two Writ Petitions may be deemed to be correct.

Mr. Mejbahur Rahman also contends that ASRB has been formed with 17 members out of whom only 3 members are carrying on ship recycling activities and excepting these 3 members, the other members are not ship recyclers and do not have any Ship Recycling Yards as per Rule 2(v) and Authorized Ship Recycling Yards as per Rule 2(ix) and in this context, the formation of ASRB is unlawful.

Mr. Mejbahur Rahman next contends that BSBRA is a valid trade body by operation of law, that is to say, by the judgment and order dated 05.06.2013 passed in the Writ Petition No. 16164 of 2012 and through issuance of No Objection Certificates (NOCs) by the Ministry of Commerce in favour of the members of BSBRA as evidenced by Annexure-‘21’ series to the Supplementary Affidavit-in-Opposition dated 29.03.2017 of the Writ Petition No. 6300 of 2016.

Mr. Mejbahur Rahman further contends that on a mistaken advice, BSBRA made an application to the Ministry of Commerce on 27.07.2015 (Annexure-‘F’ to Writ Petition No. 6300 of 2016) for a fresh T. O Licence after change of appellation of BSBA as BSBRA and this Annexure-‘F’ will not derogate from the positive assertion of BSBRA that there has been no interruption in its functioning as a trade organization under the Ordinance of 1961. In this respect, Mr. Mejbahur Rahman draws our attention to the Memo No. বাম/টিও-২/এ-১৭/৮৮(৪)/২৯৬ dated 24.08.2015 (Annexure-‘G’ to the Writ Petition No. 6300 of 2016) to bring home the point that ASRB can not capitalize on the application dated 27.07.2015 (Annexure-‘F’ to the Writ Petition No. 6300 of 2016) in order to suit their convenience.

Mr. Mejbahur Rahman also contends that by the Memo No. 36.00.0000.061.18.113.13-758 dated 01.12.2015, the Ministry of Industries communicated to ASRB that BSBA (currently BSBRA) has been functioning as a trade body in the Government declared zone at Shitakunda, Chittagong and all the yard-owners are the members of BSBRA and by that reason, there is no scope for according approval to any other association to function as a trade body (Annexure-‘H’ to the Writ Petition No. 61 of 2016); but curiously enough, by the Memo No. 36.00.0000.061.18.004.15-800 dated 20.12.2016 (Annexure-‘I’ to the Writ Petition No. 61 of 2016), the self-same Ministry (Ministry of Industries) made a U-turn and accorded permission to ASRB to import scrap vessels for the purpose of recycling activities in the Government declared zone at Shitakunda and in this regard, the stance of the Ministry of

Industries as evidenced by Annexures- ‘H’ and ‘I’ referred to above seems to be contradictory, self-defeating and paradoxical.

Mr. Mejbahur Rahman also contends that there can be more than one trade body within the purview of the Rules of 2011; but according to the Gazette Notification dated 18.04.2013, for the purpose of formation of a trade body, the number of ship recyclers must not be less than one-third members of the trade association and as the number of ship recyclers is less than one-third members of ASRB, it can not lawfully function as a trade body.

We have heard the submissions of Mr. Rokanuddin Mahmud, Mr. Md. Shaharia Kabir, Mr. Murad Reza, Mr. Tanjib-ul Alam and Mr. Mejbahur Rahman and perused all the Writ Petitions, Affidavits-in-Opposition filed in the Writ Petition Nos. 6300 of 2016 and 1607 of 2016, Supplementary Affidavits-in-Opposition and Supplementary Affidavit filed in the Writ Petition No. 6300 of 2016 and relevant Annexures annexed thereto.

In the decision in the case of Kartic Das Gupta...Vs...Election Commission of Bangladesh and others reported in 8 ADC (AD) 578, it has been held that before going into the merit of a Writ Petition, the first and primary duty of the Writ Bench is to see whether the Writ Petition itself is maintainable in law or whether the writ-petitioner has got any interest in the subject matter which, if not protected, shall cause him to suffer injury. With this ‘ratio’ in view, first of all, we are to examine the maintainability of the Writ Petition Nos. 6300 of 2016 and 1607 of 2016.

To resolve this issue of maintainability, we feel inclined to refer to the decision dated 05.06.2013 passed by the High Court Division in the Writ

Petition No. 16164 of 2012. The relevant finding arrived at in that decision is in the following terms:

“Rule 10(d) is mandatory and Rule 52 or any other provision of the Rules does not in any way exempt the Government from compliance with Rule 10, or any of its provisions, and the petitioner no. 1 is the valid Trade Organization recognized by the Government through according Certificate of Registration. It is a Trade Body as per law, as such, non-compliance with Rule 10 (d) by the Government is liable to be declared to be without lawful authority and of no legal effect.”

From the above finding of the High Court Division, it is crystal clear that the former BSBA (currently BSBRA) is both a trade organization and a trade body.

The definition of “trade organization” as given in Section 2(12) of the Ordinance of 1961 runs as follows:

- “(12) “trade organization” means an association which, -
- (a) is capable of being formed as a limited company within the meaning of the Act;
 - (b) is formed or intended to be formed with the object of promoting any trade, commerce or

industry or any group or class thereof, or for representing for any purpose, in any manner and to any extent, any trade, commerce or industry or any group or class thereof; and (c) prohibits payment of any dividend to its members and applies or intends to apply its profits or other income for achieving its objects.”

Section 3(2)(d) of the Ordinance of 1961 contemplates that no licence shall be granted for registration under the Companies Act to a trade organization unless it is an association of trade or industry or of both, organized on all Bangladesh basis, to represent specific trades or industries or both subject to the condition that a licence for registration of such an association shall not be granted to more than one trade organization. So in view of the provisions of Section 3(2)(d) of the Ordinance of 1961, we are led to hold that a licence for registration shall not be granted to more than one trade organization. It is the admitted position that BSBRA has been performing its functions since 25.06.1984. Consequently since that date (25.06.1984), BSBA (now BSBRA) has been a trade organization on all Bangladesh basis to represent the specific trade of ship breaking and recycling and other related activities. Against this backdrop, the question of terming ASRB (formed in 2014) as a trade organization within the meaning of the Ordinance of 1961 does not arise at all.

In the Writ Petition Nos. 6300 of 2016 and 1607 of 2016, the petitioner no. 1 is ASRB and the petitioner no. 2 Mr. Md. Abul Kashem. It is the definite assertion on the part of BSBRA that Mr. Md. Abul Kashem had no locus standi to file the Writ Petition Nos. 6300 of 2016 and 1607 of 2016 in view of the fact that at the relevant point of time, he was not the President of ASRB and that being so, he can not prosecute the Rules issued in both the Writ Petitions referred to above. It is very pertinent to mention here that the Writ Petition No. 6300 of 2016 was filed on 30.05.2016 and the Writ Petition No. 1607 of 2016 was filed on 14.02.2016. The materials on record indicate that at the time of filing of both the Writ Petitions, Mr. Md. Abul Kashem was not the President of ASRB.

In this context, a short recounting of the facts leading to the election of Mr. Md. Abul Kashem as the President of the Executive Committee of ASRB on 23.07.2016 is necessary. At the time of filing of the Writ Petition No. 6300 of 2016 and Writ Petition No. 1607 of 2016, the petitioner no. 2 (Mr. Md. Abul Kashem) was a member of BSBRA, though he professedly claimed to be the President of ASRB. It is further on record that a Deed of Agreement was executed between BSBRA and Mr. Md. Abul Kashem on 02.02.2014 to resolve all their outstanding disputes and misunderstandings. As a sequel to that, Mr. Md. Abul Kashem, as the proposed President of ASRB, sent a letter to the Ministry of Commerce for withdrawing their application for T.O Licence for ASRB as evidenced by Annexure-‘3’ to the Affidavit-in-Opposition filed in the Writ Petition No. 6300 of 2016. Further, Mr. Md. Abul Kashem sent an application to the Vice-President of ASRB with a request for acceptance of his

resignation and cancellation of his membership. Subsequently his resignation was accepted in a Special Emergency Meeting and the same was communicated to the Department of Trade Organizations and the Ministry of Commerce. But the Ministry of Commerce unexpectedly issued a letter dated 21.09.2015 to the effect that Mr. Md. Abul Kashem would conduct all the activities of ASRB as its President until the next election of its Executive Committee. In this background, the Secretary General of ASRB filed Writ Petition No. 2395 of 2016 before the High Court Division and the High Court Division issued a Rule Nisi with an interim order staying the operation of the impugned letter dated 21.09.2015. Being aggrieved at and dissatisfied with the interim order dated 29.02.2016 passed in the Writ Petition No. 2395 of 2016, Mr. Md. Abul Kashem preferred Civil Petition For Leave To Appeal No. 849 of 2016 before the Appellate Division and on 16.03.2016, the learned Judge-in-Chamber by an interim order directed the parties to maintain status quo in respect of the office of the President of ASRB and posted the matter for hearing by the Full Court of the Appellate Division on 11.04.2016. On 11.04.2016, the Full Court of the Appellate Division, after a full-dress hearing of the matter, directed the authority concerned to hold the election of the Executive Committee of ASRB by 31.07.2016 as per law. Accordingly the schedule of the election of the Executive Committee of ASRB was published and Mr. Md. Abul Kashem was elected as the President of ASRB on 23.07.2016.

It is worthy of notice that the learned Judge-in-Chamber of the Appellate Division did not specifically stay the operation of the interim order dated

29.02.2016 passed in the Writ Petition No. 2395 of 2016; rather he passed an order for maintenance of status quo in respect of the office of the President of ASRB. After passing of the order dated 11.04.2016 by the Appellate Division in Civil Petition For Leave To Appeal No. 849 of 2016, the Appellate Division did not pass any other order meaning thereby that the original interim order dated 29.02.2016 passed in Writ Petition No. 2395 of 2016 continued to be in force. However, as we have already found that Mr. Md. Abul Kashem was elected as the President of ASRB on 23.07.2016, he had no authority to file the Writ Petition No. 6300 of 2016 on 30.05.2016 and Writ Petition No. 1607 of 2016 on 14.02.2016. What we are driving at boils down to this: Mr. Md. Abul Kashem was legally incompetent to be one of the petitioners either in the Writ Petition No. 6300 of 2016 or in the Writ Petition No. 1607 of 2016 at the time of their filing on 30.05.2016 and 14.02.2016 respectively.

Be that as it may, on this issue Mr. Rokanuddin Mahmud's contention is that ASRB is indisputably a company and since it is a company, it is a juristic person and as a juristic person, it may sue and be sued. Mr. Mejbahur Rahman concedes to this contention of Mr. Rokanuddin Mahmud; but by the same token, Mr. Mejbahur Rahman points out that it is in the Vokatnama that ASRB stands represented by its professed President Mr. Md. Abul Kashem and since Mr. Md. Abul Kashem had no locus standi to file the Writ Petition No. 6300 of 2016 on 30.05.2016 and Writ Petition No. 1607 of 2016 on 14.02.2016, he can not represent ASRB in both the Writ Petitions. In this connection, it may be mentioned that though a company is a juristic person; yet it can not work on its own. So somebody must act for and on behalf of the

company in any litigation in any Court of law. This is why, ASRB ought to have been represented by any competent person at the time of filing of the Writ Petition No. 6300 of 2016 and Writ Petition No. 1607 of 2016 on 30.05.2016 and 14.02.2016 respectively. As ASRB was represented by Mr. Md. Abdul Kashem, a legally incapacitated person, at the time of filing of those two Writ Petitions, they were not maintainable. But this defect was subsequently cured by the election of Mr. Md. Abul Kashem as the President of ASRB on 23.07.2016 during the pendency of the Writ Petitions as argued by Mr. Rokanuddin Mahmud. We find substance in this argument of Mr. Rokanuddin Mahmud. But nevertheless, the judgment and order dated 05.06.2013 passed by the High Court Division in the Writ Petition No. 16164 of 2012 having been upheld by the Appellate Division both in the Civil Petition For Leave To Appeal No. 2298 of 2013 and the Civil Review Petition No. 540 of 2016 has conclusively determined the character of BSBRA both as a trade organization and as a trade body. Judged from this angle, the Writ Petition Nos. 6300 of 2016 and 1607 of 2016 do not seem to be maintainable.

We have already observed that BSBRA is both a trade organization within the meaning of the Ordinance of 1961 and a trade body within the meaning of the Rules of 2011. We have also observed that there can not be more than one trade organization in the whole of Bangladesh within the purview of the Ordinance of 1961. This legal position is conceded to by Mr. Rokanuddin Mahmud.

Now let us adjudicate as to whether ASRB is a valid trade body or not. The Rules of 2011 admittedly came into force on 12.12.2011. According to the

definition of “Trade Body” as given in Rule 2(xvi), it means a ship recyclers’ association recognized by the Ministry of Commerce and duly approved by SBSRB. SBSRB means Ship Building and Ship Recycling Board. This SBSRB is a one-stop service-provider under the Ministry of Industries. Its responsibility is to provide integrated service for ship breaking, recycling and other allied activities. By the way, it may be mentioned that SBSRB has not been set up as yet. In this respect, Rule 52 of the Rules of 2011 may be adverted to. Rule 52 envisages that before establishment of SBSRB by the Government, all functions of the board will be conducted directly by the Ministry of Industries. So in the absence of SBSRB, the Ministry of Industries is mandated to perform all the functions of SBSRB.

There are other terms in the Rules of 2011 which need some elucidation for our purpose. As per Rule 2(iv) of the Rules of 2011, “Owner of a ship recycling yard” means any person(s) who possess a yard to operate ship recycling activities within the declared ship recycling zone. According to Rule 2(v), “Ship Recycling Yard” means a piece of land of suitable dimension in the ship recycling zone declared by the Ministry of Industries where ship recycling activities could be carried out with required facility as per Rules. According to Rule 2(viii), “Ship Recycler” means who carries out ship breaking, ship recycling and related activities in the authorized ship recycling yard in the ship recycling zone. As per Rule 2(ix), “Authorized Ship Recycling Yard” means a ship recycling yard or yards under the ship recycling zone to cater safe and environmentally sound ship recycling activities approved by SBSRB. Rule 2(x) provides that “Ship Recycling Activities” mean and include all activities such

as beaching, cutting, dismantling of the ship and disposal of all dismantled materials from the ship-recycling yard in safe and environmentally sound manner. As per Rule 2(xviii), “Ship Recycling” is the process of dismantling a vessel’s structure or disposal whether conducted at a beach or green recycling facility for dismantling ship. It includes a wide range of activities, from removing all gears and equipment to cut down and recycle the ship’s infrastructure. Rule 2(xxv) provides that “Green Recycling Facility” means the facilities utilized in yard, dock, dockside, slip, or floating working platforms, so that no ship cutting or recycling activities can take place without full containment of loss of liquids or particular matter (e.g. oils, paint chips, or dust), and so that incidental or accidental releases of residues or emissions can be recovered and managed appropriately.

In the scheme of the Rules of 2011, a very vital question arises: can there be more than one trade body in Bangladesh? This question needs to be answered either in the affirmative or in the negative in order to resolve the bone of contention between the contending parties. As we understand the Rules of 2011, we do not find any specific embargo on the constitution of more than one trade body. In this respect, Annexure-‘12’ of the Affidavit-in-Opposition, that is to say, Gazette Notification dated 18.04.2013 may be reproduced below:

“শিল্প মন্ত্রণালয়

প্রজ্ঞাপন

তারিখ, ০৫ বৈশাখ ১৪২০/১৮ এপ্রিল ২০১৩

নং ৩৬,০৬১,০১৬,০৮,০০,০৩৬,২০১৩, ২৫৫- এতদ্বারা জানানো যাচ্ছে যে,

The Ship Breaking and Ship Recycling Rules, 2011এর বিধি

2(xvi) এ ‘Trade Body’ র যে সংজ্ঞা প্রদান করা হয়েছে, তা নিয়ে বিভিন্ন সময়ে অস্পষ্টতা তৈরি হয়েছে মর্মে পরিলক্ষিত হয়।

২। এমতাবস্থায়, শিল্প মন্ত্রণালয় কর্তৃক বিষয়টি নিম্নোক্তভাবে স্পষ্টীকরণ করা

হলো-

The Ship Breaking and Ship Recycling Rules, 2011 এর বিধি 2(viii) এ Ship Recycler বলতে জাহাজ ভাঙ্গা, জাহাজ পুনঃপ্রক্রিয়াজাতকরণ এবং এ সংক্রান্ত কার্যক্রমকে সংজ্ঞায়িত করা হয়েছে। সুতরাং, Ship Recyclers, সমন্বয়ে গঠিত এক বা একাধিক সংগঠন ‘Trade Body’ হিসেবে গণ্য হবেঃ

তবে শর্ত থাকে যে, সরকার ঘোষিত জাহাজ ভাঙ্গা ও পুনঃপ্রক্রিয়াজাতকরণ এলাকায় স্থিত ন্যূনতম এক-তৃতীয়াংশ Ship Recycler সমন্বয়ে এরূপ Trade Body গঠিত হবে।”

What is of paramount importance on this issue is the proviso which articulates that “তবে শর্ত থাকে যে, সরকার ঘোষিত জাহাজ ভাঙ্গা ও পুনঃপ্রক্রিয়াজাতকরণ এলাকায় স্থিত ন্যূনতম এক-তৃতীয়াংশ Ship Recycler সমন্বয়ে এরূপ Trade Body গঠিত হবে”. So it is seen that there must be a minimum of one-third ship recyclers of a trade association which aspires to be a trade body within the meaning of the Rules of 2011.

We find from the case of ASRB that it was formed with 17 members, but out of 17 members, it seems that only 3 members have been carrying on ship recycling activities. Excepting these 3 members, the majority members of ASRB are not ship recyclers and do not have Ship Recycling Yards as per Rule 2(v) and Authorized Ship Recycling Yards as per Rule 2(ix) and therefore the formation of ASRB is illegal. On this point, Mr. Rokanuddin Mahmud argues that ship recycling activities can also done on taking lease of ship recycling

yards as required by the Rules of 2011; but stunningly enough, no lease paper has been submitted before us to substantiate that argument. So the natural consequence is that we are led to discard that argument of Mr. Rokanuddin Mahmud.

The Department of Environment, it transpires, has a list of 154 members who have Ship Recycling Yards within the Ship Recycling Zone. Out of the list of 154 members, it seems that only 2 members of ASRB, namely, Mac Ship Builders, Proprietor- Mr. Joyanl Abedin and BBC Steel, Proprietor- Mr. Md. Abul Kashem Raza have Ship Recycling Yards at serial nos. 31 and 34 respectively. Therefore excepting these 2 members, the other members of ASRB do not have any Ship Recycling Yards and Authorized Ship Recycling Yards and also do not comply with the Green Recycling Facilities as required by the Rules of 2011.

It is the definite assertion of ASRB that it obtained a list of members of BSBRA through its website and from that list, it appears that out of 151 members, only 25 members have Ship Recycling Yards and the rest are doing business without any Ship Recycling Yards. It is also the assertion of ASRB that now there are 76 valid members of ASRB who have been carrying on ship recycling business in the Ship Recycling Zone. In support of those assertions, Annexure-‘R’ series and Annexure-‘S’ of the Supplementary Affidavit dated 02.04.2017 of the Writ Petition No. 6300 of 2016 have been referred to. As against these assertions of ASRB, it is the definite claim of BSBRA that the list of members of ASRB is a fake list and at the time of forming ASRB, there were only 17 members out of which 10 members were from different parts of

the country; but curiously enough, in the present list of members of ASRB, those 10 founding-members are missing which indicates that the list of 76 members of ASRB is a spurious list. However, we find that the authenticity of those Annexures (Annexures- 'R' series and 'S') has not been vouchsafed in any manner on the side of ASRB. So we opine that those Annexures are fishy documents.

In the Memo No. 36.00.0000.061.18.113.13-758 dated 01.12.2015 (Annexure-'H' to the Writ Petition No. 61 of 2016), it has been clearly, categorically and unambiguously stated that there is no scope to accord any approval to ASRB to function as a trade body. But by the Memo No. 36.00.0000.061.18.004.15-800 dated 20.12.2015 (Annexure-'I' to the Writ Petition No. 61 of 2016), the Ministry of Industries has accorded permission to ASRB to import scrap vessels for the purpose of recycling activities. These two Annexures, we mean, Annexures- 'H' and 'I' are contradictory, self-defeating and mutually exclusive. We fail to understand as to why and how the self-same Ministry, that is to say, the Ministry of Industries could issue the paradoxical Memos dated 01.12.2015 and 20.12.2015. What is more, it does not appear from the record that the Ministry of Industries, before issuance of the Memo No. 36.00.0000.061.18.004.15-800 dated 20.12.2015, withdrew or rescinded the earlier Memo No. 36.00.0000.061.18.113.13-758 dated 01.12.2015. The co-existence of both these Memos (Annexures- 'H' and 'I') has virtually struck at the root of the case of ASRB as a trade body. On top of that, it is undisputed that no Affidavit-in-Opposition has been filed by ASRB either in the Writ Petition No. 1699 of 2015 or in the Writ Petition No. 61 of 2016. In such view

of the matter, we feel constrained to hold that the statements made in the Writ Petition Nos. 1699 of 2015 and 61 of 2016 are deemed to have been admitted by ASRB for all practical purposes.

Mr. Rokanuddin Mahmud has drawn our attention to Annexure-‘F’ dated 27.07.2015 to the Writ Petition No. 6300 of 2016 and contends that by Annexure-‘F’ dated 27.07.2015, BSBRA (previously BSBA) applied for issuance of a T.O Licence to the Ministry of Commerce for carrying on ship recycling activities and this Annexure-‘F’ is a proof that BSBRA could not perform its function as a trade organization without any hitch and that is why, BSBRA needed a T. O Licence. On the other hand, Mr. Mejbahur Rahman’s contention is that this Annexure-‘F’ was filed under a mistaken advice and after change of nomenclature of BSBA to BSBRA, no fresh T.O Licence was required from the Ministry of Commerce and since Annexure-‘F’ was submitted to the Ministry of Commerce under a mistaken advice, it should not be taken into consideration especially in view of Section 11(8) of the Companies Act, 1994 which provides that the change of name shall not change any rights or obligations of the company. In the facts and circumstances of the case, this contention of Mr. Mejbahur Rahman appears to be correct. Over and above, Annexure-‘G’ dated 24.08.2015 to the Writ Petition No. 6300 of 2016 issued by the Ministry of Commerce indicates that there is no scope for granting a fresh T.O Licence because of change of nomenclature of BSBA to BSBRA.

BSBRA, being acknowledged by the Ministry of Commerce and the Ministry of Industries, has been functioning as a Ship Breaking and Recycling

Association since 1984. Even after the Rules of 2011 came into force on 12.12.2011, BSBRA has been acknowledged as a trade body for protecting and promoting the business interest of the members of BSBRA. The Ministry of Industries has accorded permission to import scrap vessels and issued No Objection Certificates (NOCs) to the members of BSBRA on regular basis as evidenced by Annexure-‘21’ series. Admittedly, BSBRA was granted a T.O Licence on 25.06.1984 and it has been carrying on ship breaking and recycling activities as the only lawful trade organization in the whole of Bangladesh for the last 32 years. After the Ministry of Commerce’s suggestion to BSBRA in respect of incorporation of the term “recycling” into its Memorandum of Association, BSBRA applied to the Deputy Registrar of Joint Stock Companies and Firms for change of appellation as BSBRA from BSBA. Thereafter the Deputy Registrar approved the change of appellation of BSBA as BSBRA on 12.06.2015 under Reference No. 2015158753 as per Section 11 (7) of the Companies Act, 1994. So it is abundantly clear that the claim of carrying on ship breaking and recycling business by BSBRA has never been broken since the issuance of the T.O Licence on 25.06.1984.

We have already observed that there can be more than one trade body within the purview of the Rules of 2011. As ASRB was not formed legally, that is to say, in accordance with the proviso to the Gazette Notification dated 18.04.2013 which was issued in exercise of powers under Rule 51 of the Rules of 2011, it can not be termed as a valid trade body within the ambit of the Rules of 2011. Further, the question of ASRB’s being a trade organization as evidenced by Annexures- ‘D’ and ‘D-1’ to the Writ Petition No. 6300 of 2016

both dated 23.10.2014 does not arise at all inasmuch as there can not be more than one trade organization in accordance with Section 3(2)(d) of the Ordinance of 1961. Taking all these factors into consideration, we are of the opinion that the factum of granting permission to ASRB for importation of scrap vessels for recycling activities as evidenced by Annexure-‘E’ to the Writ Petition No. 6300 of 2016 is ‘de hors’ the law. So the natural corollary is that along with BSBRA, ASRB can not function as a trade body within the meaning of the Rules of 2011 and as per Memo No. বাম/টিও-২/এ-১৭/৮৮(অংশ-৪)/৫৬ dated 25.02.2016 (Annexure- ‘N’ to the Writ Petition No. 6300 of 2016).

The upshot of the above discussion is that BSBRA is both a trade organization within the meaning of the Ordinance of 1961 and a trade body within the meaning of the Rules of 2011 whereas ASRB is neither of them. Precisely speaking, ASRB has failed to fulfill the mandatory requirement embodied in the proviso to the Gazette Notification dated 18.04.2013. ASRB can only function as a valid trade body within the meaning of the Rules of 2011 provided it fulfills the mandatory requirement contemplated by the proviso to the Gazette Notification dated 18.04.2013. But at this moment, ASRB can not function as a valid trade body for the reasons explained and elucidated hereinabove.

Since the Writ Petition No. 6300 of 2016 and Writ Petition No. 1607 of 2016 fail on the question of their maintainability as well as on merit, the Rules issued therein are discharged.

As we find merit in the Rules issued in the Writ Petition No. 1699 of 2015 and Writ Petition No. 61 of 2016, they are made absolute. The impugned

letter bearing Reference No. বাম/টিও-২/এ-৪১/২০১২/ dated 23.10.2014 (Annexure-‘J’ to the Writ Petition No. 1699 of 2015) and impugned Licence bearing No. 14/2014 dated 23.10.2014 (Annexure-‘J-1’ to the Writ Petition No. 1699 of 2015) and impugned Registration No. T.O-875 registering ASRB as a trade organization with the Registrar of Joint Stock Companies and Firms (Annexure-‘M’ to the Writ Petition No. 1699 of 2015) as a company under Section 28 of the Companies Act, 1994 in pursuance of the impugned Licence No. 14/2014 dated 23.10.2014 are declared to be without lawful authority and of no legal effect and the respondents are directed to expunge the name of ASRB from the Registry of the Registrar of Joint Stock Companies and Firms immediately.

The impugned letter bearing Reference No. 36.00.0000.061.18.004.15-800 dated 20.12.2015 issued from the Ministry of Industries under the signature of the respondent no. 3 granting permission for importing scrap vessels and recycling activities to ASRB is declared to be without lawful authority and of no legal effect as well.

In the facts and circumstances of the case, there will be no order as to costs.

Let a copy of this judgment be immediately transmitted to each of the respondents for information and necessary action.

J. B. M. HASSAN, J:

I agree.