

# Bill No.....,1999.

**An Act** to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards.

**Whereas** it is expedient to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards;

It is hereby enacted as follows:-

## Chapter I Introductory

**1. Short title, extent and commencement.-** (1) This Act may be called the Arbitration Act, 1999.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force on the .....

## Chapter II General Provisions

**2. Definitions.-** (1) In this Act, unless the context otherwise requires,-

(a) “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not;

(b) “arbitration” means any arbitration whether or not administered by a permanent arbitral institution;

(c) “arbitration tribunal” means a sole arbitrator or a panel of arbitrators;

(d) “arbitral award” means a decision of the arbitral tribunal on the substance of the dispute;

(e) “Chief Justice” means the Chief Justice of Bangladesh;

(f) “court” means the Court of the District Judge and includes such Courts of Additional Judge as are designated by the Government by notification in the official Gazette to perform the functions of the Court of the District Judge under this Act;

(g) “foreign arbitral award” means an arbitral award made in pursuance of an arbitration agreement, in the territory of any state other than Bangladesh, but does not include an arbitral award made in the territory of a specified state;

(h) “international commercial arbitration” means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in Bangladesh and where at least one of the parties is-

- (i) an individual who is a national of, or habitually resident in, any country other than Bangladesh; or
- (ii) a body corporate which is incorporated in any country other than Bangladesh; or
- (iii) a company or an association or a body of individuals whose central management and control is exercised in any country other than Bangladesh; or
- (iv) the Government of a foreign country;

(i) “legal representative” means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;

(j) “party” means a party to an arbitration agreement;

(k) “person” includes any institution or organization or company or association or body of persons, whether incorporated or not, operating within Bangladesh or outside Bangladesh;

(l) “prescribed” means prescribed by rules framed under this Act;

(m) “specified state” means a state declared by the Government as a specified state.

**3. Scope.-** (1) This Act shall apply where the place of arbitration is in Bangladesh.

(2) Notwithstanding sub-section (1) the following sections shall apply even if the place of arbitration is outside Bangladesh- sections 45 to 47.

(3) This Act shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration.

(4) The provisions of this Act shall, subject to the provisions of section 54, apply to all arbitration proceedings commenced in Bangladesh after the coming into force of this Act, whether the arbitration agreement in pursuance of which such arbitration proceedings are commenced, was entered into before or after the coming into force of this Act.

(5) Where the arbitration proceedings were commenced prior to the coming into force of this Act, the law in force prior to the coming into force of this Act shall, unless the parties otherwise agree, apply to such arbitration proceedings.

(6) Where the Republic is a party to an arbitration agreement, the Republic shall be bound by the provisions of this Act.

**4. Construction of references.-** (1) Where this Act, except section 36, leaves the parties to determine a certain issue, that freedom shall include the right of the parties to authorize any person to determine that issue.

(2) Where this Act-

(a) refers to the fact that the parties have agreed or that they may agree, or

(b) in any other way refers to an agreement of the parties,

that agreement shall include any arbitration rules referred to in that agreement.

(3) Where this Act, other than clause (a) of sub-section (3) of section 35 or clause (a) of sub-section (2) of section 41 refers to a claim, it shall also apply to a counter-claim, and where it refers to a defence, it shall also apply to a defence to such counter-claim.

**5. Receipt of written communications.-** (1) Unless otherwise agreed by the parties, where, under this Act, any written communication, notice or summons is required to be served on any party or on any person, such written communication, notice or summons shall be deemed to have been served on such party or person, as the case may be, if it is delivered to the addressee personally or at his place of business, or habitual residence or mailing address;

and if none of these can be found after making a reasonable inquiry, such written communication, notice or summons, as the case may be, shall be deemed to have been served if it is sent to the address, last known place of business or habitual residence or mailing address by registered post or by any other means which provides a record of the attempt to deliver it.

(2) The communication, notice or summons, as the case may be, shall be deemed to have been received on the day it is delivered.

(3) The section shall not apply to written communication, notice or summons, as the case may be, in respect of any proceedings of any judicial authority.

**6. Waiver of right to object.-** (1) A party who knows that-

- (a) any provision of this Act from which the parties may derogate, or
- (b) any requirement under the arbitration agreement,

has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to so object.

**7. Jurisdiction of court in respect of matters covered by arbitration agreement.-** Where a party to an arbitration agreement institutes legal proceedings in a Court against another party to such agreement in respect of a matter agreed to be submitted to arbitration under such agreement, the Court shall have, notwithstanding any other law for the time being in force, no jurisdiction to hear and determine such legal proceedings except in so far as provided by this Act.

**8. Administrative assistance.-** In order to facilitate the conduct of the arbitral proceedings, the parties, or the arbitral tribunal, with the consent of the parties, may arrange for administrative assistance by a suitable person.

### Chapter III Arbitration Agreement

**9. Form of arbitration agreement.-** (1) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) An arbitration agreement shall be in writing and an arbitration agreement shall be deemed to be in writing if it is contained-

- (a) in a document signed by the parties; or
- (b) in an exchange of letters, telex, telegrams or other means of communication which provide a record of the agreement; or
- (c) in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another.

**Explanation :** The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

**10. Arbitrability of the dispute.-** (1) Where any party to an arbitration agreement or any person claiming under him commences any legal proceedings against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred to arbitration, any party to such legal proceedings may, at any time before filing a written statement, apply to the Court before which the proceedings are pending to refer the matter to arbitration, and, thereupon, the Court shall, if it is satisfied that an arbitration agreement exists, refer the parties to arbitration and stay the proceedings, unless the Court finds that the arbitration agreement is void, inoperative or is incapable of determination by arbitration.

(2) Notwithstanding that an application has been made under sub-section (1) and that the legal proceedings are pending before the Court, an arbitration may be commenced or continued and an arbitral award made.

## Chapter IV

### Composition of arbitral tribunal

**11. Number of arbitrators.-** (1) Subject to the provisions of sub-section (3), the parties shall be free to determine the number of arbitrators of an arbitral tribunal.

(2) Where no determination referred to in sub-section (1) is made, the number of arbitrators of an arbitral tribunal shall be three.

(3) Unless otherwise agreed by the parties, where the parties appoint an even number of arbitrators, the arbitrators so appointed shall jointly appoint an additional arbitrator who shall act as the Chairman of the arbitral tribunal.

**12. Appointment of arbitrators.-** (1) Subject to the provisions of this Act, the parties shall be free to agree on a procedure for appointing the arbitrator or arbitrators, as the case may be.

(2) Unless otherwise agreed by the parties, a person of any nationality may be appointed as an arbitrator.

(3) In the absence of an agreement referred to in sub-section (1)-

- (a) in an arbitration with a sole arbitrator if the parties fail to agree on the arbitrator within thirty days from the receipt of a request by one party from the other party to so agree, the appointment shall be made, on the application of a party, by the District Judge, except in the case of an international commercial arbitration, in which case, the appointment shall be made by the Chief Justice or any other Judge of the Supreme Court designated by the Chief Justice;
- (b) in an arbitration with three arbitrators, unless otherwise agreed by the parties, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator who shall be the Chairman of the arbitral tribunal.

(4) If the appointment procedure in sub-section (3) applies and-

- (a) a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party; or,
- (b) the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment.

the appointment shall be made, upon the application of a party, by the District Judge, except in the case of an international commercial arbitration, in which case, the appointment shall be made by the Chief Justice or any other Judge of the Supreme Court designated by the Chief Justice.

(5) The third arbitrator appointed under clause (b) of sub-section (4) shall be the Chairman of the arbitral tribunal.

(6) If more than one arbitrator are appointed under sub-section (4), the District Judge or the Chief Justice or any other Judge of the Supreme Court designated by the Chief Justice, as the case may be, shall appoint one of them to be the Chairman of the arbitral tribunal.

(7) Where, under an appointment procedure agreed upon by the parties-

- (a) a party fails to act as required under such procedure; or
- (b) the parties, or the arbitrators, fail to reach an agreement required of them under such procedure; or
- (c) a third party, including a person, fails to perform any function assigned to such third party under such procedure;

any party may, unless the arbitration agreement on the appointment procedure provides other means for securing the appointment, make application to the District Judge to take necessary measures towards the appointment of an arbitrator or arbitrators, except in the case of an international commercial arbitration, in which case, the application shall be made to the Chief Justice or to any other Judge of the Supreme Court designated by the Chief Justice and the District Judge or the Chief Justice or the Judge of the Supreme Court designated by the Chief Justice, as the case may be, shall make the necessary appointment including that of the Chairman of the arbitral tribunal.

(8) The appointment of arbitrator or arbitrators by the District Judge or the Chief Justice or the Judge of the Supreme Court designated by the Chief Justice, as the case may be, under sub-sections (3), (4) and (7) shall be made within sixty days from the date of making of the applications referred to in those sub-sections.

(9) The Chief Justice, or the Judge of the Supreme Court designated by him or the District Judge, as the case may be, shall, in appointing an arbitrator, have due regard to any qualifications required of an arbitrator under the agreement between the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(10) In the case of appointment of a sole arbitrator or third arbitrator in an international commercial arbitration, the Chief Justice or the Judge of the Supreme Court designated by the Chief Justice, as the case may be, may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

(11) The Chief Justice or the District Judge, as the case may be, may make such procedure or scheme as may be deemed appropriate for dealing with matters under this section.

(12) The decision of the Chief Justice or the Judge of the Supreme Court designated by the Chief Justice or the District Judge, as the case may be, under sub-sections (3), (4) and (7) shall be final.

(13) The designation of a Judge of the Supreme Court by the Chief Justice for the purposes of this section may be generally or in respect of a particular case or cases and for such period as the Chief Justice may specify.

(14) The reference to “District Judge” in this section shall be construed as a reference to the District Judge within the local limits of whose jurisdiction the arbitration agreement has been made.

**13. Grounds for challenge.-** (1) When a person is requested to accept appointment as an arbitrator, he shall first disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.

(2) An arbitrator shall, from the time of his appointment and throughout the arbitral proceedings, disclose without delay any circumstances referred to in sub-section (1) to all the parties and to the other arbitrators, unless they have already been so informed by him.

(3) An arbitrator may be challenged only if-

- (a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or
- (b) he does not possess the qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

**14. Challenge procedure.-** (1) Subject to sub-section (6), the parties shall be free to agree on a procedure for challenging an arbitrator.

(2) Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within thirty days after becoming aware of the circumstances referred to in sub-section (3) of section 13, challenge the

arbitrator before the arbitral tribunal by a written statement stating the reasons for the challenge.

(3) The arbitral tribunal shall decide on the challenge within thirty days from the date of filing the written statement referred to in sub-section (2) unless in the meanwhile, the arbitrator challenged under sub-section (2) withdraws from his office or the other party or parties, if there be more than one, agree to the challenge.

(4) A party who is aggrieved by the decision of the arbitral tribunal made under sub-section (3) may, within thirty days from the date of the decision, appeal to the High Court Division against the decision.

(5) The High Court Division shall decide on the appeal within ninety days from the date on which it is filed.

(6) If a challenge under any procedure agreed upon by the parties or under the procedures provided in sub-section (2) or in an appeal from an order under the said sub-section is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an award.

**15. Termination of arbitrator's mandate.-** (1) The mandate of an arbitrator shall terminate-

- (a) if he withdraws from his office; or
- (b) if he dies; or
- (c) if all the parties agree on his termination; or
- (d) if he is unable to perform the functions of his office or for any reason fails to act without undue delay; and,
  - (i) he withdraws from his office; or
  - (ii) all the parties agree on the termination of his mandate.

(2) If an arbitrator has incurred the disqualifications referred to in clause (d) of sub-section (1), and, such arbitrator fails to withdraw from his office or all the parties fail to agree on the termination of his office, the District Judge may, upon application by a party within the prescribed period, remove such arbitrator, except in the case of an international commercial arbitration in which case, the Chief Justice or any other Judge of the Supreme Court designated by

the Chief Justice, shall, upon application by a party within the prescribed period, remove such arbitrator:

Provided that where the parties have so agreed, such removal shall be made by the person agreed to by the parties.

(3) Any reference to “District Judge” in this section shall be construed as a reference to the District Judge within the local limits of whose jurisdiction the arbitration agreement has been made.

(4) Where an arbitrator withdraws from his office or where all the parties agree on the termination of his mandate under the circumstances referred to in clause (d) of sub-section (1), it shall not imply acceptance of the validity of any ground referred to in this clause or in sub-section (3) of Section 13.

**16. Appointment of substitute arbitrator.-** (1) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the provisions applicable to the appointment of the arbitrator whose mandate has been terminated.

(2) In the absence of any agreement between the parties, the substitute arbitrator shall, at the discretion of the arbitral tribunal, continue the hearings from the stage at which the mandate of the arbitrator has been terminated.

(3) In the absence of any agreement between the parties, an order or ruling of the arbitral tribunal prior to the termination of the mandate of an arbitrator shall not be invalid solely on the ground of such termination.

## Chapter V Jurisdiction of arbitral tribunals

### **17. Competence of arbitral tribunal to rule on its own jurisdiction.-**

(1) Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own jurisdiction including any question as to-

- (a) whether there is existence of a valid arbitration agreement,
- (b) whether the arbitral tribunal is properly constituted,
- (c) whether the arbitration agreement is contrary to public policy or is incapable of being performed, and

- (d) what matters have been submitted to arbitration in accordance with the arbitration agreement.

**18. Severability of agreement.-** An arbitration agreement which forms part of another agreement shall be deemed to constitute a separate agreement when ruling upon the validity of that arbitration agreement for the purpose of determining the jurisdiction of the arbitral tribunal.

**19. Objection to jurisdiction of arbitral tribunal.-** (1) An objection that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence.

**Explanation :** A party shall not be precluded from raising such a plea merely because he has appointed, or participated in the appointment of, an arbitrator.

(2) An objection during the course of the arbitral proceedings that the arbitral tribunal is exceeding the scope of its authority shall be made as soon as the matter alleged to be beyond the scope of its authority is raised.

(3) The arbitral tribunal may admit an objection later than the time specified in sub-sections (1) or (2) if it considers the delay justified.

(4) The arbitral tribunal shall decide on an objection referred to in sub-section (1) or sub-section (2), and, where the tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

**20. Determination of preliminary point of jurisdiction.-** (1) The High Court Division may, on the application of a party to an arbitral proceeding after service of notice of the application on all the other parties, determine any question as to the jurisdiction of the arbitral tribunal.

(2) An application under this section shall not be considered unless the High Court Division is satisfied-

- (a) that the determination of the question is likely to produce substantial savings in costs,
- (b) that the application was made without delay, and
- (c) that there is good reason why the matter should be decided by the Court.

(3) An application under this section shall state the grounds on which the matter should be decided by the Court.

(4) Unless otherwise agreed by the parties, the arbitral tribunal may continue the arbitral proceedings and make an award while an application to the Court under this section is pending.

**21. Power of arbitral tribunal to order interim measures.-** (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute.

(2) The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under sub-section(1).

(3) No order under this section shall be passed without giving notice to the other parties:

Provided that the arbitral tribunal may, where it appears that the object of taking interim measure under this section would be defeated by the delay, dispense with such notice.

(4) An order of an arbitral tribunal requiring the taking of interim measures may be enforced by the Court, on an application made therefor, by the party requesting the taking of such interim measures.

(5) An application to the Court, under sub-section (4), for the enforcement of interim measures, shall be deemed not to be incompatible with section 7 or the arbitration agreement or a waiver of the agreement.

**22. Settlement other than by arbitration.-** (1) It shall not be incompatible with arbitration proceedings for an arbitral tribunal to encourage settlement of the dispute otherwise than by arbitration and, with agreement of all the parties, the arbitral tribunal may use mediation, conciliation or any other procedure at any time during the arbitral proceedings to encourage settlement.

(2) If, during an arbitral proceeding the parties settle the dispute, the arbitral tribunal shall, if requested by the parties, record the settlement in the form of an arbitral award on agreed terms.

(3) An arbitral award on agreed terms shall be made in accordance with section 38 and shall state that it is an arbitral award on agreed terms.

(4) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award made in respect of the dispute.

## Chapter VI

### Conduct of arbitration proceedings

**23. General duty of arbitral tribunal.-** (1) An arbitral tribunal shall deal with any dispute submitted to it for arbitration fairly and impartially-

- (a) giving each party a reasonable opportunity of presenting his case in writing or orally or both, and
- (b) giving each party a reasonable opportunity of examining all documents and other materials produced before it by the other parties or any other person.

(2) An arbitral tribunal shall deal with a dispute submitted to it for arbitration expeditiously.

(3) An arbitral tribunal shall act fairly, impartially and expeditiously in conducting arbitral proceedings, in matters of procedure and evidence, in its decision and in the exercise of all other powers conferred on it.

**24. Arbitral tribunal not bound by the Code of Civil Procedure, 1908, and the Evidence Act, 1872.-** The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (Act V of 1908) or the Evidence Act, 1872 (Act I of 1872).

**25. Determination of rules of procedure.-** (1) Subject to the provisions of this Act, the parties shall be free to agree on all or any procedural and evidential matters to be followed by the arbitral tribunal in conducting its proceedings.

(2) In the absence of any agreement referred to in sub-section (1), the arbitral tribunal shall, subject to the provisions of this Act, decide all procedural and evidential matters in conducting its proceedings.

(3) Without prejudice to the powers of the parties to include by agreement, or of the arbitral tribunal to include, any other procedural and evidential matters, procedural and evidential matters include-

- (a) when and where the whole or any part of the proceedings is to be held;
- (b) the language or languages to be used in the proceedings and whether translations of any relevant documents are to be supplied;
- (c) whether any and if so what form of written statements of claim and defence are to be used, when these should be supplied and the extent to which such statements can be later amended;

(d) whether any and if so which documents or classes of documents should be disclosed between and produced by the parties and at what stage;

(e) whether any and if so what questions should be put to and answered by the respective parties and when and in what form this should be done;

(f) whether to apply strict rules of evidence or any other rules as to the admissibility, relevance or weight of any material, oral, written or other, sought to be tendered on any matters of fact or opinion, and the time, manner and form in which such material should be exchanged and presented;

(g) whether and to what extent the arbitral tribunal should itself take the initiative in ascertaining the facts and the law;

(h) whether and to what extent there should be oral or written evidence or submissions.

(4) The arbitral tribunal may fix the time within which any directions given by it are to be complied with, and may, if it thinks fit, extend the time so fixed.

**26. Place of arbitration.-** (1) The parties shall be free to agree on the place of arbitration.

(2) Failing such agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding the provisions of sub-sections (1) and (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.

**27. Commencement of arbitral proceedings.-** (1) Unless otherwise agreed by the parties, an arbitration proceeding shall be deemed to have commenced if-

(a) a dispute to which the relevant arbitration agreement applies has arisen; and

(b) a party to the agreement -

- (a) has received from another party to the agreement a notice requiring that party to refer, or to concur in the reference of, the dispute to arbitration; or
- (b) has received from another party to the agreement a notice requiring that party to appoint an arbitral tribunal or to join or concur in, or approve the appointment of, an arbitral tribunal in relation to the dispute.

**28. Consolidation of proceedings and concurrent hearings.-** (1) The parties shall be free to agree-

(a) that the arbitral proceedings shall be consolidated with other arbitral proceedings, or

(b) that concurrent hearings shall be held on such terms as may be agreed.

(2) Unless by agreement the parties confer such power on the arbitral tribunal, the arbitral tribunal shall have no power to order consolidation of proceedings or concurrent hearings.

**29. Statements of claim and defence.-** (1) The claimant shall, within the time agreed upon by the parties and in the absence of such agreement, as determined by the arbitral tribunal, state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have agreed otherwise as to the required elements of those statements.

(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement for the sake of fairness or having regard to the delay in making it.

**30. Hearings and proceedings.-** (1) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials including affidavits by the parties:

Provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, or of its own motion, unless the parties have agreed that no oral hearing shall be held.

(1) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of documents, goods or other property.

(3) All statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary documents on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

**31. Legal or other representation.-** Unless otherwise agreed by the parties, a party to an arbitral proceeding may be represented in the proceeding by a lawyer or other person chosen by him.

**32. Power to appoint experts, legal advisers or assessors.-** (1) Unless otherwise agreed by the parties the arbitral tribunal may-

- (a) appoint experts or legal advisers to report to it on specific issues to be determined by it;
- (b) appoint assessors to assist it on technical matters; and
- (c) require a party to give to the expert, legal adviser or assessor, as the case may be, any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert, legal adviser or assessor, as the case may be, shall, after delivery of his written or oral report, information, opinion or advice, participate in an oral hearing where the parties shall have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

(3) Unless otherwise agreed by the parties, the expert, legal adviser or assessor, as the case may be, shall, on the request of a party, make available to that party for examination all documents, goods or other property in the possession of the expert with which he was provided in order to prepare his report.

(4) Unless otherwise agreed by the parties, the parties shall be given a reasonable opportunity to comment on any report, information, opinion or advice submitted to the arbitral tribunal by an expert, legal adviser or assessor.

**33. Summons to witness.-** (1) An arbitral tribunal or any party to an arbitration proceeding with the approval of the arbitral tribunal, may apply to the Court for issuing summons requiring a person to attend before the arbitral tribunal for examination or for producing any documents or materials specified in the summons or for both and the Court shall issue such summons.

(2) A person shall not be compelled under any summons issued under sub-section (1) to answer any question or produce any documents or materials which that person could not be compelled to answer or produce at the trial in an action before the Court.

(3) Persons failing to attend in accordance with the summons issued under sub-section (1), or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitral tribunal as they would incur for like offences in suits tried before the Court.

**34. Evidence before arbitral tribunal.-** (1) Unless otherwise agreed by the parties, evidence before the arbitral tribunal may be given orally, in writing or by affidavit.

(2) Unless otherwise agreed by the parties, an arbitral tribunal may administer an oath or affirmation to a witness:

Provided that no such oath or affirmation shall be administered if the witness refuses to subscribe to such oath or affirmation.

**35. Power of arbitral tribunal in case of default of parties.-** (1) The parties shall be free to agree on the powers of the arbitral tribunal in case of a party's failure to do something necessary for the proper and expeditious conduct of the arbitration.

(2) Unless otherwise agreed by the parties, the following provisions shall apply.

(3) Where-

(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 29, the arbitral tribunal shall terminate the proceedings;

- (b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 29, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations.

(4) If the arbitral tribunal is satisfied that there has been inordinate and inexcusable delay on the part of the claimant in pursuing his claim and that the delay-

- (a) gives rise, or is likely to give rise, to a substantial risk that it is not possible to have a fair resolution of the issues in that claim, or
- (b) has caused, or is likely to cause, serious prejudice to the respondent,

the arbitral tribunal may make an award dismissing the claim.

(5) If without showing sufficient cause a party-

- (a) fails to attend or be represented at an oral hearing of which due notice was given, or
- (b) where matters are to be dealt with in writing, fails, after due notice, to submit written evidence or make written submissions,

the arbitral tribunal may continue the proceedings in the absence of that party or, as the case may be, without any written evidence or submissions on his behalf, and may make an award on the basis of the evidence before it.

(6) If without showing sufficient cause a party fails to comply with any order or directions of the arbitral tribunal, the arbitral tribunal may make an order to comply with such order or directions within such time as it may deem fit.

(7) If a claimant fails to comply with an order of the arbitral tribunal to provide security for costs, the arbitral tribunal may make an award dismissing his claim.

(8) If a party fails to comply with any other kind of order, then the arbitral tribunal may-

- (a) direct that the party in default shall not be entitled to rely upon any allegation or material which was the subject-matter of the order;
- (b) draw such adverse inferences from the act of non-compliance as the circumstances justify;
- (c) proceed to an award on the basis of such materials as have been properly provided to it; or
- (d) make such order, as it thinks fit, as to the payment of costs of the arbitration incurred in consequence of the non-compliance.

## **Chapter VIII**

### The Award and termination of proceedings

#### **36. Rules applicable to substance of dispute.-** (1) In an arbitration-

- (a) an arbitral tribunal shall decide the dispute in accordance with such rules of law as are designated by the parties as applicable to the substance of the dispute;
- (b) any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as referring to the substantive law of that country and not to its conflict of laws rules;
- (c) failing any designation by the parties of the law under clause (a), the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(2) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

(3) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

**37. Decision making by a panel of arbitrators.-** (1) Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members.

(2) Notwithstanding sub-section (1), if authorized by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by the Chairman of the arbitral tribunal.

**38. Form and contents of arbitral award.-** (1) An arbitral award shall be made in writing and shall be signed by the arbitrators constituting the arbitral tribunal.

(2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient, provided that the reason for any omitted signature is stated.

(3) The arbitral award shall state the reasons upon which it is based, unless-

- (a) the parties have agreed that no reasons are to be given, or
- (b) the award is an arbitral award on agreed terms under section 22.

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 26 and the award shall be deemed to have been made at that place.

(5) After the award is made, a copy signed by the arbitrators constituting the arbitral tribunal shall be delivered to each party.

(6) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as agreed upon between the parties in the arbitration agreement or in the absence of such agreement, at such rate which the arbitral tribunal deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two percent above the prevailing Bank Rate per annum from the date of the award to the date of payment.

(7) Unless otherwise agreed by the parties,-

- (a) the costs of an arbitration shall be fixed by the arbitral tribunal;
- (b) the arbitral tribunal shall specify-
  - (i) the party entitled to costs,
  - (ii) the party who shall pay the costs,
  - (iii) the amount of costs or method of determining that amount, and
  - (iv) the manner in which the costs shall be paid.

**Explanation :** For the purposes of clause (a), "costs" means reasonable costs relating to-

- (i) the fees and expenses of the arbitrators and witnesses,
- (ii) legal fees and expenses,
- (iii) any administration fees of the institution supervising the arbitration, and
- (iv) any other expenses incurred in connection with the arbitral proceedings and the arbitral award.

**39. Award to be final.-** (1) An arbitral award made by an arbitral tribunal pursuant to an arbitration agreement shall be final and binding both on the parties and on any persons claiming through or under them.

(2) Notwithstanding sub-section (1), the right of a person to challenge the arbitral award in accordance with the provisions of this Act is not affected.

**40. Correction and interpretation of award; additional award.-** (1) Within fourteen days of receipt of the award, unless another period of time has been agreed upon by the parties, whether at the request of the arbitral tribunal or otherwise-

- (a) a party, with notice to the other party, may request the arbitral tribunal -
  - (i) to correct in the arbitral award any errors in computation, any clerical or typographical errors or omissions or any other errors of a similar nature;
  - (ii) to modify the arbitral award where a part of the award is upon a matter not referred to arbitration, provided such part

can be separated from the other part and does not affect the decision on the matter referred;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the arbitral award.

(2) If the arbitral tribunal considers the request to be justified, it shall make the correction, modification or give the interpretation within fourteen days of the receipt of the request, or such longer period as the parties may agree to at the request of the arbitral tribunal.

(3) The arbitral tribunal may correct any error of the type referred to in sub-paragraph (i) of paragraph (a) of sub-section (1) on its own motion within fourteen days of the date of the arbitral award.

(4) The correction, modification or interpretation, as the case may be, shall form part of the arbitral award.

(5) Unless otherwise agreed by the parties, a party with notice to the other party, may request within fourteen days of the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the award.

(6) If the arbitral tribunal considers the request made under sub-section (5) to be justified, it shall make an additional award within sixty days from the date of receipt of such request.

(7) The provisions of sections 38 and 39 shall apply to a correction, modification, or interpretation of an arbitral award or to an additional arbitral award made under this section.

**41. Termination of proceedings.-** (1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where-

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute,

(b) the parties agree on the termination of the proceedings, or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any reason become unnecessary or impossible.

(3) Subject to section 40, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

## **Chapter VIII**

### Recourse against arbitral award.

**42. Application for setting aside arbitral award.-** (1) An arbitral award, other than an arbitral award made in an international commercial arbitration, in an arbitration held in Bangladesh, may be set aside by the Court, on application made thereto within sixty days of the receipt of the arbitral award.

(2) An arbitral award made in an international commercial arbitration held in Bangladesh may be set aside by the High Court Division on application made thereto within sixty days of the receipt of the arbitral award.

**43. Grounds for setting aside arbitral awards.-** (1) An arbitral award may be set aside -

- (a) where a party making the application furnishes proof that -
  - (i) a party to the arbitration agreement was under some incapacity; or
  - (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law in force in Bangladesh; or
  - (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
  - (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decision on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

- (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with the provisions of this Act, or, in the absence of such agreement, was not in accordance with the provisions of this Act; or
- (b) where the Court or the High Court Division, as the case may be, finds that

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- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law in force in Bangladesh; or
- (ii) the arbitral award is on the face of it against any law in force in Bangladesh; or
- (iii) the arbitral award is in conflict with the public policy of Bangladesh; or
- (iv) the making of the award was induced or affected by fraud or corruption.

(2) Where an application is made to set aside an award, the Court or the High Court Division, as the case may be, may order that any money payable by the award shall be deposited in the Court or the High Court Division, as the case may be, or otherwise secured pending the determination of the application.

**Explanation :** The expression, "Court", in this section means the Court within the local limits of whose jurisdiction the arbitral award has been finally made and signed.

## **Chapter IX**

### Enforcement of arbitral awards.

**44. Enforcement of arbitral award.-** Where the time for making an application for setting aside an arbitral award under section 42 has expired, or such application having been made, it has been refused, the arbitral award shall be enforced by execution by the Court under the Code of Civil Procedure, 1908, in the same manner as if it were a decree of the Court.

**Explanation :** In this section, the expression, "Court", means the Court within the local limits of whose jurisdiction the arbitral award has been finally made and signed.

## **Chapter X**

Recognition and enforcement of certain foreign arbitral awards.

### **45. Recognition and enforcement of foreign arbitral awards.- (1)**

Notwithstanding anything to the contrary contained in any other law for the time being in force but subject to the provisions of section 46-

- (a) a foreign arbitral award shall be recognized as binding on the persons as between whom it was made and may, accordingly, be relied on by those persons by way of defence, set-off or otherwise in any legal proceedings in Bangladesh;
- (b) a foreign arbitral award shall, on application being made to it by any party, be enforced by execution by the Court under the Code of Civil Procedure, 1908, in the same manner as if it were a decree of the Court.

(2) An application for the execution of a foreign arbitral award shall be accompanied by-

- (a) the original arbitral award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;
- (b) the original arbitration agreement or a duly certified copy thereof; and
- (c) such evidence as may be necessary to prove that the award is a foreign award.

(3) If the award or agreement to be produced under sub-section (2) is in a language other than English or Bangla, a translation thereof in the English language certified as correct by the diplomatic or consular agent of the country to which the party filing the application under sub-section (1) belongs or certified as correct in such other manner as may be sufficient according to the law in force in Bangladesh, shall also be produced along with the application under sub-section (1).

**Explanation :** For the purposes of this section, the expression, "Court", shall mean the Court of the District Judge exercising jurisdiction within the District of Dhaka.

**46. Grounds for refusing recognition or execution of foreign arbitral awards.-** (1) Recognition or execution of a foreign arbitral award may be refused only-

(a) on the objection of the party against whom it is invoked, if that party furnishes to the Court where recognition or enforcement is sought, proof that-

- (i) a party to the arbitration agreement was under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication as to the law to which the parties have subjected such agreement, under the law of the country where the foreign arbitral award was made; or
- (ii) the party against whom the foreign arbitral award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was prevented by unavoidable circumstances to present his case; or
- (iii) the foreign arbitral award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration:

Provided that if the decision on matters submitted to arbitration can be separated from those not so submitted, that part of the foreign arbitral award which contains decisions on matters submitted to arbitration, may be recognized and enforced; or

- (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, in the absence of such agreement, was not in accordance with the law of the country in which the arbitration took place, or
- (v) the foreign arbitral award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, the award was made; or

(b) if the Court in which recognition or execution of the foreign arbitral award is sought finds that -

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law in force in Bangladesh; or
- (ii) the recognition and execution of the foreign arbitral award would be contrary to public policy of Bangladesh.

(2) If an application for setting aside or suspension of foreign arbitral award has been made to a competent authority referred to in sub-clause (v) of clause (a) of sub-section (1) the Court in which recognition or execution of the said foreign arbitral award is sought may, if it considers it proper, adjourn the decision on the execution of the award and may also, on the application of the party claiming execution of the award, order the other party to give proper security.

**47. Power to declare specified state.-** For the purposes of this Chapter, the Government may, by notification in the official Gazette, declare a state as a specified state.

## **Chapter XI**

### Appeals

**48. Appeals.-** An appeal shall lie to the High Court Division from the following orders passed by the Court, namely,

- (a) setting aside or refusing to set aside an arbitral award under sub-section (1) of section 42;
- (b) refusing to enforce an arbitral award under section 44; and,
- (c) refusing to recognize and enforce a foreign arbitral award under section 45.

## **Chapter XII**

### Miscellaneous

**49. Deposit of costs, etc.-** (1) The arbitral tribunal may fix the amount of the deposit or supplementary deposit, as the case may be, as an advance for the costs referred to in sub-section (7) of section 38, which it expects will be incurred in respect of the claim submitted to it:

Provided that where, apart from the claim, a counter-claim has been submitted to the arbitral tribunal, it may fix separate amount of deposit for the claim and the counter-claim.

(2) The deposit referred to in sub-section (1) shall be payable in equal shares by the parties:

Provided that where one party fails to pay his share of the deposit, the other party may pay that share:

Provided further that where the other party also does not pay the aforesaid share in respect of the claim or the counter-claim, the arbitral tribunal may suspend or terminate the arbitral proceedings or refuse to deliver the arbitral award to the parties.

(3) Upon termination of the arbitral proceedings, the arbitral tribunal shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the party or parties, as the case may be.

**50. Dispute as to arbitrator's remuneration or costs.-** (1) If in any case an arbitral tribunal refuses to deliver its arbitral award except on payment of the costs demanded by it, the Court may, on an application in this behalf, order that the arbitral tribunal shall deliver the arbitral award to the applicant on payment into Court by the applicant of the costs demanded, and shall, after such inquiry, if any, as it thinks fit, further order that out of the money so paid into Court there shall be paid to the arbitral tribunal by way of costs such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.

(2) An application under sub-section (1) may be made by any party unless the fees demanded have been fixed by written agreement between him and the arbitral tribunal, and the arbitral tribunal shall be entitled to appear and be heard on any such application.

(3) The Court may make such orders as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the arbitral award contains no sufficient provision concerning them.

(4) Subject to the provisions of sub-section (1) and to any provision to the contrary in the arbitration agreement, the arbitral tribunal shall have a lien on the arbitral award for any unpaid costs of the arbitration.

**51. Arbitration agreement not to be discharged by death of party.-**

(1) Unless otherwise agreed by the parties-

(a) an arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased or as respects any

other party, but shall in such event be enforceable by or against the legal representative of the deceased;

- (b) the mandate of an arbitrator shall not be terminated by the death of any party by whom he was appointed;

(2) Nothing in this section shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

**52. Provision in case of bankruptcy.-** (1) Where it is provided by a term in a contract to which a person adjudged a bankrupt under the Bankruptcy Act, 1997 (Act 10 of 1997) is a party that any dispute arising out of such contract or in connection with such contract be submitted to arbitration, the said term shall, if the receiver appointed under the Bankruptcy Act, 1997, (Act 10 of 1997), adopts the contract, shall be enforceable by or against him so far as it relates to any such dispute.

(2) Where a person who has been adjudged a bankrupt under the Bankruptcy Act, 1997, (Act 10 of 1997), had, before the commencement of the bankruptcy proceedings, become a party to an arbitration agreement, and any matter to which the agreement applies is required to be determined in connection with, or for the purposes of, the bankruptcy proceedings, then, if the case is one to which sub-section (1) does not apply, any other party or the receiver appointed under the Bankruptcy Act, 1997, (Act 10 of 1997), may apply to the Bankruptcy Court under the said Act having jurisdiction in the bankruptcy proceedings for an order directing that the matter in question shall be submitted to arbitration in accordance with the arbitration agreement, and the Bankruptcy Court may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

**Explanation :** In this section, the expression, "receiver", means a receiver as defined in clause (4) of section 2 of the Bankruptcy Act, 1997, (Act 10 of 1997).

**53. Jurisdiction.-** Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Act has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

**54. Application of the Act to other laws providing for arbitration.-** Nothing in this Act shall apply to arbitration proceedings under the Industrial

Relations Ordinance, 1969, (Ordinance XXIII of 1969), or under any other law making special provisions for arbitration.

**55. Limitation.-** (1) Subject to the provisions of this Act, the Limitation Act, 1908, (Act IX of 1908), shall apply to arbitrations under this Act as they apply to proceedings in Court.

(2) For the purposes of this section and the Limitation Act, 1908, an arbitration shall be deemed to have commenced on the date referred to in section 27.

(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may, on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1908, (Act IX of 1908), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.

**56. Authentic English Text.-** After the commencement of this Act, the Government shall, by notification in the official Gazette, publish an Authentic English Text of this Act, which shall be known as the Authentic English Text of this Act:

Provided that in the event of any conflict between the said Act and the said English Text, the Act shall prevail.

## **Chapter XII**

### Supplementary provisions

**57. Power to make rules.-** The Government may, by notification in the official Gazette, make rules for carrying out the provisions of this Act.

**58. Power of the Supreme Court to make rules.-** The Supreme Court may, with the approval of the President, make rules consistent with this Act, for regulating the proceedings before it or the Court under this Act.

## **Chapter XIII**

### Repeals and Savings

**59. Repeal and savings.-** (1) The Arbitration (Protocol and Convention) Act, 1937, the Arbitration Act, 1940, and Article 178 of the Limitation Act, 1908 are hereby repealed.

(2) Notwithstanding such repeal -

- (a) the provisions of the enactments mentioned in sub-section (1) shall apply to all arbitral proceedings which commenced before coming into force of this Act unless otherwise agreed by the parties but this Act shall apply to all arbitral proceedings which commenced on or after the coming into force of this Act;
- (b) all rules made and notifications issued under the enactments mentioned in sub-section (1) which are in force on the date of coming into force of this Act shall, to the extent to which they are not inconsistent with, or repugnant to, this Act, be deemed respectively to have been made or issued under this Act.