THE ARBITRATION ACT, 2001

[Act No. I of 2001]

[24th January, 2001]

An Act to enact the law relating to international commercial arbitration, recognition and enforcement of foreign arbitral award and other arbitrations.

Whereas it is expedient and necessary to enact the law relating to international commercial arbitration, recognition and enforcement of foreign arbitral award and other arbitrations;

It is hereby enacted as follows:-

CHAPTER I
INTRODUCTORY

1. Short title, extent and commencement.-(1) This Act may be called the Arbitration Act, 2001.
   (2) It extends to the whole of Bangladesh.
   (3) It shall come into force on such date as the Government shall, by notification in the official Gazzette, appoint.

CHAPTER II
General Provisions

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context, -

   (a) "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;

   (b) "Court" means District Judge's Court and includes Additional Judge's Court appointed by the Government for discharging the functions of District Judge's Court under this Act through Gazette notification;

   (c) "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;

(d) "Limitation Act" means Limitation Act, 1908 (IX of 1908);

(e) "Code of Civil Procedure" means Code of Civil Procedure, 1 908(Act V of 1908);

(f) "Specified state" means a spec state declared by the Government under section 47 of this Act;

(g) "party" means a party to an ' agreement;

(h) "Chief Justice" means the Chief Justice of Bangladesh;

(i) "Rules" means any rules made under this Act;

(j) "Person" means a statutory or other organizations, company and association and includes partnership firm;

(k) "Foreign arbitral award" means an award which is made in pursuance of an Arbitration agreement in the territory of any state other than Bangladesh but it does not include an award made in the territory of a specified state;

(1) "Evidence Act" means Evidence Act, 1872 (Act I of 1872);

(m) "Arbitration" means any arbitration whether or not administered by permanent institution;

(n) "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.

(o) "Arbitration tribunal" means a sole Arbitrator or a panel of Arbitrator.

(p) "Arbitral award" means a decision moxie by the arbitral tribunal on the issue in dispute;

(q) "High Court Division" means High Court Division of the Supreme Court of Bangladesh.

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

(2) Notwithstanding anything contained in sub-section (1) of this section, the provisions of sections 45, 46, and 47 shall also apply to the arbitration f the place of that arbitration is outside Bangladesh.

(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) Where any arbitration agreement is entered into before or after the commencement of this Act, the provisions thereof shall apply to the arbitration proceedings in Bangladesh relating to the dispute arising out of that agreement.

4. Construction of References.— (1) Where this Act, except section 36, leaves the parties free to determine a certain issue, that freedom shall include the right of the parties to authorise 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 that counter-claim.

5. Receipt of written communications.-(1) Unless otherwise agreed by the parties-
(a) any written communication, notice or summons is deemed to have been received f it Is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and

(b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received f it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter 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 so delivered.

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

6. Waiver of right to object.-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, f 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.- Notwithstanding anything contained in any other law for the time being in force, where any of the parties to the arbitration agreement files a legal proceedings in a Court against the other party, no judicial authority shall hear any legal proceedings except in so far as provided by this Act.

7A. Powers of court and High Court Division to make interim orders:- (1) Notwithstanding anything contained in section 7 unless the parties agree otherwise, upon prayer of either parties, before or during continuance of the proceedings or until enforcement of the award under section 44 or 45 in the case of international commercial arbitration the High Court Division and in the case of other arbitrations the court may pass order in the following matters:

(a) To appoint guardian for minor or insane to conduct on his/her behalf arbitral proceedings.

(b) To take into interim custody of or sale of or other protective measures in respect of goods or property included in the arbitration agreement.

(c) To restrain any party to transfer certain property or pass injunction on transfer of such property which is intended to create impediment on the way of enforcement of award.

(d) To empower any person to seize, preserve, inspect, to take photograph, collect specimen, examine, to take evidence of any goods or property included in arbitration agreement and for that purpose to enter into the land or building in possession of any party.

(e) To issue ad interim injunction;

(f) To appoint receiver; and

(g) To take any other interim protective measures which may appear reasonable or appropriate to the court or the High Court Division.

(2) The similar powers of the court or the High Court Division as are available in relation to any other legal proceedings shall be available to the court or the High Court Division as the case may be, while passing orders under sub section (1).

(3) Before passing order upon application received under sub-section (1) the court or the High Court Division shall serve notice upon the other party:

Provided that f the court or the High Court Division is satisfied that in the event the order is not passed instantaneously, the purpose of making interim measures shall be frustrated, there shall be no necessity of serving such notice.

(4) If the court or the High Court Division is satisfied that Arbitration Tribunal has no power to initiate proceedings in any matter under sub-section (1) or the Arbitration Tribunal has failed to pass order in such matter, the Court or the High Court Division as the case may be, shall be competent to pass order under this section.

(5) The Court or the High Court Division f considers appropriate shall be competent to cancel, alter or amend the order passed under this section.

(6) Where any Arbitration Tribunal or any institution or person empowered in any matters relating to orders passed under sub-section (1) passed any order in such matters, the order passed by the court or High Court Division as the case may be, in the same matter, shall be entirely or the relevant part thereof inoperative.

8. Administrative assistance._ In order to facilitate the conduct of the arbitral proceedings, the parties, or the arbitration 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 art 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 f it is contained in –

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams, Fax, e-mail or other means of telecommunication which provide a record of the agreement; or

(c) an exchange of statement of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

Explanation- The reference in a contract is a document containing an arbitration clause constitutes an arbitration agreement f 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,

(2) Thereupon, the Court shall, f 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.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

CHAPTER 117
Composition of Arbitral Tribunal

11. Number of arbitrators._ (1) Subject to the provisions of sub-section (3), the parties are free to determine the number of arbitrators.

(2) Failing the determination of a number referred to in sub-section (1) the tribunal shall consist of three arbitrators.

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

12. Appointment of arbitrators._ (1) Subject to the provisions of this Act, the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

(2) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.

(3) Failing any agreement referred to in sub-section (1).

(a) in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitration within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made upon request of a party-

(i) by the District Judge in case of arbitration other than international commercial arbitration, and

(ii) in case of international commercial arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall be Chairman of the arbitral tribunal

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

(a) a party fails to appoint an arbitrator within thirty days of the receipt of a request to do so from the other party or,

(b) the appointed 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 –

(c) by the District Judge except in case of international commercial arbitration, and

(d) by the Chief Justice or by any other Judge of the Supreme Court designated by the Chief Justice in case of international commercial arbitration.

(5) The third arbitrator appointed under clause (b) of sub- section (4) shall be the Chairman of the said 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 person from among the said arbitrators 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 under the same procedure; or

(c) a person or any third party fails to perform any function assigned to him under that procedure, unless the agreement on the appointment procedure provides other means to take the necessary measure for securing the appointment a party may apply to-

(d) the District Judge except in case of international commercial arbitration and the District Judge shall appoint the Chairman of the tribunal along with the other arbitrators,

(e) the Chief Justice or any Judge of the Supreme Court designated by the Chief Justice in case of international commercial arbitration and the Chief Justice or the Judge of the Supreme Court as designated by the Chief Justice shall appoint the Chairman of the tribunal along with other arbitrators.

(8) The appointment of the arbitrator or arbitrators under sub-sections (3), (4) and (7) shall be made within sixty days from the receipt of the application thereof.

(9) The Chief Justice, or a Judge of the Supreme Court as designated by the Chief Justice, or the District Judge, as the case may be, in appointing an arbitrator under this section, shall have due regard to any qual required to the 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 scheme as he may deem appropriate for dealing with matters under this section.

(12) The decision under sub-sections (3), (4) and (7) 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, shall be final.

(13) The Chief Justice may entrust a Judge with the duties for a particular case or cases or for discharging the entire duties and may fix up the tenure of that Judge for the purposes of this section.

Explanation- In this section “District Judge” means that District Judge within whose local jurisdiction the concerned arbitration agreement has been entered into.

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 d is to his independence or impartiality.

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

(3) An arbitrator may be challenged only f circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or 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, send a written statement of the reasons for the challenge to the arbitral tribunal.

(3) Unless the arbitrator challenged under sub-section (2), withdraws from his office or the other party agrees to the challenge, 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).

(4) Any party aggrieved by the decision of the arbitral tribunal under sub-section (3), may prefer an appeal to the High Court Division within thirty days from the date of the said decision,

(5) The High Court Division shall decide the matter 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 under sub-section (3) or the appeal preferred against the decision 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) he withdraws himself from office:
(b) he dies;
(c) all the parties agree on the termination of his mandate; or
(d) he is unable to perform his functions of his office or for other reasons fails to act without undue delay and withdraws from his office or the parties agree on the termination of his mandate.

(2) If arty arbitrator has incurred disqualifications referred to in clause (d) of sub-section (1) fails to withdraw himself from his office and all the parties fail to

agree on his termination, then on the application of any party within the prescribed period by rules —

(a) the District Judge, in case of other arbitrations excepting international commercial arbitration;

(b) the Chief Justice or a Judge of the Supreme Court designated by the Chief Justice in case of international commercial arbitration may terminate the said arbitrator

(3) Where the parties are agreed upon, the termination shall be enforceable by the person agreed by the parties,

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

Explanation- In this section "District Judge" means that District Judge within whose local jurisdiction the concerned arbitration agreement has been entered into.

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

(2) In the absence of any agreement between the parties –

(a) 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.

(b) Any order or decision of the arbitral tribunal shall not be Invalid before the termination of the mandate of an arbitrator due to such termination.

CHAPTER V
Jurisdiction of Arbitration Tribunals

17. Competence of arbitration tribunal to rule on its own jurisdiction.-Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own jurisdiction on any questions including the following issues, namely –

(a) whether there is existence of a valid arbitration agreement.

(b) whether the Arbitral Tribunal is properly constituted;

(c) whether the arbitration agreement is against the public policy;

(d) whether the arbitration agreement is incapable of being performed; and,

(e) whether the 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 while giving decision for the purpose of determining the jurisdiction of the arbitral tribunal.

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

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

(3) The arbitral tribunal may in either of the cases referred to in sub-sections (1) and (2), admit a later plea f it considers the delay justified.

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

(5) A party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of an arbitrator.

20. Powers of the High Court Division in deciding jurisdiction.-(1) The High Court Division, may on the application of any of the parties to the arbitration agreement, after serving notice upon all other parties, determine any question as to the jurisdiction of the arbitral tribunal.

(2) No application under this section shall be taken into account, unless the High Court Division is satisfied that-

(a) the determination of the question is likely to produce substantial savings in costs;

(b) the application was submitted without any delay; and

(c) there is good reason why the matter should be decided by the Court.

(3) The application shall state— the reasons on which the matter should be decided by the High Court Division.

(4) Unless otherwise agreed by the parties, where any application is pending before the High Court Division under this section the arbitral tribunal shall continue arbitration proceedings and make an arbitral award.

21. Powers of the arbitration tribunal to make interim orders.-(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, and no appeal shall lie against this order.

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

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

(2) If during arbitral proceedings, 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 arbitral Proceedings

23. General Responsibilities of the arbitral tribunal.- (1) The arbitral tribunal shall deal with any of the dispute submitted to it fairly and impartially and for this purpose –

(a) each party shall be given reasonable opportunity to present his case orally or in writing or both, and

(b) each party shall be given reasonable opportunity to examine all the documents and other relevant materials filed by other party or any other person concerned before the tribunal,

(2) The arbitral tribunal shall deal with a dispute submitted to it as quickly as possible.

(3) The arbitral tribunal in conducting proceedings shall act fairly and impartially in deciding procedure and evidence and in exercising other powers conferred on it.

24. The arbitral tribunal not bound by the Code of Civil Procedure and the Evidence Act.- The arbitral tribunal shall not be bound to follow the provisions of the Code of Civil Procedure and the Evidence Act in disposing of a dispute under this Act.

25. Determination of rules of procedure.-(1) Subject to this Act the arbitral tribunal shall follow the procedure to be agreed on all or any by the parties in conducting its proceedings.

(2) In the absence of any agreement as to the procedure referred to in sub-section (1), the arbitral tribunal shall, subject to this Act, decide, 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) time and place of holding the proceedings either in whole or in part;

(b) language of the proceedings and to supply translation of a document concerned;

(c) written statement of claim, specimen copy of defence, time of submission and range of amendment.

(d) publication of document and presentation thereof,

(e) the questions asked to the parties and replies thereof (1) written or oral evidence as to the admissibility, relevance and weight of any materials;

(g) power of the arbitral tribunal in examining the issue of fact and issue of law.

(h) submission or presentation of oral or documentary evidence,

(4) The arbitral tribunal may fix the time to enforce its orders and extend the time fixed by it.

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 anything contained in sub-section (1), or sub-section (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.-Unless otherwise agreed by the parties, the proceedings shall be deemed to have commenced if -

(a) any dispute arises where the concerned arbitration agreement applies; and

(b) any party to the agreement -

(i) 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

(ii) 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 upon this respect that-

(a) any arbitration proceedings shall be consolidated with other arbitral proceedings;

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

(2) The arbitral tribunal shall have no power to pass any order to consolidate the proceedings or for concurrent hearing, unless the same is given by the parties on agreed terms to the tribunal.

29. Statements of claim and defence.-(1) Within the period of time determined by the tribunal, the claimant shall 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 otherwise agreed.

(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 in future.

(3) Except otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the proceedings, unless the 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 the proceedings.-(1) Unless otherwise agreed by the parties, the 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;

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

(2) The parties shall be given sufficient prior notice of any hearing and of any meeting of the 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 tribunal by one party shall be communicated to the other party, and any expert report or

evidentiary document on which the 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 proceedings by the 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 expert or legal adviser to report to it on spec Issues to be determined by the tribunal; and

(b) appoint assessor to assist it on technical matters; and

(c) require a party to give the expert, legal adviser or the 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.—

(a) if a party or the arbitral tribunal so requests, the expert, legal adviser or the assessor, as the case may be, shall after delivery of his written or oral report, participate in an oral hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue;

(b) the expert, legal adviser or the assessor, as the case may be, shall, on the request of a party, make available to that party all documents, goods or other property in the possession of him with which he was provided in order to prepare his report;

(c) the parties shall be given reasonable opportunity to comment on the report, information, opinion or advice submitted in the tribunal by the expert, legal adviser or the assessor.

33. Summons to witnesses.- (1) The arbitral tribunal, or a party to the proceedings with the approval of the tribunal, may apply to the Court for issuing summons upon any person necessary for examining, or submitting materials or appearing, or producing before the tribunal for both the purposes, as the case maybe, 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 before the tribunal in accordance with such summons as issued under sub-section (1) or making any other default, or refusing to perform, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like punishments by order of the Court on the representations of the arbitral tribunal as they would incur for the like offences in suits tried before the Court.

34. Evidence before the arbitral tribunal-Unless otherwise agreed by the parties-

(a) evidence may be given before the arbitral tribunal orally or in writing or by affidavit,

(b) the arbitral tribunal may administer an oath or affirmation to a witness subject to his consent.

35. Powers of the arbitral tribunal in case of default of the 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 anything necessary for the proper and expeditious conduct of the arbitration.

(2) Where under sub-section (1) of section 29—

(a) any claimant fails to communicate his statement of claim, the tribunal shall terminate the proceedings, and

(b) the respondent fails to communicate his statement of defence, the tribunal shall continue the proceeding without treating that failure in itself as an admission of the allegations by the claimant.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) If a party falls to comply with any other kind of order not referred to in any of the sub-sections of this section, 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 VII
Making of arbitral award and termination of proceedings

36. Rules applicable to substance of dispute.-(1) The arbitral tribunal shall decide the dispute in accordance with the rules of law as are designated by the parties as applicable to the substance of the dispute:

Provided that any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country.

(2) Failing any designation of the law under sub-section (1) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.

(3) The arbitral tribunal shall decide in accordance with the terms of the contract taking into account the usages of the concerned matter, if any, for ends of justice.

37. Decision making by 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 anything contained in sub-section (1), f 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 moxie in writing and shall be signed by the arbitrator or arbitrators.

(2) In arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

(3) No reasons shall have to be stated by the arbitral tribunal where the parties have agreed that no reasons are to be given, or 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 arbitral award is made, a copy signed by the arbitrator or arbitrators shall be delivered to each party.

(6) Unless otherwise agreed by the parties—

(a) 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 moxie Interest, at such rate as it deems reasonable, on the whole or any part of 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 per annum which is more than the usual Bank rate from the date of the award to the date of payment.

Explanation— "Bank Rate" under this sub-section means the rate of interest as determined by the Bangladesh Bank from time to time,

(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— Under this sub-section, 'arbitration costs includes reasonable costs relating to the fees and expenses of the arbitrators and witnesses; legal fees and expenses, any administration fees of the institution supervising the arbitration and any other expenses incurred in connection with the arbitral proceedings and the arbitral award.

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

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

40. Correction and interpretation of awards etc.-(1) Within fourteen days from the receipts of the arbitral award, unless another period of time has been agreed upon by the parties-

(a) a party with notice to the other party—

(i) may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(ii) may request the arbitral tribunal to modify divisible part of the award which has not been sent to the tribunal or f sent it does not affect the arbitral award on the matters sent to the tribunal.

(b) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction, or give the interpretation as the case may be, within fourteen days from the receipt of the request or where the parties agree upon the longer period of time on the request of the arbitral tribunal, within that agreed longer period of time.

(3) The arbitral tribunal may correct any computation errors, any clerical or typographical errors or any other errors of similar nature occurring in the award referred to in clause (a) of sub section (1) within fourteen days from the date of the arbitral award.

(4) Under this section any 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 a notice to the other party, may request, within fourteen days from 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 arbitral award.

(6) If the arbitral tribunal considers the request made under sub-section (5) to be justified, it shall make the additional arbitral 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, mod or interpretation of the 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 recognises 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 unnecessary or impossible.

(3) Subject to the provisions of 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) The Court may set aside any arbitral award under this Act other than an award made in an international commercial arbitration on the application of a party within sixty days from the receipt of the award.

(2) The High Court Division may set aside any arbitral award made in an international commercial arbitration held in Bangladesh on the application of a party within sixty days from the receipt of the award.

43. Grounds for setting aside arbitral award._ (1) An arbitral award may be set aside if—

(a) the party making the application furnishes proof that-

(i) a party to the arbitration agreement was under some incapacity;

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it;

(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 due to some reasonable causes to present his case;

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration or it contains decision on matters beyond the scope of the submission to arbitration;

Provided that, if the decisions 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;

(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.

(b) The court or the High Court Division, as the case may be, is satisfied that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force in Bangladesh;

(ii) the arbitral award is prima facie opposed to the law for the time being in force in Bangladesh;

(iii) the arbitral award is in conflict with the public policy of Bangladesh; or

(iv) the arbitral award is 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 award

44. Enforcement of arbitral award.- Where the time for making an application to set aside the arbitral award under section 42 has expired, or such application having been mode, has been refused, the award shall be enforced under the Code of Civil Procedure, in the same manner as f it were a decree of the Court.

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 X
Recognition and enforcement of certain foreign arbitral awards

45. Recognition and enforcement of Foreign arbitral awards.— (1) Notwithstanding anything contained in any law for the time being in force, subject to the provisions of section 46—

a) any foreign award which would be enforceable shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in Bangladesh.

b) a foreign arbitral award shall on the application being made to it by any party, be enforced by execution by the Court under the Code of Civil Procedure, in the same manner as f 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 agreement for arbitration 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 English or in any other languages excepting Bangla, the party seeking to enforce the award under sub section (1), shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or

certified as correct in such other manner as may be sufficient according to the law in force in Bangladesh.

Explanation.-The expression 'Court" shall mean the District Judge's Court exercising the jurisdiction within the district of Dhaka for the purposes of this section.

46. Grounds for refusing recognition or execution of foreign arbitral awards.-(1) Recognition or execution of foreign arbitral award may be refused only on the following grounds, namely-

(a) if the party against whom it is invoked furnishes proof to the Court that

(i) a party to the arbitration agreement was under some incapacity;

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it;

(iii) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable due to some reasonable causes to present his case; or

(iv) the concerned foreign arbitral award contains decisions on matters beyond the scope of the submission to arbitration;

Provided that, f the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced;

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, in absence of such agreement was not in accordance with the law of the country where the arbitration took place;

(vi) the 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, that award was made; or

(b) 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 for the time being in force in Bangladesh; or

(ii) the recognition and execution of the foreign arbitral award is in conflict with the public policy of Bangladesh.

(2) If an application for setting aside or suspension of the enforcement of the 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 may, f it considers it proper, adjourn the decision on the enforcement of the foreign arbitral award and may also, on the application of the party claiming enforcement of the foreign award, order the other party to give suitable security.

47. Power of Government 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 from the following orders of the Court to the High Court Division, namely -

(a) setting aside or refusing to set aside an arbitral award under sub-section (1) of section 42;

(b) refusing to enforce the arbitral award under section 44;

(c) refusing to recognize or enforce any foreign arbitral au under section 45.

CHAPTER X
Miscellaneous

49. Deposit of costs etc._ (1) The Arbitral tribunal may fix the amount of the deposit 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 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 terminate the arbitral proceedings in respect of such claim or counter claim or refuse to make an 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 unspent balance to the party or parties, as the case may be.

50. Dispute as to arbitrator's remuneration or costs.-(1) If in arty case art arbitral tribunal refuses to deliver its award except on payment of the costs demanded by it, the court may, on an application in this behalf, order that-

(a) the arbitral tribunal shall deliver the award to the applicant on payment into court by the applicant of the costs demanded; and

(b) the Court shall, after such inquiry, f 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 where the fees demanded have not been fixed by written agreement between him and the arbitral tribunal, and the 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 parties thereto.-(1) Unless otherwise agreed by the parties-

(a) an arbitration agreement shrill not be discharged by reason of the death of any party thereto, 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 affected by the death of any party by whom he was appointed.

(2) Nothing in this section shall affect the operation of any law relating to abatement of right through the death of a person.

52. Provision in case of bankruptcy.-(1) Where it is provided by a term in a contract to which an insolvent is a party that any dispute arising therefrom or in connection therewith shall be submitted to arbitration, the said term shall, f the receiver adopts the contract, be enforceable by or against him so far as it relates to any such dispute.

(2) Where a person who has been adjudged an insolvent had, before the commencement of the insolvency proceedings, become a party to an arbitration agreement, and any matter to which the agreement is required to be determined in connection with, or for the purpose of the bankruptcy proceedings,

(a) then, f the case is one to which sub-section (1) does not apply, any other party or the receiver may apply to the judicial authority 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

(b) the Bankruptcy Court may, f it is of opinion that, having regard to all circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

Explanation._ In this section "Bankruptcy Act" means: "Bankruptcy Act" 1997 (Act No. X of 1997) and 'Receiver" means the receiver as explained in clause (4) of section 2 of the Bankruptcy Act.

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-

(a) that court alone shall have jurisdiction over the arbitral proceedings; and

(b) 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 this Act to other laws providing for arbitration.-Nothing of this Act shall apply to the Industrial Relations Ordinance, 1969 (XXXIII of 1969) or to any other law making special provisions for arbitration.

55. Limitation.-(1) Subject to the provisions of this Act, the Limitation Act, 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, 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 provided 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, the court may, on such terms, f any, as the interest of justice, 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.

56. Publication of a text in English._ After the commencement of this Act the Government shall, by notification in the official Gazette, publish an authentic text in English which shall be known as the Authentic English Text of this Act:

Provided that in the event of any conflict between this Act and the English text, this Act shall prevail

CHAPTER XIII
Supplementary Provisions

57. Power of the Government to make rules._ Subject to the provisions of section 58, the Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

58. Power of the Supreme Court to make rules in certain cases.-The Supreme Court may, with the approval of the President make rules consistent with this Act, for regulating the proceedings of the High Court Division or the Court under this Act.

CHAPTER X
Repeals and Savings

59. Repeal and savings.-(1) The Arbitration (Protocol and Convention) Act, 1937, the Arbitration Act, 1940, hereinafter mentioned as the Acts, are hereby repealed.

(2) Notwithstanding such repeal, the provisions of the enactments as referred to sub-section (1) shall apply to all arbitral proceedings which commenced before this Act came into force unless otherwise agreed by the parties, as f this Act was not made.

The End

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