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**LAW IN FOCUS**

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**ARTICLE**

**Legal issues on Carriage by Multimodal Transport Operator in  
Bangladesh**

M. Forrukh Rahman\*

“Common Carrier” denotes a person, other than the Government, engaged in the business of transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately. Private carrier on the other hand (being bailee having duty to exercise reasonable care of the goods) who does not hold himself out as exercising the public employment like common carrier.

The laws related to carriage in Bangladesh are the Carriers Act 1865; Carriage by Air (International Convention) Act 1966; The Carriage of Goods by Sea Act 1925 and the Railway Act, 1989.

The object of law of carriage are in general to imposing limitation on contracting out of liability even for negligence or misconduct by carrier; Allocating responsibility on carrier for loss and damage in certain cases same as like an insurer; Providing an enforceable transport document, title to goods for ensuring safe delivery, security of goods; Determining terms and conditions of carriage.

In the absence of any special laws, the Carriers Act, 1865 is uniformly applicable to all the modes of carriage. Accordingly, the Act applied to inland water carrier, land carriers. It does not apply in case of all carriage by Air (including inland air) and carriage by sea.

Under the Carriers Act, 1865 on the acceptance of the goods for carriage, the carrier automatically becomes charged with the responsibility of carrying them in safety to the destination and of discharging them at that place also in safety. Loss and damage due to negligence and criminal liability cannot be contracted out. However, other liability may be varied by special contract. The consignor has to prove his loss or non-delivery only. Notice for loss is required to be served within six months from the date on which the consignor first learned of the loss. Carrier has a duty to accept and carry the goods according to his public profession. Generally carrier cannot refuse to deliver except in exceptional cases.

The carrier has the following duties: (a) a duty to stop goods in transit on receiving notice from the consignor; (b) duty to carry the goods and to deliver them at the appointed destination on time/reasonable time; (c) not to deviate from the agreed route. If so deviates, he cannot claim the benefits of the terms of the contract; a duty not to deliver goods except on production of original documents.

However, carrier may exclude liability for loss and damage in certain circumstances. In case of loss, Court's presume negligence or some other fault of the carrier. The consigner has to prove nothing except this that the goods have not been delivered at the destination.

On the other hand, the Carriage of Goods by Sea Act, 1925 ratified the convention as drafted in Brussels Conference in 1923 on Bill of lading. It is applicable between a Bangladeshi port and an international port and also between two Bangladeshi ports although not inland transportation by water. A carrier by sea is liable absolutely, like all others, for the loss of the goods subject only to a few exceptions. Generally a contract of affreightment (carriage) in form of a charter-party or bill of lading is signed outlining the details.

A bill of lading is a pure and simple contract of carriage. In the other words, it is a document whereby the receipt of goods is acknowledged for shipment on board a named ship, or on some other ship for carriage by sea and delivery to the shipper's order, the document being signed on behalf of the master. (The Bills of Lading Act, 1855).

Whereas a charter-party involves the hiring of the ship itself. Where a ship is booked to the exclusive use of one shipper either for a particular voyage or voyages or for a certain time, that is a charter party. The charterer has to indemnify the ship-owner. The charterer becomes responsible for the consequences of bills of lading signed by the master.

The carrier under the Carriage of Goods by Sea Act, 1925 has similar liabilities as a common carrier as above.

The Multimodal transport (MMT) system is a combined transportation of goods under a single contract but performed with multiple modes of transport. A Multimodal transport Operator (MTO) by practice do not possess/ own all the carriers but legally responsible to deliver at final destination.

Under the present legal system of Bangladesh, MTO cannot lawfully operate with regard to carriage by sea for the reason that Carrier has been defined as the owner /charterer of a ship. (Article I of the schedule to the carriage of goods by Sea Act 1925). It is only the carrier, or the master or agent of the carrier on demand of the shipper are allowed to issue to a bill of lading.

Although for inland road, water transportation, MTO should not face legal difficulties under the Carriers Act 1865, however, it order to be true MTOs the laws on the carriage of goods by Sea Act 1925 requires amendment.

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## ARTICLE

### Interim Measures in International Commercial Arbitration

Under certain rules of many international arbitration centres all over the world, arbitrators have extensive powers to grant interim relief. For example, arbitrators can make orders or give directions to any party for security for costs, discovery of documents, answering of interrogatories, preservation/attachment/arrest of property, which is part of the subject matter of the dispute, securing relevant evidence, securing the amount in dispute, freezing assets pending the award, or any other necessary interim injunction or relief.

Few Rules also provide for the availability of emergency interim relief prior to the constitution of the tribunal. There may not be any specific requirement as to the form of the tribunal's order or award of the interim relief.

However, this power to give interim orders/awards to take interim urgent measures has not yet been incorporated in the rules of many arbitration centres. This is important because unless arbitration tribunals passes such award/order, the courts in many jurisdiction on its own may not pass an order in case the arbitration is taking place in some other country.

Section 7A of the Arbitration Act 2001 of Bangladesh (“the Act”) empowered the Courts to pass interim orders. However, as per section 3 of the Act, such order cannot be passed if the arbitration is not taking place in Bangladesh.

There are cases where the Arbitration court of Hon'ble High Court has given interim order under section 7A of the Arbitration Act 2001 exercising inherent power of the court even in case of international commercial arbitration not taking place in Bangladesh. e.g. Crown Maritime vs. Royal Boskalis Westminster NV under arbitration application No. 3 of 2009. However, such instances are rare and there are instances, where the court refused to give such orders due to the presence of said section 3.

An arbitral tribunal's interim award (not interim order) may be enforced through the Bangladesh courts as per section 45 of Arbitration Act 2001. If an arbitration tribunal gives an interim award on preservation of the property e.g. arresting a ship, such award may be executed lawfully.

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