

LEX/BDHC/0649/2026

**IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION)**

Arbitration Application No. 23 of 2025

**Decided On:** 28.04.2026

Wahid Construction Ltd. **Vs.** China Harbour Engineering Co Ltd. and Ors.

**Hon'ble Judges/Coram:**

*Debasish Roy Chowdhury, J.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: Imtiaz Mahmood, Advocate, Sumaiya Ifrit Binte Ahmed, Advocate, Shafayet Ahmed, Advocate, Pranta Barua, Advocate and Iftekhar Hossain Sifat, Advocate*

*For Respondents/Defendant: Mohammed Forrukh Rahman, Advocate and Shahinoor Alam, Advocate*

**JUDGMENT**

**Debasish Roy Chowdhury, J.**

**1.** This application has been preferred by the petitioner under section 42(2) read with section 43 of the Arbitration Act, 2001 (hereinafter called 'the Act') for setting aside the Arbitral Award dated 22.05.2025 passed by the Sole Arbitrator, Mr. Mohammad Anamul Haque emanating from arbitration proceedings between the contending parties.

**2 .** As a brief background of the matter, on 06.01.2020, the petitioner and the respondent No. 1 executed a contract whereby the petitioner being the primary contractor for the Bangladesh Export Processing Zones Authority (BEPZA), sub-contracted the respondent No. 1 for land filling works at four groups namely, Ka, Kha, Ga and Uma of the BEPZA Economic Zone, Mirsarai, Chattogram, valued at approximately BDT 76 crore for a volume of approximately 4.00 million cubic meters of land filling.

**3.** Be that as it may, certain dispute arose in between the parties out of alleged delays in work completion as well as delay in payment against unpaid bills. The contract as mentioned above contained an arbitration clause, which reads as under:-

**C. Other Terms and Conditions:**

**1.** "Both the parties will perform the said earth filling works in BEPZA EZ by mutual understanding. If any conflict of interest or dispute arises between the parties Project Director of MIRSHARAI EZ, BEPZA will act as Arbitrator. The arbitration shall be conducted in accordance with the Arbitration Act (Act no. 1 of 2001) of Bangladesh."

**4.** Pursuant to that the respondent No. 1 invoked the arbitration clause by serving a notice of arbitration on 19.05.2024 and also thereby, Mr. Mohammad Anamul Haque, Project Director of BEPZA assumed the role of Sole Arbitrator as per the terms and conditions of the contract in question. Thereafter, on 22.05.2025 the impugned Award was published, which has been challenged in this application.

**5.** Mr. Imtiaz Mahmood, the learned Counsel appearing for the petitioner supporting the present application contends that the arbitral tribunal constituted by an employee of BEPZA, the ultimate employer for the project in question, and he was in a position of manifest conflict of interest and also no written disclosure of such conflict was made as required under section 13 of the Arbitration Act, 2001 and accordingly, the Award passed by the arbitral tribunal is liable to be set aside by this Court.

**6.** Mr. Mahmood then submits that the arbitration was not fair to the petitioner and he had not given a fair opportunity to participate in the proceedings. Moreover, no proper notice of arbitration was issued, no formal statement of claim was filed by the respondent as required by section 29 of the Act as well as the petitioner was not given the opportunity to submit a formal statement of defence or opportunity to place its counterclaim. Therefore, passing the award without following the procedure requirements is not sustainable in the eye of law, hence must be set aside.

**7.** Next he contends that the entire arbitral process was conducted in stark violation of the procedure established by law, fundamentally altering its nature from adjudication to an informal mediation. In this context, referring the case of Impex Corporation and Others Vs. Elenjikal Aquamarine Export Limited reported in 2008 (2) Arb. LR 560 (Kerala) (DB), he argues that even when there is no procedure is contemplated in the arbitration agreement about the whole arbitration process, but the arbitrator cannot violate the provisions of Act and the principles of natural justice.

**8.** Finally Mr. Mahmood argues that the Award is contrary to public policy and law since it has serious procedural irregularity as provided under sections 23, 25 and 29 of the Arbitration Act, 2001 as well as failure to ensure fairness and compliance with the principles of natural justice, which allow the Court to set aside an award obtained procured in a manner that is contrary to public policy and hence, the award is liable to be set aside.

**9.** Vehemently opposing the contentions of the petitioner Mr. Mohammad Forrukh Rahman, the learned Counsel for the respondent No. 1 opined that the grounds raised in the Application do not in law warrant this Court to set aside the award as prayed by the petitioner. Then Mr. Rahman submitted that the respondent No. 1 invoked arbitration through a letter dated 17.02.2024 by claiming BDT 29,91,44,322.00 and against said claim the petitioner raised a counter-claim of BDT 11,24,79,083.00 by a letter dated 21.05.2024. Subsequently, on 26.05.2024 the parties accepted the Project Director of BEPZA as the arbitrator regarding the dispute and thereafter hearing of both parties was took place on 06.06.2024, where the parties reached a settlement as recorded in joint minutes and as per said settlement the award in question was published on 22.05.2025.

**10.** Submitting against the contention of appointing the arbitrator Mr. Rahman argued that in the contract both parties mutually agreed to nominate the Project Director of Mirsharai EZ, BEPZA, as the sole arbitrator for any disputes and therefore, the contention of the petitioner in this regard has no force in law. Citing the case of Bangladesh Rural Electrification Board Vs. Bangladesh Energy Regulatory Commission (BERC) 29 BLC (AD) (2024)1, Mr. Rahman submits that when an agreement provides for a "named arbitrator" or a specific "designated official", the parties of the agreement are bound to affirm such specific appointment. Further referring the case of Quippo Construction Equipment Limited Vs. Janardar Nirman Pvt. Limited MANU/SC/0421/2020 : 2020(4) ALD 307, he contends that active participation of a party in arbitral proceedings without objection cures any defect in the appointment or qualification of the arbitrator.

**11.** In regard to the allegation of procedure defects, Mr. Rahman submits that section 24 of the Arbitration Act 2001 expressly provides that the arbitral tribunal is not bound to follow the provisions of Code of Civil Procedure or the Evidence Act and therefore, the arbitrator has the authority to bypass full formal procedures when parties reach a mutual consensus. In support of his submission Mr. Rahman referring the case of Rupayan Housing Estate Limited Vs. Mohammad Mustafa Zaman, submits that it is the view of the High Court Division that the arbitral tribunal is not bound to follow the Code of Civil Procedure regarding the framing of issues or the strict modes of taking evidence and therefore, the contention of the petitioner has no leg to stand on the issue of procedure defect allegation.

**12.** Mr. Rahman further submits that section 25 of the Act also allows the parties to adopt the rules of procedure. Accordingly, by signing the joint minutes on 06.06.2024 the parties mutually agreed to the procedure adopted by the tribunal and pursuant to that the award based on mutual compromise was published by the arbitrator. In the case of State of Rajasthan Vs. Nav Bharat Constrution Co. MANU/SC/0235/2005 : AIF 2005 SC 2795, the Supreme Court of India held that an award based on admissions and mutual compromise between the parties does not constitute an appealable error of law. Therefore, Mr. Rahman argues that the contentions of the petitioner challenging the compromise based award have no valid reason to consider under the law. Moreover, he argues that an award cannot be set aside for minor irregularities unless the complaining party demonstrates actual prejudice, which is absent in the present case in hand.

**13.** On the Award being contrary to public policy and law, Mr. Rahman, reiterated that there is neither evidence that the award was produced by fraud, corruption and or that the arbitrator lacked impartiality nor evidence that the award was cooked as alleged by the petitioner. Moreover, an award based on the mutual consent of the parties cannot violate public policy. The power of the court to set aside an award on public policy grounds is strictly limited. Then referring the case of Saudi Arabian Airlines Corp. Vs. Saudi Bangladesh Services Co. Ltd, 73 DLR (AD) (2021) 277, Mr. Rahman contends that an award can only be struck down if it is perverse or so irrational that no reasonable person would have arrived at the same conclusion. It is therefore, in Mr. Rahman's view that no question of violation of public policy arises in this case and therefore, he prayed that the application to be dismissed.

**14.** It appears that the instant application has attracts the provisions of sections 42(2) read with section 43 of the Act. Therefore, this Court deems it pertinent to reproduce the relevant provisions of sections 42 and 43 of the Act for dealing with the present application.

**15.** For ready reference, section 42(2) of the Arbitration Act, 2001 reads as under:-

**42.** Application for setting aside arbitral award:-

(1)

(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)

(ii)

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was not otherwise unable due to some reasonable cause to present his case.

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

(i)

(ii)

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

**16.** Therefore, clearly section 42(2) empowers the High Court Division to set aside any arbitral award made in an international commercial arbitration held in Bangladesh only under certain contingencies as described in section 43 in general and sections 43(1)(a) (iii), 43(1)(b)(iii) of the Act in particular for the present application.

**17.** Apparently, the application of the petitioner and the submissions as canvassed by the learned Counsel for the petitioner indicate that the petitioner's prayer to set aside the arbitral award is based on the grounds that the arbitral tribunal was constituted by an employee of BEPZA, the ultimate employer for the project in question, and therefore, he was in a position of manifest conflict of interest. Moreover, the award was made without following proper procedures as prescribed by the Act and without giving reasonable opportunity to the petitioner to present his case before the arbitral tribunal and consequently breaching the principles of natural justice, which is also against the public policy of Bangladesh.

**18.** On the issue of arbitrator being an employee of BEPZA, it is not disputed that the parties executed the contract in question on 06.01.2020 and Clause C.1 of the contract expressly provides that the Project Director of Mirsharai EZ, BEPZA will act as Arbitrator. It is a settled position that the arbitrator and jurisdiction of arbitral tribunal are conferred by the parties through their contract. Therefore, after executing said contract the contention of the petitioner on the issue of the arbitrator has no merit.

**19.** On the ground of procedure defects, it appears that the respondent invoked the arbitration clause on 19.05.2024 and on 26.05.2024 the arbitrator was appointed by the parties. It is the contention of the petitioner that after appointing the arbitrator no formal claim was made and also the petitioner was not given the opportunity to file the counter claim before the tribunal as well as no proper hearing was carried out by the arbitrator. Upon perusal of the records reveal that in the award it has been stated that claim and counter claim of the parties were submitted on 06.03.2024 and 21.05.2024 respectively. But apparently the arbitral tribunal was constituted on 26.05.2024 upon appointing the arbitrator. Once constituted, the tribunal is required to schedule a preliminary meeting with both parties to set the procedure and roadmap for the dispute. Therefore, those letters issued before constituted the arbitral tribunal do not classify as formal claim and statement of defence or counter claim under the provisions of law.

**20.** Section 25 of the Act provides that the arbitral tribunal shall follow the procedure as agreed on by the parties in conducting its proceedings. Moreover, section 29 of the

Act requires that within the period of time determined by the tribunal, the claimant shall state the facts supporting his claim and the respondent shall state his defence as well as the counter claim, if any. But in the case in hand it appears that no notice was issued by calling the parties to submit such formal claim or statement of defence as well as there is no sign of submitting such documents by the either party before the arbitral tribunal after formation.

**21.** It also appears from the award that hearings of the parties were conducted on 23.05.2024, 26.05.2024 and 06.06.2024 before passing the award in question. Admittedly, the arbitrator was appointed on 26.05.2024 and therefore, first hearing was carried out before the appointment of the arbitrator, second hearing was conducted on the date of the appointment of the arbitrator and final hearing was took place after the appointment of the arbitrator. But there is no scope to conduct the hearing before appointing the arbitrator or before receiving formal claim and statement of defence from the parties. Accordingly, it appears that no rules of proceedings were adopted by the arbitrator or followed before passing the impugned award.

**22.** In the case of Impex Corporation and Others Vs. Elenjikal Aquamarine Export Limited 2008 (2) Arb. LR 560 (Kerala)(DB), the High Court of Kerala observed that "The proceedings of the arbitrator cannot be equivalent to the proceedings in a civil Court. The Code of Civil Procedure as such is not applicable before the arbitrator. Since no procedure is contemplated in the arbitration agreement, the Arbitral Tribunal can adopt the proceedings in the manner it consider appropriate. But the proceedings adopted shall be in fair and in accordance with the principles of natural justice. An arbitrator cannot violate the provisions of law."

**23.** Similarly, it was observed by Mr. Justice S. Rajeswaran J. in the case of K. A. Mahboob Basha and others Vs. K. A. Mohamed Ibrahim and others, 2008 (1) Arb LR (Madras) that "There was only one day hearing by the arbitrators, no claim petition nor any counter was filed by the parties..... and in such circumstances the award is patently illegal and such an award can be set aside by the Court suo motu even if the petition is filed after the limitation period."

**24.** The final ground centred on the assertion that no proper notice was issued upon the petitioner before passing the impugned award and the petitioner was not given a fair opportunity to place his case before the tribunal and there is violation of principles of natural justice.

**25.** A perusal of the impugned award would show that eventually no proper notice was served upon the parties for submitting the claim and statement of defence. It is settled proposition of law that though the arbitrator is not bound by technical rules of procedure, but he cannot ignore basic principles of natural justice.

**26.** Therefore, when a party is unable to analyse, comment or argue on a contention raised by the other party, it will certainly be deemed as a breach of natural justice and thereby, also a violation of the most fundamental notions of justice. Accordingly, such arbitral award is required to be set aside by the courts.

**27.** Moreover, the principles of natural justice and the public policy of Bangladesh are paramount and cannot be ignored or sidelined in an attempt not to frustrate the patent or latent commercial wisdom of the parties to seek an alternative means of dispute resolution. Such attempt directly attacks the root of our legal system, and the courts cannot be made a mere spectator to such gross violations.

**28.** According to the International Law Association, breaches of fundamental principles of law; actions contrary to good morals; and actions contrary to national interests/foreign relations' are integral to the public policy exception.

**29.** Therefore, any arbitral award must be fair, rational, and impartial in order for it to be upheld by the courts. But apparently, in this case the petitioner was denied the right of fair hearing as well as the impugned award was also passed by violating the statutory provisions as prescribed by sections 23, 25 and 29 of the Arbitration Act, 2001.

**30.** Though it is argued by the learned Counsel of the respondent No. 1 that the arbitral award in question was a consent award and both parties reached into a settlement recorded in joint minutes on 06.06.2024 and pursuant to that the award was subsequently passed. On perusal of the said document reveals that certain terms and conditions were imposed upon the parties before entering final agreement of compromise. But there is lack of affirmative evidence in the records and submissions of the contending parties that those terms and conditions were subsequently complied with and the agreement of compromise was signed by the parties. Therefore, the submission of the learned Counsel for the respondent No. 1 on this point has no force in law.

**31.** In light of the aforesaid reasons, I find force in the submission made by the learned Counsel for the petitioner and hence, all of the reasons aforesaid, this court finds merit in the application filed under section 42(2) read with section 43 of the Arbitration Act, 2001.

**32.** Accordingly, the application is allowed and the award dated 22.05.2025 is hereby set aside.

**33.** However, there will be no order as to cost.

**34.** Communicate the judgment at once.

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