13 SCOB [2020] HCD

HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 7882 OF 2017

M/S BHIS Apparels Limited represented by its Managing Director, 671, Dattapara, Hossain Market, Tongi, Gazipur, Bangladesh.
...Petitioner

-Versus-

Alliance for Bangladesh Workers Safety, BTI Celebration Point, Plot 3 & 5, Road 113/A, Gulshan-2, Dhaka- 1212, Bangladesh and others.
... Respondents

Mr. Imtiaz Moinul Islam, Advocate
.....For the petitioner.

Mr. Tanjib-ul Alam with
Mr. M. Saquibuzzaman and
Mr. Kazi Ershadul Alam, Advocates
....For the respondent nos. 2 and 3.

Heard on 24.10.2018, 31.10.2018, 14.11.2018, 23.01.2019, 06.02.2019, 13.03.2019, 31.03.2019, 03.04.2019, 08.05.2019, 26.06.2019, 30.06.2019 and 01.07.2019.
Judgment on 21.07.2019 and 22.07.2019.

Present:
Mr. Justice Moyeenul Islam Chowdhury
-And-
Mr. Justice Md. Ashraful Kamal

Private body -Acting on the footing of Republic;
Thus it is palpably clear that the respondent no. 1 (Alliance) has been acting with the consent of the DIFE and assisting it in inspecting and ensuring the safety of the garment factories in the country. So we hold that the Alliance has been performing *de facto* functions in connection with the affairs of the Republic. ... (Para 65)

Since as per Article 102(1) any person aggrieved can enforce any of the fundamental rights guaranteed under Part III of our Constitution, we do not find any difficulty on the part of the petitioner-company, an indigenous Bangladeshi company whose shareholders and directors are all Bangladeshi citizens, to invoke Articles 27 and 40 of the Constitution in this case. Besides, Articles 27 and 40 do not say who can enforce them; it is only Article 102 (1) which says any person aggrieved can enforce them which undeniably fall under Part III of the Constitution. So Articles 27 and 40 which have been invoked by the petitioner-company are to be interpreted in the light of Article 102(1) of the Constitution. ... (Para 88)

We are of the opinion that for the limited purpose of enforcement of any of the fundamental rights as guaranteed by Part III of the Constitution, an indigenous company like the petitioner-company, whose shareholders and directors are all Bangladeshi citizens, is a 'citizen' of Bangladesh. This interpretation, as we see it, is in perfect accord with the intention of the framers of the Constitution and the tone and tenor of Article 102(1) of the Constitution. ... (Para 95)

JUDGMENT

MOYEENUL ISLAM CHOWDHURY, J:

1. On an application under Article 102 of the Constitution of the People's Republic of Bangladesh filed by the petitioner, a Rule Nisi was issued calling upon the respondents to show cause as to why the escalation process of the respondent no. 1 (Alliance) and the notice dated 18.06.2017 (Annexure-'O') issued by the respondent no. 1 suspending the business of the petitioner-company should not be declared to be without lawful authority and of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

2. The case of the petitioner, as set out in the Writ Petition, in short, is as follows:
The petitioner is a limited company duly incorporated under the Companies Act, 1994 and is engaged in ready-made garment business with high reputation. Anyway, on 24.04.2013, the infamous "Rana Plaza Disaster" prompted a chain of cautionary initiatives and the Government of Bangladesh through the Ministry of Labour and Employment (MOLE) formed a National Tripartite Committee (NTC) with the owners of garment factories and all Bangladeshi labour organizations and adopted the National Tripartite Plan of Action (NTPA). The whole purpose of the NTPA was to take every possible measure to ensure fire and building safety in the garment sector of Bangladesh. The NTC in its joint statement(s) prescribed and adopted that it would provide entry point to any stakeholders (buyers/brands, international development organizations, donors etc.) that would wish to help improve the fire and building safety condition in the Ready-Made Garment (RMG) factories of Bangladesh. The international buyers who have been placing regular orders to Bangladesh realized that they needed to take positive steps to improve the fire and building safety condition in RMG factories in Bangladesh and that this realization must be translated into reality. Accordingly, all the American buyers formed "Alliance" (respondent no. 1) which is the only exclusive inspecting authority to inspect the RMG factories of Bangladesh. The Government of Bangladesh ratified Alliance's actions through the NTPA and therefore Alliance is an instrumentality of the Government of Bangladesh. Similarly the Europe-based apparel corporations signed a legally binding agreement named "Accord on Fire and Building Safety in Bangladesh" and created Accord which is the only exclusive inspecting authority created under the NTPA with the assent of the Government of Bangladesh. That being so, Accord is another instrumentality of the Government of Bangladesh. The inspection reports of the Alliance or Accord Foundation are final. The fate of Bangladeshi RMG factories is dependent upon such reports. Both the Alliance and Accord can stop any Bangladeshi factory's business by reporting publicly the result of any such inspection. However, the petitioner is a factory supplying to both European and American buyers and is, therefore, liable to be inspected by both the Alliance and Accord. Both the Alliance and Accord initiatives have been adopted to assist the NTC in ensuring fire and building safety of the RMG factories of Bangladesh. The Alliance came into existence as a collective help from the America-based buyers to make the RMG factories safe up to the international standard. The signatories to the Alliance agreement established the respondent no. 1 (Alliance) and opened an office in Dhaka to administer its operations. The agreement itself provides that the signatories will work in sync with the NTPA enforced by the NTC established under the MOLE. Thus the respondent no. 1 came into effect on 10.07.2013. The functions of the respondent no. 1 (Alliance) are to inspect each supplier factory, to prescribe a Corrective Action Plan (CAP) and to keep doing follow-up inspections to make sure that

the remediation work (were needed) is being done. Once a factory is inspected and it is found that retrofitting/remediation work is needed, such factory is asked to prepare a Detailed Engineering Assessment (DEA). This DEA will then be sent to the respondent no. 1 and if approved, the supplier Bangladeshi factory will start the work of remediation/retrofitting and the respondent no. 1 will keep doing follow-up inspections to ensure compliance and upgradation. This *modus operandi* was followed in the case of the petitioner too which was inspected initially on 21.05.2014 and 24.05.2014 by the Alliance and the DEA was prescribed to do the necessary remediation/retrofitting work. The petitioner started doing the remediation work as requested by the Alliance and made significant progress. However, the Alliance kept doing follow-up inspections to check on the updates and it lastly inspected the petitioner's factory on 27.03.2017 when it was conspicuously found that the petitioner had already done most of the remediation/retrofitting work and the remaining work was underway. Even the website of the Alliance reported on 14.04.2017 that most of the remediation work of the petitioner had been completed and the rest of the work was minimal and under process and there was no risk involved with the current status of the factory of the petitioner. Although the petitioner endeavoured to finish all the remediation work as dictated by the Alliance, a few minor Non-Compliances (NCs) were to be done swiftly. The Alliance did not give the petitioner any space to breathe and called a "Remediation Escalation Roundtable Meeting" on 12.04.2017. In that meeting, the Alliance did not appreciate the remediation efforts made by the petitioner and it stated that if no "noteworthy" progress is made in 4(four) weeks, the petitioner could receive 1st warning letter leading to suspension of the factory from the list of approved suppliers to the Alliance member companies. The Alliance sent an email dated 14.04.2017 dictating the petitioner what needed to be done. The petitioner with all sincerity and honesty completed the major part of the remediation work and updated the respondent no. 1 about the progress by an email dated 29.04.2017. It was mentioned in this email that a few NCs could not be accomplished in a hurried fashion as the petitioner has to do the remediation work keeping the production of the factory ongoing and some NCs are impossible to be performed within a short span of time. By the 4(four) weeks timeline set by the respondent no. 1, the petitioner completed 88% of the total remediation work; but it needed a little more time and there are legitimate reasons for such time extension. Hence the petitioner by its email dated 11.05.2017 asked the respondent no. 1 for a meeting to explain the progress made so far; but the respondent no. 1 harshly refused the fair request and denied any more meeting to give the petitioner any chance to explain the progress.

3. Out of the blue, on the one hand, the respondent no. 1 refused the meeting; but on the other hand, it issued 1st warning letter dated 11.05.2017 telling the petitioner that its business will be suspended soon. The impugned warning letter dated 11.05.2017 shows that "noteworthy" progress was made; but still the impugned warning letter was issued without giving the petitioner any opportunity to explain itself. The impugned 1st warning letter dated 11.05.2017 gave the petitioner 14(fourteen) days time, that is, up to 25.05.2017 to satisfy the respondent no. 1. However, the reason behind issuance of such illegal and arbitrary 1st warning letter dated 11.05.2017 is absolutely unclear and vexatious; but the petitioner kept on investing and doing the remediation work thinking about the betterment of the workers. Within those 14(fourteen) days, the petitioner invested a sum of Tk. 4 crore for hydrant installation and completed 90% of the remediation work. The petitioner apprised the respondent no. 1 of the "noteworthy" remediation work completed by its email dated 25.05.2017. Although the 1st impugned warning letter dated 11.05.2017 clearly stipulated that the respondent no. 1 would do follow-up inspections to evaluate the progress; yet without

doing any such inspections or giving the petitioner an opportunity to show the "noteworthy" progress achieved, the respondent no. 1 issued the 2nd warning letter dated 26.05.2017.

4. The petitioner also supplies for European buyers and as such the petitioner is amenable to inspections and remediation suggestions, if any, made by the exclusive European inspecting authority, namely, Accord Foundation. The Accord duly inspected the petitioner's factory and accorded approval to the DEA and the petitioner was doing the remediation work as suggested by the Accord as well. It is strange that for the same reason, the petitioner has to do the remediation work in 2(two) standards–one given by the respondent no. 1 (Alliance) and the other given by the Accord–particularly when both are to ensure the same thing, that is to say, safety of workers. The remediation recommendations given by the Accord were totally complied with as per the schedule and the Accord is very much satisfied at the progress as evidenced by its last follow-up inspection report dated 09.05.2017. If there was any imminent safety issue, the Accord would have not given the petitioner any "pass" on 09.05.2017. The dual standards are utterly confusing. But the petitioner kept on doing the safety remediation work to satisfy both the standards.

5. The petitioner immediately objected by its email dated 30.05.2017 to the impugned 2nd warning letter dated 26.05.2017 and requested the respondent no. 1 that since 90% of the remediation work had already been done as admitted in the 2nd warning letter itself, the impugned 2nd warning letter should be withdrawn. The escalation protocol of the respondent no. 1 by which it pushes a factory to suspension is not at all detailed and precise. What is more, the escalation protocol of the respondent no. 1 is unapproved and arbitrary.

6. In the Supplementary Affidavit dated 02.07.2017 filed by the petitioner, it has been averred that the respondent no. 1 visited the factory premises of the petitioner on 14.06.2017 and found that there was ample progress, but to the sheer disappointment of the petitioner, the respondent no. 1 suspended its business by issuing a notice of suspension dated 18.06.2017. Immediately on receipt of the notice of suspension dated 18.06.2017, the petitioner replied to the respondent no. 1 to reconsider listing of the NCs complained of. It is evident that most of the NCs were due to the whimsical attitude of the respondent no. 1 to give a date to test and commission the remediation work done; but majority of the NCs were already corrected and approved by the Accord (the other inspecting authority).

7. In the Supplementary Affidavit dated 31.01.2019, it has been stated that as per the Accord's website, the remediation of the petitioner's factory is complete to the extent of 98%. There is no severe or imminent danger to the safety of the workers in the factory of the petitioner. This fact is not only apparent from the Accord's report; but also it is apparent from the inspection of Li & Fung, a prominent buyer of the petitioner. The Accord had an escalation protocol as well like the respondent no. 1 (Alliance) and that protocol was not approved by the NTPA or the Government. As such the Accord is now negotiating with the Transition Monitoring Committee (TMC) to get approval to its escalation protocol; but the Alliance has not taken any such step as yet in that direction. The Remediation Coordination Cell (RCC) has been in place under the respondent no. 3, Department of Inspection for Factories and Establishments (DIFE), as the inspecting authority for the RMG sector. The Accord is already set to hand over its supplier factories to the RCC through the TMC. Since the Alliance has decided to stop its functions in Bangladesh, it will not seek any approval to its escalation protocol. Therefore the unapproved escalation protocol of the respondent no. 1(Alliance) is without lawful authority and of no legal effect.

8. The Rule has been contested by the respondent nos. 2 and 3 by filing Affidavits-in-Opposition. The case of those respondents, as set out therein, briefly, is as under:

> The facts appearing from different Annexures of the Writ Petition are that the remediation work in the area of structural integrity of the factory of the petitioner was not possible until and unless the prescribed DEA was conducted. Retrofitting of a building can only be done once the DEA is completed, as the retrofitting requirements are only derived from the DEA. The admitted position is that the DEA was submitted both to the Accord and Alliance on 23.03.2015 and the same was approved only by the Accord on 04.04.2017. The website publication as annexed in Annexure-'D' is indicating mainly the overall other parameters in addition to the remediation work of the factory building. In that report, the remediation work was reported to require intervention from the respondent no. 1 which means the escalation protocol is required to be implemented for the delayed remediation progress of the factory of the petitioner. As the DEA was approved on 04.04.2017, a target of only 40% of the implementation of the CAP in the structural area of the remediation within next 4(four) weeks was suggested. A substantial part of the remediation work in fire and electricity sphere was not completed and the very important structural re-enforcement of columns was not started by that time as evidenced by Annexure-'F'. The petitioner failed to even commence the structural retrofitting work of the building even on the date of requesting for a meeting with the Alliance after 4(four) weeks had elapsed. The 1st warning letter dated 11.05.2017 was the outcome of the escalation roundtable dated 12.04.2017 for not implementing the remediation work of the factory to the satisfaction of the Alliance. There was no progress in the remediation work of the factory building especially in the highest priority area of the required structural re-enforcement of 52 columns of the building. By that warning letter dated 11.05.2017, the petitioner was given 14(fourteen) days time to provide remediation progress of the factory. The remediation work of the factory was being monitored and supervised by the Alliance, not by the Accord; though for the purpose of the structural remediation, the Accord-approved DEA was followed. According to Annexure-'L', the petitioner only corrected 90% in the fire and electrical safety, while it could not achieve even 40% of the remediation target in the structural sphere given by the Alliance within the given time-frame after the escalation roundtable. The manner by which the petitioner has impugned the escalation process of the respondent no. 1 is totally absurd. The escalation process adopted by the respondent no. 1 is compatible with the spirit of the NTPA duly recognized by the respondents. At a subsequent stage, the Alliance issued a 2nd warning letter in favour of the petitioner-company at the slow remediation work of the factory. As the petitioner failed to complete the remediation work in line with its suggestions and recommendations given in the impugned warning letters, the respondent no. 1 (Alliance) suspended the business of the petitioner by issuing a notice of suspension dated 18.06.2017.

9. In the Supplementary Affidavit-in-Opposition dated 05.05.2019 filed by the respondent nos. 2 and 3, it has been mentioned that in the 4th meeting dated 21.11.2013 of the NTC on fire safety and structural integrity in the RMG sector of Bangladesh, it was decided that a Review Panel would be created to review any recommendation for closure of any building and the said Review Panel would consist of two engineers of the Bangladesh University of Engineering and Technology (BUET), one engineer from the Accord, one engineer from the Alliance and others. As part of the commitment given to the people of Bangladesh and to the international community, the Government of Bangladesh developed a single parameter with the assistance of the International Labour Organization (ILO) to assess the RMG sector in

Bangladesh regarding fire, electrical safety and structural integrity. Following the parameter, the three actors, namely, the Accord, Alliance and National Initiative (NI) assessed 3780 factories initially. This inspection process commenced in late 2013 and by the end of 2015, the process was complete. The Government in a meeting held on 05.09.2016 formed a cell under the name and style– Remediation Coordination Cell (RCC) –to manage and organize the remediation process to be commenced in all the inspected factories. Afterwards the RCC was reconstituted by the Memo No. 40.00.0000.039.06.005.18-25 dated 27.05.2018.

10. Anyway, the Writ Petition contains highly disputed questions of facts which cannot be ascertained in the writ jurisdiction of the High Court Division under Article 102 of the Constitution. The writ-petitioner has raised some issues as to the inspection and escalation process of the Alliance whereby assertions have been made that it remedied most of the concerns raised by the Alliance and despite such remedial work, it was suspended. These assertions and factual aspects can only be adequately dealt with by the Review Panel. The Review Panel is the only alternative and equally efficacious remedy for the writ-petitioner. That remedy having not been availed of by the writ-petitioner, the instant Rule is not maintainable.

11. However, there is a new development. From the website entry dated 30.04.2019 of the respondent no. 1, the name of the petitioner has been shown as "participating" and as the petitioner has been a "participating" factory according to this entry dated 30.04.2019, the Rule Nisi has already become infructuous.

12. In the Supplementary Affidavit-in-Opposition dated 03.07.2019 filed by the respondent nos. 2 and 3, it has been stated that during the course of the remediation work of the petitioner's factory, the respondent no. 1 (Alliance) conducted as many as 6(six) Remediation Verification Visits (RVVs). After issuance of the 2(two) warning letters (1st warning letter dated 11.05.2017 and 2nd warning letter dated 26.05.2017) in compliance with the established inspection protocol, the respondent no. 1 went for the 6th RVV on 14.06.2017 and having found unsatisfactory progress, it finally issued the notification of suspension dated 18.06.2017 (Annexure-'O').

13. As per the Agreement (Annexure-'A'), it is not obligatory for the Alliance to conduct any RVV in between the 1st warning letter dated 11.05.2017 and the 2nd warning letter dated 26.05.2017, albeit the Alliance conducted the 6th RVV before issuance of the notice of suspension to the petitioner. The draft escalation protocol was presented before the 14th meeting of the NTC wherein it was decided that the ILO would review the same and thereafter it would be sent to the MOLE for its approval. The final draft escalation protocol was sent to the MOLE for its approval by the Memo No. 40.01.0000.103.16.008.17.139 dated 19.02.2019. The escalation protocol is currently being applied to the factories under inspection by the NI on behalf of the DIFE. The petitioner has failed to establish how its fundamental rights have been infringed by the escalation protocol particularly when it is no longer suspended by the respondent no. 1 and is actually a "participating" entity. As at the moment, the petitioner is a "participating" entity, this Court will not decide on the constitutionality of the actions of the respondent no. 1 in that the alleged threats to the fundamental rights of the petitioner as guaranteed by Articles 27, 31 and 40 of the Constitution are already over.

14. In the Affidavit-in-Reply dated 04.07.2019 filed on behalf of the petitioner, it has been averred that in reality, there exists no disputed questions of facts and so the Rule cannot

be discharged on that score. The question of de-escalation of the factory is out of the question because all the Alliance signatories refused business to do with the petitioner. The petitioner never did any remediation work after the suspension of its business simply for the reason that that would mean admitting the illegal, arbitrary and *mala fide* escalation of its factory; rather the petitioner sought shelter of this Court thereagainst. The assertion that the Operating Manual (OM) creates a common standard is denied. Nowhere in the said OM, there is a single word about the escalation protocol of the respondent no. 1 (Alliance) or Accord Foundation. The respondent no. 1 escalated the factory of the petitioner from stage 1 to stage 2 as evidenced by Annexures- 'H' and 'J' without inspecting the factory. When the Accord approved the DEA on 04.04.2017, the respondent no. 1 (Alliance), as per Annexure-'Q', was *coram non judice* in the matter of escalating the factory of the petitioner. The NTPA did not develop any escalation protocol for the Alliance; rather it drafted an escalation protocol for the factories under the NI. It is common knowledge that there are 3(three) initiatives being the NI, Accord and Alliance. The NI is supervised by the DIFE. The DIFE has devised the RCC to supervise the factories under the NI and the RCC is also set to take over the Accord-listed factories. But on the contrary, the respondent no. 1 (Alliance) did never intend to negotiate with the RCC to hand over its factories thereto. It is *ex-facie* clear from a conjoint reading of Annexures- '12' and '12A' that the 14th meeting of the NTC prescribed a course of action for the NI-listed factories. This NI has nothing to do with the Alliance or its factories. If the escalation protocol of the Alliance is declared illegal, then it will have to negotiate with the Government and the BGMEA, just like the Accord is doing and a common standard will be achieved which will benefit the RMG sector, members of the public and the Government alike. The Government has made it abundantly clear that the draft escalation protocol is for the NI-listed factories only. The Review Panel has been in place as an Appellate Authority in order to review the recommendations of closure of factories posing severe and imminent danger to human life and that is the only periphery of the Review Panel. Admittedly the factory of the petitioner-company was never recommended to be closed down. On the contrary, the petitioner has always been doing business with the Accord, even after issuance of the notice of suspension by the respondent no. 1. The suspension of the business relation of the petitioner with the signatories of the Alliance is not a matter to be resolved within the jurisdiction of the Review Panel. Since the petitioner has filed this Writ Petition for enforcement of its fundamental rights under Articles 27, 31 and 40 of the Constitution, the Rule cannot be thrown out on the ground of disputed questions of facts. The respondent nos. 2 and 3, who have no direct or firsthand knowledge about the facts alleged by the petitioner in the Writ Petition and Supplementary Affidavits with regard to inspection and remediation of the factory, cannot legally raise the plea of disputed questions of facts. The respondent no. 1 with a *mala fide* intention wrote "participating" after issuance of the suspension notice in order to confuse the Court and to frustrate the Rule. As per the Accord's website, the present status of the petitioner is that it is a 100% compliant factory. The petitioner being a local juristic person can invoke the fundamental rights guaranteed by Articles 27, 31 and 40 of the Constitution both as a citizen and a resident of the country.

15. At the outset, Mr. Imtiaz Moinul Islam, learned Advocate appearing on behalf of the petitioner, submits that admittedly the petitioner is a Private Limited Company incorporated under the Companies Act, 1994 and it is also admitted that the petitioner's factory is a 'shared' factory, that is to say, shared by both the Accord and the Alliance and as a local company, it is a local juristic person and as a local juristic person, being both a resident and a citizen of Bangladesh, it can invoke its fundamental rights as guaranteed under Articles 27, 31 and 40 of the Constitution.

16. Mr. Imtiaz Moinul Islam also submits that the petitioner-company being a juristic person is a 'person' for the purpose of the relevant provisions of the Constitution; but according to the definition of 'citizen' given in Article 152(1) of the Constitution, a company is apparently not a citizen and for the first time, a question has arisen as to whether a local company can enforce the fundamental rights exclusively reserved for the citizens of Bangladesh under the Constitution.

17. Mr. Imtiaz Moinul Islam further submits that the petitioner being a juristic person can undoubtedly enforce its fundamental right guaranteed under Article 31 of the Constitution in view of the decision in the case of Elias Brothers (Md) (Pvt) Limited and another…Vs…Bangladesh and others; 16 BLC (2011) 327 and as such there does not appear to be any dispute as regards the enforcement of the fundamental right of the petitioner thereunder.

18. Mr. Imtiaz Moinul Islam also submits that as per Article 44(1) of the Constitution, the right to move the High Court Division in accordance with Clause (1) of Article 102 for the enforcement of the rights conferred by Part III is guaranteed and Article 102 (1) of the Constitution envisages that the High Court Division, on the application of any person aggrieved, may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by Part III of the Constitution and the petitioner-company, being a local juristic person, is undoubtedly entitled to enforce its fundamental rights as per Article 102 (1), whether the fundamental rights enumerated in Part III are applicable to citizens or non-citizens.

19. Mr. Imtiaz Moinul Islam next submits that it has been ruled in the case of Bangladesh Small Industries Corporation, Dacca…Vs…Mahbub Hossain Chowdhury, 29 DLR (SC) 41 that the word 'person' in the Constitution shall include the word 'person' as defined in section 3(39) of the General Clauses Act, 1897 which states that a 'person' shall include any company or association or body of individuals, whether incorporated or not.

20. Mr. Imtiaz Moinul Islam also submits that the petitioner has invoked Articles 27, 31 and 40 of the Constitution and Article 31 relates to the fundamental right incorporated therein which applies to both citizens and non-citizens, but the fundamental rights enshrined in Articles 27 and 40 are applicable to citizens only; but Articles 27 and 40 do not indicate as to who can enforce those Articles; but Article 102 (1) does indicate and in this view of the matter, the petitioner-company, being a local juristic person, can invoke Article 102(1) for enforcement of its fundamental rights guaranteed under Articles 27 and 40, apart from the fundamental right guaranteed under Article 31 of the Constitution.

21. Mr. Imtiaz Moinul Islam further submits that according to the definition of 'citizen' provided in Article 152(1) of the Constitution, except where the subject or context otherwise requires, 'citizen' means a person who is a citizen of Bangladesh according to law relating to citizenship; but if the subject or context otherwise requires, then the definition of 'citizen' as given in Article 152(1) will not be evidently applicable and that being so, in Article 102(1) of the Constitution, the phraseology 'any person aggrieved' has been used and if Article 102(1) and the definition of 'citizen' as given in Article 152(1) are read together, there is not an iota of doubt that 'any person aggrieved', whether a citizen or a non-citizen, may invoke Article 102(1) for enforcement of any of his fundamental rights guaranteed under Part III of the

Constitution and considered from this perspective, the petitioner being a local juristic person is necessarily a citizen of Bangladesh.

22. Mr. Imtiaz Moinul Islam also submits that the petitioner-company being an indigenous company is a collective representation of its shareholders who are undeniably all citizens of Bangladesh and by that reason, there is no difficulty in construing an indigenous company like the petitioner-company as a citizen of Bangladesh.

23. Mr. Imtiaz Moinul Islam next submits that the Appellate Division took the interpretation of the Constitution to a new height in the case of Dr. Mohiuddin Farooque…Vs…Bangladesh represented by the Secretary, Ministry of Irrigation, Water Resources and Flood Control and others, 49 DLR (AD) 1 (popularly known as BELA's case) wherein it ruled that 'a person aggrieved' will include an indigenous association when it is espousing the cause arising out of an invasion of the fundamental rights of an indeterminate number of people and in that case, the Appellate Division further ruled that an association can enforce the fundamental rights of the other citizens of Bangladesh in the form of a Public Interest Litigation (PIL) and if it is the view of the Appellate Division in BELA's case, then there can be no bar whatsoever in the way of the petitioner-company to enforce its own fundamental rights under Articles 27 and 40 of the Constitution which are applicable to citizens only, apart from Article 31 of the Constitution which applies both to citizens and non-citizens.

24. Mr. Imtiaz Moinul Islam also submits that the Appellate Division allowed another association to enforce its fundamental right guaranteed under Article 27 of the Constitution in the case of Bangladesh Retired Government Employees Welfare Association and others…Vs…Bangladesh represented by the Secretary, Ministry of Finance and another, 51 DLR (AD) 121 and the petitioner-company, being an indigenous association of its shareholders, can, no doubt, invoke the writ jurisdiction of the High Court Division for enforcement of its fundamental rights guaranteed under Articles 27 and 40 of the Constitution and considered from this point of view, the Writ Petition as framed is maintainable.

25. Mr. Imtiaz Moinul Islam further submits that in our neighbouring country India, it has been observed in the case of State Trading Corporation of India, Limited…Vs….The Commercial Tax Officer and others, AIR 1963 SC 1811 that the fundamental rights of the people of India are enforced by the Supreme Court of India under Article 32 and by the High Courts of India under Article 226 of the Indian Constitution; but neither of those Articles contemplates as to who can enforce the fundamental rights under Articles 32 or 226 of the Indian Constitution unlike Article 102(1) of our Constitution and in actuality, there is no enforcement device/mechanism of the fundamental rights of the people of India like that of the people of Bangladesh in Article 102(1) of our Constitution and that is why, the constitutional mandate of India is different from that of Bangladesh.

26. Mr. Imtiaz Moinul Islam next submits that in the decision reported in AIR 1963 SC 1811, according to the majority view, State Trading Corporation of India being a company is not a 'citizen'; but according to the minority view, it is a 'citizen' and as the constitutional mandate of Bangladesh is different from that of India, an indigenous company of Bangladesh like the petitioner-company, whose shareholders are all Bangladeshi citizens, can definitely be regarded as a citizen of Bangladesh.

27. Mr. Imtiaz Moinul Islam further submits that admittedly there was no inspection of the factory of the petitioner by the Alliance between escalation stage 1 and stage 2 and the issuance of the 2nd warning letter dated 26.05.2017 without any RVV is clearly *mala fide* and against the principle of natural justice.

28. Mr. Imtiaz Moinul Islam also submits that when the DEA was approved by the Accord on 04.04.2017, the Alliance did not have any jurisdiction thereafter, as per Annexure-'Q', to conduct any inspection or to suggest any CAP or to initiate any escalation process and to suspend the business of the petitioner all of which were done in flagrant contravention of the fundamental rights of the petitioner.

29. Mr. Imtiaz Moinul Islam next submits that the Review Panel is not an alternative efficacious remedy of Article 102(1) of the Constitution and the Review Panel can only review the recommendation of closure of any factory posing any severe and imminent danger to the safety of the workers and that is the only jurisdiction of the Review Panel; but indisputably there was no recommendation made by the Alliance for closing down the factory of the petitioner and even after suspension of the business of the petitioner by the respondent no. 1, the petitioner has been doing business with the Accord and as it is not a case of recommendation of closure of the factory of the petitioner, the question of availing of the alleged equally alternative efficacious remedy of the Review Panel by the petitioner does not arise at all.

30. Mr. Imtiaz Moinul Islam further submits that the petitioner has invoked Articles 27, 31 and 40 of the Constitution for enforcement of its fundamental rights under Article 102(1) of the Constitution and in such a Writ Petition under Article 102(1) of the Constitution, the disputed questions of facts, if any, are of no avail and, if necessary, in an appropriate case, the Court will have to take evidence, either itself or by issuing a commission, to resolve any disputed question of fact to determine whether a fundamental right has at all been violated. In support of this submission, Mr. Imtiaz Moinul Islam relies upon paragraph 5.19 of Mahmudul Islam's "Constitutional Law of Bangladesh", 3rd edition and the decision in the case of Kavalappara Kottarathil Kochunni alias Moopil Nayar…Vs…State of Madras and others, AIR 1959 SC 725.

31. Mr. Imtiaz Moinul Islam also submits that the contesting respondent nos. 2 and 3 have no direct or firsthand knowledge about the facts as to inspection or remediation of the factory of the petitioner and as such they cannot legally raise any plea of disputed questions of facts in this case and it is only the respondent no. 1 (Alliance) which can raise this plea of disputed questions of facts in the case; but curiously enough, the Alliance has not come forward to raise the plea.

32. Mr. Imtiaz Moinul Islam next submits that on 30.04.2019, the website of the respondent no. 1 (Alliance) showed the petitioner-company as "participating" and this showing of the petitioner-company as "participating" is a cunning ploy to confuse the Court.

33. Mr. Imtiaz Moinul Islam further submits that the petitioner, after being suspended on 18.06.2017, did never resume any remediation work as per the Alliance requirement and the Alliance, after the 6th RVV on 14.06.2017, did never inspect the factory of the petitioner nor did it suggest any new remediation work which are *ex-facie* clear from the CAP reports on structural, fire and electric safety that are preserved in the website of the Alliance and the said CAP reports unerringly indicate that the Alliance wrote the word "participating" against the

name of the petitioner-company which contradicts the CAP reports themselves saved in its own website thus conspicuously proving that the Alliance *mala fide* penned "participating" in order to frustrate the Rule Nisi.

34. Mr. Imtiaz Moinul Islam also submits that had the Alliance, without having any *mala fide* intention, followed the general system, then every person who would have entered the Alliance's CAP respecting the petitioner would have been redirected to the Accord website where he would have found that the petitioner is a 100% compliant factory; but by falsely writing "participating" and by not including the Accord report in its website as is the general rule, the respondent no. 1 violated the petitioner's fundamental right guaranteed under Article 27 of the Constitution.

35. Mr. Imtiaz Moinul Islam next submits that the Accord Foundation too had an escalation protocol like that of the respondent no. 1 (Alliance); but that protocol was not approved by the NTPA or the Government and hence the Accord negotiated with the Government and the BGMEA to get approval to its escalation protocol as evidenced by the Workshop Summary dated 29.08.2018 and finally on 08.05.2019, the Accord signed a Memorandum of Understanding (MOU) with the BGMEA and Clause 2 of the MOU is indicative of the fact that the Accord has agreed to enforce its escalation protocol in collaboration with the BGMEA.

36. Mr. Imtiaz Moinul Islam further submits that the respondent no. 1 (Alliance) has not taken any step till date for approval of its escalation process like the NI or the Accord did and therefore the unapproved escalation protocol of the respondent no. 1 has no legs to stand upon.

37. Mr. Imtiaz Moinul Islam also submits that the escalation process of the respondent no. 1 does not stipulate as to what is to be regarded as 'adequate progress' or 'noteworthy progress' and even after doing 90% of what was suggested, the respondent no. 1 can determine that the progress is not 'adequate' or 'noteworthy' which is arbitrary and whimsical and since the escalation process is not approved by the NTPA or the Government of Bangladesh, the respondent no. 1, being an instrumentality of the Government, cannot enforce such unlawful escalation process.

38. Mr. Imtiaz Moinul Islam next submits that the Alliance has agreed in Clauses 1.1, 4.1 and 5.1 of its Agreement (Annexure-'A') that it will follow a common standard and as per its factory inspection standard (Annexure-'Q'), it will not duplicate any inspection completed by the Accord and will accept the Accord's findings; but the Alliance has acted in contravention of its own standard and issued the impugned notice of suspension in absolute disregard of the fundamental rights of the petitioner guaranteed under Articles 27, 31 and 40 of the Constitution.

39. Mr. Imtiaz Moinul Islam further submits that it is admitted by the respondent no. 1 (Alliance) as well as the other inspecting authority (Accord) and the buyer company Li & Fung that there is no severe and imminent danger to the workers' safety in the factory of the petitioner and the only thing to be done is to upgrade its standard a bit more in order to make it world-class and the respondent no. 1 in Clause 7.2 (c) of the Agreement (Annexure-'A') has clearly stipulated that it will only suspend and close down a factory if there is severe and imminent danger to the workers' safety and as there is no severe and imminent danger to the workers' safety in the factory of the petitioner, there is no earthly reason for issuance of the

impugned notice of suspension dated 18.06.2017 (Annexure-'O') and in this perspective, Annexure-'O' is without lawful authority and of no legal effect.

40. Per contra, Mr. Tanjib-ul Alam, learned Advocate appearing on behalf of the respondent nos. 2 and 3, submits that the petitioner cannot raise any objection to the escalation protocol of the respondent no. 1 (Alliance) on the score that it is not compatible with the ethos and norms of the NTPA, or for that matter, the MOLE and had the petitioner any genuine grievances about the escalation process of the Alliance, it would have raised its objections, if any, thereto at the earliest opportunity; but the petitioner-company did not do so and it challenged the escalation process of the Alliance only after issuance of the impugned notice of suspension.

41. Mr. Tanjib-ul Alam also submits that the Rule Nisi has already become infructuous in view of the Alliance's website entry dated 30.04.2019 showing the petitioner as a "participating" entity and as the Rule has already become infructuous as above, the petitioner cannot get any relief on merit.

42. Mr. Tanjib-ul Alam further submits that there are disputed questions of facts and those disputed questions of facts cannot be resolved in this summary proceeding under Article 102 of the Constitution and hence the Rule Nisi is not maintainable.

43. Mr. Tanjib-ul Alam next submits that the petitioner ought to have sought necessary relief(s) from the Review Panel against the impugned notice of suspension dated 18.06.2017 (Annexure-'O') and as the petitioner did not avail itself of the equally efficacious remedy available from the Review Panel, the Rule is incompetent.

44. Mr. Tanjib-ul Alam also submits that as the petitioner failed to carry out the remediation/retrofitting work of the factory to the satisfaction of the respondent no. 1, it issued two successive warning letters and eventually after the 6th RVV, it had to suspend the business of the petitioner-company under compelling circumstances.

45. We have perused the Writ Petition, Supplementary Affidavits, Affidavit-in-Opposition, Supplementary Affidavits-in-Opposition, Affidavit-in-Reply and relevant Annexures annexed thereto and heard the submissions of the learned Advocate for the petitioner Mr. Imtiaz Moinul Islam and the counter-submissions of the learned Advocate for the respondent nos. 2 and 3 Mr. Tanjib-ul Alam.

46. At first, a short narration about the background of the formation of the Alliance by the American buyers of Bangladeshi suppliers of RMGs is necessary. Following the fire of November 24, 2012 at Tazreen Fashions Limited in which 112 workers lost their lives and many others were injured, the Tripartite Partners adopted a Joint Statement of Commitment during a meeting organized jointly by the MOLE and the ILO on January 15, 2013. Through the Joint Statement, the Tripartite Partners committed to work together to develop a NTPA on Fire Safety by the end of February, 2013 with a view to taking comprehensive actions aimed at preventing any further loss of lives, limbs and properties due to work place fires and fire-related accidents and incidents. A further factory fire on January 26, 2013 at Smart Export Garments in which 8(eight) workers lost their lives and others were injured underlined the need for urgent tripartite actions in this respect. To ensure the timely development of a NTPA, the MOLE established a Tripartite Committee, which met several times with the support of the ILO. The NTPA was endorsed by the MOLE on March 24, 2013.

47. On 24 April, 2013, the Rana Plaza building collapsed leaving 1,129 dead and almost 2,000 injured, many of whom will remain permanently disabled. Most of the victims were garment sector workers given that the building housed 5(five) RMG factories. The ILO subsequently dispatched a High-Level Mission led by the Deputy Director General for Field Operations and Partnerships, Mr. Gilbert Houngbo, to Bangladesh from 1-4 May to express the solidarity of the ILO with those affected by these tragic events, partners from the Government, labour, and industry, and with the nation as a whole. The Mission engaged with the tripartite partners and other stakeholders to identify what needed to be done to prevent any such future tragedies. Within the framework of the mission, the tripartite partners issued a Joint Statement in which they committed to the formulation of an action plan focusing on six short and medium-term steps aimed at improving the structural integrity of RMG factories and other measures to prevent further tragedies from recurrence. To this end, in course of time, the Alliance, a platform of American buyers and the Accord Foundation, a platform of European buyers came into being after exhaustive deliberations among the stakeholders including the MOLE.

48. At this juncture, we would like to discuss the issue of maintainability of the Writ Petition. The petitioner in the Writ Petition has alleged contravention of its fundamental rights as guaranteed by Articles 27, 31 and 40 of the Constitution. By the way, Articles 27, 31 and 40 of the Constitution are quoted below verbatim:

"27. All citizens are equal before law and are entitled to equal protection of law."

. . .

"31. To enjoy the protection of law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law."

AND

. . .

"40. Subject to any restrictions imposed by law, every citizen possessing such qualifications, if any, as may be prescribed by law in relation to his profession, occupation, trade or business shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business."

49. Indisputably those three Articles are in Part III of the Constitution.

50. Article 102(1) of the Constitution provides that the High Court Division, on the application of any person aggrieved, may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by Part III of this Constitution. In other words, when it comes to enforcement of any of the fundamental rights as guaranteed by Part III, an aggrieved person can invoke Article 102(1) of the Constitution. From a plain reading of Article 102 (1) of the Constitution, we find that its ambit is very wide. In this context, we feel tempted to refer to the decision in the case of Moulana Md. Abdul Hakim alias Md. Abdul Hakim…Vs…Government of Bangladesh and others, 34 BLD (HCD) 129. Paragraph 12 of that decision is to the following effect:

"12. Article 102(1) sets itself apart from Article 102(2) (a) (ii) by bringing within its purview a wider group of individuals and authority on whom the Court may on judicial

review hold sway. When issues of fundamental rights are raised, the sanction of redress under Article 102(1) is clearly of availability against 'anyone', or 'any authority', inclusive of 'any person performing any function in connection with the affairs of the Republic'. The reference to Government functionaries must, accordingly, be seen as an appendage made to the broader category of 'anyone' or 'any authority' by way of abundant caution."

51. Tracing such jurisprudential development in this jurisdiction through the cases like Zakir Hossain Munshi…Vs…Government of the People's Republic of Bangladesh, 55 DLR (HCD) 130; Farzana Moazzem…Vs…Securities and Exchange Commission and others, 54 DLR (HCD) 66 and Conforce Limited, a Limited Liability Company…Vs…Titas Gas Transmission and Distribution Company Limited, a Public Limited Liability Company and another, 42 DLR (HCD) 33, it is now well-settled that the functional test approach enables a judicial review of an ostensibly private body, but which nevertheless performs a public function that aims at benefiting the public at large.

52. As a matter of fact, under our Constitutional scheme, an aggrieved person, in order to agitate his claim/case in judicial review, can do so by invoking Article 102(1) and/or Article 102(2) depending on the nature of the grievance and status of the perpetrator.

53. Article 102(1) comes into play in relation to the infringement of any of the fundamental rights guaranteed under Part III of the Constitution. Article 102(2) presupposes the availability of various writs that may be resorted to for review of actions and operations in the public domain, such actions and operations being otherwise the preserve of the Executive organ of the State affecting the citizenry in their contacts and dealings with the Executive and its functionaries.

54. There is no gainsaying the fact that the respondent no. 1 (Alliance) is basically a private platform/body set up by the American buyers and this respondent no. 1 has been operating in Bangladesh with the approval of the Government of Bangladesh. To be precise, there is a public element in the functions that are being discharged by the respondent no. 1 (Alliance). Needless to say, some of the public functions of the DIFE are being discharged both by the Alliance and the Accord on being recognized by the Government and its instrumentalities and agencies.

55. However, in the decision reported in 34 BLD (HCD) 129 (supra), it has been spelt out in paragraph 25:

"25…What can, however, be asserted with certainty is that the question whether an activity has sufficient public element in it is quite properly a matter of fact and degree ascertainable from a consideration of each given case on its merit. But it is nevertheless indisputably well-established by now and as held by the Privy Council in Jeewan Mohit…Vs…The Director of Public Prosecutions of Mauritius reported in (2006) UKPC 20 that the principle enunciated in *Datafin* is invariably the effective law, or rather the 'invariable rule' entrenched in judicial psyche."

56. Indubitably it is a principle of law that by virtue of Article 152 (2) of the Constitution, the General Clauses Act, 1897 is applicable to the interpretation of the Constitution. It has been settled in various judicial pronouncements of both the Divisions of the Supreme Court of Bangladesh that the word 'person' in the Constitution shall include the 'person' as defined in Section 3(39) of the General Clauses Act which contemplates that a person shall include

any company or association or body of individuals, whether incorporated or not. In view of this definition provided in Section 3(39) of the General Clauses Act, the respondent no. 1 (Alliance) is, no doubt, a person within the meaning of Article 102(1) of the Constitution.

57. The language of Article 102(1) of the Constitution, however, clearly states that a person must be aggrieved by the action or order of 'any person' including a person acting in connection with the affairs of the Republic. Thus it is not necessary for the impugned act or order to be done or made by a public functionary or a statutory body or a local authority so as to attract Article 102(1) of the Constitution. When any fundamental right of a person is violated, the remedy provided by Article 102(1) is available to the aggrieved person irrespective of whether the violator is in the service of the Republic or in any local authority or statutory body or even in a private capacity.

58. Under our Constitution, the High Court Division has power under Article 102(1) to pass necessary orders to enforce fundamental rights and under Article 44(1), the right to move the High Court Division under Article 102(1) is itself a fundamental right. The position of the High Court Division in respect of enforcement of fundamental rights is the same as that of the Indian Supreme Court with the difference that its decision is not final and is subject to appeal under Article 103 of our Constitution. Thus it is not discretionary with the High Court Division to grant the relief sought for under Article 102(1). Once the High Court Division finds that any fundamental right of a citizen has been violated, it is under a constitutional obligation to grant the necessary relief(s).

59. In the case of the Chairman, Rajdhani Unnayan Kartipakkha (RAJUK)…Vs…A. Rouf Chowdhury and others, 61 DLR (AD) 28, the Appellate Division has clearly held that when any violation of any fundamental right enumerated in the Constitution is alleged as the only ground and no violation of any legal right or law has been alleged whatsoever, only then resort may be had to the fundamental right(s) guaranteed by Part III of the Constitution for protection by the High Court Division. So it is *ex-facie* clear that when violation of any fundamental right guaranteed by Part III of the Constitution is alleged by any citizen and if he can prove to the satisfaction of the Court that such fundamental right has been infringed, in that event, the Court must pass necessary orders or give directions to the person or authority concerned for enforcement of his fundamental right. There cannot be any deviation whatsoever therefrom.

60. In an unreported decision dated 08.06.2010 passed by the High Court Division in Writ Petition No. 2499 of 2010 in the case of Rokeya Akhter Begum…Vs…Bangladesh and others, it has been held that as far as Article 102(1) is concerned, that is to say, when fundamental rights are relied on, the question of status of the impugned person or authority loses its relevance because the phrase 'any person or authority' therein necessarily refers to a person or any authority, irrespective of his/its status. Any decision by such a person or authority, whether he/it is a public functionary or a private one, is reviewable provided, however, that infringement of one of the fundamental rights embodied in Part III of the Constitution is in question.

61. Since private bodies now-a-days are increasingly performing public functions, the Courts are intervening and passing appropriate directions and orders reviewing the actions, inactions and functions of those private bodies. The Courts regulate their discretion by looking at the nature of the functions exercised by the private bodies and by scrutinizing whether those bodies are acting in the public domain and whether the aggrieved person has

any other alternative efficacious remedy. This view has been underpinned in the case of the Board of Control for Cricket in India and others…Vs…Cricket Association of Bihar and others, AIR 2015 SC 3194.

62. In the landmark English Case of R…Vs…Panel on Take-overs and Mergers, ex-parte Datafin plc and another (Norton Opax plc and another intervening) reported in (1987) 1 All England Reports 564 (popularly known as Datafin Case), the Court of Appeal has held that where a public duty is imposed on a body, expressly or by implication or where a body exercises a public function, the Court will have jurisdiction to entertain an application for judicial review of that body's decision. There is not a single test, however, as to the nature of public function. The source of the body's power is a significant factor; if it is by an Act of Parliament or by any subordinate legislation, then the body's action will be subject to judicial review. On the other hand, if the decision of the body is derived solely from any contract, its decision will not be amenable to judicial review. In such a case, the Court will try to decide whether the impugned action has been taken in the public domain wherein the Court is likely to infer that the decision has been taken in connection with the affairs of the Republic. A public element may also appear where the Governmental functions are carried out by private bodies. By contrast, when the nature of the function is such that it does not generate any interest of the Government, then the body's action will not be subject to judicial review. Thus not only the source of the power of the body but also the nature of the functions exercised by it will determine the availability of judicial review. It also seems that when a private sector body steps into the shoes of a public body, in that event, its action will be amenable to judicial review.

63. In Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust and others…Vs…V. R. Rudani and others, AIR 1989 SC 1607, it has been held:

> "The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice wherever it is found'. Technicalities should not come in the way of granting that relief under Article 226."

64. In the case of Consumer Education and Research Centre and others…Vs…Union of India and others, AIR 1995 (SC) 922, the Supreme Court of India has observed that in an appropriate case, the Court would give appropriate directions to the employer, be it the State or any private employer, to make the right to life meaningful; to prevent pollution of work place; to preserve free and unpolluted water for the safety and health of the people and for protection of the environment and health of the workmen. The authorities or even private persons or industries are bound by the directions issued by this Court under Articles 32 and 142 of the Indian Constitution. In the aforesaid case, the Supreme Court of India has issued a writ of Mandamus upon a private industry for the enforcement of the petitioner's fundamental rights.

65. In Bangladesh, the responsibility for inspecting factories and their safety vests in the DIFE. This vesting is clearly discernible from Sections 61 and 62 of বাংলাদেশ শ্রম আইন, ২০০৬ (Bangladesh Labour Act, 2006). The work of checking and inspecting the safety conditions of all RMG factories in the country within a short time after the Rana Plaza tragedy was not possible for the Government alone. The Government, therefore, welcomed the assistance of other stakeholders like the Accord and the Alliance through the NTC and the NTPA in this

respect. The Alliance Agreement states that all Bangladeshi factories supplying RMGs to its members would be inspected at least once by an independent safety inspector appointed by the respondent no. 1. The commitment of the respondent no. 1 to inspect fire and safety facilities of the RMG factories of Bangladesh at their own expense is certainly a welcome step for the improvement and development of the infrastructures of those factories. In the process, both the Accord and the Alliance are assisting the DIFE in ensuring fire and building safety measures of the RMG factories of Bangladesh. Thus it is palpably clear that the respondent no. 1 (Alliance) has been acting with the consent of the DIFE and assisting it in inspecting and ensuring the safety of the garment factories in the country. So we hold that the Alliance has been performing *de facto* functions in connection with the affairs of the Republic.

66. The petitioner-company, it is undisputed, is a juristic person. Now a question has arisen as to whether an indigenous company like the petitioner-company is a 'citizen' and whether as a 'citizen', it can invoke the fundamental rights which are exclusively reserved for the citizens of Bangladesh guaranteed by Part III of the Constitution.

67. A definition in a modern statute provides the vocabulary for understanding the different provisions of the statute. But the definition clause cannot control the legislative intent or the express provisions of the statute, or any particular provision which is clear from the language of the section. This view finds support from the decision in the case of James Finlay & Company Limited…Vs…Chairman, Second Labour Court, Dacca & another, 1981 BLD (AD) 21.

68. In the case of Jabir…Vs…Middle-Sex County Council, (1949) 1 KB 142, Scott, L.J. has opined that the definition sub-section ought not to be treated as prima facie an operative sub-section. "It is a definitive sub-section and no more" and a definition section ought to be construed as not cutting down the enacting provisions of an Act, unless there is absolutely clear language having the opposite effect.

69. Crawford in his book "Construction of Statutes" at pages 361-362 has dealt with this aspect of interpretation in the following words:

> "The legislature has the power to embody within the statute itself a definition of its language as well as rules for its construction. These are usually binding upon the courts, since they form a part of the statute, even though in the absence of such a definition or rule of construction, the language would convey a different meaning. But the meaning of the legislature, as revealed by the statute considered in its entirety, if contrary to the expressions of the interpretation clause or the legislative definitions, will prevail over them. That is, the interpretation clause will control in the absence of anything else in the Act opposing the interpretation fixed by the clause. No interpretation clause should be given any wider meaning than is absolutely necessary. In other words, it should be subjected to a strict construction."

70. Halsbury in his "Laws of England", vol. XXXI, pages 476-477, has stated the rule in the following words:

> "Most modern statutes contain an interpretation, or definition section, wherein is declared the meaning which contain words and expressions are to or may, bear or include for the purpose of the statute in question. As a result, it should be used for interpreting words which are ambiguous or equivocal only, and not so as to disturb the meaning of such words as are plain. Definition section does not necessarily apply

in all the possible contexts in which it may be found in the statute. If a defined expression is used in a context which in the definition will not fit, it may be interpreted according to its ordinary meaning. Definition sections are often inserted ex abundenti cautela, and are not necessarily to be construed in a positive enactment."

71. Craies on Statute Law, sixth edition at page 212, has stated the rule of construction in the following words:

"In most modern Acts of Parliament, there is an 'interpretation clause' enacting that certain words when found in the Act are to be understood as regards that Act in a certain sense, or are to include certain things, which but for the interpretating clause, they would not include."

72. In the same book at page 161, it has been also stated:

"The modern statute contains, in the form of an interpretation clause, a little dictionary of its own, in which it endeavours to define, often arbitrarily, the chief terms used. Any ambiguity in the definition of such terms can rarely be solved otherwise than by examination of this statute itself or other enactments with which it is to be read by reason of its subject matter or the direction of the legislature."

73. Craies on Statute Law at page 215 has further stated:

"If, therefore, an interpretation clause gives an extended meaning to a word, it does not follow as a matter of course that, if that word is used more than once in the Act, it is on each occasion used in the extended meaning, and it may be always a matter of argument whether or not the interpretation clause is to apply to the word as used in the particular clause of the Act which is under consideration. The learned author quoted the rule of interpretation of statute by Lord Selsborne in Mouz V. Jacohs, (1875) 127 H.L. 488, 'It appears to me that the interpretation clause does no more than say that, when you find these words in the Act, they shall, unless there be 'something' repugnant in the context or in the sense, include fixtures.' "

74. In the case of Punjab Co-operative Bank Ltd...Vs...Republic of Pakistan, PLD 1964 (SC) 616= 16 DLR (SC) 518, the Supreme Court of Pakistan has stated the rule in the following words:

"The object of incorporating a definition clause or section in a statute is generally to declare what certain words or expressions used in that statute shall mean. The definition thus is a rule of a declaratory character and normally applies to all cases which come within its ambit, whatever might have been the position before."

75. But the Supreme Court of Pakistan in the subsequent decision in the case of Pramatha Nath Chowdhury...Vs... Kamir Mandal, PLD 1965 (SC) 434= 17 DLR (SC) 392 has stated as follows:

"A definition clause has the effect of a declaration provision and governs all cases coming within the ambit."

76. The rules of interpretation shown above are being followed by the Superior Courts of various jurisdictions without any controversy. Crawford, however, has stated in his book "Construction of Statutes" at page 363, as a measure of caution, the application of the legislative definition for interpreting the statute in the following words:

"Although the legislative definition may be of great assistance in clearly revealing the legislative meaning, it may also create considerable confusion. The definitive

> language may itself require construction. Its own language may be ambiguous. It may be clearly contradictory with the language of the statute proper. The statute may indicate that the legislative definition is inaccurate. It is, therefore, obvious that before that legislative definition can be relied upon, its applicability as well as its reliability should be ascertained. And in this connection, one important situation should be mentioned. In the event that the definition found in the interpretation clause is at variance with the intention of the law-makers as expressed in the plain language of the statute, that intention must prevail over the legislative definition."

77. From the above-noted principles of interpretation stated by the different authorities, it seems that the definition clause is generally binding upon the Courts, provided that it is not at variance with the intention of the law-makers as expressed in the plain language of the statute. However, the definition clause need not be in accord with the ordinary dictionary meaning. When a word or phrase is defined as having a particular meaning in an enactment, it is that meaning alone which must be given to it in interpreting a section of the Act. Courts have no power to extend the meaning of a provision of a statute. If the Courts are to have the power to extend the meaning of the words used in a statute, they will be travelling beyond their function which is to interpret law and not to amend or make law. Of course, in a proper case, when an expression used in a statute has a meaning from that which the language used to indicate, a Court would not be exceeding its jurisdiction in giving an extended meaning to it. But before this is done, the intention of the Legislature must be clear on the point. It is an elementary rule of interpretation of statutes that in construing a statute, all the provisions should be considered together and the interpretation sought to be given must reconcile with the different provisions of the statute, if possible. The word "context" occurring in section 13 of the General Clauses Act implies that in construing a statute, one should not isolate words or give them their abstract meaning or consider the different provisions separately and independently. Every part must be considered together and every part is to be considered as an integral part of the whole, and it should be kept subservient to the general intent of the whole enactment.

78. In the decision in the case of Charanjit Lal Chowdhury...Vs...The Union of India and others, AIR 1951 SC 41, Justice B. K. Mukherjea has articulated himself in the following manner:

> "...The fundamental rights guaranteed by the Constitution are available not merely to individual citizens but to corporate bodies as well except where the language of the provision or the nature of the right compels the inference that they are applicable only to natural persons."

79. Basing on this observation of Justice B. K. Mukherjea of the Indian Supreme Court, the Bombay High Court in the case of State of Bombay...Vs...R.M.D. Chamarbaugwalia and others, AIR 1956 Bombay 1, has found that the fundamental right guaranteed to every citizen under Article 19(1) (f) and (g) of the Indian Constitution is guaranteed as much to a citizen as to a corporation, where all the shareholders and directors are Indian citizens. If a case arises where the shareholders or the directors are not citizens, then the Court may well consider whether the particular corporation is a citizen or not.

80. In the decision in the case of State Trading Corporation of India, Limited…Vs….The Commercial Tax Officer and others, AIR 1963 SC 1811, according to the majority view, the word "citizen" in Article 19(1)(f) and (g) of the Indian Constitution has no special meaning and refers to a natural person. The State Trading Corporation cannot be regarded either by

itself or by taking it as an aggregate of citizens, as a citizen for the purpose of enforcing rights under Article 19(1)(f) and (g). The State Trading Corporation is really a department of the Government behind the corporate veil and it is not possible to pierce the veil of incorporation in India to determine the citizenship of the members and then to give the corporation the benefit of Article 19. The corporation cannot claim to enforce the fundamental rights under Part III of the Indian Constitution against the State as defined in Article 12. But according to the minority view, the State Trading Corporation, so long as it consists wholly of citizens of India, can ask for enforcement of the fundamental rights granted to the citizens under Article 19(1)(f) and (g) of the Indian Constitution. The State Trading Corporation is not a department or organ of the Government of India and can claim to enforce the fundamental rights under Part III of the Constitution against the State as defined in Article 12. It is also the minority view that the Constitution-makers when they used the word "citizen" in Article 19 intended that at least a corporation of which all the members were citizens of India would get the benefit of the fundamental rights enshrined in that Article and the legal position that the corporation is a distinct entity from its members does not appear to create any real difficulty in the way of giving effect to this intention.

81. In view of what have been stated above, it is crystal clear that according to the majority view, the State Trading Corporation of India is not a citizen of India; but it is a citizen of India as per the minority view. In this regard, it is very interesting to note that in the State Trading Corporation case, the Supreme Court of India referred to the observation of Justice B. K. Mukherjea which we quoted earlier. But according to the majority Judges in the State Trading Corporation case, that observation of Justice B. K. Mukherjea was merely an obiter dictum and since it was an obiter dictum, the majority Judges found themselves unable to accept the above observation of Justice B. K. Mukherjea as a guiding principle for entitlement of an indigenous Indian company as a citizen of India. Whatever may be the character/nature of the observation of Justice B. K. Mukherjea in the case reported in AIR 1951 SC 41, the fact remains that it is a momentous observation and its significance cannot be whittled down in the least.

82. At this stage, let us discuss in the light of the various provisions of the Constitution of Bangladesh as to whether an indigenous company incorporated in Bangladesh is a citizen or not for the purpose of enforcement of its fundamental rights under Article 102(1) of the Constitution.

83. As per Article 152(1) of our Constitution, except where the subject or context otherwise requires- "citizen" means a person who is a citizen of Bangladesh according to the law relating to citizenship. So it is understandable that the definition of "citizen" as given in Article 152(1) is not a water-tight definition. Where the subject or context otherwise requires, the definition of "citizen" as provided in Article 152(1) of the Constitution will not be applicable.

84. It may be reiterated that Article 102 (1) of the Constitution provides that the High Court Division, on the application of any person aggrieved, may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by Part III of the Constitution. Here the framers of the Constitution have consciously used the expression 'any person aggrieved'. To put it differently, the term 'any person aggrieved' employed in Article 102(1) of the Constitution may be either a citizen or a non-citizen. Considered from this standpoint, it leaves no room

for doubt that the definition of "citizen" as given in Article 152(1) is not applicable for enforcement of any of the fundamental rights guaranteed under Part III of the Constitution. What we are driving at boils down to this: the phraseology 'any person aggrieved' is open-ended and it does not distinguish any citizen from any non-citizen.

85. From a careful perusal of Part III of our Constitution, it transpires that Articles 27, 28, 29, 30, 36, 37, 38, 39, 40, 41, 42 and 43 of the Constitution provide fundamental rights only to the citizens of Bangladesh. On the other hand, Articles 31, 32, 33, 34, 35 and 44 of the Constitution provide fundamental rights to any person, whether a citizen or a non-citizen.

86. The mechanism/device for enforcement of the fundamental rights as guaranteed by Part III of our Constitution has been embodied in Article 102(1); but in contrast, the Indian Constitution does not lay down any such enforcement mechanism/device. Precisely speaking, it has not been spelt out who can enforce the fundamental rights guaranteed under Part III of the Indian Constitution. Anyway, the fundamental rights guaranteed under Part III are enforced as per Articles 32 and 226 of the Indian Constitution.

87. Reverting to the Constitution of Bangladesh, there is no dispute about the invocation of the fundamental rights by the petitioner-company for enforcement of its fundamental rights which are applicable to non-citizens as well. Article 31 is one of those Articles which the petitioner-company has admittedly invoked in this case and this view, to be sure, gets support from the decision in the case of Elias Brothers (Md) (Pvt) Limited and another…Vs…Bangladesh and others, 16 BLC (2011) 327.

88. Since as per Article 102(1) any person aggrieved can enforce any of the fundamental rights guaranteed under Part III of our Constitution, we do not find any difficulty on the part of the petitioner-company, an indigenous Bangladeshi company whose shareholders and directors are all Bangladeshi citizens, to invoke Articles 27 and 40 of the Constitution in this case. Besides, Articles 27 and 40 do not say who can enforce them; it is only Article 102 (1) which says any person aggrieved can enforce them which undeniably fall under Part III of the Constitution. So Articles 27 and 40 which have been invoked by the petitioner-company are to be interpreted in the light of Article 102(1) of the Constitution.

89. It is a truism that a company is a collective representation of its shareholders. The petitioner-company is, no doubt, a collective representation of its shareholders who are all Bangladeshi citizens. It is incorporated in Bangladesh under the Companies Act, 1994. In a word, it is an aggregate of the citizens of Bangladesh. By way of recapitulation, the petitioner-company is a person as per the definition of 'person' given in section 3(39) of the General Clauses Act. It seems that Mr. Imtiaz Moinul Islam has rightly pointed out that the Appellate Division accepted the standing of Bangladesh Environmental Lawyers Association (BELA), an indigenous association, in enforcing the fundamental rights of an indeterminate number of people. In BELA's case, Dr. Mohiuddin Farooque was the Secretary General of BELA. It is the finding of his Lordship Mr. Justice Mustafa Kamal in BELA's case that any person aggrieved as provided in Article 102 meaning only an exclusive individual and excluding the consideration of people as a collective and consolidated personality will be a stand taken against the Constitution itself. So we have no hesitation in holding that a collective and consolidated personality can enforce his or its fundamental rights under Article 102(1) of the Constitution. The petitioner-company, it goes without saying, is a collective and consolidated personality in accordance with the phraseology used by Mr. Justice Mustafa Kamal in BELA's case.

90. Moreover, the Appellate Division allowed Bangladesh Retired Government Employees Welfare Association to enforce its fundamental right guaranteed under Article 27 of the Constitution in the case of Bangladesh Retired Government Employees Welfare Association and others…Vs…Bangladesh represented by the Secretary, Ministry of Finance and another, 51 DLR (AD) 121. If BELA and Bangladesh Retired Government Employees Welfare Association could invoke the writ jurisdiction of the High Court Division for enforcement of their fundamental rights under Article 102(1) of the Constitution, then it is not comprehensible as to why the petitioner-company will be precluded from enforcing its fundamental rights guaranteed under Articles 27 and 40 in accordance with Article 102(1) of the Constitution. It does not stand to reason and logic as to why this Court will shut out the petitioner-company in the matter of invocation of its fundamental rights, whether applicable to citizens or non-citizens, and enforcing them under Article 102(1).

91. On top of that, as adverted to earlier, the Indian Supreme Court has found the State Trading Corporation of India, by majority view, a non-citizen on the ground that it is a department of the Government of India for all practical purposes. But in the present case before us, indisputably the petitioner-company is a Private Limited Company incorporated in Bangladesh. It is not an entity of the Government, let alone the question of any department of the Government of Bangladesh. So these facts of the case are clearly distinguishable from those of the State Trading Corporation case.

92. To us, it plainly appears that the reason behind inclusion of the word 'citizen' in Articles 27 and 40 or any other similar Article of our Constitution is not to exclude any indigenous Bangladeshi company which is essentially and practically an aggregate of the citizens of Bangladesh. Of course, a foreign company will not be able to enforce the fundamental rights guaranteed under Articles 27 and 40 or any other Articles which are applicable to citizens only in accordance with Article 102(1) of the Constitution.

93. It is abundantly clear from the diction– 'any person aggrieved'–used in Article 102(1) of the Constitution that it requires a citizen to include any indigenous company like the petitioner-company and such inclusion in apparent contradiction with the definition of 'citizen' as given in Article 152(1) is permitted, except where the subject or context otherwise requires. In this regard, our view is fortified by the decisions in the cases of Special Officer and Competent Authority, Urban Land Ceilings, Hyderabad and another...Vs…P. S. Rao, AIR 2000 SC 843 and The State of Maharashtra….Vs…Indian Medical Association and others, AIR 2002 SC 302.

94. Incidentally we are reminded of an oft-quoted dictum of Justice Oliver Wendell Holmes of the American Supreme Court–"The life of law is not logic; it has been experience." Law is never static. It is always in a state of flux. It is always developing by the experience of Judges through judicial activism.

95. From the discussions made hereinabove, we are led to hold that virtually there is no conflict between Article 102(1) and the definition of 'citizen' as given in Article 152(1) of the Constitution. As Article 152(1) starts with the words–"in this Constitution, except where the subject or context otherwise requires…", so Article 102(1) is not obviously controlled or governed by the definition of 'citizen' as given in Article 152(1). Given this scenario, without going into the question as to whether the petitioner-company is a 'citizen' of Bangladesh according to the law relating to citizenship, we are of the opinion that for the limited purpose

of enforcement of any of the fundamental rights as guaranteed by Part III of the Constitution, an indigenous company like the petitioner-company, whose shareholders and directors are all Bangladeshi citizens, is a 'citizen' of Bangladesh. This interpretation, as we see it, is in perfect accord with the intention of the framers of the Constitution and the tone and tenor of Article 102(1) of the Constitution.

96. However, the petitioner has challenged the escalation process of the Alliance and the notice of suspension of its business after accrual of the cause of action. There is no need on the part of the petitioner-company to challenge the escalation protocol of the respondent no. 1 before issuance of the warning letters and the notice of suspension. Unless the fundamental rights, if any, of the petitioner-company are adversely affected by any action of the respondent no. 1, it need not invoke the writ jurisdiction of the High Court Division under Article 102(1) of the Constitution. The petitioner-company has approached the High Court Division under Article 102(1) of the Constitution only after accrual of the cause of action, that is to say, after issuance of the two warning letters and the notice of suspension of its factory. This being the landscape, the petitioner-company is not required to approach the High Court Division under Article 102(1) of the Constitution for enforcement of its fundamental rights at the earliest opportunity especially when the escalation protocol of the Alliance is professedly unapproved by the NTPA or the Government of Bangladesh. So in this respect, the submission of Mr. Tanjib-ul Alam stands negatived.

97. It is admitted that the respondent no. 1 escalated the petitioner's factory from stage 1 to stage 2 without inspecting it. After approval of the DEA on 04.04.2017 by the Accord, the other inspecting agency, the respondent no. 1 (Alliance) cannot carry out any inspection or suggest any NC or escalate the petitioner's factory because of its status as a 'shared' factory. As the Alliance is under a contractual obligation to follow the inspection of the Accord and the resultant CAP and the DEA approved by the Accord, the Alliance cannot replicate the same in relation to the petitioner's factory. But the replication was done by the Alliance in sheer contravention of the provisions of the contract as evidenced by Annexures- 'A' and 'Q'.

98. No scrap of paper or document has been furnished on behalf of the contesting respondents to show that the escalation protocol of the Alliance is approved by the NTPA or the Government. On the contrary, the record shows that the NTPA has already drafted an escalation protocol for the factories under the NI. Undeniably the RCC has been created by the DIFE to supervise the NI-listed factories. It is *ex-facie* evident from Annexures- '12' and '12A' filed by the contesting respondent nos. 2 and 3 that the NTC has prescribed a course of action for the NI-covered factories. The NI runs with the support of the ILO and the NI has nothing to do with the Alliance or its factories. Any inspecting agency like the Alliance, an instrumentality of the Government of Bangladesh, cannot formulate an escalation protocol on its own without any legal sanction or authority from the NTPA or the Government of Bangladesh. This being the panorama, we have no option but to hold that the so-called escalation protocol of the Alliance is 'de hors' the law. So the natural consequence is that the entire escalation process including the 2(two) warning letters and the notice of suspension of the petitioner's factory are all without any legal basis.

99. As to the contention of Mr. Tanjib-ul Alam that there are disputed questions of facts and those facts cannot be resolved in this summary proceeding under Article 102 of the Constitution and hence the Rule is not maintainable, Mr. Imtiaz Moinul Islam has drawn our

attention to paragraph 5.19 at page 610 of Mahmudul Islam's "Constitutional Law of Bangladesh", 3rd edition, wherein it has been stated in unmistakable terms:

> "In view of the provision of Article 44, the High Court Division cannot refuse to entertain an application under Article 102(1) on the ground that the petition involves resolution of disputed questions of facts; if necessary, in appropriate cases, the Court will have to take evidence, either itself or by issuing commission, to resolve any disputed question of fact to determine whether a fundamental right has at all been violated."

100. So in enforcing the fundamental rights under Article 102(1) of the Constitution, if need be, the Writ Court may take evidence and settle disputed questions of facts, if any. A similar view has been taken in the case of Kavalappara Kottarathil Kochunni alias Moopil Nayar…Vs…State of Madras and others, AIR 1959 SC 725.

101. Coming back to the case in hand, we find that admittedly the Alliance has not contested the Rule. Only the respondent nos. 2 and 3 have contested the Rule. The facts alleged by the petitioner-company in the Writ Petition, Supplementary Affidavits and Affidavit-in-Reply can only be assailed/controverted by the Alliance inasmuch as the respondent nos. 2 and 3 have no direct or firsthand knowledge thereabout. Against this backdrop, the respondent nos. 2 and 3, in our opinion, are not competent enough to raise the plea of the disputed questions of facts in this case.

102. However, in the facts and circumstances of the case, we are of the considered view that the instant Rule can well be disposed of on merit, apart from the disputed questions of facts, if any. This Court need not record any evidence vis-à-vis any alleged disputed question of fact and resolve it on that basis.

103. As regards the argument of Mr. Tanjib-ul Alam that the petitioner-company ought to have approached the Review Panel for necessary relief(s) against the notice of suspension dated 18.06.2017 (Annexure-'O') and since the equally efficacious remedy was not availed of by the petitioner-company, the Rule is incompetent, we deem it pertinent to state that previously the Superior Court used to refuse to entertain any Writ Petition if the petitioner did not avail himself of any alternative remedy. This was a self-imposed rule of the Court. But now it is a constitutional requirement of Article 102 (2) that a Writ Petition for judicial review of any action shall not be entertained if the petitioner does not, before coming to the High Court Division, exhaust any efficacious remedy available to him under any law. But there is no requirement of exhaustion of efficacious remedy for enforcement of fundamental rights under Article 102(1) and a petition under Article 102(1) cannot be turned down on the ground of non-exhaustion of any efficacious remedy. (Government of Bangladesh represented by the Ministry of Works and another…Vs…Syed Chand Sultana and others, 51 DLR (AD) 24).

104. It may be recalled that the instant Writ Petition has been filed under Article 102(1) of the Constitution for enforcement of the fundamental rights of the petitioner-company under Articles 27, 31 and 40 of the Constitution. It is not a Writ Petition under Article 102(2) of the Constitution. So the Rule is maintainable. Anyway, what is of paramount importance is that it is not a case of closure of the factory of the petitioner-company; rather it is a case of suspension of the business of the petitioner-company. So no appropriate relief(s) can be sought from the Review Panel as evidenced by Annexure- 'S' (Memo No. 40.00.0000.022.10.009.2013.115 dated 11.05.2014) to the Affidavit-in-Reply.

105. Regard being had to the facts and circumstances of the case, it is the admitted position that there was never any severe and imminent danger to the workers' safety in the factory of the petitioner and that was also conceded by the other inspecting agency Accord and the buyer Li & Fung; but even then, the notice of suspension dated 18.06.2017 was issued in violation of Clause 7.2(c) of the Agreement (Annexure-'A') by the respondent no. 1 (Alliance) for reasons best known to itself.

106. The entry dated 30.04.2019 in the website of the respondent no. 1 (Alliance) shows that the petitioner is a "participating" company. But we fail to understand as to why the Alliance made the entry "participating" in its website without having any communication with the petitioner and without any RVV to its factory. It is undisputed that after issuance of the notice of suspension dated 18.06.2017, the Alliance did never inspect the petitioner's factory nor did it suggest any remediation work thereof which is manifest from the CAP reports on the structural, fire and electrical safety of the factory preserved in the website of the Alliance. So the very insertion of the word "participating" against the name of the petitioner-company in the website of the Alliance as of 30.04.2019 appears to be mysterious, inexplicable and unfathomable. This might have been done by the Alliance to frustrate the instant Rule as submitted by Mr. Imtiaz Moinul Islam.

107. It is admitted that the petitioner's factory is a "shared" factory. It is further admitted that the DEA was approved by the Accord on 04.04.2017. But strangely enough, the Alliance does not indicate that the petitioner is under the Accord as well and the CAP relating to the petitioner in the Alliance website does not redirect any viewer/buyer to the Accord website. Now every person, wishing to do business with the petitioner, will enter the Alliance website and find the petitioner to be a "participating" company; but when he will enter the CAP of the Alliance, he will see that the petitioner has done nothing after the 6th RVV and he will naturally cancel any such wish. Had the Alliance, without having any ill-intention, followed the general system, then every person who would have entered the Alliance's CAP would have been necessarily redirected to the Accord website where he would have found that the petitioner is a 100% compliant factory at the moment. By inserting the word "participating" with a *mala fide* intention in its website and by not including the Accord's report therein as is the general rule, the respondent no. 1 violated the petitioner's fundamental right guaranteed under Article 27 of the Constitution. By suspending the business of the petitioner-company through the notice of suspension dated 18.06.2017 (Annexure-'O'), the petitioner's fundamental right to profession guaranteed under Article 40 was also contravened. As according to the Accord website, the petitioner-company is a 100% compliant factory at present and as it is a "shared" factory both by the Accord and the Alliance, the suspension of its business by the Alliance by way of issuance of the notice dated 18.06.2017 cannot be maintained at all; albeit at a later stage, the Alliance fraudulently wrote "participating" in its website as of 30.04.2019.

108. The Accord had an escalation protocol like that of the respondent no. 1 (Alliance). But that escalation protocol of the Accord was not also approved by the NTPA or the Government of Bangladesh. Hence the Accord negotiated with the Government and the BGMEA to get approval to its escalation protocol vide the Workshop Summary dated 29.08.2018. Finally on 08.05.2019 (Annexure-'V-2'), the Accord signed a MOU with the BGMEA. Clause 2 of the MOU dated 08.05.2019 indicates that the Accord has agreed to enforce its escalation protocol in collaboration with the BGMEA which conclusively proves that Annexures- '12' and '12A' to the Supplementary Affidavit-in-Opposition dated

03.07.2019 have nothing to do with the escalation process of the Accord or that of the Alliance and the Alliance has not taken any step as yet for approval of its escalation protocol as the NI or the Accord did (Annexures- '12A' and 'V-2' respectively).

109. For the same purpose of electric, fire and structural safety of the supplier factories, the Alliance and the Accord are prescribing different standards. The Alliance has agreed in Clauses 1.1, 4.1 and 5.1 of its Agreement (Annexure-'A') that it will follow a common standard and according to its factory inspection standard (Annexure-'Q'), it will not duplicate any inspection completed by the Accord and will accept and use the Accord's inspection report and the CAP concerned to track the progress of the remediation work of the factory. But the Alliance violated its own standard and issued the impugned notice of suspension dated 18.06.2017 (Annexure-'O') in flagrant infringement of the fundamental rights of the petitioner guaranteed under Articles 27, 31 and 40 of the Constitution.

110. Having regard to the facts and circumstances of the case and in view of the foregoing discussions, we find merit in the Rule. The Rule, therefore, succeeds.

111. Accordingly, the Rule is made absolute without any order as to costs. It is hereby declared that the escalation protocol of the respondent no. 1 (Alliance) and the impugned notice dated 18.06.2017 (Annexure-'O') suspending the business of the petitioner-company are without lawful authority and of no legal effect. As a corollary to this order, the respondent no. 1 (Alliance) is directed to formulate a proper escalation protocol for its RMG factories in collaboration with the Government and/or the BGMEA at the earliest.