IN THE SUPREME COURT OF BANGLADESH

APPELLATE DIVISION

PRESENT:

Mr. Justice Zubayer Rahman Chowdhury,
Chief Justice

Mr. Justice Md. Rezaul Haque.
Mr. Justice S.M. Emdadul Hoque.
Mr. Justice A.K.M. Asaduzzaman
*Mrs. Justice Farah Mahbub***.**

CIVIL APPEAL NO.47 OF 2025.

(From the judgment and order dated 15.06.2015 passed by the High Court Division in Writ Petition No.10820 of 2014).

M/S. AMS Faraj Construction, represented by it's proprietor, Md. Faruk Islam Bhuiyan, Eyakub Nagor, Kuti, Police Station-Kasba, District-Brahmanbaria.	:	...Appellant.

-Versus-

Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Textiles and Jute, Bangladesh Secretariat, Police Station-Ramna, Dhaka and others.	:	....Respondents.

For the Appellant.	:	Mr. Muhammad Jamiruddin Sircar, Senior Advocate with Mr. Probir Neogi, Senior Advocate, Mr. Ehsan A. Siddiq, Senior Advocate and Mr. Nowshad Zamir, Senior Advocate instructed by Mrs. Madhumalati Chowdhury Barua, Advocate-on-Record.
For the Respondent No.1.	:	Mr. Aneek R. Haque, Additional Attorney General with Mr. Reza Md. Sadekin, Deputy Attorney General and Mr. Md. Obaidur Rahman, Deputy Attorney General instructed by Mr. Haridas Paul, Advocate-on-Record.
For the Respondent No.2.	:	Ms. Nahid Sultana, Advocate-on-Record.

For the Respondent Nos.3-6. : Not represented.

Date of Hearing. : 27.01.2026, 18.02.2026 and 19.02.2026

Date of Judgment. : 22.02.2026.

JUDGMENT

Farah Mahbub, J:

Instant Civil Appeal by leave granted on 06.03.2025 in Civil Review Petition No.74 of 2019 arises out of the judgment and order dated 03.07.2018 passed by this Division in Civil Appeal No.181 of 2016 allowing the appeal and thereby setting aside the judgment and order dated 15.06.2015 passed by the High Court Division in Writ Petition No.10820 of 2014 disposing of the Rule with direction.

The appellant, herein as writ petitioner, filed Writ Petition No.10820 of 2014 before the High Court Division under Article 102(2)(a)(i) and (ii) read with Article 44 of the Constitution of the People's Republic of Bangladesh (in short, the Constitution) stating, *inter alia,* that Chisty Textile Mills Ltd., situated at Doulatpur, Comilla (in short, the Mill), was originally established in 1962 as a private industrial undertaking and was incorporated under the provisions of the Companies Act, 1913 (in short, the Act, 1913).

Following the independence of Bangladesh in 1971, the Mill, along with numerous other textile and jute mills across the country, was nationalized pursuant to the Bangladesh Industrial Enterprises (Nationalisation) Order, 1972 (President's Order No.27 of 1972) (in short, the Order, 1972). Subsequently, it was vested upon Bangladesh Textile

Mills Corporation (BTMC) under the provision of Article 10(1)(b) of the Order, 1972 for the purpose of management, maintenance, and operational improvement. However, owing to persistent financial losses, the Government eventually ceased the operations of the said Mill in June 1998. Later, with a view to privatization through the Privatization Commission of Bangladesh, several international tenders were invited; nevertheless, despite 4 (four) such attempts, the Mill could not be sold due to various impediments.

Subsequently, in accordance with the decision of the Government by virtue of Article 23(2) of the Order,1972, the Mill was formally declared to be wound up with effect from 09.11.2003 vide Order No. নং-মব/শা-৪/লিকুইডেশন-১/২০০৩/২৬৬ dated 01.11.2003 issued by the Ministry of Textiles and Jute. Consequent thereupon, vide Memo No. MOT/Admin/ B-13/2001/ dated 13.11.2003 respondent no.2 was appointed as the Liquidator of the Mill and was entrusted with the authority and responsibility to undertake all necessary measures in relation to the winding-up process, including the management, disposal, and settlement of the affairs of the Mill subject to the overall control of the Government.

Furthermore, vide Memo No. মপবি/শা-ক্রঅ/অর্থ-০৫/২০০৩-১৭৮ dated 02.08.2003 issued by the Senior Assistant Secretary, it was stipulated that, all activities concerning the disposal of the Mill and the discharge of related responsibilities would be monitored by the concerned Ministry and where deemed necessary, said Ministry would inform the

Privatization Commission and arrange for the sale of such mills or for their disposal in any other suitable manner.

In the meantime, the writ petitioner, through several applications addressed to the Liquidator, expressed its intention to purchase the Mill. In response, the Liquidator informed the petitioner that certain disputes regarding the land of the Mill were pending and that a tender would be issued only after the resolution of such disputes and completion of a comprehensive valuation of the assets and liabilities of the Mill by a Chartered Accountant (in short, CA) firm.

Pursuant thereto, a CA firm was appointed, which assessed that the total value of the assets of the Mill stood at approximately Tk.15.11 crore (Taka fifteen crore eleven lakh) only, whereas its liabilities amounted to Tk. 44.56 crore (Taka forty-four crore fifty-six lakh) only. Being fully aware of the said valuation, the petitioner reiterated its willingness to purchase the Mill. However, when the proposal was placed before the Hon'ble Minister of the Ministry of Textiles and Jute in a meeting held on 04.07.2013, he declined to approve the same at the assessed value and resolved that the Mill should instead be sold at a price of Tk. 35 crore (Taka thirty-five crore) only. Said decision is evident from the minutes of the meeting bearing reference No. লিকুইডেটর/১০০/২৭২(অংশ-১)/১২৪ dated 10.07.2013. Accordingly, the petitioner was duly informed of the said decision through an official communication vide letter No. লিকুইডেটর/১০০/২৭২(অংশ-১)/১২৪ dated 14.08.2013.

Owing to the prevailing economic recession at that time, the petitioner made a number of applications to the authority concerned seeking permission to pay the purchase price of Tk. 35 crore (Taka thirty five crore) only by way of down payment of Tk. 15 crore (Taka fifteen crore) only and the balance amount of Tk. 20 crore (Taka twenty crore) only in installments. Said proposal being approved thereby, the writ petitioner deposited Tk.15 crore (Taka fifteen crore) only as the initial payment vide pay order nos.0000061 and 0847087 dated 13.11.2013 respectively, which were duly received by the writ respondent no.2.

Subsequently, on 01.01.2014, the writ petitioner and respondent no.2 executed a Deed of Agreement (in short, the agreement) for sale of the movable and immovable assets of the Mill, whereby it was agreed that upon payment of the remaining balance of Tk. 20 crore (Taka twenty crore) only in 5(five) equal installments within 10(ten) months, respondent no.2 would execute and register the necessary deed of sale transferring ownership of the Mill, including all its movable and immovable properties, in favour of the petitioner.

In accordance with the terms and conditions of the said agreement, possession of all movable and immovable assets and properties of the Mill was formally handed over to the writ petitioner vide letter no. লিকুইডেটর/১০০/২৭২(অংশ-১)/ dated 06.01.2014. The petitioner thereafter acknowledged the receipt of such possession vide Memo No. লিকুইডেটর/১০০/২৭২(অংশ-১)/০৮ dated 09.01.2014.

However, in a sudden and unexpected development, respondent no.2 issued Memo No. লিকুইডেটর/১০০/২৭২(অংশ-১)/১৩৭ dated 18.02.2014 restraining the writ petitioner from carrying out any activities relating to the Mill until further instructions. Said directive appears to have been issued on the basis of certain newspaper reports published on 11.02.2014 in *"দৈনিক জনকণ্ঠ"* and *"দৈনিক সংবাদ"*, alleging certain irregularities in connection with the winding-up process of the Mill.

On receipt thereof, the writ petitioner promptly made on application to the authority concerned on 24.02.2014 seeking withdrawal of the restraining memo dated 18.02.2014 and for restoration of the earlier authorization so was given by the authority concerned vide Memo No. লিকুইডেটর/১০০/২৭২(অংশ-১)/০৮ dated 09.01.2014 allowing operation of the Mill. Meanwhile, in compliance with the order of the Prime Minister's Office of Bangladesh vide Memo No. 24.078.046.00.00.001.2011-17 dated 27.02.2014, writ respondent no. 2 issued another memo bearing No. লিকুইডেটর/১০০/২৭২(অংশ-১)/৭১ dated 17.04.2014 stating, *inter alia*, that the operations of the Mill had been suspended and that the matter remained under consideration pending further review.

Despite the above pressing circumstances, the writ petitioner proceeded to pay the 1st installment of Tk. 4 crore (Taka four crore) only on 13.04.2014 vide pay order nos.0850777 and 0850778 dated 13.04.2014 respectively each for Tk. 2 crore (Taka two crore) only together with fine of Tk. 5 lakh (Taka five lakh) only vide pay order no.0850776 dated 13.04.2014 in adherence to the contractual terms of the agreement. Later, upon expressing willingness to pay the 2nd installment, the writ petitioner was verbally instructed by the writ respondent no.2 to deposit the said amount to the office of the writ respondent no.1, which the petitioner duly complied with by paying Tk.4 crore (Taka four crore) only vide pay order no.0006430 on 30.06.2014. Subsequently, when the petitioner attempted to deposit the 3rd installment, writ respondent no.2 expressed reluctance in receiving the same. Consequently, the writ petitioner, vide letter dated 17.07.2014, formally requested writ respondent no.2 to accept the remaining installments and to execute and register the sale deed in accordance with the agreement. However, no response was forthcoming.

In a further attempt to resolve the matter, the writ petitioner addressed a letter dated 28.08.2014 to the Hon'ble Minister of the Ministry of Textiles and Jute seeking intervention and also issued a demand of justice notice on 25.10.2014 requesting the writ respondents to allow resumption of all activity in relation to the Mill and execute and register the sale deed upon receipt of the remaining installments for the balance amount; but, without any response thereof.

Being aggrieved thereby, the writ petitioner filed Writ Petition No.10820 of 2014 before the High Court Division seeking direction upon the writ respondents to allow the petitioner to resume all activities relating to the Mill in question, to accept the installments towards the balance consideration from the petitioner, and to execute and register the requisite deed of sale in its favour in compliance with the terms and conditions of the Deed of Agreement for Sale dated 01.01.2014 executed between the respondent no.2. Having found prima facie substance, a *Rule Nisi* was issued by the said Division.

In this regard, the categorical assertion of the writ petitioner is that, the actions of the respondents in preventing the petitioner from carrying on any activities in relation to the Mill, despite being placed in lawful possession thereof pursuant to a valid agreement, are manifestly arbitrary, illegal, and tainted with *mala fide*. The impugned restraint was imposed without affording the petitioner any opportunity of being heard, thereby constituting a clear violation of the principles of natural justice and fair administrative process. Furthermore, the unjustified refusal of the respondents to accept the remaining installments of the purchase price and their failure to execute and register the requisite sale deed in favour of the petitioner, notwithstanding its substantial compliance with the terms of the agreement and payment of a considerable portion of the consideration, amount to an abuse of statutory power and a breach of public law obligations. Such conduct has not only frustrated the petitioner's legitimate expectation arising from the transfer of possession and the respondents' acceptance of earlier installments, but has also attracted the operation of the doctrine of promissory estoppel. Consequently, the impugned actions have infringed the petitioner's fundamental rights to equality before law, protection of law and property, as guaranteed under Articles 27, 31 and 42 of the Constitution.

The writ respondent nos.1 and 2 contested the Rule by filing affidavit-in-opposition stating, *inter alia*, that following the declaration of winding-up of the mill in question, the Government initially undertook measures through the Privatization Board to dispose of the assets of the Mill through auction. However, as the anticipated sale price could not be secured, the proposed sale could not be materialized. Consequently, the Government subsequently entrusted the matter to the Liquidation Cell under the supervision and control of writ respondent no.1 for the purpose of completing the winding-up process. The Mill, however, presently remains under the authority and management of the said respondent.

It is further stated that, although the terms and condition no. ‘ka’ of the Letter of Intent dated 14.08.2013 stipulated payment of the entire consideration without installments, the writ petitioner was nonetheless granted extraordinary indulgence through the agreement for sale dated 01.01.2014 by permitting payment in installments; an arrangement which, according to the respondents, went beyond the original decision of the Government. Notwithstanding such concession, the petitioner admittedly failed to pay the outstanding balance consideration amounting to Tk. 20 crore (Taka twenty crore) only within the stipulated timeframe under clause 11 of the agreement, thereby legally entitling respondent no.1 to adopt appropriate measures, including repossession of the Mill even after the alleged delivery of possession. It is further asserted that, pursuant to clause 3 of the said agreement, possession could only lawfully be handed over upon execution of the final sale deed; however, when questions and objections arose regarding the legality of the transfer process, the competent authority, acting in compliance with the instructions issued from the Prime Minister's Secretariat vide memo dated 27.02.2014, issued restraining communications dated 18.02.2014 and 17.04.2014 respectively in order to safeguard and preserve the property of the State.

The respondents further averred that the writ petitioner, by misconstruing the contractual stipulations and by repeatedly delaying payment of installments beyond the prescribed period, effectively rendered itself a habitual defaulter, thereby justifying the refusal of the authority to accept the belated payments. Subsequently, serious allegations concerning irregularities in the sale process came to the attention of the Prime Minister's Office, which thereupon constituted an enquiry committee. Upon completion of enquiry, the committee submitted its report dated 31.08.2014, categorically finding, *inter alia*, that the Mill had been sold without the issuance of any public tender and through the Liquidation Cell, notwithstanding the fact that the said entity had reportedly been abolished on 16.02.2011, thereby rendering the process procedurally irregular and legally questionable. Accordingly, the matter was referred to the Ministry of Law, Justice and Parliamentary Affairs for legal opinion, which, upon examining the relevant records and applicable law, opined on 20.07.2014 that the entire sale process had been conducted illegally. Consequently, vide office order dated 28.09.2014, the matter was formally communicated to the Liquidator of the Liquidation Cell. In these circumstances, the writ respondents maintain that the impugned transaction suffers from fundamental legal infirmities and is void *ab initio*.

Further case of the writ respondent no.2 is that, according to the express terms of the said agreement, the 2nd installment was required to be paid on or before 30.04.2014; however, the writ petitioner caused considerable delay in tendering the said payment. Consequently, the petitioner itself breached the terms and conditions of the agreement. In view of such violation, writ respondent no.2 was justified in refusing to accept the 3rd installment from the writ petitioner.

Moreso, the agreement dated 01.01.2014 contains a specific provision for arbitration in clause 18 thereof, providing an alternative and efficacious contractual remedy; hence, in accordance with well-settled principles of law governing judicial review, disputes arising from such commercial contracts, particularly those involving the disposal of State property, are not amenable to the extraordinary writ jurisdiction of the Court. Accordingly, the writ petition is not maintainable and that the Rule is liable to be discharged.

Upon hearing both the parties, the High Court Division, ultimately disposed of the Rule vide judgment and order dated 15.06.2015 with the following direction:

> *"...The respondents are directed to allow the petitioner to resume its activities in relation to Chisty Textile Mills Ltd, and are further directed to receive the installment for the balance amount from the petitioner and execute and register necessary sale deed in favour of the petitioner in compliance with the terms of the Deed of Agreement for sale dated 01.01.2014 executed by and between Respondent No. 2 in accordance with law."*

Consequently, being aggrieved, the writ-respondents preferred Civil Petition for Leave to Appeal No.3468 of 2015 before this Division and, upon grant of leave on 06.03.2025 on two counts, said petition was converted into Civil Appeal No.181 of 2016.

Upon hearing, the Civil Appeal was allowed vide judgment and order dated 03.07.2018 passed by this Division, setting aside the judgment and order dated 15.06.2015 passed by the High Court Division.

In response thereof, the writ petitioner filed Civil Review Petition No.74 of 2025 challenging the aforesaid judgment and order, whereupon leave was granted by this Division vide order dated 06.03.2025.

Hence, the instant Civil Appeal.

Mr. Muhammad Jamiruddin Sircar, learned Senior Advocate, along with Mr. Probir Neogi, Mr. Ehsan A. Siddiq and Mr. Nowshad Zamir, learned Senior Advocates, appearing for the appellants, submits that, the impugned judgment and order passed by this Division proceeds on an erroneous legal premise regarding the character of the agreement dated 01.01.2014 relating to the Mill. In this regard, he goes to argue that the authority of the Government regarding disposal of the Mill, is directly driven from statutory instruments, namely, the Bangladesh Industrial Enterprises (Nationalisation) Order, 1972 (P.O. No.27 of 1972), the Privatisation Act, 2000, and the Bangladesh Industrial Enterprises (Nationalisation) Act, 2018, which collectively regulate the management, disposal and privatization of nationalized industrial enterprises. In these circumstances, he contends that the agreement entered into by the

Government for disposal of the Mill was not a mere commercial arrangement but a statutory contract, executed in discharge of sovereign and statutory functions. Therefore, the contrary finding of this Division, treating the contract as purely commercial, is inconsistent with the principle articulated in the case of *Sharping Matshajibi Samabaya Samity Ltd. vs. Bangladesh,* reported in *39DLR(AD)85,* thereby disclosing a manifest error apparent on the face of the record.

Drawing attention to the ratio decidendi recognised in *Managing Director, Dhaka WASA v. Superior Builders,* reported in *51DLR(AD)56,* he further submits that the appellant paid Tk.22 crore, comprising Tk.15 crore in a lump sum and Tk.7 crore in installments out of the total consideration of Tk.35 crore, and was placed in possession of the Mill pursuant to clause 3 of the agreement dated 01.01.2014. Such delivery of possession constitutes part performance within the meaning of Section 53A of the Transfer of Property Act, 1882, thereby rendering the agreement a concluded and enforceable contract, and hence, giving rise to a legitimate expectation that the Government would honour its contractual obligations with fairness.

He goes to add that the reasoning of the impugned judgment and order passed by this Division that the Mill could not be sold except through a tender process is legally untenable, inasmuch as Article 4(2) of the Bangladesh Industrial Enterprises (Nationalisation) Order, 1972 explicitly authorizes the Government to dispose of such property *"in such manner and on such terms and conditions as it deems fit".* Significantly, international tenders had been invited on multiple occasions, but failed to attract a viable purchaser. Consequently, the Government entered into an agreement with the appellant at a consideration of Tk.35 crore, notwithstanding that a government-appointed chartered accounting firm assessed the Mill's assets at Tk.15.11 crore against liabilities amounting to Tk.44.56 crore. In such circumstances, the subsequent failure of the respondents to execute and register the sale deed, despite receipt of substantial consideration and delivery of possession, constitutes arbitrary inaction on their part. Such conduct not only frustrates legitimate expectation of the appellant, but also infringes the constitutional rights of equality before law, protection of law and the right to property guaranteed under Articles 27, 31 and 42 respectively of the Constitution.

Relying upon the decision elucidated in *Mahbubur Rahman Sikder v. Mujibur Rahman Sikder,* reported in *37DLR(AD)145,* he goes on to argue that the exercise of review jurisdiction is warranted to prevent manifest injustice and to secure complete justice, for, the power of review under Article 105 must be read harmoniously with the Court's plenary authority under Article 104 to ensure complete justice between the parties.

Taking us through the principles reaffirmed by this Division in several unreported cases including *Government of Bangladesh v. Refat Garments Ltd. (CPLA No.08 of 2017)* and *Government of Bangladesh v. M.R. Trading Company (Civil Appeal No.25 of 2007),* he further submits that the agreement was duly executed, was substantially performed through payment of installments and acted upon through delivery of possession, thereby constituting a concluded statutory contract and creating a legitimate expectation in favour of the petitioner; hence, deviation from such concluded arrangements by the respondents invites judicial scrutiny.

Accordingly, he submits that the impugned judgment and order dated 03.07.2018 passed in Civil Appeal No.181 of 2016, having been rendered in disregard of settled principles governing statutory contracts, legitimate expectation, and constitutional fairness, is liable to be reviewed by this Hon'ble Court in the interest of justice.

Supporting the judgment and order dated 03.07.2018 passed by this Division in Civil Appeal No.181 of 2016, Mr. Aneek R. Haque, the learned Additional Attorney General appearing with Mr. Reza Md. Sadekin, learned Deputy Attorney General and Mr. Md. Obaidur Rahman, learned Deputy Attorney General for the respondents submits that the contract in question entered into by the Official Liquidator was not sovereign in character, but purely commercial in nature for having been executed without lawful authority and in the absence of any tender process.

He further submits that the writ petitioner, having failed to pay the 2nd installment within the stipulated time under the Deed of Agreement, was in clear breach of the terms thereof and consequently, stood as a defaulter. Moreso, the agreement contains an arbitration clause providing an efficacious alternative remedy; therefore, disputes arising out of such commercial transactions involving State property are not amenable to writ jurisdiction. In such view of the matter, he submits that this Division has rightly allowed the appeal by setting aside the judgment and order dated 15.06.2015 passed by the High Court Division.

In order to appreciate the respective arguments placed by the learned Counsels of both the parties, it is necessary to first examine the legal character of the agreement dated 01.01.2014 executed in relation to the Mill in question, which has been branded by this Division as a commercial contract and thereby ousted the appellant-writ petitioner to invoke writ jurisdiction under Article 102 of the Constitution.

In this regard, the categorical contention of the learned Counsel for the appellant is that the agreement in question was entered into pursuant to the provisions of existing statutory framework governing nationalised industrial enterprises, i.e. Articles 4,10(1)(b),10(1A) and 23 of the Bangladesh Industrial Enterprises (Nationalisation) Order, 1972, Sections 3, 10, 11, 12, and 13 of the Privatisation Act, 2000 and Sections 11 and 27(2)(Ka) of the Bangladesh Industrial Enterprises Nationalisation Act, 2018, including the principles as laid down in *Sharping Matshajibi Samabaya Samity Ltd. (supra)* and the subsequent legislative and administrative instruments regulating the management and disposal of such undertakings. It is argued that the Government, in dealing with the assets of a nationalised industrial enterprise, was exercising statutory authority, and therefore, the agreement in question should be regarded as possessing the character of a statutory contract.

The jurisprudence of this Division has drawn a distinction between ordinary commercial contracts entered into by public authorities and contracts executed in the exercise of statutory power or sovereign function. In *Bangladesh Power Development Board vs. Md. Asaduzzaman Sikder,* reported in *9BLC(AD)1 para-11,* this Division articulated the governing principles regarding the enforceability of contractual obligations against public authorities, which run as under:

> *"...writ jurisdiction can be invoked in case of breach of contract when (a) the contract is entered into by the Government in the capacity as sovereign; (b) where contractual obligation sought to be enforced in writ jurisdiction arises out of statutory duty or sovereign obligation or public function of a public authority; (c) where contract is entered into in exercise of an enacting power conferred by a statute that by itself does not render the contract a statutory contract, but if entering into a contract containing prescribed, terms and conditions is a must under the statute then that contract becomes a statutory contract. If a contract incorporates certain, terms and conditions in it which are statutory then the said contract to that extent is statutory; (d) where a statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions and the contract so entered by the statutory body is not an exercise of statutory power then merely because one of the parties to the contract is a statutory or public body such contract is not a statutory contract; (e) when contract is entered into by a public authority invented, with the statutory power, in case of breach thereof relief*

> *in writ jurisdiction may be sought as against such on the plea that the contract was entered into by the public authority invested with a statutory power; (f) where the contract has been entered into in exercise of statutory power by a statutory authority in terms of the statutory provisions and then breach thereof gives right to the aggrieved party to invoke writ jurisdiction because the relief Sought is against breach of statutory obligation."[para-11]*

The principles governing such matters were further elaborated by this Division in *Superintending Engineer, RHD Sylhet vs. Md. Eunus and Brothers (Pvt.) Ltd.*, reported in *31BLD (AD) 1*, with the observation that when the alleged contract does not fulfill any one of the requirements to make the same a statutory contract or contract entered into by the Government in the capacity as a sovereign, the relief claimed by way of writ jurisdiction is not entertainable.

However, in *Sharping Matshajibi Samabaya Samity Ltd. (supra),* this Division, while disposing of the appeal regarding cancellation of lease of a fishery by the Government, held as follows:

> *"it may be argued that the lease of the fishery is not governed by any statutes, but is governed by terms of the contract. But the contract was entered into by the government having some legislative backing. For, 'fishery' is a non-retainable khas land under Section 20 of the State Acquisition and Tenancy Act and vested absolutely in the government. Under Section 76 of this Act it lies at the disposal of the government who may either manage it khas or make settlement thereof in accordance with rules to be made by them. In the*

> *absence of any such rules, the government must follow certain fixed standards, principles guidelines applicable to all person seeking settlement and shall not Act arbitrarily or in discriminatory manner. In these circumstances, writ jurisdiction is quite available to the lessee."[para 53].*

Thereby, it was recognized that if it is a pure and simple contract which is entered into by the Government in its trading capacity for any breach thereof, writ will not be available. However, if the contract is entered into by the Government in the capacity as sovereign, then writ can be invoked for breach of such contract. The same notion was further reiterated by this Division in *Government of Bangladesh vs Zafar Brothers Limited*, reported in *69 DLR (AD) 52*.

In the present case in hand, it appears that pursuant to Article 23(2) of the Order, 1972 and Government Order dated 01.11.2003, issued by the Ministry of Textiles and Jute, the Mill in question was declared wound up with effect from 09.11.2003 and vide Memo dated 13.11.2003, writ respondent no.2 was appointed as the Liquidator with authority, subject to Government control, to manage the winding-up process and dispose of the Mill's movable and immovable assets by tender, auction or transfer. After several correspondences from the side of the Government, a resolution was adopted on 04.07.2013 in a meeting chaired by the Hon'ble Minister of the Ministry of Textiles and Jute to sell the Mill at Tk.35 crore, which was communicated to the appellant on 14.08.2013. Later, accepting the request of the appellant to pay partly by down payment and partly in installments, the Government approved the proposal, following which a deed of agreement for sale of the Mill was executed between the appellant-writ petitioner and writ respondent no.2 on 01.01.2014.

In this connection, Article 4(2) of Order, 1972 being relevant is quoted as follows:

> *"The Government may, if in the national interest it deems it expedient so to do, sell or otherwise transfer to a Corporation or to any other person, in such manner and on such terms and conditions as it deems fit, any scheduled industrial enterprise or any other industrial enterprise or any share or proprietary or other interest therein, vested in the Government under clause (1)."*

Thereby, the Government's authority to manage, liquidate or dispose of the assets of the Mill arises from the statutory regime governing nationalised industries that eventually led to execution of a deed of agreement for sale with the appellant.

Viewed from that perspective, the transaction relating to disposal of the Mill cannot be regarded as entirely devoid from the statutory framework within which the Government was acting.

However, even if the agreement is assumed to possess elements of a statutory contract or to have been entered into in the exercise of statutory power, that by itself does not automatically entitle the appellant-writ petitioner to the relief as sought for in the present proceeding. The enforceability of such contractual rights must still be examined in the light of the terms of the agreement itself as well as the conduct of the parties.

As it appears from record, the claim of the appellant is rooted in the agreement dated 01.01.2014, entered into by and between the appellant and the Liquidator, writ respondent no.2, basing on which the appellant sought for a direction to be given upon the respondents to execute and register necessary the sale deed in compliance with the terms of the said agreement on receipt of the installments for the balance amount and thereby to allow it to resume all activities in connection with the said Mill. Said claim was duly allowed by the High Court Division by giving necessary direction upon the writ-respondent no.2.

In the given context, the question being raised before this Division in Civil Appeal No.181 of 2016 is whether the liquidator, writ-respondent no.2, had the power or authority to sale or dispose of the Mill in question through negotiated agreement rather than through a formal process of public tender.

Admittedly, the Mill in question was a nationalised industrial enterprise governed by the statutory framework created by the Bangladesh Industrial Enterprises (Nationalisation) Order, 1972. Upon the declaration of winding-up of the Mill under Article 23 of the said Order, the Government appointed the writ respondent no.2 as Liquidator vide Memo no. MOT/Admin/B-13/2001 dated 13.11.2003 (Annexure-A to the writ petition) and entrusted him with the responsibility of administering the affairs of the Mill and taking appropriate steps for its disposal in accordance with law including to the power to sell the immovable and movable property of the Mills by inviting sealed tenders through public auction.

The records placed before us reveal that, following the transfer of the Mill's disposal process to the Privatization Commission, 4(four) successive tender attempts proved unsuccessful. On account of the events, the matter was reverted to the Liquidation Cell.

The learned Counsels for the respondents in this regard argued that the Liquidation Cell was abolished on 16.02.201 and therefore, it was non-existent at the time of execution of the agreement. Said assertion of the respondent-government played a vital role for this Division to give findings that Liquidation Cell having been abolished, it was not in existence at the time of execution of the deed of agreement dated 01.01.2014.

In the report dated 17.04.2014 (Annexure-I to the writ petition), submitted in connection with the news report published in the daily “Jugantor” as to the questionable sale of the Mill in question for only Tk.35 crore, it has been stated that the Cabinet Committee on Economic Affairs, had fixed the tenure of the Liquidation Cell until 15.02.2011. However, the liquidation process of 8 (eight) mills including the Mill in question under its jurisdiction could not be completed within that period. In this regard, with reference to Writ Petition No.17233 of 2012, it has also been stated that challenging the order of the Cabinet Division dated

28.11.2012 to close the Liquidation Cell, said writ petition has been filed by the respective petitioners before the High Court Division.

On perusal of the record of Writ Petition No.17233 of 2012, however, it appears that the Government, in exercise of the power conferred under Section 23(2) of the Order, 1972, decided to wind-up 8 (eight) Mills including the present Mill in question, running under the control of the Bangladesh Textile Mills Corporation by placing them under liquidation with effect from different dates, with further stipulation that the liquidation proceedings would be implemented by the Liquidation Cell in accordance with the directions of Ministry of Textiles (Annexure I-I to Writ Petition No.17233 of 2012).

It further appears that, vide Order No. 04.612.002.01.006.022.12-375 dated 28.11.2012, the tenure of the said Liquidation Cell, which had expired on 15.02.2011, was not extended, thereby resulting in its dissolution (Annexure-K to Writ Petition No.17233 of 2012).

Assailing the said order dated 28.11.2012, whereby the Liquidation Cell was closed without completion of the registered sale deed in favour of the respective writ petitioners, Writ Petition No.17233 of 2012 has been filed before the High Court Division whereupon a *Rule Nisi* was issued by the said Division on 12.02.2013 calling upon the writ respondents to show cause as to why the impugned order dated 28.11.2012, should not be declared to have been issued without lawful authority and to be of no legal effect and also, as to why they should not be directed to continue the functioning of the Liquidation Cell until completion of the winding-up process. Pending hearing of the Rule, the parties were directed to maintain status quo in respect of the possession and position of the properties in question for a prescribed period.

Fact remains, the Rule Nisi issued in Writ Petition No.17233 of 2012 is still pending for hearing and disposal. In other words, the issues relating to the dissolution and functioning of the Liquidation Cell remain *sub judice* before the High Court Division.

The above context is further fortified from the letter of opinion dated 06.12.2015 (as referred by the respondent by filing additional paper book in Civil Appeal No.181 of 2016) provided by the Law and Justice Division, Ministry of the Law, Justice and Parliamentary Affairs on the function of the "Liquidation Cell" operated under the control of the Ministry of Textiles and Jute, which is reproduced below:

“গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
আইন, বিচার ও সংসদ বিষয়ক মন্ত্রণালয়
আইন ও বিচার বিভাগ, সলিসিটর অনুবিভাগ
সিনিয়র সহকারী সচিব, রিট-২ শাখা
অ্যাটর্নি-জেনারেল ও সলিসিটর ভবন
বাংলাদেশ সুপ্রীমকোর্ট প্রাঙ্গন, ঢাকা।

নং-সল-মিস-১০৪/২০১৫ (রীট-২)-২১৫ *তারিখ: ০৬-১২-২০১৫ খ্রিঃ।*

বিষয়ঃ বস্ত্র ও পাট মন্ত্রণালয়ের নিয়ন্ত্রণে পরিচালিত ‘লিকুইডেশন সেল’ এর কার্যক্রম পরিচালনার বিষয়ে মতামত প্রদান প্রসঙ্গে।

সূত্রঃ নথি নং-২৪.০০.০০০০.২০১.১৮.০০৩.২০১৫

উপর্যুক্ত বিষয় ও সূত্রের প্রেক্ষিতে নির্দেশক্রমে জানানো যাচ্ছে যে, লিকুইডেশন সেল অবসায়ন সংক্রান্তে মন্ত্রিপরিষদ বিভাগের গত ২৮/১১/২০১২ খ্রিঃ তারিখের ৩৭৫নং স্মারক পত্রের বিরুদ্ধে ০৩(তিন) জন টেক্সটাইল মালিক মাননীয় হাইকোর্ট বিভাগে রিট পিটিশন নং-১৭২৩৩/২০১২ দায়ের করেন। উক্ত মামলায় মাননীয় হাইকোর্ট বিভাগ "Pending hearing of the Rule the parties are directed to maintain status-quo in respect of the position and possession of the property in question for a Period of 3(three) months." মর্মে আদেশ প্রদান

করেন। পরবর্তীতে মাননীয় হাইকোর্ট বিভাগের প্রদত্ত স্থিতাবস্থায় (Status-quo) আদেশ বিভিন্ন তারিখে Extension করা হয়। উক্ত স্থিতাবস্থার আদেশ বর্তমানেও বহাল আছে। এমতাবস্থায়, যেহেতু রিট পিটিশন নং-১৭২৩৩/২০১২ মামলায় মাননীয় হাইকোর্ট বিভাগ কর্তৃক প্রদত্ত স্থিতাবস্থার (Status-quo) আদেশ বর্তমানেও বহাল আছে, সেহেতু এ পর্যায়ে লিকুইডেশন সেলের অবসায়ন বা লিকুইডেশন সেলের বিষয়ে ভিন্ন কোন পদক্ষেপ গ্রহণ করা সমিচীন হবে না মর্মে প্রতীয়মান হয়। একইসাথে মাননীয় মন্ত্রী মহোদয়ের নির্দেশের প্রেক্ষিতে রীট পিটিশন নং-১৭২৩৩/২০১২ মামলাটি জরুরী ভিত্তিতে শেষ করার জন্য নির্দেশনা প্রদান করা হলো।

স্বাক্ষর-অপাঠ্য
০৬/১২/১৭
(মুহাম্মদ লুৎফুল মজীদ নয়ন)
সিনিয়র সহকারী সচিব (রিট-২)
ফোন-৯৫৮৬৫৭৭।
সচিব
বস্ত্র ও পাঠ মন্ত্রণালয়
বাংলাদেশ সচিবালয়, ঢাকা।"

In the above backdrop, since the issue as to abolishing the Liquidation Cell is still *sub-judice* in connection with Writ Petition No.17233 of 2012 and that the agreement in question had been executed by the Liquidator, writ-respondent no.2, on 01.01.2014 during pendency of the said writ petition, as such, it cannot be said that the Liquidation Cell was not in existence at the time of execution of the deed of agreement.

A further point of contention raised by the learned Counsel for the respondents in Civil Appeal No.181 of 2016 is that disposal of the property of the Mill could only occur through public tender. Notably, under Memo No. MOT/Admn/B-13/2001 dated 13.11.2003, issued by the Ministry of Textiles, it was clarified in clause 2(5) while appointing the writ-respondent no.2 as official liquidator that the authorized methods for transfer of the movable and immovable property of the Mill included inviting sealed tenders or conducting public auctions, with the power to transfer the property in whole or in parcels (Annexure-Al to the writ petition).

Clause 2(5) is, accordingly, quoted below:

> *"2(5) to sell the immovable and movable property of the Mills by inviting sealed tenders, or public auction with power to transfer the whole thereof to any person of company or to sell the same in parcel."*

It is, thus, evident from the above provision that the Mill cannot be transferred outside the method as prescribed thereunder, including a negotiated agreement. It is apparent from record that the method of transfer of the Mill under the agreement did not comply with the due course of law. Thereby, the exercise of authority by the Liquidator through execution of the agreement bypassing the statutorily mandated process contravenes the specific instructions required under the order. Taking into consideration of the said position of law and facts, this Division has rightly observed that writ-respondent no.2 was not invested with any power to sell the Mill other than by tender.

The further issue being raised by the appellant is that the payment of Tk.22 crore out of the total consideration of Tk.35 crore by the appellant and being placed in possession of the Mill under the agreement constitute part performance under Section 53A of the Transfer of Property Act, 1882, thereby rendering the contract as enforceable and concluded one giving rise to a legitimate expectation that the Government would honour its contractual obligations.

The deed of agreement dated 01.01.2014 clearly stipulated that the balance consideration of Tk.20 crore (Taka twenty crore) only was to be paid by the appellant through installments within the time schedule as prescribed in the agreement dated 01.01.2014. It appears that, in making payment of the 2nd installment, the appellant caused considerable delay, inasmuch as under clause 2 of the deed of agreement, the 2nd installment was required to be paid by 30.04.2014. However, the appellant made payment of the 2nd installment of Tk 4.00 crore (Taka four crore) only vide pay order no.0006430 dated 30.06.2014, which rendered the appellant a defaulter, and also, was a violation of the terms and conditions of the agreement dated 01.01.2014.

Furthermore, the agreement itself contains a specific provision in clause 11 that:

> *"উল্লেখ্য যে, অত্র চুক্তিপত্রের ১ ও ২নং সহ যে কোন শর্ত ভংগের কারণে বা কোন চুক্তির হেরফের করিলে বিক্রেতা সরকার অত্র চুক্তি বাতিল করাসহ তাৎক্ষনিকভাবে দলিলের পূর্ব দখলের (Take back) করার ক্ষমতা সর্বক্ষনই সংরক্ষন করেন।"*

It is a well-settled principle of law that a party who is in default of its own contractual obligations cannot, at the same time, seek equitable relief from the Court whether by invoking the doctrine of part performance under Section 53A of the Transfer of Property Act, 1882 or otherwise to enforce or derive benefit from the very contract which it has breached.

Accordingly, the conduct of the appellant, as reflected in the admitted circumstances, demonstrates that they themselves were in breach of the material terms and conditions of the contract and hence, cannot seek relief in the present form on the basis of its own alleged performance.

The appellant further contends that, in view of the principles laid down in *Government of Bangladesh and others v. Refat Garments Limited and others (Civil Petition for Leave to Appeal No.08 of 2017)* and *Government of the People's Republic of Bangladesh and others v. M.R. Trading Company and others (Civil Appeal No.25 of 2007),* the agreement in question must be regarded as a concluded contract, inasmuch as the same was duly executed, installments were paid in pursuance thereof and possession of the property was duly delivered. According to the appellant, such acts created a legitimate expectation in its favour that the contractual terms would be duly performed.

Significantly, the term 'concluded contract is rooted in the principles of offer, acceptance, and intention to create legal relations under the Contract Act, 1872 which governs contractual relationships as per the following obligations:

1. *Offer and acceptance are complete:*
2. *Essential terms (subject matter, price, obligations, etc.) are settled;*
3. *The parties intend the agreement to be legally binding: and*
4. *Performance has commenced or consideration has been exchanged.*

In *Nur Mohammad and Co. Ltd. v. Bangladesh,* reported in *61DLR(AD)77,* this Division held:

> *"...In a suit for specific performance, it is incumbent upon the plaintiff to prove the existence of a concluded contract between the parties and that the plaintiff is ready and willing at all material dates to perform its part of the contract."[para 6]*

Similar view was reiterated by this Division in *H.N. Fabrics Ltd. v. Mallick Textile Industries*, reported in *1985 BLD (AD) 271*, wherein it has been held:

> *"... The question is whether there was a concluded contract between the parties which could be enforced by a suit for specific performance. It is well settled that the court will not decree a suit for specific performance of a contract the terms of which are uncertain."[para 8]*

The Appellate Division emphasized that the Court cannot create contractual terms on behalf of the parties. If the essential elements of the contract remain unsettled, the agreement cannot be treated as concluded.

In the present case in hand, it transpires from Annexure-G and I to the writ petition that, by virtue of the correspondences dated 18.02.2014 and 17.04.2014 respectively issued by the respondents, the appellant was restrained from carrying out any activity in relation to the Mill, and the operation of the said Mill was kept in abeyance in compliance with the order dated 27.02.2014 issued from the Prime Minister's Office with the intimation that the matter was under process and that a meeting had been convened in this regard.

Subsequently, following the appellant's failure to duly pay the 2nd installment within the stipulated period, the respondents, pursuant to a decision of the Government taken in view of certain newspaper publications alleging irregularities in connection with the Mill, refused to accept the 3rd installment tendered by the appellant.

In this context, clauses 3, 4, 7 and 8 of the agreement dated 01.01.2014, being relevant for the purpose of adjudication of the present dispute, are quoted below for ready reference:

> *"০৩। ক্রেতা কর্তৃক মূল্যের বিপরীতে ডাউন পেমেন্ট বাবদ দেয়া টাকা মোট ১৫.০০ কোটি (পনের কোটি) টাকা মাত্র বাদে অবশিষ্ট টাকা এতদসংক্রান্তে সম্ভাব্য চূড়ান্ত চুক্তি সম্পাদন স্বাপেক্ষে উক্ত অবসায়িত মিলের দখল সরকারী সিদ্ধান্তের ভিত্তিতে ক্রেতার বরাবরে বুঝাইয়া দেওয়া হইবে।*
>
> *০৪। ক্রেতাকে অত্র দলিলের উপরে ০২নং শর্তে বর্ণিত মতে ক্রেতা কর্তৃক প্রথম কিস্তি টাকা পরিশোধে ব্যর্থ হইলে উক্ত ব্যর্থতার জন্য দন্ড স্বরূপ প্রতি কিস্তির জন্য ৫,০০,০০০/-(পাঁচ লক্ষ টাকা) পরবর্তী কিস্তির সহিত ক্রেতাকে অবশ্যই বিক্রেতা সরকারের অনুকূলে পরিশোধ করিতে বাধ্য থাকিবেন। তবে আরও উল্লেখ থাকে যে, এইভাবে ক্রেতা যদি ২য় কিস্তির টাকা পরিশোধে ব্যর্থ হইলে বিক্রেতা সরকার কোন প্রকারের কারণ না দর্শিয়ে উক্ত মিলের অপাঠ্য (back) ক্ষমতা সর্বদাই সংরক্ষন করেন এবং এতদসংক্রান্তে বিক্রেতা সরকার সর্বদাই পূর্ণ ক্ষমতা বা আইনতঃ অধিকারী হইবেন বা থাকিবেন। এইরূপ ক্ষেত্রে ক্রেতার দেয়া সাকুল্য টাকা বাজেয়াপ্ত হইবে এবং অত্র চুক্তিপত্র কোন প্রকারের যোগাযোগ বা নোটিশ প্রদান ব্যতিরেকে সরাসরি বাতিল মর্মে গন্য হইবে। এমনকি বিক্রেতা সরকার ইহা করিলে ক্ষেত্রমতে আর যে কোন (অপাঠ্য) পদক্ষেপ গ্রহন করিতে পারিবেন।*
>
> *...........................*
>
> *০৭। বিক্রেতা কর্তৃক তফশিলী সম্পত্তির মূল্যের অবশিষ্ট সাকুল্য টাকা নির্ধারিত সময়ের মধ্যে পরিশোধ করা এবং প্রয়োজনীয় বিক্রয় দলিল সম্পাদন না হওয়া পর্যন্ত উক্ত সরকারী মিলের মালিকানা ও স্বত্ত্ব দখল ইত্যাদি বিক্রেতা সরকারের অনুকূলেই থাকিবে।*
>
> *০৮। ক্রেতা কর্তৃক উক্ত সম্পত্তির মূল্যের অবশিষ্ট সাকুল্য টাকা পরিশোধ না করা পর্যন্ত এবং বিক্রেতা সরকার কর্তৃক ক্রেতার অনুকূলে প্রয়োজনীয় বিক্রয় দলিল রেজিস্ট্রি না করিয়া নেওয়া ও উহার খাস দখল সরে-জমীনে অফিসিয়ালী ক্রেতাকে বুঝাইয়া না দেওয়া পর্যন্ত তফসিলী সম্পত্তিতে ক্রেতা কর্তৃক কোনভাবেই যেকোন প্রকারের স্থায়ী নির্মান কাজ করিতে পারিবেন না।"*

It is, therefore, evident from the conduct and actions of both the parties that all the material terms of the agreement had not been finally settled between them and that certain obligations remained to be performed. Upon careful scrutiny of the terms embodied in clause 7 of the agreement, which stipulates that *বিক্রেতা কর্তৃক তফশিলী সম্পত্তির মূল্যের অবশিষ্ট সাকুল্য টাকা নির্ধারিত সময়ের মধ্যে পরিশোধ করা এবং প্রয়োজনীয় বিক্রয় দলিল সম্পাদন না হওয়া পর্যন্ত....,* in particular, clearly envisages that the balance of the consideration price must be paid within the stipulated time and the requisite deed of sale must thereafter be executed and registered. Thereby, a contingency was expressly created under the agreement, requiring the fulfillment of these stipulated obligations before the transfer of the Mill could attain its final and legally effective form through the execution and registration of a deed of conveyance.

In *Rossiter Vs. Miller,* reported in *1878, 3 AC 1124,* Lord Blackburn stated:

> *"It is a matter to be taken into account in construing the evidence and determining whether the parties have really come to a final agreement or not."*

Per Parker, J. in Hatzfeld-Wildenburg V. Alexander, reported in *1912 1 Ch. 284-248* drew a clear distinction between a concluded contract and a mere arrangement to negotiate in future. His Lordship observed, in substance, that where the parties have not reached finality on essential terms and contemplate the execution of a further formal agreement, there is no binding contract unless the material terms are already settled. The Privy Council quoted with approval the following passages in

Currimbhoy and Co. Ltd. Vs. L.A. Creet and Ors., reported in *AIR 1933 P.C. 29* as follows:

> *"It appears to be well settled by the authorities that if the document or letters relied on as constituting a contract contemplate the execution of a further contract between the parties it is a question of construction whether the execution of the further contract is a condition of term of the bargain or whether it is a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through. In the-former case there is no enforceable contract either because the condition is unfulfilled or because the law does not recognize a contract to enter into a contract. In the latter case there is a binding contract and the reference to the more formal document may be ignored."*

In view of the above, the agreement in question cannot be said to have attained the status of a concluded contract as per the principle enunciated in the case of *Refat Garments Limited and others (supra)*.

At this juncture, we are inclined to examine another contention advanced by the learned counsel for the respondents that the appellant-writ petitioner without first exhausting the efficacious alternative remedy provided under the arbitration clause contained in the agreement dated 01.01.2014, directly invoked the writ jurisdiction of the High Court Division.

It transpires from the agreement dated 01.01.2014 that the instrument incorporates a specific provision for resolution of disputes through arbitration, as contemplated in clause 18, which is reproduced below:

> *“১৮। অত্র চুক্তিনামা সংক্রান্তে বা উক্ত মিলের তফশিলী সম্পত্তি সংক্রান্তে ভবিষ্যতে যদি কখনো কোন প্রকারের বিরোধ বা মতভেদ দেখা দেয়; সেইরুপ ক্ষেত্রে তাহা মিমাংসার নিমিত্তে (আরবিট্রেটর) মাধ্যমে আবশ্যিকভাবে নিষ্পন্ন করিতে হইবে। এইরূপ ক্ষেত্রে বিক্রেতা সরকারই আরবিট্রেটর মর্মে গণ্য হইবেন এবং আরটিট্রেটরের সিদ্ধান্তই চূড়ান্ত মর্মে গণ্য হইবে।”*

The appellant, however, contends that the said arbitration clause is void and inoperative in the eye of law on the ground that the Government, being itself a contracting party, cannot assume the role of an arbitrator in a dispute arising between the Government and the appellant.

It is equally evident from the record in hand and from the submissions of the learned Counsels appearing for both sides that the agreement entered into by the Government for disposal of the Mill was executed in pursuance of Article 4(2) of the Order, 1972. Thus, the very foundation of the contractual terms and conditions, whose enforcement as a whole the appellant have sought before this Court, is rooted in statutory authority conferred by law.

In that view of the matter, the stipulations embodied in the agreement must be construed in the context of the statutory framework under which the transaction was undertaken. It further appears that such a clause, i.e. clause 18, providing for the settlement of disputes through arbitration, having been consciously incorporated and agreed upon by both the parties at the time of execution of the agreement, forms an integral part of the contractual arrangement governing their respective rights and obligations.

Accordingly, the arbitration clause contained in the agreement cannot be said to be inoperative or ineffective on the plea that the Government, being itself a contracting party, cannot assume the role of an arbitrator; rather, it remains fully applicable to any dispute arising between the parties in connection with the agreement. More importantly, the existence of such an agreed dispute-resolution mechanism provides the parties with an efficacious alternative remedy for the adjudication of their disputes. In these circumstances, where the parties themselves have chosen arbitration as the forum for resolving disputes arising out of the agreement, the appellant cannot legitimately bypass that agreed mechanism and seek enforcement of the contractual terms directly under Article 102 of the Constitution.

In this regard, the consistent view of this Division is that where disputes arise out of contractual obligations and the contract itself provides a mechanism for resolution through arbitration or other agreed forum, the aggrieved party should ordinarily pursue that remedy rather than invoking the extraordinary jurisdiction of the High Court Division under Article 102 of the Constitution.

In *Bangladesh Telecom (Pvt.) LTD vs. T&T,* reported in *48DLR(AD)1996, this Division* held that:

> *"...With regard to the availability of arbitration and civil suit as an alternative remedy, Article 102 of the Constitution provides that if there is "no other equally*

> *efficacious remedy" provided by law" then the writ jurisdiction of the High Court Division may be invoked." [para 18]*

In this connection, reliance may be placed on the case of *Md. Mobarak Hossain vs. Government of the People's Republic of Bangladesh* reported in *VII ADC (2010) 835,* wherein this Division held as follows:

> *"....It appears that the petitioner did not avail the provision of clause 24 of the Contract Agreement and as such, there was no scope for taking the recourse of Arbitration. Therefore it is evident that the petitioner failed to exhaust the alternative remedy available in the Contract Agreement. It is well settled that when the parties enter into a clear, unambiguous and express contract creating mutual rights and obligations, the parties are bound by it and the extraordinary jurisdiction of the High Court Division under Article 102 of the Constitution which is of discretionary nature cannot be allowed to be utilized for enforcing an obligation in departure from the terms of the agreement."*

In the present case, the appellant did not invoke the arbitration clause contained in the agreement and instead directly approached the High Court Division under Article 102 of the Constitution seeking enforcement of contractual rights. Such an approach is inconsistent with the settled principles governing the exercise of constitutional jurisdiction.

In addition to the above considerations, it must also be borne in mind that the present proceeding arises from a Civil Review Petition. The settled principle regarding the power of review conferred upon this

Division under Article 105 of the Constitution is that review jurisdiction may be exercised only where there exists an error apparent on the face of the record.

In *Mahbubur Rahman Sikder snd ors vs. Mujibur Rahman Sikder and others* reported in *37 DLR (AD) 145*, this Division held that:

> *"... The need to do 'complete justice' must be felt only when some meaningful change is required. Mere irregularity, though material, may not necessitate the exercise of the power to review. For its exercise some substantial injury must result from such irregularity." [para-35]*

In support of the finality of judgment of the superior Court, the Indian Supreme Court observed in *Northern India Caterers Vs. Lt. Governor, Delhi* reported in *AIR 1980 SC 674*, as follows:

> *"A party is not entitled to seek a review of a judgment delivered by the Supreme Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so."*

Upon careful scrutiny of the grounds taken in the present Civil Review Petition, we find that the appellant has essentially reiterated the very arguments which were advanced at the time of hearing of Civil Appeal No.181 of 2016. However, no error apparent on the face of the record has been demonstrated.

In view of the failure of the appellant to comply with the agreed schedule of payment, its failure to invoke the arbitration clause contained in the agreement, and the absence of any manifest error in the judgment sought to be reviewed, we find no ground to interfere with the judgment and order passed by this Division in Civil Appeal No.181 of 2016.

Accordingly, the Civil Appeal is dismissed.

There shall be no order as to costs.

C.J.

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J.

22.02.2026.
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