

ARBITRAL PROCEEDINGS BETWEEN
MEGHNA STAR CABLES AND
ELECTRICAL APPLIANCES LTD. AND
BANGLADESH RURAL
ELECTRIFICATION BOARD (BREB)

AWARD

31 JANUARY 2024

DHAKA, BANGLADESH

Mr. Justice Syed Mahmud Hossain
Mr. Mohammad Mehedi Hasan Chowdhury
Mr. Mizan Sayeed



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THE ARBITRAL TRIBUNAL COMPRISING OF:

Mr. Justice Syed Mahmud Hossain,
Former Chief Justice of Bangladesh

...CHAIRMAN

-AND-

Mr. Mohammad Mehedi Hasan Chowdhury
Barrister-at-Law,
Advocate, Supreme Court of Bangladesh

...ARBITRATOR

-AND-

Mr. Mizan Sayeed,
Barrister-at-Law,
Advocate, Supreme Court of Bangladesh

...ARBITRATOR

IN THE MATTER OF:

AN ARBITRATION BETWEEN:

Meghna Star Cables and Electrical
Appliances Ltd.

Represented by its Managing Director,
of Address City Heart (12th Floor),
Suite No. 13/5, 67, Naya Paltan,
Dhaka-1000 and Factory Address at
Meghna Industrial Commercial Zone,
Tripordi, Sonargaon, Narayanganj.

...1st Party-Claimant

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M. H. Chowdhury
[Handwritten signature]
MIZAN SAYEED

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার

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-VERSUS-

Bangladesh Rural Electrification Board
(BREB)

Represented by the Project Director,
Address: Training Academy Building
(7th Floor), Nikunja-2, Khilkhet, Dhaka-
1229.

...2nd Party-Respondent

AWARD

The 15th of January, 2024

PRESENT

For the Claimant

For the Respondent

(1) Mr. Mohammad Sayed Ahmed
(Raza)
Senior Advocate,
Supreme Court of Bangladesh

(1) Mr. Sk. Mohammad Zakir
Hussain
Barrister-at-Law,
Advocate, Supreme Court
of Bangladesh

With

(2) Mr. Samiul Huq
Barrister-at-Law,
Advocate, Supreme Court of
Bangladesh

“দেশপ্রেমের শপথ নিন, দুর্নীতিকে বিদায় দিন”

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MR. AHMED

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(MR. SAIED)

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার

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(3) Mr. Sovan Mahmud
Barrister-at-Law,
Advocate, Supreme Court of
Bangladesh

1. The instant Arbitral Proceeding arises out of a contractual dispute between the Claimant and the Respondent.
2. The Claimant is a Private Company, limited by shares, incorporated under the laws of Bangladesh and registered with the Registrar of Joint Stock Companies and Firms (RJSC) under the Companies Act. 1994, (Registration No. C-138780-2017) having its registered office at City Heart (12th Floor), Suite No. 13/5, 67, Naya Paltan, Dhaka 1000 and Factory Address at Meghna Industrial Commercial Zone, Tripordi, Sonargaon. Narayanganj, represented in this instant Arbitral Proceedings by its Managing Director. The Claimant is engaged in the business of trading in cables and other electrical Products through its network of resellers and distributors.
3. The Respondent is the Bangladesh Rural Electrification Board (BREB), represented by its Project Director, 100% Rural Electrification (Rajshahi, Rangpur, Khulna and Barisal Division) Project, and implements electrification of rural areas in Bangladesh and builds electrics lines and sub stations and is the primary government organization responsible for rural electrification throughout the entire nation.
4. The background of the instant Arbitral Proceeding is that the Respondent floated a tender No. 27 12.0000.162.027.02.20 1559 dated 03.05 2020 for purchase of electric line constructions materials conductor, ACSR, Bare for package No. DNE(W)-G-48, Lot No. Lot 1. under Distribution Network Expansion for 100% Rural Electrification (Rajshahi, Rangpur, Khulna and Barisal Division) Project. The Claimant in response, submitted its “দেশপ্রেমের শপথ নিন, দুর্নীতিকে বিদায় দিন”

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Mr. Sovan Mahmud

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(Mr. Sovan Mahmud)



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bid of Tk. 69,69,21,040.00 (Taka Sixty-Nine Crore Sixty-Nine Lac Twenty-One Thousand and Forty Only) on 10.06 2020 and the same was accepted by the Respondent and accordingly, a notification of award was issued in favour of the Claimant on 08.12.2020. That after having received notification of award, the Claimant accepted the same and as per the stipulated conditions, furnished a performance security in the form of a bank guarantee being numbered 3555201 PG013 dated 20.12.2020 for an amount of Tk. 6,96,92,104 (Taka Six Crore Ninety-Six Lac Ninety-two Thousand One Hundred and Four Only) furnished by Pubali Bank Limited, Principal Branch, Dhaka and thereafter, an agreement against package No. DNE(W)-G-48, Lot No. 01 dated 04.01.2021 (hereinafter referred to as "the Agreement") was executed between the Claimant and Respondent.

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MR. ANTOH

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(MIZAN SAHEED)

5. The dispute arose between the parties when Respondent on 26.12.2020 issued a letter contained in Memo No. 27 12.0000/162.07.254.2022 471 addressing the Guarantor Pubali Bank i.e. the General Manager & Head of Branch of Pubali Bank Limited, 26, Dilkusha C/A, Dhaka requesting an encashment of the performance security being No. 355520LPG013 dated 20.12.2020 furnished by the Claimant, within 3(three) days stating that "ultimately they have failed to supply the bare conductor against the abovementioned contract in the contractual time period".
6. The said letter was communicated to the Claimant by the said Bank vide its letter contained in Memo No. PBL/PB/ADV/ MEGHNA STAR CABLES/2057/2022 dated 27.12.2022. The Claimant vide a letter on the same day i.e. on 27.12.2022 requested the Respondent to reconsider his decision for encashment of the performance security being No. 355520LPG013 dated 20.12.2020.
7. The Claimant thereafter served notice of Arbitration under sections 11 and 12 of Arbitration Act, 2001 of Bangladesh upon the Respondent in compliance with GCC Clause 47.3(a) on 29.12.2022 informing the Respondent of the nomination of Mr. Mizan Saheed, Advocate Supreme Court of Bangladesh as the Arbitrator on behalf of the

দেশস্বৈরের ন্যায় নিন. দনাতিকে বিদায় দিন

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার

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Claimant. In their response dated 26.01.2023, the Respondent informed the Claimant of the nomination of Mr. Mohammad Mehedi Hasan Chowdhury as an Arbitrator on their behalf. The two arbitrators so nominated on behalf of the Parties, appointed Mr. Justice Syed Mahmud Hossain, former Chief Justice of Bangladesh as the Chairman, thereby duly constituting the instant Arbitral Tribunal in accordance with the Agreement and the provisions of the Arbitration Act, 2001.

8. The first sitting of the Arbitral Tribunal took place on 17.06.2023. The Tribunal vide its Order No. 1 dated 17.06.2023 was pleased to pass the following procedural directions, amongst others:

- a. The honoraria of the Hon'ble Chairman and the Arbitrators were fixed at Tk. 80,000,00/- (Eighty lac) only which will have to be shared by the Claimant and Respondent equally.
- b. The honoraria of the Secretary of the Arbitral Tribunal were fixed at Tk. 5,00,000/- (Five Lac) only which will have to be shared by the Claimant and Respondent equally.
- c. The incidental costs and other expenses of the Tribunal was fixed at Tk. 50,000/- (Fifty Thousand) only which will have to be shared by the Claimant and the Respondent equally
- d. The Hon'ble Tribunal also fixed the date of the submission of the Statement of Claim on or before 15.07.2023 and also ordered that parties have to make the aforesaid payments on or before 15.07.2023.

9. However, following the Order No. 1, the Parties informed the Tribunal of entering into discussions to explore avenues of amicable settlement of the dispute, and prayed for an adjournment of proceedings to allow the parties to engage in negotiations aimed at reaching a compromise. Accordingly, the Tribunal was pleased to allow the same.

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10. Thereafter, the Respondent - Bangladesh Rural Electrification Board formed a committee vide Nathi No. 27.12.0000.22.002.23.42 dated 27.07.2023 to proceed further with an amicable settlement of the dispute between the parties. Admittedly, the committee furnished a recommendation which was signed by the committee members. Following that Bangladesh Rural Electrification Board (BREB) by its resolution dated 20.09.2023 approved the recommendations made by the Committee.

11. That based on the approval given by the Respondent, the Claimant and the Respondent have thereby filed a joint application on 03.12.2023 for an award on compromise ("compromise petition") in the terms as referred to in Paragraph No.11 of the said application. In contemplation of an award on compromised terms, the Claimant also prayed for a revision of the Honorarium of the Hon'ble Arbitral Tribunal and to reduce the honoraria of the Chairman and the Arbitrators, the remuneration of the Secretary, and the costs and incidental expenses to 1/5th (one fifth) of the original amounts stipulated in the Order No.1 dated 17.06.2023 passed by this Tribunal. The Claimant further prayed to make the payments on behalf of the Respondent, referring to assurances of reimbursement of the same by the Respondent. The Claimant has already submitted 1/5th (one fifth) of the original amounts of the honoraria of the Chairman and the Arbitrators, the remuneration of the Secretary, and the costs and incidental expenses on behalf of the parties.

12. The Tribunal fixed today for hearing of the application for an award on compromised terms filed jointly by the parties, and for passing other or further order or orders as the Tribunal deems fit and proper.

13. We have heard the learned advocates Mr. Mohammad Samiul Huq, appearing on behalf of the Claimant and Mr. Sk. Mohammad Zakir Hossain, appearing on behalf of the Respondent. It appears that the parties have reached a settlement of the dispute and are jointly seeking an award on compromise in the terms as set out in the said application.

দেখাশ্রমে মগধ মিন, দুনাতিকে বিদায় দিন

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MR. MAMUNUR RAHMAN
(K. P. BAN. 17/12/23)



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14. Accordingly, the joint application filed by the Petitioner and the Respondent for an award on compromise is allowed. Furthermore, considering the need for a quick and effective disposal of the matter, in light of the amicable settlement of the dispute between the parties, we are of the view that the reduction of the honoraria of the Chairman and the Arbitrators, the remuneration of the Secretary and the costs and incidental expenses to 1/5th (one fifth) of the original amount stipulated in the Order No. 1 dated 17.06.2023 is reasonable and justified.

15. Accordingly, we are inclined to allow the prayer for reduction of the honoraria of the Chairman, the Arbitrators, the remuneration of the Secretary of the Arbitral Tribunal and the costs and incidental expenses to 1/5th (one fifth) of the original amount stipulated in the Order No. 1 dated 17.06.2023. Let the prayer for reduction of the honoraria of the Chairman, the Arbitrators, the remuneration of the Secretary of the Arbitral Tribunal and the costs and incidental expenses to 1/5th (one fifth) of the original amount stipulated in the Order No. 1 dated 17.06.2023 be allowed.

16. Since the terms of the compromise are lawful, let the joint application filed on 03.12.2023 do form a part of the award. Accordingly, the instant Arbitral Proceeding is disposed of and the compromise award is passed in the following terms:

- That the claim will be decreed on the terms and conditions of the compromise petition dated 03.12.2023.
- The respondent shall pay to the claimant BDT 6,96,92,104.00 (Taka Six Crore Ninety-Six Lac Ninety-Two Thousand One Hundred Four) only, without any interest, against the bill of the 8th consignment subject to extension of Bank Guarantee till the warranty period.
- The termination of the contract between the claimant and the respondent shall be considered as a normal closing of contract.

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- (d) Performance guarantee furnished by the Claimant in the form of bank guarantee being numbered 3555201 PG013 dated 20.12.2020 for an amount of Tk. 6,96,92,104 (Taka Six Crore Ninety-Six Lac Ninety-two Thousand One Hundred and Four Only) issued by Pubali Bank Limited, Principal Branch, Dhaka shall be returned to the Claimant after expiry of the warranty period.
- (e) The Respondent shall not impose any Liquidated Damage (LD) for the products that had been supplied till 18.12.2022 by the claimant.
- (f) The Respondent can impose Liquidated Damage (LD) against the Claimant only against products which were delivered after 18.12.2022.
- (g) That both the parties and their successors in interest will be bound by this compromise application and none will violate any of the terms and conditions made therein.

M. H. Chowdhury

Mr. Mohammad Mehedi
Hasan Chowdhury
(Arbitrator)

M. Justice Syed Mahmud Hossain

Mr. Justice Syed
Mahmud Hossain
(Chairman)

M. Mizan Sayeed

Mr. Mizan Sayeed
(Arbitrator)

“দেশপ্রেমের শপথ নিন, দুর্নীতিকে বিদায় দিন”