



## EXTRATERRITORIAL APPLICATION OF THE ARBITRATION ACT, 2001: A JUDICIAL DILEMMA

---

Oishe Rahman\*

### ABSTRACT

*The Arbitration Act, 2001 inspired by the UNCITRAL Model Law, was established to facilitate arbitration processes and encourage international investment. The application of the Act, to foreign-seated arbitrations, has been the subject of debate for more than two decades now. The Supreme Court of Bangladesh has issued divergent decisions over the years, with certain decisions advocating a restricted interpretation that confines the Act's applicability to domestic arbitrations, while others supported a more expansive application that supported the application of the Act to foreign-seated arbitrations. The Accom case (2021) resolved the issue by determining that the Act is inapplicable to foreign-seated arbitrations, or at least that was the position before May 2024. In May 2024, the Appellate Division in the Italian Thai Development case created scope for the extraterritorial application of the Arbitration Act, 2001 by issuing a status quo order in favour of an arbitration proceeding seated in Singapore. Divergent opinions of the Court in the applicability of the Act in foreign-seated arbitrations may erode investor confidence and affect Bangladesh's position in Bilateral Investment Treaties (BITs). Such inconsistent interpretation of the Act may frustrate the purpose of its enactment. To guarantee a solid legal framework, the judiciary must use a clear and consistent methodology that promotes predictability and conforms to international arbitration standards.*

**Keywords:** Arbitration, Foreign-Seated Arbitration, Accom, Arbitrability.

Bangladesh has enacted the Arbitration Act, 2001 (hereinafter referred to as 'the Act') upon repealing the Arbitration Act, 1940 in line with the UNCITRAL Model Law on International Commercial Arbitration, 1985, (hereinafter referred to as the 'Model Law') albeit with some deviations. The preamble of the Act provides that the Act has been enacted in order to make provisions relating to international commercial arbitration, recognition and enforcement of

---

\*POST-GRADUATE

foreign arbitral awards and other arbitrations.<sup>1</sup> Therefore, it is said to have started its provisions with a flavor of internationality in the field of arbitration.<sup>2</sup> Such a legislative step was urgent in the face of increasing foreign investment in Bangladesh in various sectors, especially in natural gas and power, and her ever-growing export trade with the rest of the world. The primary objective of this new legislation is to facilitate arbitration proceedings with minimal judicial intervention, except in matters pertaining to the jurisdiction of the arbitral tribunal.<sup>3</sup> The Act creates a single and unified legal regime for arbitration in Bangladesh which has also been the trend in recent years in some other jurisdictions.<sup>4</sup> Since the enactment of the Act until today, the extraterritorial application of the Act, i.e. whether the provisions of the Act shall apply to foreign-seated arbitrations is highly contested. The Supreme Court has been going back and forth on this issue for more than two decades now. Some of the decisions of the Court supported the application of the Act to foreign-seated arbitrations, while the other decisions took the contrary view. The debate was thought to be over after the Appellate Division decided in the *Accom* case in 2021 that section 3(1) of the Act bars its application to foreign seated arbitrations. However, in 2024 in the *Italian Thai Development* case, when the Appellate Division issued a status quo order in favour of an arbitration seated in Singapore, the *Accom* principle can be said to have been overruled, the latest position of the Court being in favour of extraterritorial application of the Act. The following discussion lays down the divergent precedents of the Supreme Court of Bangladesh with regard to the extraterritorial application of sections 3 and 10. Although the *Italian Thai Development* case is the latest decision of the Court on the Act's extraterritoriality, *Accom* has been mentioned as the latest case because it is the latest case specifically addressing the extraterritorial application of sections 3 and 10.

### **THE SCOPE OF THE ARBITRATION ACT, 2001 UNDER SECTION 3: DIVERGENT JUDICIAL INTERPRETATIONS**

The pronouncements of the Supreme Court of Bangladesh regarding the interpretation of Section 3 of the Arbitration Act, 2001, and its subsequent impact on the Act's applicability to arbitrations taking place outside Bangladesh, reveal a degree of inconsistency. Two distinct sets of conflicting decisions have been issued by different benches which are detailed as follows.

---

<sup>1</sup>Arbitration Act 2001, Preamble.

<sup>2</sup> *Accom Travels and Tours Ltd v Oman Air SAOC and Others* [2016] (AD) 4,7.

<sup>3</sup>*M/s Strains Construction Company v Government of Bangladesh* [2017] 22 BLD (HCD) 236.

<sup>4</sup> German Arbitration Act 1998, book 10, s 1025-1066; Arbitration and Conciliation Act 1996 (India).

A. *First Set of Decisions: Provisions of the Arbitration Act 2001, apart from Sections 45, 46 and 47, shall not apply to arbitrations taking place outside Bangladesh*

***i. Canada Shipping and Trading SA v TT Katikaayu and another***<sup>5</sup>

In this case, the High Court Division concluded that a combined reading of section 3(1) and (2) indicates that the Act is applicable to arbitrations conducted only within Bangladesh, rather than in any other jurisdictions.<sup>6</sup>

***ii. Unicol Bangladesh v Maxwell Engineering Works***<sup>7</sup>

The case was appealed to the Appellate Division against a judgment of the High Court Division.<sup>8</sup> Despite the origins of the case in the now-repealed Arbitration Act of 1940, the Appellate Division, upon reviewing the arguments from both parties, observed that the provisions in sections 3(1) and 3(4) of the Act, which restrict the Court from granting an injunction, pertain exclusively to arbitrations held within Bangladesh. This prohibition does not prevent a specific party from seeking arbitration in a foreign jurisdiction for a contract made in Bangladesh.<sup>9</sup>

***iii. Uzbekistan Airways v Air Spain***<sup>10</sup>

The High Court Division again took a restrictive approach in this case by noting that according to both the Divisions of this Court in decisions such as 56 DLR (AD) 166, the unreported Civil Petition for Leave to Appeal Nos. 73-75/1982, LEX/BDHC/0082/2001, 54 DLR 93, and 9 BLC 96, section 10 does not apply in foreign-seated arbitrations although awards passed by any foreign arbitration tribunal may be enforced in Bangladesh under section 3(2) of the Act, read with sections 45-46.<sup>11</sup>

***iv. STX Corporation Ltd. vs. Meghna Group***:<sup>12</sup>

In *STX*, the High Court Division again took the restrictive approach with regard to the extraterritorial application of the Act similar to that taken in the *Canada Shipping, Unicol and Uzbekistan Airways* case. According to the court, section 3(2) affirms such interpretation as it

---

<sup>5</sup>*Canada Shipping and Trading SA v TT Katikaayu and another* [2002] 54 DLR 93.

<sup>6</sup> *ibid* [7].

<sup>7</sup> *Unicol Bangladesh v Maxwell Engineering Works* [2004] 56 DLR (AD) 166.

<sup>8</sup> *Occidental v Maxwell* [2004] 9 BLC 96.

<sup>9</sup> *ibid* [15].

<sup>10</sup> *Uzbekistan Airways v Air Spain Ltd* [2005] 10 BLC 614.

<sup>11</sup> *ibid* [5].

<sup>12</sup> *STX Corporation Ltd. v Meghna Group* [2012] 64 DLR 550.

categorically states the circumstances under which the Act shall apply to foreign-seated arbitrations.<sup>13</sup>

With regard to the contrary decision on this issue pronounced by another single bench of this Court in *HRC Shipping Limited vs. MV. Express*,<sup>14</sup> the Court observed that the High Court Division failed to appreciate the precedents set by the Appellate Division on this point which it was bound to do so under Article 11 of the Constitution.<sup>15</sup> It was further contended that the High Court Division cannot exceed the principles set by the Appellate Division as required by the principles of “stare decisis.”<sup>16</sup>

## **B. Second Set of Decisions: Provisions of the Arbitration Act 2001 will apply to arbitrations taking place outside Bangladesh**

### *i. HRC Shipping Limited Vs. M.V. X-press Manaslu and others:*<sup>17</sup>

The *HRC* decision is the first decision whereby the Court, instead of following the restrictive approach set by the precedents stated above, gave an expansive interpretation of the provisions of section 3. The Court noted that section 3(1) states that the Act shall apply to arbitrations taking place in Bangladesh, but nowhere in the section it is mentioned that the Act shall 'not' to arbitrations taking place outside Bangladesh. Neither does it contain any such prohibitory words with respect to the application of the Act in foreign-seated arbitrations, nor does it state that the Act shall apply “exclusively” or “only” to arbitrations taking place in Bangladesh. According to the court, the legislative intent behind the incorporation of section 3(1) was to express that the Act is mandatorily applicable to arbitration including international commercial arbitrations taking place in Bangladesh. Therefore, the parties are prevented from circumventing such requirements.

The single bench, following a thorough examination of the Model Law’s provisions and relevant Indian case laws, notably *Bhatia International v. Bulk Trading SA*,<sup>18</sup> concluded that section 3 does not explicitly prohibit the Act’s application when the arbitration seat is outside Bangladesh; thus, section 10 of the Act is applicable in proceedings where the arbitration seat is located in a foreign jurisdiction.

---

<sup>13</sup> *ibid* [19].

<sup>14</sup> *HRC Shipping Limited v MV. Express* [2007] 12 MLR (HC) 265.

<sup>15</sup> *ibid* [41].

<sup>16</sup> Thomas Burns, ‘The Doctrine of Stare Decisis’ (1893) Historical Theses and Dissertations Collection.

<sup>17</sup> *HRC Shipping Ltd v MV. Express* [2007] 12 MLR (HC) 265.

<sup>18</sup> *Bhatia International v Bulk Trading SA* [2002] AIR (SC).

## ***ii. Southern Solar Power Limited vs. PBDP***<sup>19</sup>

After the liberal interpretation of section 3 in the *HRC* case, the Court again went back to its previous restrictive position in the *STX Corporation* case as regards the extraterritoriality of the Act. However, a few years after the *STX Corporation* decision, the court again adopted the expansive interpretation of *HRC* in the *Southern Solar* case in 2020. The issue in this case was whether section 7A of the Act would apply to foreign-seated arbitrations. As regards the scope of the Act, the court was of the opinion that section 3 is “not about the jurisdiction of the courts” but rather about the “scope of the application of the provisions of the Arbitration Act, 2001.”<sup>20</sup> Like *HRC*, the court reasoned that the absence of any prohibitory words in section 3 and the omission of the word “only” implies that the provisions of the Act are not only applicable to arbitrations seated in Bangladesh but also to foreign-seated arbitrations.<sup>21</sup>

## ***C. Latest Pronouncement of the Supreme Court Latest Pronouncement on the Interpretation of Section 3***

In the case of *Accom Travels and Tours Limited vs. Oman Air S.A.O.C. and Others (2021)*,<sup>22</sup> the primary issue was the interpretation of Section 3 of the Act. The Court identified inconsistencies in the interpretation of Section 3 by various Supreme Court benches and conducted a comparative analysis with Article 1 of the Model Law.<sup>23</sup> The Court noted that while both Indian and Bangladeshi arbitration laws are modeled after the UNCITRAL framework, they have not followed the same in toto.<sup>24</sup> Article 1(2) of Model law states: ‘(2) *The provisions of this law, except Articles 8, 9, 35 and 36, apply only if the place of arbitration is in the territory of this State.*’ However, unlike the Model Law, the Bangladeshi Legislature framed Section 3 differently.

Specifically, the word ‘only’ is absent from Section 3(1), and provisions such as Sections 10, 7A, 45, and 46 are not explicitly excluded for arbitrations seated in Bangladesh. However, Section 3(2) clarifies that “*notwithstanding anything contained in sub-section (1) of this section, the provisions of sections 45, 46, and 47 shall also apply to the arbitration if the place of that arbitration is outside Bangladesh.*” Consequently, a combined reading of subsections (1) and (2) of Section 3 reveals that, despite the absence of the term ‘only’ in the text, its

---

<sup>19</sup> *Southern Solar Power Limited v PBDP* [2020] 25 BLC 501.

<sup>20</sup> *ibid* [36].

<sup>21</sup> *ibid*.

<sup>22</sup> *Accom Travels and Tours Limited v Oman Air S.A.O.C. and Ors.* [2016] (AD).

<sup>23</sup> *ibid* [4.15].

<sup>24</sup> *ibid*.

intended effect is evident, as subsection (2) explicitly identifies only three applicable sections i.e. sections 45, 46, and 47 when the arbitration seat is located in a foreign jurisdiction.

The Court disagreed with prior High Court Division rulings in the *HRC Shipping* and *Southern Solar* cases, which suggested that the absence of the word ‘only’ undermines the exclusivity of Section 3(1). Instead, it concluded that such omission is remedied by the provisions under subsection (2) of Section 3 of the Act.<sup>25</sup> Thus, the Court affirmed that the Act applies to arbitrations seated in Bangladesh, with specific provisions, namely Sections 45, 46 and 47, extending to foreign arbitral awards.

The court in *Accom* placed reliance on the Indian decision in the *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc*<sup>26</sup> (the *BALCO* case) case as regards the extraterritorial application of the Act. In the *BALCO* case, one of the parties argued that, if the provisions Arbitration and Conciliation Act, 1996 do not apply to foreign-seated arbitrations and if the court is thereby prevented from granting interim measures with respect to arbitrations seated outside India, it would result in the alienation or destruction of the subject matter. In response to such an argument, the Indian Supreme Court noted that it is a matter for the Legislature to consider and not the court. However, it is noteworthy that after the *BALCO* decision, the Legislature in India has amended section 2(2) of their Act adding a proviso that some provisions, including section 9 (corresponding to section 7A of our Act) shall also apply to arbitrations taking place outside India. The Court noted in *Accom*<sup>27</sup> that since no such legislative step had been taken in our country, there is no scope for us to go beyond the express language of section 3. It was further noted that it is not the duty of the court to make laws, rather to interpret the law as it is. Therefore the court refused to expand the application of section 3 and other provisions of the Act to foreign-seated arbitrations and again adopted the pre-*HRC* restrictive approach.<sup>28</sup>

---

<sup>25</sup> *ibid* [4.17].

<sup>26</sup> *Bharat Aluminium Com. v Kaiser Aluminium Technical Services Inc* [2012] 9 SCC 552.

<sup>27</sup> *ibid* [4, 20].

<sup>28</sup> *ibid*.

## ARBITRABILITY OF A DISPUTE UNDER SECTION 10: DIVERGENT JUDICIAL INTERPRETATIONS

Arbitrability implies the ability of the dispute to be resolved through arbitration, instead of litigation.<sup>29</sup> Section 10 permits the parties to petition the Court to refer the dispute to arbitration if it is covered by the arbitration agreement. However, the court reserves the right to refuse to submit the dispute to arbitration if the agreement is void, ineffective or unenforceable through arbitration. If no such impediment exists, the court will suspend the proceedings and submit the issue to arbitration. This provision mirrors Article 8 of the Model Law,<sup>30</sup> which pertains to the “negative” effect of the arbitration agreement, prohibiting the parties from initiating court actions concerning issues encompassed by the agreement and obligating courts to refer a case to arbitration under specific conditions.<sup>31</sup> According to the Model Law, the submission of a case to arbitration precludes its continuation in domestic courts.<sup>32</sup> The principle of party autonomy, a fundamental tenet of the Model Law,<sup>33</sup> promotes the implementation of arbitration agreements, as evidenced by this provision.

Section 10 of the Act mandates that any court in Bangladesh shall stay proceedings and submit the parties to arbitration if the proceedings pertain to the subject matter outlined in the section, provided that the stipulated circumstances are met.<sup>34</sup> Section 10 of the Act has been contested numerous times. Disputes regarding section 10 arose mainly on the point of whether recourse can be made to section 10 to stay proceedings in Bangladesh where the arbitration takes place outside Bangladesh. On this point, there were two sets of contrary decisions given by different benches of the High Court Division and the issue has been finally resolved by the majority decision in 2021 in the case of *Accom*.<sup>35</sup> Accordingly, the two sets of contrary views expressed by different benches of the High Court Division that prevailed before the decision in the case of *Accom Travels* are discussed as follows:

---

<sup>29</sup>Emilia Onyema, *International Commercial Arbitration and the Arbitrator's Contract* (19th edn, Routledge, 2012) 19.

<sup>30</sup>*Accom Travels and Tours Limited v Oman Air S.A.O.C. and Ors.* [2016] (AD) [4.21].

<sup>31</sup>UNCITRAL, ‘2012 Digest of Case Law on the Model Law on International Commercial Arbitration’ (2012) 1 UNCITRAL 33.

<sup>32</sup>*Comtec Components Ltd. v Interquip Ltd.* [1998] HKCFI 803 (HC, Hong Kong SAR).

<sup>33</sup>Sunday A Fagbemi, ‘The Doctrine of Party Autonomy in International Commercial Arbitration: Myth or Reality’ (2015) 15(1) *Journal of Dispute Resolution and Legal Practice*.

<sup>34</sup>*HRC Shipping Limited v MV Express* [2007] 12 MLR (HC) [16].

<sup>35</sup>*Accom Travels and Tours Limited v Oman Air S.A.O.C. and Ors.* [2016] (AD) [4.21].

**A. First set of decisions: Section 10 of the Act shall not apply where the arbitration takes place outside Bangladesh.**

In *Canada Shipping and Trading SA v TT Katikaayu and another*, the High Court Division held that Section 10 of the Act does not apply to arbitration proceedings seated outside Bangladesh. The court reasoned that, based on Sections 3(1) and (2), the Act primarily governs arbitrations seated in Bangladesh, excluding Sections 45, 46, and 47. Consequently, the application to stay proceedings before the court was rejected, as it concerned foreign-seated arbitration proceedings, not an arbitration award or domestic arbitration.<sup>36</sup>

In *Uzbekistan Airways v Air Spain*, the High Court Division affirmed that section 10 of the Act is inapplicable to international arbitral procedures, highlighting that section 3(2) ensures the validity of foreign arbitration rulings in Bangladesh.<sup>37</sup>

**B. Second set of decisions: Section 10 of the Act shall apply where the arbitration takes place outside Bangladesh.**

In *HRC Shipping Limited Vs. M.V. X-press Manaslu and others*,<sup>38</sup> the High Court Division considered an application under Section 10 of the Act for the stay of proceedings and evaluated the Act's applicability to foreign-seated arbitrations.

It analyzed the Model Law and relevant case law, concluding that Section 10 applies even when the arbitration seat is outside Bangladesh. The court emphasized that the Act does not limit its application solely to arbitrations seated in Bangladesh<sup>39</sup> and relied on Indian precedents, particularly on *Bhatia International v. Bulk Trading SA* to support this interpretation, ultimately staying the admiralty suit under Section 10.

Similarly in *Southern Solar Power Limited vs. PBDP*,<sup>40</sup> the Court addressed the applicability of the Arbitration Act 2001, specifically Section 7A, concerning arbitration conducted outside Bangladesh, while also expressing its views on the relevance of Section 10 under similar conditions. The single bench opined on the applicability of Section 10 of the Arbitration Act 2001 in foreign-seated arbitrations, stating that the High Court Division may invoke Section

---

<sup>36</sup>*Canada Shipping and Trading SA v TT Katikaayu and another* [2002] 54 DLR 93.

<sup>37</sup>*Uzbekistan Airways v Air Spain Ltd* [2005] 10 BLC 614.

<sup>38</sup>*HRC Shipping Limited v MV Express* [2007] 12 MLR (HC) [16].

<sup>39</sup>*ibid* [32].

<sup>40</sup>*Southern Solar Power Limited v PBDP* [2020] 25 BLC 501.

10 alongside Sections 7A and 45-47 in such cases.<sup>41</sup> The single bench reasoned that Section 3 of the Act does not exclude the High Court Division's jurisdiction over arbitration proceedings conducted outside Bangladesh.<sup>42</sup>

### C. Final/Latest Position Adopted by the High Court Division

In the case of *Accom Travels and Tours Limited Vs. Oman Air S.A.O.C. and Others*, although the main issue was whether section 3 restricted the application of the Act to only arbitrations seated in Bangladesh,<sup>43</sup> the Court nonetheless gave a decision on the applicability of section 10 with respect to foreign-seated arbitrations. Having reviewed the two aforementioned, conflicting pronouncements from the High Court Division on this issue, the Court ultimately sided with the first set of decisions. Consequently, it concluded that section 10 does not apply to situations where the arbitration takes place outside Bangladesh on the ground that section 3 of the Act limits the extra-territorial application of the Act.

*Impact of Italian Thai Development Public Company Limited v. The Export Import Bank of China (2024)*<sup>44</sup> on the Scope and Application of Sections 3 and 10

In *Italian Thai Development Public Company Limited v. The Export Import Bank of China (2024)* the High Court Division considered a petition submitted under section 7A of the Act requesting an injunction to prevent the respondents from enforcing the transfer of shares in the First Dhaka Elevated Expressway (FDEE) until the arbitration is settled. The parties' agreements stipulated that disputes would be adjudicated according to the SIAC Rules, governed by English law, with Singapore designated as the seat of arbitration. The Court observed that section 3(1) of the Act is inapplicable to foreign-seated arbitrations. Given that the arbitration in this matter was located in Singapore, the application was deemed not maintainable. The Court further emphasized that section 3(2) limits the applicability of the Act to provisions regarding the enforcement of arbitral awards (sections 45, 46, and 47) for arbitrations seated outside Bangladesh. Thus, interim relief under section 7A cannot be granted for foreign-seated arbitrations. Following the approach taken by the court in *Accom*, the court referred to the Indian case of *Bharat Aluminium Co. v. Kaiser Aluminium Technical Service Inc.*, and highlighted that Indian law similarly restricts the applicability of its Arbitration and

---

<sup>41</sup> *ibid.*

<sup>42</sup> *ibid.*

<sup>43</sup> *ibid* [4.13].

<sup>44</sup> *Italian Thai Development Public Company Limited v The Export Import Bank of China and Others* [2024] Arbitration Application 02 of 2024 (HCD).

Conciliation Act to arbitrations seated within India, and interim relief for foreign-seated arbitrations is not maintainable. The Court ultimately held that section 7A does not apply to foreign-seated arbitrations and dismissed the petition, concluding that no injunction could be granted in this case.

When the Court went to the Appellate Division, in its order dated 30 May 2024,<sup>45</sup> the Appellate Division granted a status quo concerning the petitioner's application for stay, which was to remain effective until the 'First Session' of the Arbitral Tribunal in Singapore (SIAC Arbitration Nos. ARB016/24/ZY and ARB017/24/ZY). Subsequently, in its judgment on 1 September 2024,<sup>46</sup> the Appellate Division noted that the Tribunal constituted on 30 July 2024, had interpreted the term 'First Session' under SIAC Rule 19.3 as the 'preliminary meeting' between the parties. The Tribunal noted that the preliminary meeting had not been scheduled when its order was issued. It observed that the petitioner's interim relief application could potentially be addressed before the meeting, though it was beyond the Tribunal's control to ensure the continuation of the Appellate Division's status quo order during this period, particularly in the hearing on 29 August 2024. Anticipating a risk of no protection over the petitioner's shares if the Appellate Division lifted its order before the Tribunal could decide on interim relief, the Tribunal issued Procedural Order No. 2 on 21 August 2024, prohibiting the transfer of the petitioner's shares in FDEE until further notice. Citing section 7A(6) of the Act, the court acknowledged that any prior court order on matters under section 7A(1) would become inoperative once the Tribunal issued its order. The Appellate Division concluded that its previous status quo order dated 30 May 2024 became infructuous following the Tribunal's order of 21 August 2024. Consequently, the court held that the Civil Petition for Leave to Appeal had also become infructuous due to the supervening developments, particularly the Tribunal's subsequent order.

The *Italian Thai Development* case, while principally addressing the interpretation of section 7A, has wider ramifications for the extraterritorial application of other sections, notably sections 3 and 10. The High Court Division in the *Italian Thai Development* case adhered to the *Accom* ruling; but the Appellate Division issued a status quo order to prevent the transfer of shares, thereby granting an injunction in support of foreign-seated arbitration. This seems

---

<sup>45</sup> *Italian Thai Development Public Company Limited v The Export Import Bank of China and Others* [2024] Civil Petition for Leave to Appeal No 1828 of 2024 (AD).

<sup>46</sup> *ibid.*

that the court indirectly endorsed the position that section 7A is applicable to foreign-seated arbitrations.

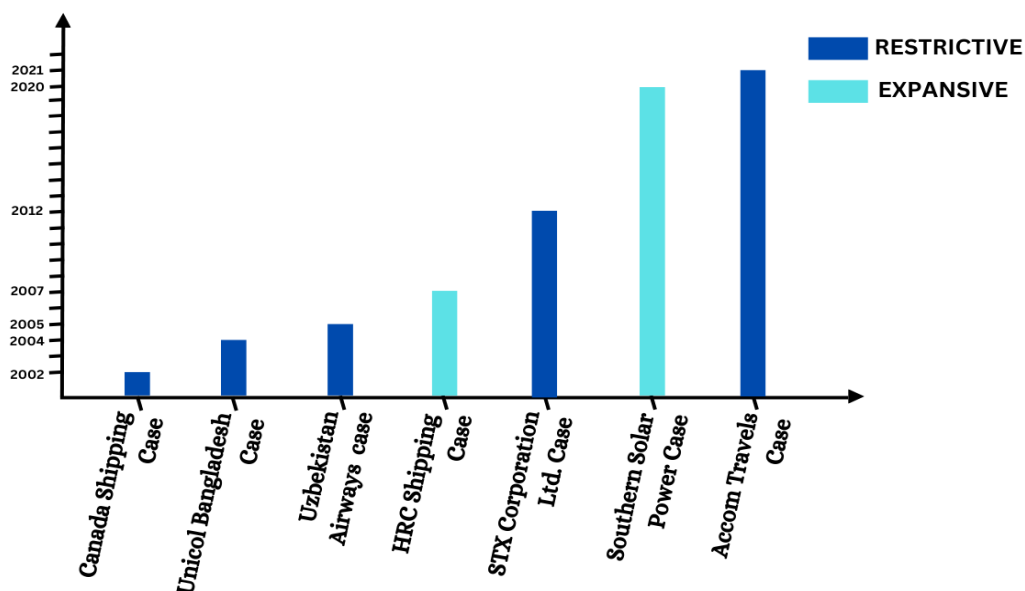
The Appellant Division's order dated 30 May 2024 is significant as it in effect overruled the *Accom* principle. The Appellant Division granted status quo through its order dated 30 March 2024 until the first session of the Arbitral Tribunal in Singapore. Therefore it did, in fact, grant an interim relief to a foreign seated arbitration thereby having the effect of overruling *Accom* and the previous decisions of the Court adopting the narrow interpretation of section 7A denying interim relief to foreign seated arbitrations. However, the Court did not explicitly explain why the status quo was granted or its reasoning for deviating from the *Accom* principle. The court notably did not grant the interim measure using its inherent power under section 151 of the Code of Civil Procedure as was done in *Accom* to issue the interim order for foreign-seated arbitration. Hence, it seems to be the only logical conclusion that since interim relief is granted in a foreign-seated arbitration, the *Accom* decision that section 7A does not apply to foreign-seated arbitrations stands overruled.

In its judgment on 1 September, however, the Appellate Division based its reasoning on section 7A(6). The court did not enter into the discussion on whether section 3 of the Act bars section 7A's application in foreign seated arbitrations. The court simply held that according to section 7A(6) when the Arbitration Tribunal passes any order, the order/s passed by the court or the High Court Division shall be inoperative. Based on this the court concluded that since the Tribunal passed its order after the Appellate Division's order, the order of the Appellate Division and the Petition to the High Court Division stands inoperative. In its judgment the Appellant Division did not disagree with the earlier position of the Appellate Division that an interim order can be issued in foreign seated arbitrations, rather, as can be seen, the order of the Appellate Division was held to be inoperative because of supervening development. Thus it can be concluded that the latest position of the Appellate Division is that, section 7A applied to foreign seated arbitrations and the High Court Division and the lower courts are bound to follow this decision under Article 111 of the Constitution. It stands as the settled position until another bench of the Appellate Division decides otherwise. Thus, this ruling indicates that the restrictive interpretations of Articles 3 and 10 have been overturned by the Appellate Division's decision in the *Italian Thai Development* case. The Court's current stance, therefore, is that the provisions of the Act extend to foreign-seated arbitrations, thereby overruling the *Accom* decision.

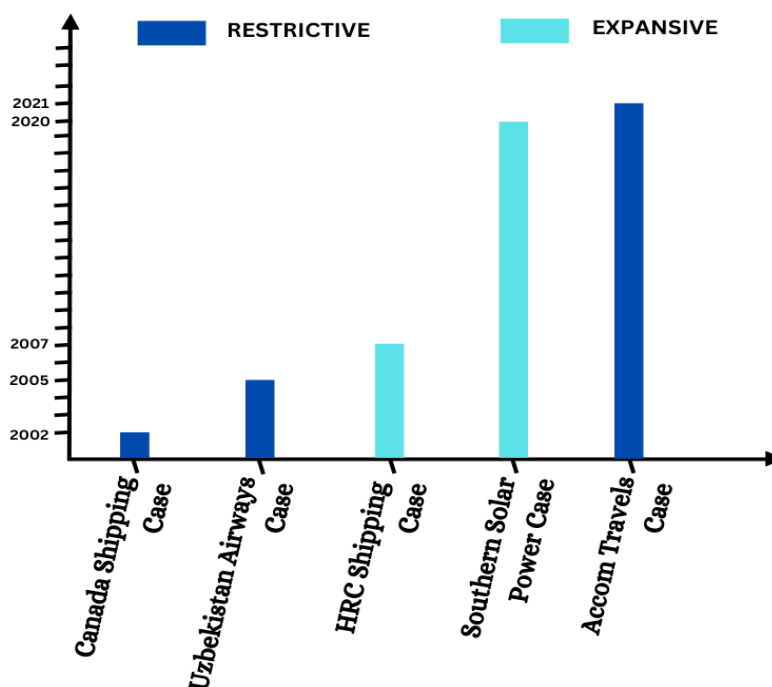
### *Restrictive vs. Expansive Interpretations of the Act*

Concerning the extraterritorial application of the Act, the Supreme Court has rendered contradictory rulings during the past two decades. The Court appears to be divided on the implementation of the Act in foreign-seated arbitrations. The following charts illustrate the variations in the Court's rulings over the years concerning the Act's extraterritoriality. The pertinent sections, specifically sections 3 and 10, are depicted.

**Figure 1: Rulings of the Court on section 3 of the Act**



As can be seen from the above chart, the Court initially adhered to a restrictive interpretation of section 3 from the *Canada Shipping* case to the *Uzbekistan Airways* case. Afterwards in 2012, in the *HRC Shipping* case, the Court for the first time made an expansive interpretation of section 3. However, this was again reversed in the *Southern Solar* case. Although the court in 2020 came back to its expansive interpretation, the final position of the Court according to the *Accom* case, is that section 3 restricts the extraterritorial application of the Act, thereby adopting a restrictive approach.

**Figure 2: Rulings of the Court on section 10 of the Act**

Like section 5, the interpretation of section 10 also started with the restrictive interpretation of the court in the *Canada Shipping* case which continued in the *Uzbekistan Airways* case. Later in the *HRC Shipping* case and the *Southern Solar* case, the Court took an expansive view stating that section 10 shall apply to foreign seated arbitrations. However, this view was again specifically overruled in the *Accom* case whereby the court adopted the restrictive view and noted that section 10 applies only to arbitrations seated in Bangladesh.

The inconsistent rulings of the Supreme Court of Bangladesh may have considerable negative repercussions for the nation's status under its Bilateral Investment Treaties (BITs) with other countries. Judgments that deny interim relief to safeguard the subject matter of disputes during legal proceedings may dissuade foreign investors and hinder investment. The recent ruling in *Italian Thai Development* represents a positive change by issuing interim orders for foreign-seated arbitrations, thus broadening the scope of the Act to include these arbitrations; however, its effectiveness in attracting foreign investment hinges on the guarantee of judicial consistency and investor protection.

## CONCLUSION

Investors require a stable and predictable legal environment for sustained development in foreign investment. The discrepancies in judicial interpretations and the absence of consensus on the Act's extraterritorial applicability make Bangladesh a less attractive location for foreign commerce. To establish Bangladesh as a competitive and appealing destination for foreign investment, the judiciary must implement a uniform and broad interpretation of the Arbitration Act, 2001 guaranteeing its provisions extend to arbitrations conducted outside Bangladesh. Furthermore, to solidify the Arbitration Act, 2001 as a dependable and favored framework for arbitration, the Court must avoid delivering contradictory opinions and maintain a consistent body of precedents, ideally ones that support a broad and investor-friendly perspective.

If the provisions of the Act do not apply to foreign-seated arbitrations, it might become difficult to save the disputed property from alienation once arbitration proceedings are initiated in a foreign country. It has been seen in many instances that when the place of arbitration is outside Bangladesh, the defendants start alienating the disputed property after arbitration proceedings are initiated in a foreign country. Thus parties are taking advantage of the position of the court post-*Accom* that the provisions of the Act do not apply to foreign-seated arbitrations and hence the Courts are barred from granting interim relief in favour of foreign seated arbitrations, even for the purpose of saving the property in dispute from the transfer. If this continues, Bangladesh is likely to face massive setbacks in foreign investments as investors are unlikely to commit to a country that lacks provisions for safeguarding disputed assets during arbitration. Therefore, a broad interpretation of section 3 allowing the provisions of the Act to apply to foreign-seated arbitrations would ensure that foreign-seated arbitrations are given equal legal protection as the arbitrations seated in Bangladesh. Since the Appellate Division did not explicitly address the extraterritoriality of the Act in *Italian Thai Development* despite the decision having the effect of overruling the narrow interpretation of *Accom*, this issue remains open to further debate. A definitive ruling of the Appellate Division declaring the applicability of the Act to foreign-seated arbitrations would provide much-needed clarity, putting an end to the decades-long debate over the Act's applicability to foreign-seated arbitrations. Such a decision will contribute to the stable development of arbitration jurisprudence, keeping in line with the principles of judicial discipline and stare decisis.