

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(STATUTORY ORIGINL JURISDICTION)

Present:

Mr. Justice Sikder Mahmudur Razi

Company Matter No. 199 of 2018

QLM Label Makers SDN. BHD
(Formerly Pyramid Label Industries SDN BHD)
...Petitioner.

-Versus-

QLM Label Makers Bd. LTD
(In Liquidation).

...Respondent.

Mr. Md. Yousuf Ali, Advocate

....For the Petitioner-applicant.

Mr. Margub Kabir, Advocate with

Mr. Taisir Mahmud, Adv.

...For the respondent No. 4.

The 7th August, 2025.

This is an application for a direction upon the respondent No. 4 *i.e.* Jamil Ahmed, Managing Director of QLM Label Makers BD. Limited to handover an amount of Tk. 61,97,500/- to the account of the Official Liquidator.

It appears that this court vide Judgment and order dated 19th November, 2020 passed an order for winding up of the respondent No. 1 company and Ms. Faria Huq, learned Advocate, Supreme Court of Bangladesh was appointed as liquidator with certain responsibilities.

Now, Mr. Md. Yousuf Ali, learned Advocate for the petitioner-applicant by filing this application for direction submits that the winding up order was passed long before but during this long period of time there is no remarkable development in the liquidation process which is causing serious loss to the petitioner. He further submits that it was for the Official

Liquidator to take all the appropriate measures to recover and collect the money and to take into custody the property and assets of the company which the liquidator has failed to do as of today, therefore, finding no other alternative the petitioner-applicant filed the instant application before this court. He next submits that from audit report, which was conducted at the order of this court, it appears that the Chairman of the company (in liquidation) Mr. Simon Lyddon Pugh remitted Tk.61,97,500/- in Bangladesh through Public Islamic Bank, Malaysia on 11.02.2016 in the account of the respondent No. 1-company maintained with Eastern Bank Limited bearing Account No. 1061070239401. Referring the relevant portion of the audit report he further submits that the respondent No. 4 *i.e.* the Managing Director of the company (in liquidation) withdrew the entire fund from the bank on 22.03.2016. But in spite of utilizing the fund for which the money was remitted *i.e.* for purchasing land for the company said respondent No. 4 utilized the said amount for his personal use by way of purchasing land in the name of another company, namely Tag BD Limited which is neither a holding company nor a subsidiary of the respondent No. 1 company. Mr. Yousuf next submits that here in the instant transaction, respondent no. 4 will be regarded as trustee of the said fund.

Mr. Md. Yousuf Ali, learned Advocate finally submits that as per provision of section 268 of the Companies Act, 1994 the Court has the power to direct respondent No. 4 to refund the said money to account of the official liquidator.

Mr. Margub Kabir, learned Advocate appearing on behalf of the respondent No. 4 by filing an affidavit-in-reply submits that the power so given in section 268 of the Companies Act, 1994 is to be exercised at the instance of the liquidator and not any of the directors or creditors of the company. In support of his submission the learned Advocate relied upon a judgment of Indian Jurisdiction which was decided in the case of B. Matha Gowder Vs. M. S. Kada Gowder, reported in AIR 1961 Madras 172.

Mr. Margub Kabir, learned Advocate further submits that the provisions of section 268 of the Companies Act, 1994 is akin to section 185 of the earlier Indian Companies Act, 1956 and in that judgment, it was held that *“if there was any loss to the company the appellant was as much liable to the company as the respondent himself as both were directors. It is highly undesirable that the powers of the Court under sections 185 and 195 of the Indian Companies Act should be allowed to be invoked by one director against another director. There can be no doubt that the application is actuated by personal spite and hostility towards the respondent. As a fully paid shareholder the appellant need not be afraid of any liability being cast on him. Having regard to the facts alleged by him it is most unlikely that there will be any surplus assets of the company in which the appellant may be expected to share”*.

Mr. Margub Kabir, learned Advocate further submits that from Paragraph No. 4 of the instant application for direction it appears that the petitioner-applicant treated the said amount of Tk. 61,97,500/- as loan to the company. By referring the audit report the learned Advocate submits

that out of the said amount of Tk. 61,97,500/- already Tk. 50,00,000/- has been refunded to the company's account.

Mr. Margub Kabir, learned Advocate next submits that the respondent No. 4 cannot be directed to make the payment as prayed for because, as per audit report the said amount was withdrawn by one Md. Bahauddin who happens to be the broker for purchasing land on behalf of the company. He finally submits that list of contributories, creditors has not been fixed and finalized as yet which is a *sine qua non* for filing an application under section 268 of the Companies Act, 1994. With these submissions the learned Advocate for the respondent No. 4 prays for rejection of the instant application.

In reply to such submissions, Mr. Md. Yousuf Ali, learned Advocate for the petitioner-applicant draws attention of this court to the said audit report wherein it has been stated as follows;

“To make the matter regarding deposits of two cheque from Britannia Label Makers limited more clear to us, we check the transaction list recorded by the QLM Label Makers BD Limited in their software to identify the nature of transaction and how they treated in their books of account. We found that these cheque deposits were treated as loan received from the Tag BD Limited. We wanted to know from the management of the company about current status of the remitted money for the land purchase. The management replied that they spent the money for operational activities of the company, and they could not show us any form of communication with Mr. Simon Lyddon Pugh, Chairman for informing that

management using the money for operational activities rather land purchase”.

Mr. Md. Yousuf Ali, learned Advocate for the petitioner-applicant further submits that since the official liquidator failed to discharge her responsibility as per direction of the court and the final dissolution process is being halted for a long period of time because of such inertia of the official Liquidator, therefore, the petitioner-applicant having sufficient interest in the subject matter has come before this court with the instant application and there is nothing in the Companies Act debarring the court from exercising its power in exceptional circumstances.

I have gone through the instant application so filed by the petitioner, the affidavit-in-reply filed by the respondent No. 4 as well as the audit report.

As per submission of Mr. Margub Kabir if any amount is genuinely due and recoverable from any person, it is for the Official Liquidator alone to take appropriate step to recover the money.

There is no denial of the legal position to the effect that once a winding up order is made it is for the Official Liquidator as officer of the Court and subject to the control of the court, to discharge the duties as mandated by the law to ensure orderly winding up including the power to prepare the list of contributories, creditors, verifying the liabilities and recovering the funds and properties of the company. But what if the official liquidator failed, refused or neglected to discharge his/her responsibilities? As it appears, copy of the application was served upon the official liquidator on 04.03.2025 but nevertheless she did not appear before the

court with her version. Both the learned advocates candidly admitted that the official liquidator is not functioning properly. Let alone preparing the list of contributories, creditors etc, from record I do not find any work done by the liquidator and it appears that the entire process has been stultified. There is nothing on record to show that the liquidator has taken any steps as per section 259 or section 261 of the Act, 1994. Therefore, evidently the official liquidator has failed and neglected to discharge her responsibilities till date.

I have also gone through section 268 of the Companies Act, 1994 on which the petitioner has relied upon. Section 267 to 277 of the Companies Act, 1994 has been encapsulated under the chapter 'Ordinary Powers of Court'. This section empowers the court to require any contributory, trustee, receiver, banker, agent or officer of the company to pay, deliver, surrender or transfer forthwith or within such time as the court directs, to the official liquidator any money, property or documents in his hands to which the company is prima facie entitled. From the audit report it appears that respondent no. 4 by taking out the money from the company's fund improperly utilized the same for his personal benefit and therefore, as Mr. Yousuf submitted, respondent no. 4 will be regarded as trustee of that fund. Section 268 is silent as to who will or can be the applicant under this section. Since, it is a winding up proceeding, therefore, I am of the view that not only the liquidator but also anyone having a stake in the company can approach the court under this section for ends of justice and to protect the interest of the company especially when the official liquidator failed, neglected or refused to discharge his/her responsibilities.

Therefore, this court holds that under the prevailing circumstances, it has become the duty of the court to interfere and bring back everything into life. The fact of the decision cited by Mr. Margub Kabir is quite different from the case in hand and as such the same is not applicable.

As to the genuineness of the applicant's claim on perusal of the audit report it appears to this court that respondent no.4 failed to give any credible explanation as to what he did with the said amount of Tk.61,97,500/- only rather from the report it is evident that he used the money for his personal purpose. Therefore, respondent no. 4 is under an obligation to refund the same into the company's account and since the company is under liquidation, therefore, into the liquidator's account.

Accordingly, the instant application is allowed. The respondent No. 4 is hereby directed to refund the said amount of Tk.61,97,500/- to the account of the Official Liquidator within 4(four) weeks from the date of receipt of the instant order.

However, as already noted the Official Liquidator is not diligent in discharging her responsibilities, therefore, the Official Liquidator is directed to take appropriate steps and file an update of the liquidation process before this court within 4(four) weeks from date.

(Sikder Mahmudur Razi, J.)