

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

Present:

Mr. Justice Sikder Mahmudur Razi

Company Matter No. 256 of 2020

IN THE MATTER OF:

An application under Section 241(i) and 245 of the
Companies Act, 1994.

-AND-

IN THE MATTER OF:

F. R. Cold Storage Limited, represented by its Managing
Director Mr. Ahmed Faisal Chowdhury, of Sogir Mansion,
44, Enayet Bazar, Police Station-Kotowali, District-
Chattogram.

..... Petitioner.

- V E R S U S -

The Registrar of Joint Stock Companies and Firms
and others.

.....Respondents.

Mr. Md. Yousuf Ali, Advocate with
Mr. Md. Uzzal Hossain, Advocate with
Mr. Gobinda Biswas, Advocate

.....For the Petitioner.

Mr. Ehsan Abdullah Siddiq, Senior Advocate with
Mr. Syed Mohammad Raihan Uddin, Advocate

.....For the Respondent Nos. 2 and 3.

Heard on: 16.07.2025 & 07.08.2025

Judgment on: 10th August, 2025

Sikder Mahmudur Razi, J:

This is an application under sections 241(i) and 245 of the Companies Act, 1994 filed by F. R. Cold Storage as petitioner for winding up of the company on special resolution. The matter was admitted on 24.11.2020. Apart from making the Registrar of Joint Stock Companies and Firms, Chattogram as respondent No. 1, the petitioner also impleaded one Rizia Begum and Shamim Akter as respondent Nos. 2 and 3 for their being in possession of the landed

property of the company. Subsequently, on the death of said Rizia Begum her heirs were made party by way of substitution.

The case of the petitioner in short, is that, the petitioner is a company limited by shares being Registration No. 1257/445 dated 03.11.1992. After incorporation the company continued its business till 1996. Mr. Ahmed Faisal Chowdhury was the Managing Director of the petitioner company who left the country on 30.08.1996 for the United States of America for pursuing higher education. As the other two share-holders of the company were not in a position to manage the business, therefore, the business of the company was suspended. On his returned back to Bangladesh, the Managing Director of the company came to know that taking advantage of his long absence, some unscrupulous persons by way of forged and fabricated documents taken over the company. Thereafter, the Managing Director of the company including other share-holders collecting necessary documents from the office of RJSC filed Company Matter No. 234 of 2012 under section 43 of the Companies Act, 1994 for rectification of the register of members of the company. The said company matter was contested by the concerned respondents denying the assertion of the petitioners of that company matter. Subsequently, upon extensive hearing of the matter the same was allowed by this court by Judgment dated 19.03.2013. Challenging the said judgment the contesting respondents who are also respondents in the instant matter moved before the Hon'ble Appellate Division by filing Civil Petition for Leave to Appeal being No. 2588 of 2013 which was dismissed as being time barred by order dated 13.03.2016. Subsequently, the contesting respondents of the said matter filed Civil Review Petition being No. 185 of 2016 before the Hon'ble Appellate Division and the Hon'ble Appellate Division by their order dated 21.10.2018 dismissed the same with the findings that "we find no mistake or error apparent on the face of the record or any other

reason to review the order sought to be reviewed.....” Accordingly, the share-holding position of the company reverts back to its original position.

Subsequently, the Managing Director of the petitioner company called an Extra Ordinary General Meeting on 07.10.2020 for winding up of the company and accordingly on that day the said meeting was held and all the share-holders of the company unanimously adopted Special Resolution to dissolve and wind up the petitioner company through the Court. In the said meeting it was further decided that since the company has no debt or liability whatsoever and the company is free from all encumbrances, the share-holders may withdraw the share capital and distribute the available assets of the company among themselves pro-rata with their respective share-holdings. In the said meeting the Managing Director of the company, namely Ahmed Faisal Chowdhury were requested to take all the necessary steps for winding up of the company through the Hon’ble court. It is the further case of the petitioner company that the petitioner company is the owner of 30 decimals of land which was originally owned by the original share-holders of the company, namely Ahmed Faisal Chowdhury, Ahmed Rasel Chowdhury and Farzeen Chowdhury and who vide sale deed No. 4918 dated 28.08.1996 transferred the land in favour of the petitioner company. As per decision of the Special Resolution taken in the Extra Ordinary General Meeting dated 07.10.2020 the petitioner company has filed the instant company matter.

Respondent Nos. 2 and 3 contested the proceeding by filing affidavit-in-opposition. In their affidavit-in-opposition said respondents denied the assertions made by the petitioner and made several statements to establish that Ahmed Faisal Chowdhury, Ahmed Rasel Chowdhury and Farzeen Chowdhury

transferred their shares in favour of these respondents in due process and thereby they prayed for dismissal of the instant proceeding.

As against the said affidavit-in-opposition the petitioner company filed an affidavit-in-reply denying the statements of the contesting respondents as made in the affidavit-in-opposition and further stating that the said statements of the respondents are contumacious to the authority of the Court.

The contesting respondents then filed two supplementary affidavit-in-oppositions stating that the respondents had been acquitted from C.R. Case No. 2239 of 2016 (Kotwali) by Additional Metropolitan Magistrate, Chattogram by his judgment and order of acquittal dated 11.12.2024. It has further been stated that the said C.R. Case was filed by Ahmed Faisal Chowdhury under sections 467/468/471 of the Penal Code, 1860 in relation to F. R. Cold Storage Limited. Subsequently, a criminal appeal was filed and that too was rejected. Moreover, the special resolution for winding up of the company was not filed with RJSC and thus the same violates section 88 of the Companies Act. Further, the petitioner company also failed to comply with the provision of Rules 64 and 65 of the Company Rules, 2009 with regard to publication of notices of winding up application.

The petitioner filed an affidavit-in-reply against the said supplementary affidavit-in-opposition and submitted that in view of the fact as it stands the result and reference of the criminal case is quite irrelevant. However, from the said judgment and order it will be quite clear that in fact that case was abandoned by the complainant.

Mr. Mohammad Yousuf Ali, the learned Advocate appearing on behalf of the petitioner submitted that by dint of the judgment of this court passed in Company Matter No. 234 of 2012 the shareholding position of the company has

been reverted back to its original position and now Ahmed Faisal Chowdhury, Ahmed Rasel Chowdhury and Farzeen Chowdhury being the share-holders Directors of the company by taking a Special Resolution in an Extra Ordinary General Meeting dated 07.10.2020 decided to dissolve and wind up the company. He further submitted that taking such decision is now within the absolute domain of the said share-holders- directors and the contesting respondents have no locus standi to raise objection against this winding up proceeding and they have been impleaded as respondents only because of the fact that they are now illegally occupying the landed property of the company. The learned advocate by filing an affidavit-in-compliance under Rule 74 of the Companies Rules, 2009 submitted that since the company has no debt or liability to any person, bank, body corporate or institution whomsoever and since the company is free from all encumbrances, therefore, there is no legal bar in winding up of the company under section 241(i) of the Companies Act, 1994.

Per contra Mr. Ehsan A Siddique, learned Senior Advocate along with Syed Mohammad Raihan Uddin, learned advocate appearing for the respondent Nos. 2 and 3 admitted that the contesting respondents lost up to the Hon'ble Appellate Division in Company Matter No. 234 of 2012 which was filed by Ahmed Faisal Chowdhury, Ahmed Rasel Chowdhury and Farzin Chowdhury for rectification of the share register of the company. However, relying on the decisions passed in the case of Aluminium Corporation of India Limited and another Vs. Lakshmi Cotton Mills reported in 40 company cases (1970) 259, in the case of New-karala-chits and Traders(p) Limited Vs. Official Liquidator, reported in ILR(1) Karala 634, in the case of Re-Vellador Silk reported in 1965 1 All ER 667 and in the case of In Re; Bajrangbali Engineering Co. Ltd., reported in (1991) 70 comp. case 488 (Cal) and in the case of Re Sulekha Works Ltd., reported in AIR 1965 Cal 98, submitted that the power to wind up a

company is discretionary and it has to be exercised judicially and if it appears that the winding up proceeding is to achieve a collateral purpose then the company court has the jurisdiction to go behind any decree of a court and not to allow the winding up proceeding. Mr. Ehsan further submitted that result of any winding up order in this particular will be disentitling the 2nd wife of Late Wahed Asgar Chowdhury and her children from ownership of the land. Mr. Ehsan further opposes the winding up petition on the ground of alleged non-compliance of section 88 of the Companies Act, 1994 and Rules 64 and 65 of the Companies Rules.

In reply to these submissions, Mr. Yousuf Ali, learned advocate submitted that the respondents have no locus standi to oppose the winding up petition. The property belonged to the company and the respondents are no body in the company. He next submitted that even if respondent no. 3 is the legal wife of late Wahed Asgar Chowdhury, she has no *locus standi* to oppose this petition. Regarding non-compliance of section 88 of the Companies Act, 1994, Mr. Yousuf submitted that RJSC may or may not impose fine on them for violation of section 88 but non filing of special resolution with RJSC within time does not render the same illegal except inviting penal consequences.

I have heard the learned Advocates of the respective parties. I have perused the substantive application, affidavit-in-opposition, supplementary affidavit-in-oppositions, affidavit-in-reply as well as necessary papers and documents annexed therewith.

On perusal of the same, it appears that by *dint* of the judgment passed in Company Matter No. 234 of 2012 the share-holding position of the petitioner company reverted back to its founder share-holders-directors *i.e.* Ahmed Faisal Chowdhury, Ahmed Rasel Chowdhury and Farzeen Chowdhury are now the

only shareholders-directors of the petitioner company and it is an admitted position. The contention of the respondents in their affidavit-in-opposition as well as the submissions of Mr. Ehsan A Siddique, learned senior Advocate appearing on behalf of the respondents is nothing but an attempt of replenishment of an event which has already been settled up to the Hon'ble Appellate Division, therefore, those contention and submissions of the respondents are discarded. Moreover, the decisions so cited by the learned senior Advocate for the respondents have no nexus with the present case in hand and the facts of all those cases are quite different from the fact of the present case. Moreover, the submissions so far it relates to non-compliance of section 88 of the Act and 64 and 65 of the Rules also do not carry any weight. For, non-filing of the resolution the authority may impose penalty on the company but the resolution does not become invalid. Moreover, the purpose of publication of notices of winding up is to bring on notice of the interested parties including the creditors about the proceeding and more so, notice was published in the newspapers as per order of this Court. Here in the instant matter the respondents are contesting and the petitioner in the substantive application as well as by filing an affidavit-in-compliance stated that the company has no liability. Further, even after winding up order there is requirement of publishing notice for the 2nd time for the convenience of the creditors, debenture holders etc. (if any). Finally, it is the settled principle of law that the findings of a criminal courts are not binding on civil courts and in this regard reliance can be placed in the case of Akhtar Hosain Shariff and others –vs- Munshi Akkas Hossain and others, reported in 3 BLD (1983) (AD) page-334 as well as in the case of Md. Elias Miah –vs- Habibullah Munshi, reported in 8 LG (2011) HCD 359. This principle is also applicable for the present case in hand.

As the shareholders-directors of the petitioner company by taking a Special Resolution in an Extra Ordinary General Meeting held on 07.10.2020 has taken a unanimous decision to dissolve and wind up the company and in pursuance of the said decisions filed the instant application for winding up of the petitioner company, therefore, I do not find any reason to refuse the said prayer of winding up.

Accordingly, the petitioner-company, namely F. R. Cold Storage Limited is hereby wound up from the date of presentation of the winding up petitioner, subject to compliance of the under mentioned directions—

- A. The petitioner shall send to the Registrar of Joint Stock Companies a notice of this Order, in Form No. 18, as required by Section 251(1) of the Companies Act read with Rule 75 of the Companies Rules.
- B. Mr. Bivuti Tarofder, learned advocate, Supreme Court of Bangladesh, Membership NO. 6235, Chamber- Room No. 6051(5th floor), Hussain Shahid Suhrawardy Building, Supreme Court Bar Association, Dhaka and Suite No. 104, Sarika Tower, 8 No. Segunbagicha, Dhaka, Mobile- 01970-773388, is hereby appointed as 'the Official Liquidator' of F. R. Cold Storage Ltd. (in liquidation), as per Section 255(1) of the Companies Act, 1994 read with Rule 76 of the Companies Rules, 2009. The Company/Directors of the company shall pay a consolidated fee of BDT: 5,00,000/- (Five lac) only to the Official Liquidator, out of which 25% shall be paid within four weeks from the date of receipt of this order. The rest payment shall be made before he files the application for dissolution of this wound-up company under section 271 of the Companies Act.
- C. The Official Liquidator is hereby directed-

- i. To advertise, as required by Rules 76 and 133, the order of liquidation, to submit claims giving 14 days' time, with adequate proof (vide Rules 133 to 147), from the claimants, if any, in two national daily newspapers namely "the Daily Post" and "the Daily Ajker Potrika".
- ii. To open a bank account with Sonali Bank PLC, Supreme Court Branch, in the name of the "Official Liquidator of F. R. Cold Storage Ltd (in liquidation)," as required by Rule 103. The Bank Account shall be operated under the sole signature of the Official Liquidator. The company shall deposit an amount of Tk. 1,00,000/-(One lac) in the said account within 15 days for meeting up all legitimate expenses by the liquidator in doing the needful.
- iii. To maintain all books, records and accounts as required under the provisions of the Companies Act, 1994 and the Rule 110 of the Companies Rules, 2009 showing all assets and liabilities of the company.
- iv. To submit quarterly reports of the accounts of the company to the Court, till its dissolution or otherwise ordered by this Court.
- v. To exercise powers and discretion, vested upon him under Section 262 of the Companies Act with due regard for the interest of the company, its creditors (if any) and contributories and subject to the control of the Court.
- vi. To prepare and to furnish before this Court a list of all Contributories (subject to this Court's right to rectify the same, if so, required according to law).

- vii. To submit his statement/report, further and/or supplementary statement/report to this Court, as required by Section 259 of the Act, read with Rules 119 and 120, as soon as practicable upon receiving the statement of affairs to be filed under Section 258 (since winding up order is made) of the companies Act.
- D. The Official Liquidator is directed to take into custody all immovable properties of the company, including the title deeds and to dispose of the same, as permitted by Section 262 of the Companies Act, with prior sanction of this Court (vide Rules 168 to 170) and to use the sale proceeds, if any, towards settling the liabilities of the company, if any, in the manner prescribed by Rules 148 to 162 and regard being had to the provisions of Section 325 concerning preferential payment as well as to show separately the list of secured and unsecured creditors, if any, giving their names, particulars and the amount of their claim, in two columns, one showing the principal and the last column showing the total sum claimed. He shall, to that end, submit an application accordingly for disbursement of the assets, liabilities cash, if any, at hand.
- E. The company or its Director/Managing Director/Chairman is directed to submit, to the Official Liquidator, a verified statements of affairs in duplicate, signed by the Chairman/Director/ Managing Director to the aforesaid official liquidator, as required under the provisions of Section 258 of the Act, within 21 (twenty-one) days from the date of drawing up of this winding up Order or from the date of sending this record to the concerned administrative office of the Company Court, whichever occurs later.
- F. The company or its Director/Managing Director/Chairman shall furnish to the Official Liquidator the name of the bankers of the company,

giving account numbers, enclosing statement of accounts, name of the Signatories and also enclosing authenticated copies of the Resolution regarding operation of the bank accounts, if any, within the time limit prescribed in the preceding paragraph.

- G. The persons named in preceding paragraph no. G and/or the official-in charge of the estate, if any, of the company shall give particulars of and handover all title deeds of immovable properties of the company, if any, to the official liquidator within the same time-limit prescribed in the preceding paragraph.
- H. The Chairman/Managing Director or any other Director of the company (in liquidation) shall submit an affidavit of compliance as regards directions Nos. E to G within one week thereafter.
- I. The Company, the members of the Board, all shareholders/contributories are hereby restrained to operate bank accounts, to remove or transfer or encumber the immovable properties of the company including, but not limited to, the vehicles, equipment, machineries etc., if any, of the company, and not to remove any documents without leave of the Court.
- J. The Official Liquidator shall follow and comply with all such provisions laid down in the Companies Act and the Rules, as are applicable in the process of winding up and he shall be solely responsible for the default, if any, committed in the process of winding up. He shall not withdraw any amount more than that may be required to meet the lawful and reasonable costs and expenses and/or to settle the lawful claims and/or to distribute the surplus assets amongst the contributories, if any, as per law and with prior sanction of the Court. Besides, he shall bring, in writing, to the knowledge of the Court all facts that are material to ensure compliance of the provisions of law and

to protect interest of the creditors, claimants, contributories, if any, and the company, as the case may be.

- K. The Liquidator is directed to file a report within 30 (thirty) days thereafter and also to inform the Court if any further enquiry in the matter of liability and assets of the company is required.
- L. If the Registrar of Joint Stock Companies receives the winding up Order from the company/any of its directors within time, he should notify in the Official Gazette that an order has been recorded in his register-book giving effect to winding up of the company.

Let a copy of this Judgment and Order be sent to the official liquidator for information and necessary action.

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(Sikder Mahmudur Razi, J.)