

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

Present:

Mr. Justice Sikder Mahmudur Razi

Company Matter No. 318 of 2020

IN THE MATTER OF:

An application under Section 241(v) and (vi) of
the Companies Act, 1994 read with Rule 8 and
263 of the Companies Rule, 2009.

-AND-

IN THE MATTER OF:

Prime Islami Life Insurance Limited.

..... Petitioner

- Vs-

Sterling Creations Limited

and others.

.....Respondents

With

Company Matter No. 319 of 2020

Prime Islami Life Insurance Limited.

..... Petitioner

- Vs-

Tech Max Limited and others.

.....Respondents

With

Company Matter No. 320 of 2020

Prime Islami Life Insurance Limited.

..... Petitioner

- Vs -

Blue Creations Limited and others.

.....Respondents

And

Company Matter No. 321 of 2020

Prime Islami Life Insurance Limited.

..... Petitioner

- Vs -

Sterling Denims Limited and others.

.....Respondents

Mr. Tanoy Kumer Saha, Advocate

.....For the Petitioner.

Mr. Imran A. Siddiq, Sr. Advocate with

Mr. Mahbub Shafique, Sr. Advocate

Mr. Sifat Mahmud, Advocate

....For the Respondent Nos. 1 & 2.

Mr. Zakir Hossain Bhuiyan, Advocate

....For the respondent No. 13.

Mr. Muhammad Shafiqur Rahman, Adv.

...For the respondent No. 18.

**Heard on: 31.08.2025, 22.10.2025, 27.10.2025 &
02.11.2025 And
Judgment on: The 9th November, 2025**

Sikder Mahmudur Razi, J:

Since common questions of fact and law are involved in Company Matters Nos. 318 of 2020, 319 of 2020, 320 of 2020, and 321 of 2020, all these matters were heard together and are now being disposed of by a single judgment.

Facts of the Petitioner's Case:

Facts of the petitioner's case gleaned from the substantive petition, supplementary affidavit and affidavit-in-reply are that the petitioner is an Islami Life Insurance Company and listed with Bangladesh Securities and Exchange Commission.

The respondent no. 1 company of Company Matter no. 318 of 2020 namely Sterling Creations Limited approached the petitioner for short-term investment of Tk.3,00,00,000/- (Taka three Crore) only and accordingly, the petitioner- company made a short-term investment of Tk.3.00 crore into respondent no. 1- company on 19.07.2018 which was repayable with 8% profit.

On the other hand, respondent no. 1 company of Company Matter no. 319 of 2020 namely Tech Max Ltd. approached the petitioner for short-term investment of Tk.5,00,00,000/- (Taka Five Crore) only and accordingly, the petitioner- company made a short-term investment of Tk.5.00 crore into respondent no. 1- company on different dates from 28.06.2018 to 05.07.2018 which was repayable with 7.5% profit.

On the other hand, respondent no. 1 company of Company Matter no. 320 of 2020 namely Blue Creation Ltd. approached the petitioner for short-term investment of Tk.5,00,00,000/- (Taka Five Crore) only and accordingly, the petitioner- company made a short-term investment of Tk.5.00 crore into respondent no. 1- company on different dates from 02.07.2018 to 05.07.2018 which was repayable with 7.5% profit.

On the other hand, respondent no. 1 company of Company Matter no. 321 of 2020 namely Sterling Denims Ltd. approached the petitioner for short-term investment of Tk.2,00,00,000/- (Taka Two Crore) only and accordingly, the petitioner- company made a short-term investment of Tk.2.00 crore into respondent no. 1- company on 19.07.2018 which was repayable with 8% profit.

However, since the respondent no. 1-companies failed and neglected to repay the said investment of the petitioner company despite repeated requests and reminders dated 24.01.2019, 12.02.2019 and legal notice dated 05.08.2019, thereafter, the petitioner served a statutory notice under section 242 of the Companies Act, 1994 on 20.10.2020. As the respondent no. -1 companies in all the company matters failed and neglected to repay the said amount even after receiving the notice under section 242 of the Act, 1994, therefore, finding no other alternative the petitioner has filed this winding up petition under section 241(v) and (vi) of the Companies Act, 1994.

By placing minutes of 168th meeting of the Board of Directors the Petitioner-Company further tried to draw an analogy to the effect that since in agenda no.13 of the said meeting the investment in Blue Creation Ltd and Tech Max Ltd was approved, therefore, the investment made in favour of Sterling Creations Limited and Sterling Denims Ltd were also made

following due process, though the petitioner-company on vigorous attempts failed to trace out the relevant resolution. Petitioner's further standing is that respondent -company by its complaint dated 23.10.2021 has other way round admitted the petitioner's case. Petitioner's further case is that the money involved in the instant matter is public money belonging to the shareholders and insured of the petitioner company. Though the respondent-companies are trying to establish the said transaction as personal favour but the Petitioner's sturdy assertion is that the same was a short-term investment. Moreover, there is no scope to deny the transaction as the money was transacted through the bank account of respondent –companies as evidenced from Annexure A of the substantive petitions. However, conceding the fact that there was no prior approval from Insurance Development and Regulatory Authority (IDRA) the said investment cannot be said to be void rather the same may be irregular at best, as per provisions of sections 41, 44 of the Insurance Act, 2010 and the irregularities can be cured by imposing penalty as per sections 130, 132 and 134 of the Insurance Act, 2010. Moreover, as per the petitioner's version from section 44(3) of the Act, 2010 it is further evident that an insurance company can invest into or give finance in a private company like the respondent-companies with the approval of the Board of the Insurance Company and the approval of IDRA and there is no absolute prohibition as to lending and giving advance. Further, in spite of being fully informed about the transaction IDRA has not imposed any penalty as yet and has not initiated any proceedings against the petitioner company as well as the present and past board under the Insurance Act, 2010 rather IDRA advised the petitioner company to initiate criminal proceeding against the then members of the Board and high officials for misappropriation. The current Board of

the petitioner-company also submitted applications/complaints to the Anti-Corruption Commission on 27.01.2021 and 15.12.2022 for taking necessary action for misappropriating of the fund of the petitioner's company by the previous Board. The petitioner in its audit report has also shown the said investment. The petitioner further contended that Mr. Tanvirul Haque son of respondent no. 2 namely Mr. Fazlul Haque was a share holder director of the Petitioner Company and respondent no. 2 is brother- in- law of Mr. M A Khaleque was also a shareholder director of the petitioner company at the relevant time and both of them resigned from the petitioner-company on 23.10.2018. In any view of the matter the respondent-companies cannot escape their liability from refunding the money to the Petitioner-Company.

Response of the Respondent- Companies in all the company matters

The response of the respondent-companies of all the company matters as it stands from their affidavit-in-oppositions; supplementary affidavits and affidavit-in-replies are that the petitioner never invested any money in the respondent-companies. There is no loan or investment agreement between the petitioner and respondent-companies. The then Chairman of the petitioner-company namely Mr. M A Khaleque is a close relative of the Managing Director of the respondent-companies namely Mr. Md. Fazlul Haque. Specifically, Mr. M A Khaleque's daughter namely Sarwat Khaled is married to the second son of Md. Fazlul Haque namely Md. Tanvirul Haque. In July, 2018 M.A. Khaleque told Mr. Md. Fazlul Haque that he was in extreme need of liquid/cash money for his own purpose, but he was unable to withdraw necessary amount from his own Bank Account and therefore, requested Mr. Fazlul Haque to allow the petitioner-company to deposit certain amount of money in the bank

accounts of the respondent-companies by cheque and further requested Mr. Fazlul Haque to give him the same amount of money in cash. Considering the relationship Mr. Fazlul Haque failed to deny the said request. Accordingly, the petitioner-company issued the cheques in question covering different amounts in favour of respondent-companies of different company matters which was deposited by the petitioner-company in the bank account of the respondent-companies and thereafter, the said amount was withdrawn from the account of the respondent companies and the same amount was given to the nominated person of M.A. Khaleque in cash.

In Company Matter No.319 of 2020 it was the further response of the respondent company that cheque nos. 8742720 and 8742723 dated 28.06.2018 of Prime Bank Ltd and cheque nos. 6832088 and 6832091 dated 28.06.2018 of Islami Bank Bangladesh Ltd. for an amount of Tk.1.00 crore as mentioned in paragraph no.4 of the substantive petition was never deposited in the Bank Account of the respondent-company.

Upon receiving letters and notices from the petitioner-company the Managing Director of respondent-companies immediately contacted with M.A. Khaleque and requested him to settle the matter with the petitioner-company. Thereafter, in November, 2019 an unofficial meeting was held between the Managing Director of the respondent-1 companies Md. Fazlul Haque, the erstwhile Chairman of the petitioner-company M.A. Khaleque and Mr. Mohammad Akhter who was the Chairman of the petitioner company in November, 2019 at the office of IDRA in presence of the then Chairman of IDRA namely Mr. Shafiqur Rahman Patwary and some officials of IDRA and in the said meeting M. A. Khalque admitted that he withdrew money in question from the petitioner-company for his own

purpose. The petitioner company is fully aware of the fact the respondent-companies do not owe any money to it. Subsequently, it was revealed that M. A Khaleque misappropriated the money in question by misleading the Managing Director of the respondent-companies and using his relationship with him.

The petitioner-company failed to show any sort of document to establish/prove that the respondent-companies approached the petitioner company for any loan or investment.

The respondent Sterling Creations Ltd is a profitable business entity and a going concern and is engaged in 100% export-oriented garments industry having annual turnover of BDT2,655,076,477/- in the year ended on 30.06.2024, BDT 1,887,057,093/- in the year ended on 30.06.2023 and BDT 3,946,128,766/- in the year ended on 30.06.2022, BDT 3,162,195,564/- in the year ended on 30.06.2018 and BDT 3,620,498,666/- in the year ended on 30.06.2017. The minutes of the 168th meeting of the Board of Directors of the Petitioner Company containing the purported decision to invest in the respondent-companies is nothing but a subsequent manufactured document by which the petitioner is attempting to cure the illegality committed by itself.

The respondent Tech Max Ltd is also a profitable business entity and a going concern and is engaged in 100% export-oriented garments industry having annual turnover of BDT1,781,856,498/- in the year ended on 30.06.2024, BDT 1,767,121,107/- in the year ended on 30.06.2023 and BDT 1,463,889,766/- in the year ended on 30.06.2022.

The respondent Blue Creations Ltd is also a profitable business entity and a going concern and is engaged in 100% export-oriented garments industry having annual turnover of BDT 814,080,878/- in the year ended on 30.06.2024, BDT 853,773,725/- in the year ended on 30.06.2023, BDT 735,653,566/- in the year ended on 30.06.2022, BDT 340,764,117/- in the year ended on 30.06.2019.

The respondent Sterling Denims Ltd is also a profitable business entity and a going concern and is engaged in 100% export-oriented garments industry having annual turnover of BDT 12,285,028,025/- in the year ended on 30.06.2024, BDT 6,669,023,660/- in the year ended on 30.06.2023, BDT 5,670,490,883/- in the year ended on 30.06.2022, BDT 3,866,953,263/- in the year ended on 30.06.2019.

The minutes of the 168th meeting of the Board of Directors of the Petitioner Company containing the purported decision to invest in the respondent-companies is nothing but a subsequent manufactured document by which the petitioner is attempting to cure the illegality committed by itself.

Submissions on behalf of the Petitioner

Mr. Tanoy Kumer Saha learned advocate appearing on behalf of the petitioner supporting the petitions articulated his submissions in the following manner:

(i) Section 44 (3) of the Insurance Act, 2010 merely requires approval from Board of the Petitioner- Company and from IDRA for certain financial transactions and it does not prohibit or invalidate transactions made between companies without such approval. Transaction made without

approval can at best be treated as irregular and not void. Further for such non-compliance section 134 of the Insurance Act, 2010 provides for regulatory penalties and not forfeiture of creditor's rights. So far, the transactions in questions are concerned IDRA despite of its having full knowledge about the said transactions has not imposed any penalty as yet and therefore, the alleged irregularity in giving credit/loan has thus been cured.

(ii) Since the receipts of the amount in questions are admitted in all the company matters, therefore, the defense of "personal favour" as taken by the respondent-companies contradicts the principle of separate corporate personality. Personal or shareholder relationships cannot absolve a company of its corporate liability to repay admitted sum received into its official account.

(iii) The petitioner Company issued repeated demand letters requesting respondent-companies to refund the loan/investment amount as well as notice according to the provision of Section 242(1) of the Companies Act, 1994 and the respondent-companies neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the petitioner-company and as such the respondent-companies are liable to be wound up.

(iv) A winding up petition is a legitimate method of enforcing payment of a just debt and a creditor who is unable to obtain the payment of his debt has the right *ex debito justitiae* to a winding up order.

(v) Where the debt is undisputed and yet the respondent company refuses to pay, a winding up petition is maintainable. In support of such

submission the learned advocate relied upon the case of *Cornhill Insurance P.L.C Vs Improvement Services Ltd, (1986) BCLC 26 Ch. D.*

(vi) There is evidence on record to show that a certain amount of money is lawfully due to the petitioner company and the respondent Companies, despite being put on notice, intentionally failed to pay the same and as such the respondent-companies should be wound up. In support of such submission the learned advocate relied upon the case of *Raj Kumar and Brother Vs. Organic Chem Oils Ltd, (1998) Company Cases 386.*

(vii) The petitioner Company has filed this instant winding up applications on the ground of the inability of the respondent-companies to settle its admitted debt and it is just and proper that the respondent companies be wound up. In support of such submission the learned advocate relied upon the case of *Thai Airways International Vs. Air Route Services Ltd, 48 DLR (1996) 412.*

(viii) There is no dispute regarding the debt and the intention of the petitioner company seeking winding up is not *malafide* to pressurize the respondent-companies to submit to an unjust demand. In support of such submission the learned advocate relied upon the case of *Amin Scales Ltd Vs. Md. Yakub, 1987 BLD (AD) 259.*

(ix) The law embodied in section 241 is clear and unambiguous. Section 241(V) of the Companies Act does not impose any precondition or qualification for an application to be filed seeking winding up of a company and all that is required is the existence of a claim for an ascertained sum of money, duly acknowledged and owed by the company which remains

unpaid despite a statutory notice issued upon the Respondent- Company. Failure to make payment of the sum that is due and outstanding indicates an "inability on the part of the company to pay its debt' even if the debtor-company is a profitable and going concern. In support of such submission the learned advocate relied upon the cases of *Ambala Cold Storage Vs. Prime Insurance Co. Limited*, 56 DLR (HCD) 422; *Cathay Pacific Airways Limited Vs. Vantage International Limited*, 74 DLR (HCD) 190.

(x) Apart from inability to pay debt, the respondent-companies should be wound up on just and equitable ground because of its fraudulent, *malafide* and prejudicial behaviour towards its creditors. Moreover, the Company Court, exercising its Company Court jurisdiction, acts not merely as a tribunal of law but as a Court of equity, conscience, and public trust, and where the Petitioner is a statutory life insurance institution holding fiduciary and trust-based funds of innumerable policyholders, the Court is duty-bound to safeguard public monies from corporate delinquency, recognizing that the Company Court is the sentinel of corporate probity, and must not, under any circumstance, become an unwitting protector of commercial dishonesty masquerading as solvency.

(xi) That corporate solvency becomes irrelevant where corporate conscience collapses, and the Company Court, being a master of equity, must not permit the corporate structure to serve as a sanctuary for dishonesty or as a shield for calculated evasion; in matters involving public depositors trust-funds, the Court's duty is elevated to a solemn fiduciary obligation, rendering winding-up not punitive but preservative of public confidence, financial discipline, and systemic integrity.

Submissions on behalf of the Respondent-Companies

While controverting the submissions made by the learned advocate for the petitioner and advancing his arguments against the winding-up petitions, Mr. Imran A. Siddiq, the learned Senior Advocate, made the following submissions:

(i) Any agreement made in contravention of a statutory provision attracting a penalty is void. As a life insurance company, the Petitioner is legally prohibited under Section 44 of the Insurance Act, 2010 from extending any loan or financial facility to entities like the Respondent-companies.

(ii) No approval of IDRA was taken prior to making the payment to the Respondent- Companies. In the Petitioner's Annual Report for the year 2019 it has been stated as follows: "বিগত ব্যবস্থাপনা/পরিচালনা পর্ষদ কোম্পানীর তহবিল বীমা আইন অমান্য করে স্ট্রলিং গ্রুপে বিনিয়োগ করেছেন।" Also, in the Petitioner's Annual Report of the year 2020 it has been further stated that "পর্ববর্তী ব্যবস্থাপনা/পরিচালনা পর্ষদ কোম্পানীর তহবিল বীমা আইন অমান্য করে স্ট্রলিংগ্রুপের চারটি কোম্পানি ক) M/s. Blue Creation Ltd, খ) M/s. Tech Max Ltd., গ) M/s. Sterling Creations Ltd, এবং M/s. Sterling Denims Ltd. এ বিনিয়োগ করেছেন।" As such, it is clear that the Petitioner acted in contravention of section 44 of the Insurance Act, 2010 by failing to procure the prior approval of IDRA. As such, the alleged transaction falls outside the scope of legitimate investment activities permitted for insurance companies under the Insurance Act, 2010.

Furthermore, the statutory obligation of obtaining approval of IDRA is mandatory inasmuch as failure to obtain such approval attracts penal

consequences under section 134 of the Insurance Act 2010. Since the transaction in question has been entered into in violation of section 44 of the Insurance Act, 2010 which attracts a penalty, the said transaction is *void ab initio* and a nullity in the eye of the law. As such, a transaction which is *void ab initio*, does not give rise to a legal and valid debt.

In this regard the learned Sr. Advocate relied on the case of *Asha John Divianathan Vs. Vikram Malhotra and Ors reported in AIR 2021 SC 2932* which reinforced the well-established principle that a contract is void if prohibited by a statute under a penalty, even without express declaration that the contract is void, because such a penalty implies a prohibition.

Since the purported transaction entered into between the Petitioner and the respondent-companies violates the provisions of the Insurance Act 2010, and that the same attracts a penalty, the said transactions are *void ab initio* and thus, no question of a lawful or valid debt can arise.

(iii) That the alleged transactions do not amount to a valid 'debt' since the essential requisites of a debt is absent in all the transactions in questions. In this regard, the Mr. Imran relied on the case of *Ataur Rahman (Md) anr. Vs. Edruc Limited reported in 57 DLR (2005) 337*. There is no ascertained or readily calculable amount for debts exist in the instant matters. The petitioner's standing as to profit is not also clear rather inconsistent. Moreover, there is no time period specified for the sum of money to be returned. As such, there exists no liability on the part of the respondent-companies to pay the amount forthwith or in future within a specified time period. In such circumstances, the alleged transaction does not constitute a debt in the eyes of law.

In this regard, the leaner advocate further relied on the case of *Ambala Cold Storage (Pvt) Ltd. Vs. Prime Insurance Co Ltd. reported in 56 DLR (2004) 422* where it was held that unless the claim is 'undisputedly ascertained' it cannot be said that a debt exists, and further that, winding up of a company by Court for debt is not called for where there is a *bonafide* dispute relating to the existence of the debt.

(iv) In the instant case, there is no documentary evidence of agreement between the parties relating to the alleged investment. Therefore, the claim in the instant matter is not undisputedly ascertained and the debt is not admitted. Hence, there exists no valid debt in these matters.

(v) Furthermore, there exists a bona fide dispute regarding the existence and quantum of the debt and so the winding-up application should be rejected. In this regard, the learned advocate relied on the case of *Tamanna-E-Jahan Vs. The Paper Converting and Packaging Ltd. and Ors reported in 7 BLC (2002) 443*. In the present case, there exists a bona fide dispute between the parties regarding the existence of the debt. The respondent-companies contend that it had returned the alleged sum of money to the petitioner through the Petitioner's former board of directors. Therefore, the instant application for the winding up of the Respondent-companies should be rejected due to the existence of the bona fide dispute regarding the alleged debt. The learned advocate in this regard relied on the case of *The Bengal Builders and Traders Private Limited Vs. Orissa Textile Mills Limited reported in 44 (1977) CLT 619*.

(vi) The winding up application should be rejected as the Respondent-Companies are profitable going concern. This is evident from

the fact that the Respondent-companies have huge annual turnover as reflected in the Auditor's Reports on the Financial Statements of the Respondent- companies. In this regard, the learned advocate relied on the case of *Mohiul Islam Vs. Century Properties Development Ltd and Others* reported in 7 BLC (2002) 248 and in the case of *Haryana Telecom Ltd. Vs. Himachal Futuristic Communication Ltd [2006]* reported in 133 Comp Cas 351 (HP). The learned advocate further relied on the case of *Mulla Abdullabhai and 9 Others Vs. Saria Rope Mills Ltd* reported in PLD 1971 Karachi 597.

(vii) The Respondent-Companies being commercially solvent going concern, the instant winding up applications are not maintainable. No evidence has been offered by the Petitioner to establish that the Respondent-Companies are insolvent. Therefore, the instant application for the winding up of commercially solvent companies such as the Respondent-Companies should be rejected.

(viii) The application filed by the petitioner under section 241 is neither a legitimate method for enforcing payment of a debt nor a substitute for a civil suit. In support of this contention, the learned advocate relied on the judgment in the case of *Kamadenu Enterprises Vs. Vivek Textile Mills Pvt. Ltd* reported in [1984] 55 Comp Cas 68 (Kar)

(ix) In the instant cases, there exists a genuine dispute regarding both the existence and the quantum of the alleged debt. The facts of the instant matters clearly demonstrate that the existence of the alleged debt is contested and further that the Petitioner has failed to establish a debt which is owed to the Petitioner. Moreover, the respondent-companies continue to be a going concern, indicating its ability to pay any alleged debt.

Consequently, the petitioner's applications under section 241 appears to be made with *malafide* intent. It follows that such an application is neither a legitimate method for debt enforcement nor a valid substitute for initiating a civil suit. As such, the instant winding up application is liable to be rejected.

Findings of the Court

Before proceeding to analyse and examine the facts of the present company matters, it would be appropriate to first undertake a close scrutiny of the decisions relied upon by the petitioners.

In support of his submissions to the effect that, if the debt is not genuinely disputed and if the debt is admitted and remains unpaid then a winding up order can be passed as well as winding up is a legitimate method to enforce payment of a just and admitted debt and when a company fails to comply with a statutory demand, it is deemed unable to pay within the meaning of section 242, the petitioner relied upon *Amin Scales Limited and another vs Md. Yakub*, reported in 39 DLR (AD) page 201; *Ambala Cold Storage vs Prime Insurance Co. Ltd.*, reported in 56 DLR (HCD) 422.

From *Amin Scales Limited (supra)* it appears that a winding up petition on that company matter was filed for non-payment of debt. The fact of that matter was that the petitioner alleged that the company namely Amin Scales Limited took loan from him for certain business purpose and for repayment of the loan issued two cheques which were dishonoured and thereafter the company refused to repay the loan. In the said matter there was an admission on the part of the respondent company of taking loan from the petitioner and others to a certain extent.

From *Ambala Cold Storage (Supa)* it appears that the petitioner of that company matter obtained credit facility from Sonali Bank for purchasing potatoes to store them in the petitioner's cold storage and as per terms and conditions of the sanction letter the petitioner obtained 3 insurance policy. Subsequently, when the potatoes were damaged due to shortage of electricity supply caused by unprecedented flood the petitioner placed their claim to the insurance company based on a survey report. The respondent company disputed the survey report and the damage assessed. Consequently, the said company matter was filed.

In support of his submission to the effect that when a debt due from a company has been established but remains unsatisfied the court has no discretion to refuse winding up, the petitioner relied upon *Cathay Pacific Airways Limited vs Vantage International Ltd.*, reported in 74 DLR (HCD) 190 as well as on *Raj Kumar and Brothers vs. Organic Chem Oils Ltd.* (1998) Company Cases 386.

From *Cathay Pacific Airways Limited (supra)* it appears that fact of that matter was that there was a General Sales Agent agreement between the petitioner and the respondent company whereby the respondent company was appointed as General Sales Agent. As per the agreement, the respondent company was to sell tickets for passenger and cargo flights operated by the petitioner and upon collection of the sale proceeds, to deposit the same in the petitioner's account after deduction of the GSA commission along with other related expenses. As the respondent company refused and stopped the payment therefore, following the formalities that company matter was filed.

From *Raj Kumar and Brothers(supra)* it appears that there was an order for purchase of soap stone powder and in pursuance of that order the petitioner supplied the materials but was not paid and consequently, winding up petition was filed.

In support of his submission to the effect that even if the respondent-company is solvent and profitable a winding up petition can be filed even for a small but undisputed debt, the learned advocate relied up *Cornhill Insurance PLC vs Improvement Services Ltd., [1986] 1 WLR 114*. From the said judgment it appears that in the said matter the petitioner claimed money under an insurance policy covering damage by fire to their building from their insurers Cornhill Insurance plc. The Insurance Company paid £65000 but still the claimant demanded £1154 for some damage to plaster and damage to an injection machine lance. As the insurance company refused to pay a winding up petition was filed.

Therefore, from the decisions relied upon by the petitioner, it appears that in all those cases the transactions between the parties were genuine business transactions.

Now, let us analyze the facts of the instant company matters. It is the assertion of the petitioner Prime Islami Life Insurance Limited that they have made **investment** to the tune of Tk.3.00 crore in favour of Sterling Creations Limited, Tk5.00 crore in favour of Tech Max Ltd, Tk.5.00 crore in favour of Blue Creation Ltd and Tk.2.00 crore in favour of Sterling Denims Ltd. The money was transferred to the bank accounts of said companies. But on demand, the companies refused to repay the said amount and this refusal of the respondent companies as per the petitioner tantamount to its inability to pay the debt and consequently the instant

company matters have been filed. The petitioner-company to substantiate its assertions rested on 168th meeting of the Board of Directors of the Petitioner-Company whereby the petitioner company decided to **investment** in Blue Creation Ltd and Tech Max Ltd. The petitioner further relied on a letter dated 23.10.2021 written by the respondent companies to the Chairman of IDRA to establish that, the **investments** made by the petitioner-company in the respondent-companies are an admitted fact. The petitioner further relied on a memo dated 12.01.2022 issued by IDRA wherein it has been mentioned that “...প্রতিষ্ঠান তিনটি কর্তৃপক্ষের নিকট এই মর্মে অভিযোগ করেছেন যে, কোম্পানির কোন **বিনিয়োগ** তাদের নিকট গচ্ছিত নেই। অভিযোগের সাথে কোম্পানির **বিনিয়োগ** সম্পর্ক জড়িত। অভিযোগের বর্ণনায় দেখা যায় কোম্পানির ১২ (বার) কোটি **বিনিয়োগের** নামে আত্মসাত হয়েছে। এতে সাধারণ বীমা গ্রাহকের স্বার্থ সম্পূর্ণ জড়িত।”

On the other hand, the respondent-companies categorically denied about taking any loan or investment from the petitioner-company. Their version in this regard is that, the account of the respondent-companies were used by the then Chairman of the petitioner-company namely M A Khaleque for his personal purpose and the respondent-company allowed him to use the companies’ bank accounts due to close relationship between said M A Khaleque and Mr. Md. Fazlul Haque who is the Managing Director of the respondent-companies. There was no malice on the part of the respondent companies rather the Managing Director on good faith acted on the request of said M.A. Khaleque. The respondents did not make any prayer for **investment** or **loan/advance** and the petitioner also failed to produce any such document. Moreover, by placing the Audit Reports, the respondent-companies further tried to emphasize that there is no reason for the companies to take loan from an insurance company rather they have

regular business transactions with the Banks for their business purpose. It has been emphasized that there exists no justification for the respondent companies to obtain a loan from an insurance company, and such an act is beyond the comprehension of a prudent or reasonable person.

Therefore, the first and foremost issue for determination in these matters is to find out whether there was any creditor and debtor relationship between the petitioner and the respondent-companies and whether money transacted through the bank accounts of the respondent companies can be treated as **investment or loan/advance** at all.

Admittedly, money was transferred through the accounts of the respondent-companies. Though the petitioner termed and treated the said transactions as **investment** but in fact the petitioner failed to produce any application of the respondent-companies asking or requesting the petitioner-company to **invest** in their companies. The petitioner also failed to produce any application of the respondent-companies asking or requestion for **loan or advance**. The only document the petitioner has placed before this court at the time of hearing is the minutes of 168th Board Meeting of the petitioner-company dated 30.05.2018 and the relevant portion runs as follows:

*Agenda No: 13 To consider proposal for **investment** with i) M/s. Blue Creation Ltd and ii) M/s. Tech Max Ltd.*

The Chief Executive Officer informed the Board that i) M/s. Blue Creation Ltd. and ii) M/s. Tech Max Ltd had approached for an investment with

them for an amount of Tk.5 (Five) crore each @ 7.5% profit per annum,

The Board discussed the matter and agreed to invest with the above companies and adopted the following resolution:-

*“ Unanimously that **investment** for an amount of Tk.5(Five) Crore each with i) M/s. Blue Creation Ltd., Road No#47, House No#25, Flat No#B-2, Gulshan-2, Dhaka, Bangladesh, and ii) M/s. Tech Max Ltd., Road No#47, House No#25, Flat No#B-2, Gulshan-2, Dhaka, Bangladesh be made @ profit of 7.5% per annum.*

Therefore, as per the said Board Resolution and the statements made in the substantive applications, the petitioner-company **invested** the amount in question with the respondent-companies, and did not give any **loan, or advance** to the respondent-companies. The word ‘**investment**’ and ‘**loan/advance**’ has been highlighted because on perusal of the said board resolution it appears that the petitioner-company has used the word ‘**loan/advance**’ in its agenda no. 17 while approving **loan/advance** to its Deputy Managing Director & Company Secretary for matrimonial purpose of his daughter. Therefore, it is evident that they have used the term ‘**investment**’ and ‘**loan/advance**’ in different meanings fully knowing its implications. The words “**investment**” and “**loan/advance**” have also been used in the Insurance Act, 2010, in different senses and contexts. This view of this court will be elaborated in the following paragraphs.

On perusal of the record, I have found the Memorandum and Articles of Association of the petitioner-company which has been annexed as Annexure- 2 with the Affidavit-in-Opposition filed by respondent no. 18. Clause 108 sub-clause (ঠ) and (ফ) of the said Articles of Association provides as follows:

(ঠ) কোম্পানীর যে টাকা/ফান্ডসমূহ কোম্পানীর নৈমিত্তিক কাজে প্রয়োজন নাই, এই ধরনের টাকা বা ফান্ড এমন সিকিউরিটি ভিত্তিতে এবং এমন পদ্ধতিতে যাহা পরিচালকবৃন্দ সমীচীন মনে করে বিনিয়োগ করা, তারতম্য করা বা বিনিয়োগ করা, তারতম্য করা বা বিনিয়োগকৃত ফান্ড উদ্ধার করা বা বিনিয়োগ ভাস্কানো ইত্যাদি।

(ফ) কোম্পানী কোন পরিচালক বা পরিচালকের সংশ্লিষ্ট ফার্ম বা ব্যক্তিগত প্রতিষ্ঠানকে বা প্রাইভেট লিমিটেড কোম্পানীকে সাধারণত কোনরূপ অগ্রীম বা ঋণ মঞ্জুর করিবেন না। সরকারী বিধি নিষেধ ও আইন সাপেক্ষে পরিচালক পরিষদ কোম্পানীর যে কোন পরিচালককে ক্ষেত্র বিশেষে পরিচালকবৃন্দ কর্তৃক যথাযথ মনে হয় এরূপ পরিমাণ ঋণ প্রদান করিতে পারিবে।

Sub-section 2 of Section 2 of the Insurance Act, 2010 defines “**approved investment**” as follows:

“approved investments” means such investments as the Government may, for the purposes of this Act, by notification in the official Gazette, specify as approved investments;

Section 41 of the said Act contains provision of **investment** of assets and the said section runs as follows

Section 41: Investment of assets.—(1) *Every insurer shall invest and maintain its assets in such manner and place, as may be prescribed by regulations, and the Authority shall have power to regulate such investment:*

Provided that no investment shall be permissible in the first issue of capital by a company, firm or other business concern in which any of the

directors of the insurer or any member of the family of such director has any interest as proprietor, partner, director, manager or managing agent.

(2) Every insurer shall submit a return on such investment under subsection (1) in such manner as may be prescribed by regulations.

In the affidavit- in- opposition of respondent no. 31 i.e. Insurance Development and Regulatory Authority (IDRA) a Rule titled as বীমা (লাইফ বীমাকারীর সম্পদ বিনিয়োগ) প্রবিধানমালা, ২০১৯ has been annexed as Annexure- 3. The purpose and object of formulating the said Rules have been mentioned as বীমা আইন, ২০১০ (২০১০ সনের ১৩ নং আইন) এর ধারা ১৪৮, ধারা ৪১ এর সহিত পঠিতব্য, এ প্রদত্ত ক্ষমতাবলে বীমা উন্নয়ন ও নিয়ন্ত্রণ কর্তৃপক্ষ, সরকারের অনুমোদনক্রমে, নিম্নরূপ প্রবিধানমালা প্রণয়ন করিল, যথা:-

Rule 3 of the said Rules, 2019 contains provisions relating to **investment** of assets of life insurer which runs as follows:

৩। লাইফ বীমাকারীর সম্পদ বিনিয়োগ।-(১) লাইফ বীমা ব্যবসা পরিচালনাকারী প্রত্যেক বীমাকারী তাহার দায়সমূহের সমপরিমাণ সম্পদ বাধ্যতামূলকভাবে দেশের নির্ধারিত বিনিয়োগ খাতে বিনিয়োগ করিবে।

(২) উপ-প্রবিধান (১) এর অধীন বিনিয়োগ পরবর্তী বীমাকারী অতিরিক্ত সম্পদ দেশে বা অন্য কোনো রাষ্ট্রে বিনিয়োগ করিতে পারিবে :

তবে শর্ত থাকে যে, অন্য কোনো রাষ্ট্রে বিনিয়োগ করিবার ক্ষেত্রে উক্ত রাষ্ট্রের সরকারের এবং যথাযথ কর্তৃপক্ষের অনুমোদন গ্রহণ করিতে হইবে।

(৩) বীমাকারীর দায়সমূহ নিম্নরূপ, যথা:-

(ক) একচুয়ারিয়াল মূল্যায়ন অনুযায়ী লাইফ বীমা পলিসির দায়সমূহ;

(খ) লাইফ বীমা পলিসি সমূহের অপরিশোধিত দাবি পরিশোধের নিমিত্ত প্রয়োজনীয় অর্থ;

(গ) প্রস্তাবিত লভ্যাংশ ও পলিসি বোনাস এবং অপরিশোধিত লভ্যাংশ ও পলিসি বোনাস প্রদানের জন্য আবশ্যকীয় অর্থ;

(ঘ) পুনঃবীমাকারীর নিকট প্রদেয় অর্থ;

(ঙ) সরকারি রাজস্ব বাবদ প্রদেয় অর্থ;

(চ) পরিশোধিত মূলধন, সাধারণ সঞ্চিতিসমূহ, বিনিয়োগ সঞ্চিতি, কুঋণ, সন্দেহপূর্ণ কুঋণ সঞ্চিতি এবং অবচয় তহবিল ব্যতিরেকে অন্যান্য পাওনাদারদের নিকট প্রদেয় অর্থ।

(৪) বীমাকারীর সম্পদ হিসাবের ক্ষেত্রে নিম্নবর্ণিত বিষয়সমূহ অন্তর্ভুক্ত হইবে না, যথা :-

(ক) প্রত্যেক বৎসরের ৩১ ডিসেম্বর পর্যন্ত বকেয়া নবায়ন প্রিমিয়ামের অর্থ পরবর্তী বৎসরের ৩১ মার্চ পর্যন্ত যাহা আদায় হয় নাই;

(খ) আইনের ধারা ৩২ এর অধীন নিরীক্ষক কর্তৃক আর্থিক বিবরণী স্বাক্ষর করিবার পূর্ব পর্যন্ত বকেয়া দায় দেনা;

(গ) আসবাবপত্র এবং সরঞ্জামাদি, স্টেশনারি এবং পরিত্যক্ত মালামালের মজুদ সংক্রান্ত ব্যয়; এবং

(ঘ) অস্পর্শনীয় (intangible) সম্পদ যেমন: সুনাম, প্যাটেন্ট রাইট, ইত্যাদি।

(৫) লাইফ বীমাকারীর সম্পদের অনূন ৩০% (ত্রিশ শতাংশ) সরকারি সিকিউরিটিজে বিনিয়োগ করিতে হইবে।

(৬) উপ-প্রবিধান (৫) এর অধীন বীমাকারীর সম্পদ সরকারি সিকিউরিটিজে বিনিয়োগ পরবর্তী অবশিষ্ট অংশ 'তফসিল-ক' অনুযায়ী নির্ধারিত খাতে বিনিয়োগ করিতে হইবে।

(৭) কোম্পানীর বীমা ব্যবসার জন্য নিবন্ধন সনদ প্রাপ্তির পূর্বেই আইনের তফসিল-১ এ বর্ণিত উদ্যোক্তাগণ কর্তৃক প্রদত্ত আবশ্যিক গচ্ছিত জামানত সরকারি সিকিউরিটিজে বিনিয়োগকৃত বা বিনিয়োগের জন্য রক্ষিত বলিয়া গণ্য হইবে।

Schedule- Ka as mentioned in sub-rule 6 of Rule 3 is as follows:

তফসিল-ক

[প্রবিধান ৩(৬) দ্রষ্টব্য]

বিনিয়োগের খাতসমূহ

ক্রমিক নম্বর	বিনিয়োগ খাত	সম্পদের নির্ধারিত সর্বোচ্চ হার
১।	বাংলাদেশে সরকারের গ্যারান্টিযুক্ত ভৌত অবকাঠামো উন্নয়নের জন্য ইস্যুকৃত বন্ড এবং অন্যান্য বন্ড: স্বতন্ত্র খ্যাতনামা ও বাংলাদেশে অনুমোদিত রেটিং সংস্থা কর্তৃক "AA" অথবা সমমানের নিম্নে নহে এরূপ রেটিং প্রাপ্ত বন্ড।	উভয় বন্ডে সম্পদের পরিমাণ ১৫%
২।	ডিবেঞ্চার বা সিকিউরিটিজ : (ক) সরকারের অনুমোদনক্রমে, কোনো সিটি কর্পোরেশন কর্তৃক ইস্যুকৃত ডিবেঞ্চার বা অন্যান্য সিকিউরিটিজ। (খ) বাংলাদেশ সিকিউরিটিজ এন্ড এক্সচেঞ্জ কমিশন কর্তৃক অনুমোদিত কোনো ডিবেঞ্চার।	(ক) কোনো কোম্পানীর ডিবেঞ্চারে মোট বিনিয়োগের পরিমাণ লাইফ বীমাকারীর সম্পদের ৫%। (খ) ডিবেঞ্চারে মোট বিনিয়োগ লাইফ বীমাকারীর সম্পদের ১০%।

৩।	অগ্রাধিকার বা সাধারণ শেয়ার : বাংলাদেশ সিকিউরিটিজ এন্ড এক্সচেঞ্জ কমিশন কর্তৃক অনুমোদিত এবং যে কোনো স্টক এক্সচেঞ্জে তালিকাভুক্ত কোনো কোম্পানীর অগ্রাধিকার বা সাধারণ শেয়ার : তবে শর্ত থাকে যে, বাংলাদেশ সিকিউরিটিজ এন্ড এক্সচেঞ্জ কমিশন কর্তৃক ‘Z’ ক্যাটাগরিভুক্ত শেয়ারে বিনিয়োগ করা যাইবে না।	কোনো কোম্পানীতে বিনিয়োগের অগ্রাধিকার শেয়ার বা সাধারণ শেয়ার বা যে কোনো সময় উক্ত কোম্পানীর পরিশোধিত মূলধনের ১০% বা লাইফ বীমাকারীর সম্পদের ৫% : তবে শর্ত থাকে যে, সাধারণ শেয়ার বা অগ্রাধিকার শেয়ার বা উভয় প্রকারের মোট বিনিয়োগ লাইফ বীমাকারীর সম্পদের ২৫%।
৪।	স্থাবর সম্পত্তি : (ক) সিটি কর্পোরেশন এলাকায় বা কোনো পৌরসভায় অবস্থিত দায়হীন এবং নিষ্কটক স্থাবর সম্পত্তি। (খ) প্রথম বন্ধকীকৃত স্থাবর সম্পত্তি বা আবাসিক, দাপ্তরিক বা দোকান হিসেবে ব্যবহৃত বা লিজকৃত সম্পত্তি : তবে শর্ত থাকে যে, লিজকৃত সম্পত্তি হইলে লিজের মেয়াদ অন্যান্য ৩০ (ত্রিশ) বৎসর এবং উক্ত সম্পত্তির মূল্য লিজকৃত সম্পত্তির মূল্যের ৫০% হইতে হইবে।	(ক) বিনিয়োগকৃত অর্থ লাইফ বীমাকারীর সম্পদের ২০%। (খ) সম্পত্তি আবাসিক কাজে ব্যবহৃত হইলে লাইফ বীমাকারীর সম্পদের ২% এবং সম্পত্তি দাপ্তরিক বা দোকান হিসাবে ব্যবহারের জন্য ভাড়া প্রদান করা হইলে, লাইফ বীমাকারীর সম্পদের ৫%। তবে শর্ত থাকে, দফা (ক) এবং (খ) এ বর্ণিত উভয় প্রকার সম্পত্তিতে মোট বিনিয়োগ লাইফ বীমাকারীর সম্পদের ২০%।
৫।	তফসিলি ব্যাংকে আমানত: বাংলাদেশে অনুমোদিত রেটিং সংস্থা কর্তৃক "A" অথবা সমমান বা শ্রেষ্ঠতর তফসিলি ব্যাংকে আমানত গচ্ছিত রাখা।	কোনো লাইফ বীমাকারীর সম্পদের ৬০% আমানত তফসিলি ব্যাংকে গচ্ছিত রাখিতে পারিবে: তবে শর্ত থাকে যে, কোনো তফসিলি ব্যাংকে গচ্ছিত স্থায়ী আমানত বা চলতি আমানত বা আংশিক স্থায়ী বা আংশিক চলতি আমানত এর পরিমাণ লাইফ বীমাকারীর সম্পদের ১০%।
৬।	মিচুয়াল ফান্ড ও ইউনিট ফান্ড : বাংলাদেশ সিকিউরিটিজ এন্ড এক্সচেঞ্জ কমিশন কর্তৃক অনুমোদিত বা নিয়ন্ত্রিত মিচুয়াল ফান্ড ও ইউনিট ফান্ডে বিনিয়োগ।	মিচুয়াল ফান্ড ও ইউনিট ফান্ডে বিনিয়োগ লাইফ বীমাকারীর সম্পদের ২০%:
৭।	আর্থিক প্রতিষ্ঠানসমূহে স্থায়ী আমানতঃ সরকার কর্তৃক সময় সময় নির্ধারিত আর্থিক প্রতিষ্ঠানসমূহে স্থায়ী আমানতে বিনিয়োগ করা যাইবে: তবে শর্ত থাকে যে, বাংলাদেশ অনুমোদিত রেটিং সংস্থা কর্তৃক “ A” বা সমমান বা শ্রেষ্ঠতর আর্থিক প্রতিষ্ঠানে আমানত গচ্ছিত রাখিতে পারিবে।	আর্থিক প্রতিষ্ঠানসমূহে স্থায়ী আমানতে বিনিয়োগ লাইফ বীমাকারীর সম্পদের ১০% তবে শর্ত থাকে যে, কোনো একটি আর্থিক প্রতিষ্ঠান এ স্থায়ী আমানত হিসাবে বীমাকারী মোট সম্পদের ২%।
৮।	সাবসিডিয়ারি কোম্পানীতে বিনিয়োগ: কর্তৃপক্ষের পূর্বানুমোদনক্রমে এবং তদকর্তৃক আরোপিত শর্ত সাপেক্ষে সাবসিডিয়ারি কোম্পানীতে বিনিয়োগ করিতে হইবে।	লাইফ বীমাকারীর মোট সম্পদের ১০%।

৯।	অন্যান্য প্রকারের সম্পদে বিনিয়োগ: কর্তৃপক্ষ পূর্বানুমোদনক্রমে এবং আরোপিত শর্ত সাপেক্ষে অনুমোদিত অন্যান্য প্রকার সম্পদে বিনিয়োগ করিতে পারিবে।	বীমাকারীর মোট সম্পদের ৫%।
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Therefore, the **investment** that the petitioner-company is alleging to have made in the respondent-companies do not cover the definition and provisions of the Insurance Act, 2010 or the Rules, 2019 not even serial no. 9 of Schedule-Ka since the investment was not made in any asset (অন্যান্য প্রকারের সম্পদে বিনিয়োগ) or the Articles of Association of the Petitioner's-company rather those are against the foundational documents of the petitioner company as well as against the applicable laws. Therefore, since the said alleged **investments** are not covered by the provisions of the law and the foundational documents of the petitioner-company, therefore, those are out and out null and void and *ultra vires*. Being null and void and *ultra vires* neither the company nor any third party can enforce it. Rather the director(s) who knowingly authorized or participated in such an *ultra vires* **investment** is personally liable to the company for any resulting losses as because they have a fiduciary duty to act within the company's powers and mandates.

Now, turning to another aspect of the said transactions, it has been submitted by the learned advocate for the petitioner that the transaction is covered under Section 44(3) of the Act, 2010. And absence of any approval from the Board or from IDRA makes the transactions irregular and not illegal/void and for violation of the mandate of law penal provisions has been provided in section 130, 132 and 134 of the Act, 2010. Therefore, the

respondent-companies cannot escape from their liabilities taking the plea of absence of any approval of the Board and the Authority.

To evaluate the said argument it is profitable to have a look at those provisions of law.

Section 44: Restrictions on grant of loan, advance and financing facility:-

(1)-----

(2) -----

(3) *Except with the permission of its Board of Directors and approval by the Authority, no insurer shall grant any loan or temporary advance to any firm or company in which any director, manager, actuary, auditor or officer of the insurer, or member of the family of such director, manager, actuary, auditor or officer, has any interest as proprietor, partner, director, manager or managing agent.*

(4) -----

(5) -----

(6) -----

(7)-----

(8)-----

(9)-----

Section 130: Imposition of fine for default in complying with, or act in contravention of this Act.- *If any person, under this Act of rules or regulations made there under,-*

(a) *fails to furnish any statement, account, return or report to the Authority;*

(b) *fails to comply with the directions;*

(c) fails to maintain solvency margin;

(d) fails to comply with the directions on the insurance contracts; or

(e) fails to comply with the directions on the reinsurance treaties, he may be made liable to fine not exceeding Taka 5 (five) lac for each such failure and in the case of continuing default he may be made further liable to additional fine not exceeding Taka 5 (five) thousand for every day.

Section 132: Penalty for carrying on insurance business in contravention of certain sections- *If any person contravenes the provisions of sections 8, 23,41,43,46 or 119, he shall be liable to fine not exceeding Taka 5 (five) lac for each such contravention.*

Section 134: Personal fine for default in complying with, or act in contravention of this act- *Except as otherwise provided in this act, any director, shareholder, chief executive officer, manager or other officer of the insurer or broker or any partner, surveyor or other officer of it or an agent of employer of insurance agent who makes default in complying with or acts in contravention of any provision of this Act and who is knowingly a party to the default, shall be punished with fine for maximum Taka 1 (one) lac and minimum Taka 50 (fifty) thousand and, in the case of a continuing default, with an additional fine not more than Taka 5 (five) thousand for every day during which the default continues.*

On going through Section 44 it appears that the said provision relates to grant of **loan, advance or financial facility**. It further appears that if **loan or temporary advance** is made without permission and approval of the Board and the Authority i.e. IDRA then the person(s) responsible for such violation and contravention shall be punished with fine to a certain extent. For the sake of argument, let us suppose that the word **investment** has been used in the Board Resolution and in the substantive petitioner as synonymous of the word **loan/advance**.

The question that arises, then, is this: if the loan or advance alleged to have been given by the company or firm is denied by the recipient, or if such loan or advance was granted without proper permission and approval and the recipient company or firm refuses to repay it, or if it appears that the transaction was merely a device used for the personal interest of a director, manager, or officer of the insurer, then what will be the fate of such loan or advance, and how is the same to be recovered? Law is not silent on this point. The answer has been given in section 45 of the Act, 2010 which runs as follows:

Section 45: Liability of directors and others for loss.—*If by reason of a contravention of any of the provisions of section 44 any loss is sustained by the insurer or by the policy-holders, any director, manager or officer who is knowingly a party to such contravention shall, without prejudice to any other penalty to which he may be liable under this Act, be jointly and severally liable to make good the amount of such loss.*

Therefore, it appears that if **loan or advance** is given without permission and approval of the Authority and of the Board, then, apart from facing penalty under section 134, the directors, managers or officers who are responsible for such contravention has to pay the said amount to make good the loss the insurer suffered. The company or firm to whom loan/advance in violation of the law is given has not been held responsible in the said provision.

Section 135 of the Insurance Act, 2010 also provides punishment if in course of time or by any deceptive device any director or officer or employee of the insurer obtains possession of any property of the insurer wrongfully. The said section run as follows:

Section 135: Wrongfully obtaining of withholding property. -(1)

Any director, or other officer or employee of an insurer who wrongfully obtains possession of any property of the insurer of having any such property in his possession wrongfully withholds it or willfully applies it to purposes other than those expressed or authorized by this Act, shall, after giving the insurer not less than 15 (fifteen) days notice of its intention, on the complaint of the insurer or any member or any policyholder thereof be punished with fine for Taka 15 (fifteen) lac and may be ordered by the Court trying the offence to deliver up or refund within a time to be fixed by the Court any such property improperly obtained or wrongfully withheld or willfully misused and in default to suffer imprisonment for a term not exceeding 2 (two) years.

(2) For the purpose of this section, property of a life insurance statutory fund maintained by an insurer is property of that insurer.

In the present matters, the respondent-companies categorically set up the defence and asserted that the money routed through their accounts was, in fact, taken by the then Chairman of the petitioner-company, namely M.A. Khaleque, for his personal interest, and that, due to a close matrimonial relationship, the Managing Director of the respondent-companies, in good faith, believed the reasons advanced by M.A. Khaleque. Further, IDRA i.e. respondent no. 31 in paragraph no. 7 of the its affidavit-in-opposition stated that IDRA has got no record of any meeting between the petitioner and the IDRA regarding the petitioner company's investment in respondent – companies rather IDRA received complaints from respondent-companies in this regard and IDRA issued memo on 12.01.2022 asking the petitioner-company to provide an explanation within 7 days. Therefore, if the alleged **investments** or **loan/advance** were made at all, the petitioner-company would have at least informed IDRA about such **investments, loan/advance** which did not happen in the instant matters; rather IDRA's knowledge

accrued in respect of the transactions in questions from the complaint made by the respondent-companies. This fact can be considered as a relevant fact in support of the respondent's defense. Further, in 168th Board Meeting, in the statutory notices as well as in the pleadings of these company matters the petitioner-company referred the transaction as an **investment** but while making submission before this court in spite of relying on the relevant provisions of **investment**, the petitioner relied on the provisions relating to **loan/advance**. This perplexing situation regarding the petitioners' standing and the resulting dichotomy also indicates that, the then Board of the petitioner-company, by adopting a deceptive device, siphoned off the insurer's funds wherein Mr. M A Khaleque, the former Chairman was the mastermind. Another import fact is that the former Chairman M.A. Khaleque and former director Mr. Tanvirul Haque (son of Mr. Fazlul Haque) resigned from the petitioner-company on 23.10.2018. Therefore, the dispute and denial raised by the respondent-companies calls for strong consideration.

Apart from the provisions contained in sections 45 and 135, which are intended to make good the loss suffered by the insurer, a detailed provision laying down the procedure in this regard has further been provided in section 136 of the Act, 2010. The section runs as follows:

Section 136: Power of court to order restoration of property of insurer or compensation in certain cases.(1) *If on the application of the Authority or an administrator appointed under section 95 or an insurer or any member of an insurance company or the liquidator of an insurance company (in case of a company being in liquidation) the Court is satisfied that*

(a) any insurer (including in any case where the insurer is an insurance company, any person who has taken part in the promotion or formation of the insurance company or any past or present director, managing director, manager, secretary or liquidator) or any officer, employee or agent of the insurer;

(i) has misapplied or retained or become liable or become accountable for any money or property of the insurer, or

(ii) has been charged for any misfeasance or breach of trust in relation to the insurer;

(b) any person, whether he is or has been in any way connected with the affairs of the insurer is in wrongful possession of any money or property of the insurer or having any such money or property in his possession wrongfully withholds it or has converted it to any use other than that of the insurer; or

(c) by reason of any contravention of the provisions of this Act, the amount of the life insurance fund has been diminished; the Court may examine any such insurer, director, manager, managing agent, secretary or liquidator or any such officer, employee, or agent of the insurer or such other person, as the case may be, and may compel him to contribute such sums to the assets of the insurer by way or compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks fit, or to restore any money or property of the insurer or any part thereof, as the case may be; and where the amount of the life insurance fund has been diminished by reason of any contravention of the provisions of this Act, the Court shall have power to assess the sum by which the amount of the fund has been diminished and to order the person guilty of such contravention to contribute to the fund the whole or any part of that sum by way of compensation; and in any of the aforesaid cases the Court shall have power to order interest to be paid at such rate and from such time as the Court may deem fit.

(2) Without prejudice to the provisions contained in sub-section (1) or subsection (3) where it is proved that any money or property of an insurer has disappeared or has been lost, the Court shall presume that

every person in charge of such money or property at the relevant time (whether a Director, Managing Director, Manager, Chief Executive Officer or any other officer) is liable for such money or property within the meaning of sub-clause (i) of clause (a) of subsection (1) and the provisions of that sub-section shall apply in the same manner, unless such person proves that the money or property has been utilized or disposed of in the ordinary course of the business of the insurer or that he took all reasonable steps to prevent the disappearance or loss of such money or property and otherwise satisfactorily accounts for such disappearance or loss.

(3) Where the insurer is an insurance company and any of the acts referred to in clauses (a), (b) and (c) of sub-section (1) has been committed by any person of that insurance company, every person who was at the relevant time a director, managing director, manager, liquidator, secretary or other officer of the insurance company shall, for the purposes of this sub-section be deemed to be liable for that act in the same manner and to the same extent as the person who has committed the act, unless he proves that the act was committed without his permission or connivance and was not facilitated by any neglect or fault on his part.

(4) Where at any stage of the proceedings against any person under this section (hereinafter referred to as the accused), the Court is satisfied by affidavit or otherwise that a prima facie case has been made out against the accused; and that it is just and proper so to do in the interest of the policy-holders of an insurer or of the members of an insurance company, the Court may direct the attachment of the following, namely :

(a) property of the insurer in the possession of the accused;

(b) property of the accused which belongs to him or is deemed to belong to him within the meaning of sub-section (5);

(c) any property transferred by the accused within two years before the commencement of proceedings under sub-section (1) or during the pendency of such proceedings, if the Court is satisfied by an affidavit or otherwise that the transfer was otherwise than in good faith and for equitable consideration.

(5) For the purpose of sub-section (4) the following classes of property shall be deemed to belong to the accused, namely:

(a) any property standing in the name of any person which by reason of the person being connected with the accused, whether by way of relationship or on account of any other relevant circumstances appear to belong to the accused;

(b) the property of a private company in respect of the affairs of which the accused by himself or through his nominees, relatives, partners or persons interested in any shares of the company is able to exercise or is entitled to acquire control, whether direct or indirect.

Explanation.-For the purposes of this section a person shall be deemed to be a nominee of an accused if he, whether directly or indirectly, possesses on behalf of the accused or may be required to exercise on the direction or on behalf of the accused any right or power which is of such a nature as to enable the accused to exercise or to entitle the delinquent to acquire control over the company's affairs.

(6) Any claim to any property attached under this section or any objection to such attachment shall be made by an application to the Court and it shall be for the claimant or objector to adduce evidence to show that the property is not liable to attachment under this section and the Court shall proceed to investigate the claim or objection in a summary manner.

(7) When disposing of an application under sub-section (1) of this section the Court shall after giving all persons who appear to it to be interested in any property attached under this section an opportunity of being heard, make such order as it thinks fit respecting the disposal of any such property for the purpose of effectually enforcing any liability under this section and all such persons shall be deemed to be parties to the proceedings under this section.

(8) In any proceedings under this section the Court shall have full powers and exclusive jurisdiction to declare all questions of any nature whatsoever arising there under and in particular, with respect to any property attached under this section and no other Court shall have

jurisdiction to decide any such question in any suit or other legal proceedings.

(9) In making any order with respect to the disposal of the property of any private company referred to in clause (b) of sub-section (5) the Court shall have due regard to the interests of all persons interested in such property other than the accused and persons referred to in that clause.

(10) In proceedings under this section the Court shall have all the powers which a Court has under the Company Act.

(11) This section shall apply in respect of an insurance company or a cooperative insurance society as defined in Chapter-III as it applies in respect of an insurer.

(12) The Court entitled to exercise jurisdiction under this section shall be the High Court Division and any proceedings under this section pending immediately before the commencement of this Act in any Court other than the High Court Division shall on such commencement be transferred to the High Court Division

(13) For the Purposes of this section, the Supreme Court may make rules on the following matters, namely :

(a) the procedures in which investigations and proceedings may be held under this section; and

(b) any or all matters relating to effectively exercise its jurisdiction under this section.

It appears that the petitioner-company, without taking any steps to recover the said amount from the then directors of the petitioner-company under section 45, or initiating any action against them under sections 135 and 136 of the Insurance Act, 2010, is now pursuing this Court for a winding-up order in order to create pressure upon the respondent-companies.

Further, from the audit reports of the respondent- companies it appears that the respondent companies are profitable business entity and a going concern and are engaged in 100% export-oriented garments industry having huge annual turnover.

Now, let us examine the citations referred by the learned senior advocate for the respondent-companies.

In support of the submission that a transaction that is *void ab initio* does not give rise to a legal and valid debt; the learned Sr. advocate relied on the case of *Asha John Divianathan Vs. Vikram Malhotra and Ors* reported in AIR 2021 SC 2932. In that judgment it was held as follows:

"38. We hold that the condition predicated in Section 31 of the 1973 Act of obtaining "previous " general or special permission of the RBI for transfer or disposal of immovable property situated in India by sale or mortgage by a person, who is not a citizen of India, is mandatory. Until such permission is accorded, in law, the transfer cannot be given effect to; and for contravening with that requirement, the concerned person may be visited with penalty under Section 50 and other consequences provided for in the 1973 Act.

39. A priori, we conclude that the decisions of concerned High Courts taking the view that Section 31 of the 1973 Act is not mandatory and the transaction in contravention thereof is not void or unenforceable, is not a good law.....

The *ration decidendi* of the said decision was that, “*Contract is void if prohibited by a statute under a penalty, even if not expressly declared to be void*”

As previously noted, the investment pleaded by the petitioner in the substantive petition is not authorized under the applicable law or the company's foundational documents. Furthermore, the purported loan or advance relied upon by the petitioner was not approved by the Insurance Development and Regulatory Authority (IDRA). The consequences of such contraventions are provided in sections 45, 130, 132, 134, 135, and 136 of the Act, 2010 which impose both civil and criminal liabilities. Therefore, the ration of this decision has got a great deal of relevance for the instant company matters.

In support of the submission that the alleged transaction does not amount to a valid debt since there is no calculable amount for a debt to exist as well as the petitioner claimed different type of profit in different places and there was no time period specified for the money to be returned, the learned Sr. Advocate has relied on in the case of *Ataur Rahman (Md) anr. Vs. Edruc Limited reported in 57 DLR (2005) 337* where it was held as follows-

"20. Thus, the essential requisites of a debt are (1) an ascertained or readily calculable amount (2) an absolute unqualified and present liability in regard to that amount with the obligation to pay forthwith or in future within a time certain, and (3) the obligation must have accrued and must be subsisting and should not be that which is merely accruing."

Though, this court has already found that there exists no valid investment or genuine and admitted loan/advance, nevertheless, the said referred judgment also negate the submissions of the petitioner since the essential requisites of debt is absent here.

The learned Sr. Advocate has also relied on *Ambala Cold Storage (Pvt) Ltd. Vs. Prime Insurance Co Ltd. reported in 56 DLR (2004) 422*. The learned advocate for the petitioner also relied on this judgment. It was held in the said judgment that-

"6. The claim is not undisputedly ascertained, and unless it is admitted it cannot be said to be a debt and the respondent company is liable to pay the debt. Winding up of a company by Court for debt is not called for where there is a bona fide dispute relating to the existence of the debt."

The learned Sr. Advocate has also relied on in the case of *Tamanna-E-Jahan Vs. The Paper Converting and Packaging Ltd. and Ors, reported in 7 BLC (2002) 443* wherein it was held that-

"10. There should, firstly, exist a debt, secondly, it should not be the subject of an honest dispute and, thirdly, the company should be unable to pay its debts....I respectfully agree with view expressed in the said decision and I find that bona fide dispute is involved with regard to the amount of debt and the nature of debt. I am thus constrained to hold that the application filed for winding up of the respondent company is not a proper forum for the petitioner. I do not, therefore, find any substance in the winding up petition. Accordingly, this winding up application is rejected."

The learned Sr. Advocate has further relied on in the case of *The Bengal Builders and Traders Private Limited Vs. Orissa Textile Mills Limited reported in 44 (1977) CLT 619*. In the judgment it was held as follows-

"6. It is long settled in law that a winding up petition is not an appropriate mode of enforcing payment of a debt which is bona fide disputed and is an abuse of the process of Court. (See Gold Hill Mines (1813) 23 Ch D. 210. To the same effect is the decision of the Calcutta High Court in the case of Bukhtiarpur Bihar Light Railway Co. Ltd. v. Union of India and Anr. A.I.R. 1964 Cal. 499. In the case of Amalgamated Commercial Traders (P) Ltd. v. A.O.K. Krishnaswami and Anr. (1965) 35 Comp Cas 456, the Supreme Court pointed out that it is well-settled that a winding up petition is not a legitimate mode of seeking to enforce payment of a debt which is bona fide disputed by the Company. The petition presented ostensibly for a winding up order but really to exercise pressure will be dismissed and under circumstances may be stigmatised as a scandalous abuse of the process of the Court. At one time petitions founded on disputed debt were directed to stand over till the debt was established by action. If, however, there was no reason to believe that the debt, if established, would not be paid, the petition was dismissed. The modern practice has been to dismiss such petitions. If the debt was bona fide disputed, there cannot be neglect to pay within the meaning of Section 431(1)(a) of the Act. If there was no neglect, the deeming provision does not come into play and the ground of winding up, namely that the Company was unable to pay its debt was not substantiated."

As pointed out earlier, the disputes and denials raised by the respondent companies deserve strong consideration. The present company matter, having been filed without invoking the remedies available under

sections 45, 130, 132, 134, 135, and 136 of the Insurance Act, 2010, appears to have been instituted merely to exert pressure on the respondent companies. Therefore, in light of the cited decisions, this winding-up petition is not maintainable and must fail.

In support of his submission to the effect that the Courts are unwilling to wind-up commercially solvent going concerns, the learned Sr. Advocate has relied on in the case of *Mohiul Islam Vs. Century Properties Development Ltd and Others* reported in 7 BLC (2002) 248, wherein it was held that -

"5. ...it appears to me that the petitioner has hopelessly failed to make out a case for winding up of the company. The claim is only for Taka 9.10,000 as compensation but he has failed to show that the assets of the company are not sufficient to meet his claim and the company's substratum is gone. The petitioner also failed to show that the respondent company is commercially insolvent or that it has admitted that it is unable to pay. In fact, the petitioner has admitted that the company is a running company.

6. The Petitioner can seek redress before any other forum but not before this court under section 241 of the Companies Act which is a very serious matter and amounts to killing of a company."

The learned Sr. Advocate has also relied on in the case of *Haryana Telecom Ltd. Vs. Himachal Futuristic Communication Ltd* [2006] reported in 133 Comp Cas 351 (HP), wherein it has been held that -

"24. Respondent is a going concern and appears to be commercially solvent. Amount as claimed due by the petitioner, though specifically

disputed and controverted by the respondent, has been partly paid in Court on 9-1-2003 to the petitioner, i.e., Rs. 25 lakhs. Further substantial amount was deposited in this Court on 27-3-2003. In such a situation, claim of the petitioner that the respondent is unable to pay its debts and it will be just and equitable to order winding up of the respondent-company, would not be correct.

25. Suffice it to say in this behalf that if prayer made by the petitioner is allowed and petition is ordered to be advertised, as required under the Companies Act, 1956 and the Rules framed there under, it will lead to financial ruination of the respondent. Balance sheet placed on record clearly shows that the respondent is not only commercially solvent, but is also a going concern. Running payments have admittedly been made from time to time to the petitioner.

35. In the commercial world ups and downs in business are well-known. Therefore, even if in a case where the Company is otherwise financially viable, commercially solvent and is providing employment to number of persons directly as well as indirectly, then in a given situation winding up would not be ordered. Reason being that a winding up order completely changes the complexion of the company because management passes on from Directors to the Official Liquidator or to an Administrator.”

The learned Sr. Advocate further relied on in the case of *Mulla Abdullabhai and 9 Others Vs. Saria Rope Mills Ltd* reported in *PLD 1971 Karachi 597*, wherein it was held that-

"19. The basic object of security in such proceedings is the solvency or insolvency of the company and not the truth of the claims of the creditors. There may be a company which is in reality under an obligation to pay huge debts but may be honestly disputing them and therefore refusing to pay them. In such circumstances, if the winding up proceedings were continued, they would be converted into proof and disproof of the debts and the main object which is scrutiny into the solvency or insolvency of the company will be relegated to the background. A company which is able to pay its debts cannot in terms of section 162(v) be ordered to be wound up except in the sense that refusal to pay a genuine debt is usually accompanied with the existence of a state of insolvency.

20. If a debtor is merely unwilling to pay his debts, then the normal remedy is a suit. If a creditor, instead of instituting a suit against debtor-company, files an application for winding it up, I always ask myself, why has he done so, instead of following the straight forward course of proving his claim directly and then executing the decree? If his debt is undisputed, then the decree will follow easily. If he simply desires to save court-fee, then the consideration of loss to the State revenue may not be in his way, but he involves himself in the problem of proving insolvency of the company which is different from a temporary misfortune of a company. See *Naresh Narayan Roy v. Secretary of State for India* AIR 1923 PC 1. *D. Devis & Co. Ltd. v. Brunswick (Australia) Ltd.* and others AIR 1936 PC 114. If, on the other hand, the object of a creditor applying for winding up a debtor-company is to bring

pressure on it, then it is an abuse of legal process and by itself a sufficient to displace the prima facie position that a creditor is' entitled ex debito justitiae to a winding up order. See Nawabzada Captain Syed Murtaza Ali Khan v. Stressed Concrete Construction (Private) Ltd. It is wrong to unnecessarily resort to winding up proceedings because there is an implied threat in them to bring disaster to the company and because an odium is also attached to such proceedings."

As pointed out earlier, the respondent companies are commercially solvent, profitable, and going concerns, having substantial annual turnover and providing employment to thousands of workers. Moreover, since the alleged debt is found to be genuinely disputed and denied, the cited decisions are fully applicable to the present matters.

In support of his submissions to the effect that a winding up petition is not a legitimate method for enforcing payment of a debt, the learned Sr. Advocate relied upon in the case of *Kamadenu Enterprises Vs. Vivek Textile Mills Pvt. Ltd* reported in 55 Comp Cas 68 (Kar), wherein it was held that-

"3. In this view of the matter admittedly there is a genuine dispute as to the liability of the respondent-company to pay the aforementioned difference between what has been admitted and what has been claimed. It is not proper, in such a circumstance, to decide the same in this summary proceeding. Normally, the petitioner-firm should have approached a civil court the moment the amount claimed was denied by the respondent company. Instead of doing that the petitioner has approached this court under s. 433 of the Act.

4. This court, having jurisdiction under s. 433 of the Act, is not a court which is essentially meant for settling money disputes between parties. This jurisdiction of the court is to sub-serve the object of winding up the companies which have not paid their debts or which are unable to pay their debts. Therefore, the first pre-requisite must be establish prima facie a debt against the respondent. But when a claim or debt is disputed, the proper forum for that is a civil court."

Now, let us have a brief look to some of the decisions from Indian Jurisdiction to weigh how far the present winding up petitions are justified.

In *SICAL-CWT Distriparks Ltd. vs. Besser Concrete Systems Limited.*, (2003) 113 Com Cases 383 (Mad): MANU/TN/2601/2002, the High Court of Madras addressed a petition by SICAL-CWT Distriparks Ltd. seeking the winding up of Besser Concrete Systems Limited under Sections 433(e) and 433(c) of the Companies Act, 1956, due to alleged non-payment of debts guaranteed by Besser for Vibrant Investment and Properties Ltd. The court found a bona fide dispute regarding the genuineness of the guarantee agreement purportedly executed by Besser, noting discrepancies in the documents and the involvement of a common director in both companies. Consequently, the court dismissed the petition, directing the petitioner to resolve the matter in a civil court, as the winding-up proceedings were deemed inappropriate for settling the disputed debt.

In the case of *Rhein Chemie Rheinau GmbH v. Standard Oil Additive P. Ltd.*, (2005) 128 Com Cases 13: (2005) 63 SCL 434 (Karn), the court found that there was no *prima facie* evidence of a commercial transaction and accordingly the court held that that winding-up was not to be allowed merely on the basis of the assertion of a debt.

In *T. Srinivasa v. Flemming (India) Apotheke Pvt. Ltd. (1990) 68 Com Cases 506, 509 (Karn): MANU/KA/0089/1990*, the High Court of Karnataka addressed whether Flemming (India) Apotheke P. Ltd. owed Srinivasa (T.) Rs. 24,000 under a bailment agreement for electrical fittings and fixtures. The court found that the debt was bona fide disputed, and the evidence presented by Srinivasa and his mother was self-serving and lacked credibility. Citing the Supreme Court's decision in *Madhusudan Gordhandas and Co. v. Madhu Woollen Industries Pvt. Ltd. [1972] 42 Comp Cas 125* the court determined that the defense was in good faith and likely to succeed in a civil court. Consequently, the petition for winding up the company was rejected, leaving the matter to be resolved in a civil court.

In *S.M. Patel Iron Traders (P) Ltd. v. Sugam Construction (P) Ltd. (2013) 2 Comp LJ 301 (Guj): MANU/GJ/1271/2010*, the High Court of Gujarat dealt with the petition by S.M. Patel Iron Traders Private Limited seeking the winding up of Sugam Construction Private Limited for failing to pay a debt of Rs. 60,35,985. The court examined the defense raised by Sugam Construction, which included allegations of collusion and siphoning of funds by former directors, and found that there was a bona fide dispute regarding the debt. The court emphasized that winding up is a discretionary remedy and should not be used as a pressure tactic for debt recovery. Consequently, the petition was dismissed.

So, far the present winding up petitions are concerned serious dispute has been raised by the respondent-companies as to the nature of the transactions. The violation of Insurance Act, 2010, the Rules as well as the foundational document of the petitioner's company is manifest. The Regulatory Authority of the petitioner-company considered it as

misappropriation of fund in the guise of investment. The petitioner failed to establish the debtor-creditor jural relationship. The Insurance Act, 2010 which is the applicable law for the petitioner-company provides for specific provision for recovery of any sort of loss of the insurer from the directors, managers, officers involved in violation and contravention of the law while making investment and granting loan/advance. The respondent-companies not only raised serious dispute about the debt but in fact robustly denied the same and the respondent-companies are not only commercially solvent but also their turnover as an export-oriented industry are huge, creating employment opportunities for thousands of workers and having satisfactory banking business with number of commercial banks. Therefore, for all considerations without any hesitation it can be said that the instant company matters are misconceived and therefore, those are liable to be dismissed.

However, the petitioner-company is at liberty to pursue proper course of action as provided in sections 45, 130, 132, 134, 135 and 136 of the Insurance Act, 2010 if so advised and in pursuing such actions the question of limitation (if any) will not stand as a bar in granting relief to the petitioner-company.

Accordingly, all the company matters being No. 318 of 2020, 319 of 2020, 320 of 2020 and 321 of 2020 are hereby dismissed with the above observations.

Since all the company matters have been dismissed, any restraining order affecting any of the respondents shall stand vacated. However, if the petitioner company initiates any proceedings under sections 45, 130, 132, 134, 135, or 136 of the Insurance Act, 2010 against the former Board

members or any other persons responsible, it shall be at liberty to file an application seeking appropriate interlocutory orders.

The respondent-companies have expressed willingness to donate Tk. 4,00,000/- (Four Lac) which is to be given in the form of pay order or directly in the Bank Account. Out of the said amount, Tk. 2,00,000/-(Two lac) is to be paid in the account of “Chairman, Department of Law, University of Dhaka”. Tk. 50,000/- (Fifty thousand) is to be paid in favour of “Jamia Sowlul Ohi Kawmi Mohila Madrasha”, A/C No. 20504130201290008, Islami Bank PLC, Phulpur Branch, Mymensingh, Tk. 50,000/- (Fifty thousand) is to be paid in favour of “Atakara Jame Masjid” A/C No. 1513100005223, Sonali Bank Limited, Kaliya Para Branch, Chandpur, Tk. 50,000/-(Fifty thousand) is to be paid in favour of “Helenchabaria Munshibari Jame Masjid” A/C No. 20507770219885211, Islami Bank PLC, Agent Bank, Taltoli, Barguna and Tk. 50,000/-(Fifty thousand) is to be paid in favour of “Chorvabna Baitul Aman Ahley Hadith Masjid” A/C No. 18088, Krishi Bank PLC, Pathakata Branch, Nokla, Sherpur.

Let a copy of this Judgment and Order be sent to the concerned authorities at once.

(Sikder Mahmudur Razi, J:)