

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

Present:

Justice Md. Toufiq Inam.

Company Matter No. 442 of 2022.

In the Matter Of:

An application for winding up under section 241 read with sections 242 and 245 of the Companies Act, 1994.

-And-

In the matter of :

A.F.M. Shahidul Islam Mamun, son of M.A. Amin Mia, NID No.2370590636, Proprietor of Mars Treading Co. of 56/2, Dynasty Wahed Tower, 2nd Floor, Lake Circus (Kalabagan), West Panthapath, P.S. Kalabagan, Dhaka-1205.

----- Petitioner.

-Versus-

Sigma Fashions Ltd., represented by its Managing Director, RS, 6 Dhonied Zirabo, Ashulia, Savar, Dhaka-1341, Office at House # 24, Road # 18, Sector-3, Jashim Uddin Sharak, Uttara, Police Station-Uttara, Dhaka-1230 and others.

----- Respondents.

Mr. Md. Emdadul Haque Kazi, Advocate with
Mr. Md. Muktadir Rahman, Advocate.

----- For the Petitioner.

Mr. Tanoy Kumer Saha, Advocate with
Mr. Md. Ashikur Rahman, Advocate.

---- For the Respondent No.1.

Heard On: 06.08.2026, 25.08.2026;

Judgment delivered On: 30.08.2026.

Md. Toufiq Inam, J:

This is an application for winding up Respondent No.1, *Sigma Fashions Ltd.*, a private limited company incorporated under the Companies Act, 1994.

The petitioner, a sole proprietorship concern, claims to be a creditor of Respondent No.1-Sigma Fashions Ltd. (hereinafter referred to as “the debtor-company”), a private limited company incorporated under the Companies Act, 1994 and registered with Respondent No.4 under Certificate of Incorporation No. C-59169(1175)/05 dated 28.09.2005. The petitioner, authorised by a Special Power of Attorney dated 09.11.2022 to institute and conduct the present Company Matter, states that it is engaged in supplying fabrics to 100% export-oriented readymade garment manufacturers against specific orders, generally through back-to-back letters of credit. According to the petitioner, Respondent Nos.1 and 2 placed an order for 18,935 yards of various fabrics for a total value of US\$14,718.20, pursuant to which the petitioner issued Proforma Invoice No. SIGMA/MARS/02/2019 dated 02.11.2019. Thereafter, Documentary Credit No. 2364190400293 dated 18.12.2019 was opened in favour of the petitioner for the said amount. The petitioner claims that, upon receipt of the documentary credit through its advising bank, it procured and delivered the entire quantity of fabrics to Respondent No.2 under Delivery Challans Nos.056, 059, 060, 067 and 068 dated 01.01.2020, 13.01.2020, 16.01.2020, 13.02.2020 and 20.02.2020 respectively, and that the deliveries were duly acknowledged by an authorised representative of Respondent No.2.

The petitioner further states that, after completing delivery, it submitted the bills of exchange and other relevant documents to Respondent No.2 for acceptance and fixation of the maturity date for payment. It alleges that, despite receipt of the goods, Respondent Nos.2 and 3 failed and/or refused to accept the bills or communicate the maturity date, notwithstanding repeated requests and meetings. The petitioner states that it forwarded the relevant documents to the respondents by letters dated 05.07.2020 and 19.07.2020 and had earlier requested, by letter dated 18.06.2020, that the respondents take

necessary steps for acceptance and settlement of the transaction. Having allegedly received no satisfactory response, the petitioner approached Bangladesh Bank on 29.07.2020. It thereafter served demand notices dated 27.09.2020 and 10.10.2022 upon the respondents demanding payment of US\$14,718.20, but, according to the petitioner, the amount remained unpaid. On these assertions, the petitioner claims that the said sum constitutes a debt due and payable by Respondent No.1 and has approached this Court seeking appropriate relief under the Companies Act, 1994.

Mr. Md. Emdadul Haque Kazi, learned Advocate appearing for the petitioner, submits that the respondents' failure to accept the bills of exchange and fix the maturity date cannot defeat the petitioner's claim, particularly when the goods had been duly supplied under the back-to-back letter of credit. He submits that the petitioner is entitled to recover US\$14,718.20 from the debtor-company together with the applicable charges for delay. He further submits that the documents produced before the Court establish that the petitioner supplied the goods in accordance with the documentary credit and that the amount claimed remains unpaid. According to him, the debt is therefore due and payable and the debtor-company has failed to discharge the same. The petitioner has repeatedly demanded payment and has taken steps before the concerned bank and Bangladesh Bank for settlement of the claim, but without result. He contends that the continued failure of the debtor-company to pay the admitted and due amount demonstrates its inability to pay its debts within the meaning of section 241(v) of the Companies Act, 1994. He therefore submits that Respondent No.1 is liable to be wound up under section 241(v) read with section 245 of the Companies Act, 1994.

Mr. Tanoy Kumer Saha, learned Advocate appearing for Respondent No.1, opposes the application and submits, at the outset, that the statutory notice relied upon by the petitioner is incurably defective and incapable of sustaining a winding-up proceeding. He submits that the statutory notice dated 24.04.2022, annexed as Annexure-H-2, required payment within seven days, whereas section 242 of the Companies Act, 1994 requires the company to be allowed not less than twenty-one days to comply with the demand. According to him, the notice is therefore void ab initio. He further submits that the notice ambiguously described Trust Bank Ltd. as “Notice Receiver No.1” and the debtor-company as “Notice Receiver No.3”, thereby creating uncertainty as to the identity of the person against whom the alleged debt was claimed. He further contends that the notice did not sufficiently identify the nature, amount, date of accrual or contractual basis of the alleged debt and was, therefore, vague and legally incompetent. He submits that the notice itself principally referred to arbitration proceedings and the alleged inability of Trust Bank Ltd. to make payment, demonstrating that the petitioner's grievance was in substance directed against a third party rather than Respondent No.1.

It is next submitted that the present winding-up petition is an abuse of the process of the Court, as the alleged debt is genuinely and substantially disputed. According to learned Advocate, a winding-up proceeding under section 241 of the Companies Act cannot be employed as a means of enforcing a disputed commercial claim or as a substitute for an ordinary civil suit. In support of this proposition, he relies upon *Ataur Rahman (Md.) and another v. Edruc Limited*, 57 DLR (2005) 337; *Ambala Cold Storage (Pvt.) Ltd. v. Prime Insurance Co. Ltd.*, 56 DLR (2004) 422; and *Tamanna-E-Jahan v. The Paper Converting and Packaging Ltd. and others*, 7 BLC (2002) 443.

He submits that the dispute arises out of a commercial transaction involving, inter alia, the quality and conformity of the goods, compliance with the contractual terms, the timing of delivery and reconciliation of accounts. According to him, such issues require determination by a competent Civil Court or arbitral tribunal and cannot properly be adjudicated in a winding-up proceeding. He submits that there is a bona fide dispute not only as to the existence but also as to the quantum of the alleged debt, and that the debtor-company has counterclaims arising from alleged breaches of the contract by the petitioner. In particular, he alleges that the petitioner failed to comply with the agreed delivery schedule and made deliveries on 13.02.2020 and 20.02.2020, notwithstanding the alleged contractual deadline of 30.01.2020. According to him, such delayed delivery resulted in cancellation of the export order by the foreign buyer and caused loss to the debtor-company.

He further submits that the petitioner has suppressed material facts concerning settlement discussions between the parties, in which, according to the respondent, it was agreed that an amount of US\$10,000.00 would be waived and that US\$32,000.00 would be paid upon the lifting of the allegedly defective goods. On this basis, learned Advocate contends that the petitioner's claim is disputed on substantial and bona fide grounds and that the winding-up jurisdiction ought not to be invoked for determination or enforcement of such a disputed commercial claim.

Having heard the learned Advocates for the respective parties and upon perusal of the petition, the affidavit-in-opposition and the documents on record, the principal question that falls for determination is whether the petitioner has been able to establish that Respondent No.1 is unable to pay its debts within the meaning of

section 241(v) of the Companies Act, 1994, so as to warrant an order for winding up of the company.

Section 241(v) provides that a company may be wound up by the Court if it is unable to pay its debts. Section 242, in turn, specifies the circumstances in which a company shall be deemed to be unable to pay its debts. Where reliance is placed upon the statutory demand contemplated by section 242(1)(i), the petitioner must establish compliance with the statutory requirements, including service of a demand requiring payment of the debt and the company's neglect for the prescribed period to pay, secure or compound for the same to the reasonable satisfaction of the creditor.

In the present case, the petitioner claims US\$14,718.20 from Respondent No.1 on the basis of a commercial transaction for supply of fabrics under Documentary Credit No.2364190400293 dated 18.12.2019. The petitioner asserts that the goods were duly supplied in accordance with the terms of the documentary credit and that, despite delivery and receipt of the goods, the amount remains unpaid. It is significant, however, that the respondent-company does not simply deny the transaction or the receipt of the goods. Its case is that the petitioner's claim cannot be treated as an undisputed debt because there are substantial disputes concerning the petitioner's performance of the underlying contract and the amount, if any, ultimately payable.

The respondent specifically alleges that the petitioner failed to comply with the stipulated delivery schedule and that deliveries were made on 13.02.2020 and 20.02.2020, although the alleged contractual deadline was 30.01.2020. It is further alleged that the delayed delivery caused cancellation of the export order by the foreign buyer and thereby occasioned loss to the respondent-company. The respondent has also

raised allegations concerning the quality and conformity of the goods and has referred to subsequent settlement discussions and proposed adjustment or waiver of part of the claim.

These allegations cannot be characterised, at this stage, as merely sham or frivolous. They arise directly out of the very transaction upon which the petitioner bases its claim. Whether the deliveries were contractually compliant, whether the delay, if any, constituted a breach of the contract, whether the goods were defective or otherwise failed to conform to the agreed specifications, whether the respondent suffered any loss as a consequence, and whether any settlement or adjustment was subsequently agreed between the parties are all matters requiring determination upon evidence.

The fact that the respondent-company received the goods does not, by itself, conclude these issues. Receipt of goods may be relevant evidence in determining whether the petitioner performed its part of the transaction and whether consideration became payable. But where the respondent raises a bona fide dispute as to the contractual consequences of delayed delivery, the quality or conformity of the goods, the amount payable and the existence of counterclaims or adjustments, the ultimate liability cannot simply be treated as an undisputed debt for the purpose of the winding-up jurisdiction. The distinction is important. The jurisdiction of the Company Court in a winding-up proceeding is not intended to provide a summary mechanism for adjudicating a disputed commercial claim. A creditor cannot ordinarily invoke winding-up proceedings merely because the company has failed to pay an amount which the creditor asserts to be due, where the company has raised a genuine and substantial dispute concerning its liability.

The authorities relied upon by the respondent, including *Ataur Rahman (Md.) and another v. Edruc Limited*, 57 DLR (2005) 337; *Ambala Cold Storage (Pvt.) Ltd. v. Prime Insurance Co. Ltd.*, 56 DLR (2004) 422; and *Tamanna-E-Jahan v. The Paper Converting and Packaging Ltd. and others*, 7 BLC (2002) 443, support the settled principle that the winding-up jurisdiction should not be employed as a means of enforcing a debt which is bona fide and substantially disputed.

This court is also unable to overlook the nature of the petitioner's own case. The petitioner's claim is founded upon the supply of goods under a documentary credit. According to its own pleadings, some of the goods were delivered on 13.02.2020 and 20.02.2020. The respondent, however, relies upon the stipulated delivery schedule and contends that such deliveries were made after the agreed deadline. Thus, even assuming that the goods were ultimately received, the question whether the petitioner thereby became entitled to the full amount claimed, and whether the respondent was entitled to any contractual deduction, damages, set-off or other adjustment, remains to be determined.

This court's view, these are not matters which can properly be resolved in the present proceeding merely by examining whether the goods were received. The Court would necessarily have to embark upon an adjudication of the underlying commercial contract, the parties' respective obligations, the effect of delayed performance, the alleged defects, the alleged loss suffered by the respondent and the alleged settlement discussions. Such an exercise is beyond the proper scope of a winding-up proceeding.

There is, moreover, a further difficulty with the statutory notice relied upon by the petitioner. The respondent has challenged the notice dated 24.04.2022 on the ground that it required payment within seven days, whereas section 242 contemplates a period of three weeks for compliance with a demand of the nature contemplated therein. This court finds substance in this objection. Where a petitioner seeks to invoke the statutory deeming provision under section 242(1)(i), compliance with the statutory requirements is essential. The demand must afford the company the period prescribed by law to pay, secure or compound for the debt to the reasonable satisfaction of the creditor. If, as appears from the notice relied upon by the petitioner, Respondent No.1 was called upon to make payment within seven days, such demand cannot be treated as a demand satisfying the statutory requirement of section 242(1)(i). Consequently, the petitioner cannot rely upon the alleged failure to comply with that notice as constituting the statutory basis for deeming the respondent-company unable to pay its debts.

There is a further aspect of the notice which also requires consideration. The respondent has pointed out that Trust Bank Ltd. was described as “Notice Receiver No.1”, while Respondent No.1 was described as “Notice Receiver No.3”, and that the notice made substantial reference to the alleged inability of the bank to make payment. In a proceeding founded upon a statutory demand against a particular company, the demand must sufficiently identify the debt claimed from that company and the basis upon which it is alleged to be liable. The ambiguity in the notice, coupled with the failure to afford the statutory period, further weakens the petitioner's attempt to invoke the deeming provision under section 242.

This court must next consider whether, independently of the statutory demand, the materials before this court establish that Respondent No.1 is unable to pay its debts. The mere non-payment of a claimed amount does not invariably establish commercial inability to pay debts. Particularly where the underlying liability is itself bona fide disputed, non-payment cannot, without more, be treated as proof of insolvency or inability to pay within the meaning of section 241(v). In the present case, the petitioner has not placed before this court sufficient material to demonstrate that Respondent No.1 is commercially unable to meet its debts generally. Rather, the case is founded substantially upon the petitioner's claim for US\$14,718.20 arising from the particular transaction in question.

As already observed, the respondent has raised a substantial dispute concerning the petitioner's entitlement to the amount claimed. This court is not called upon in this proceeding, nor would it be appropriate for this court, to determine whether the respondent's defence will ultimately succeed. It is sufficient for present purposes that the dispute is bona fide and substantial and is not shown to be merely a device to avoid payment of an otherwise undisputed debt.

The winding-up jurisdiction cannot properly be converted into a forum for deciding such disputed contractual claims. If the petitioner establishes, in the appropriate forum, that the goods were supplied and accepted, that any delay did not affect its contractual entitlement, and that a definite sum remains due and payable after taking into account any legitimate defence, set-off or counterclaim, it may obtain an appropriate decree or award in accordance with law.

This Court considers it necessary to observe that the materials indicate that the goods were delivered to and received by the respondent-

company. Such receipt is relevant to the petitioner's underlying contractual claim, but does not, by itself, establish an unconditional liability for the entire amount claimed, particularly in view of the respondent's allegations of delayed delivery, non-conformity of goods, consequential loss and adjustment of the claim. Those matters concern contractual liability and may be settled amicably or, failing settlement, determined by the competent forum in accordance with the parties' agreed dispute-resolution mechanism. The fact that some goods may have been delivered after the stipulated date does not, by itself, extinguish the petitioner's claim; nor does receipt of the goods, by itself, establish an undisputed debt for the purpose of winding up.

Accordingly, this Court makes no finding on the ultimate merits of the petitioner's claim or the respondent-company's defence and counterclaim. The dismissal of this winding-up application shall not preclude the petitioner from pursuing any other remedy available in law for recovery of any amount that may ultimately be found due and payable.

In view of the foregoing, the petitioner has failed to establish a clear, undisputed and presently enforceable debt of US\$14,718.20 against Respondent No.1 so as to invoke the winding-up jurisdiction of this Court.

The statutory notice relied upon by the petitioner also does not satisfy the requirements of section 242(1)(i). More importantly, the respondent has raised a bona fide and substantial dispute arising from the underlying commercial transaction, including the alleged delayed delivery, conformity and quality of the goods, consequential loss and alleged adjustment or settlement.

The mere non-payment of the amount demanded, in the circumstances of the present case, cannot establish the statutory ground of inability to pay debts under section 241(v) of the Companies Act, 1994.

Accordingly, no sufficient ground has been made out for winding up Respondent No.1 under section 241(v) read with section 242 of the Companies Act, 1994.

The Company Matter is, accordingly, dismissed.

Office is directed to send back the RJSC record at once.

(Justice Md. Toufiq Inam)

Sayed.B.O.