IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(STATUTORY ORIGINAL JURISDICTION)

Present:

Mr. Justice Sikder Mahmudur Razi

Company Matter No. 07 of 2023

IN THE MATTER OF:

An application under Section 241 read with section 245 of the Companies Act, 1994.

-AND-

IN THE MATTER OF:

Channel VAS Holding Limited

…………. Petitioner.

- V E R S U S -

The Registrar of Joint Stock Companies and Firms and others.

................Respondents.

Mr. Muntasir Mahmud Rahman, Advocate

.......For the Petitioner.

None appears for the respondents.

Heard on: 27.10.2025

And

Judgment on: The 28th October, 2025

Sikder Mahmudur Razi, J:

This application under section 241 and section 245 of the Companies Act, 1994 for winding up of "Channel VAS Bangladesh Ltd" has been filed by Channel VAS Holdings Limited.

Facts essential for disposal of the instant matter are that the petitioner is the largest Shareholder of respondent no. 2-Company namely Channel VAS Bangladesh Ltd., for whose winding up the instant company matter has been filed. The petitioner is holding 65% of the shares of the respondent no.2-company. Respondent no. 3 Wintel Limited is the other shareholder of the Respondent No. 2- company holding 35% shares. The petitioner was desirous of promoting, marketing and selling the said services in Bangladesh by rendering the services overseas and invoicing from the UAE. For this purpose, the petitioner entered into a Cooperation Agreement with the Respondent No. 3 on 01.12.2015, whereby the Respondent No. 3 agreed and undertook to co-operate with the petitioner company for the promotion, marketing and facilitation of the sale of its services to the mobile network operators functioning in Bangladesh. In order to facilitate such arrangement, the petitioner company and the Respondent No.3 intended to form a joint venture entity. In alignment with the aforesaid arrangements between the parties, the petitioner company entered into a Joint Venture Agreement with the Respondent No. 3 on 01.12.2015. The said agreement provided for the provision of carrying out a number of projects of providing mobile value added services etc. The duration of the said agreement was fixed for a period of 1 year from the date of execution of the agreement. Subsequently after commencing the business, both the petitioner and the Respondent No. 3

felt that the proposed and projected business of providing the intended services would be much easier if the two companies together form a separate company in Bangladesh. Being agreed, on 19.01.2016 they executed a Shareholders' Agreement, whereby they agreed and decided for incorporating a limited company under the name and style of 'Channel VAS Bangladesh Limited' and in the said agreement they also set forth the modus operandi of running the new company. It was agreed that the petitioner and the Respondent No.3 would be allotted with 6,50,000 and 3,50,000 shares respectively which would constitute 65% and 35% shareholding of the proposed company respectively. Accordingly, the respondent no. 2-company was incorporated on 09.03.2016 under the Companies Act, 1994 having incorporation No. C-129465/2016. The said company was incorporated with the objectives of, inter alia, carrying on businesses of Information Technology and other Information Technology Enabled Services and to provide Mobile Value Added Services to Mobile Network Operators etc. Initially the Respondent No. 2- company had a satisfactory start of business in terms of initial market reach. Accordingly, just after some days of incorporation, it could enter into a Services Agreement for Emergency Balance Services dated 31.03.2016 with a renowned Telecom company in Bangladesh for providing Emergency balance services of IT enabled services for business process outsourcing. However, unfortunately, during the execution of the said agreement, the petitioner gradually found itself to be constantly at odds with the Respondent No.3. The non-cooperating attitude of the Respondent No. 3 was against the business interest of the company. The petitioner expressed its concerns vide a letter dated 19.07.2017 regarding the deterrent disposition of the accounts department, employed by the Respondent No. 3, in the Respondent No. 2 company. Even after the formal letter, the petitioner time and again raised the similar concerns regarding the lack of participation by the Respondent No. 3 in executing the projects in hand. However, the Respondent No.3 could not provide any satisfactory reply whatsoever. The Respondent No. 3 at one stage almost stopped cooperating with the petitioner company for the common interest of the business of the Respondent No. 2. The Respondent No.3, in violation of the Agreements preceding incorporation of the Respondent No. 2- company, refused to use any endeavour to promote the interest of the Respondent No. 2- company and to bring any opportunity for new customers. It was also known by the petitioner company that the Respondent No. 3- company also utilized the reputation of the petitioner company for its own purpose. Moreover, in its dealing with the existing customers, the Respondent No.3 turned out to be not as much effective as it was thought to be initially. As a result, the Respondent No.2 company's relationship with the existing customer became strained and thus the business reputation of the Respondent No. 2- company and the petitioner was also damaged. The petitioner company tried its best to resolve the situation amicably and requested the Respondent No. 3 not to do any act which is prejudicial to the business interest of the Respondent No. 2-company and also not to use the reputation of the petitioner company for acquiring business for the Respondent No. 3- company. But despite being requested by the petitioner many a times, the Respondent No. 3- company did not show a positive attitude towards the petitioner company. Thus the petitioner was under an impression that business relations with the Respondent No. 3- company may not be continued as had been wanted. In this backdrop, the petitioner company for an amicable parting for both the parties, sent a legal notice on 25.01.2019 for termination of the Cooperation invoking clause No. 8.3 of the Cooperation Agreement by providing the Respondent No.3 with requisite time of 30 (thirty) days to remedy its non-compliance but the Respondent No.3 refused to initiate any effective step to correct the breaches. Consequently the petitioner vide notice dated 27.03.2019, terminated the Cooperation Agreement dated 01.12.2015, the termination being effective from 25.02.2019. Due to the ineptitude of the Respondent No.3, the customers started deserting the Respondent No.2 company and notified the said company to terminate the Services Agreement on 01.07.2019. The Respondent No.2- company accepted the termination of the Services Agreement on 30.01.2020, after which the said company did not carry on any further business. In this backdrop the Respondent No. 2- company held an extra-ordinary general meeting on 20.02.2020, as well as a board meeting on the same date, discussing steps for members voluntary liquidation of the Respondent No. 2 company and thereafter appointed 'Masud Altaf & Co.' as the liquidator of the company vide a Liquidation Manager Agreement dated 22.02.2020. Again, due to the non-cooperation of the Respondent No. 3- company, the liquidation process could not be executed and appointed liquidator, i.e. Masud Altaf & Co.' withdrew themselves as liquidator on 11.08.2020. Following this event, the petitioner sent a formal letter of intent on 26.10.2020 to the Respondent No. 3 requesting the said respondent to consider viable steps in relation to the prospective liquidation of the Respondent No.2- company. But the Respondent No. 3 did not give any feedback. Thereafter, the petitioner served a legal notice on 11.04.2021 requesting the Respondent No. 3 to start completing all the acts as prescribed under the Shareholders' Agreement including taking all necessary steps to complete all the statutory filings and corporate backlogs of the Respondent No.2 company and to respond positively to the legal notice dated 11.04.2021 within fifteen (15) days of its receipt. The Respondent No. 3 duly received the legal notice and also made a reply on 13.04.2021. The company was also unable to hold required number of board meetings. Moreover, the nominated Director of the Respondent No.3 had been acting as the Managing Director of the company from the inception of the company on 09.03.2016 to till date making it more than 5 years, contravening the provision of the Company Law. But there has not been any formal process of reappointing him or regularize his continuation in the said position after the expiry of 5 years. The petitioner company raised all these issues to the Respondent No. 3 for an effective and amicable solution but unfortunately the Respondent No. 3 did not adhere to the Petitioner's request. That due to no response from the Respondent No. 3 the petitioner served another legal notice on 11.05.2021, again requesting cooperation and response to the notice dated 11.04.2021 to which the Respondent No. 3 responded on 19.05.2021 requesting the Petitioner to allow them some additional time to take actions for voluntarily winding up of the Respondent No.2- company. After a gap of several months, the Respondent No. 3 informed through email that they were willing to take steps to wind up the Respondent No.2- company voluntarily. Subsequently an Extra-ordinary General Meeting (EGM) was held on 11.10.2021, wherein at the presence of all the shareholders, it was unanimously resolved that the liquidation proceedings of respondent no. 2-company should be initiated and an individual from Grand Thornton Bangladesh would have been the Official Liquidator, while Masud Altaf & Co. would have been the auditor for the year 2019 and that Grand Thornton Bangladesh would also be responsible for facilitating the accounting services. As per the Shareholders' Agreement dated 19.01.2016 all compliances and filing of the Respondent No. 2- company ought to have been carried out by the Respondent No. 3- company. But Respondent No. 3 did not do the same. Respondent No. 3 even after agreeing to winding up of the Respondent No. 2- company, did not take any step whatsoever to comply with the statutory requirements and there was no strides in this regard. Due to this non-cooperation of the Respondent No. 3, the petitioner- company issued a final legal notice on 24.10.2022 to the Respondent No. 3. Though respondent No. 3 company responded to the Final Legal Notice on 14.11.2022 but did not specify or provide any definitive timeline within which they wish to revert with the pending documents required for continuing with the voluntary winding up process. From the inaction of respondent no. 3 it is manifested that the voluntary winding up of the respondent No.2 is impracticable and being stagnated. However, it is also clear that both the shareholders are willing not to hold on to the respondent No.2- company since the resolution of Extra-Ordinary General Meeting is a clear testimony of that. It has further been stated that the Company does not have any ongoing project. The company does not have any Bank loan or any unpaid credit from any third party. Hence, this application for winding up.

Mr. Muntasir Mahmud Rahman, learned advocate appearing on behalf of the petitioner submitted that as the structure of a private limited company is akin to that of a partnership and such a company should be wound up when there is ground for dissolution of partnership and the present state of the respondent No.2 company, is a fit case for application of this principle. The learned advocate next submitted that both the shareholders are willing not to hold on to the Respondent No.2- company and the resolution of Extra-Ordinary General Meeting is a clear testimony of that and since, the respondent no. 3 being vested with the power to do the needful is dragging the matter intentionally therefore, respondent no.-2 is now required to be wound up by an order of this court. He next submitted that the substratum of the Respondent No.2- company has lost since in the last 5 years of incorporation, the company could not progress to the minimum of the expectation and more so, the whole objective of incorporating the Joint Venture Company was for profit through collaborative effort between the petitioner and the Respondent No.3. However, over the years, the petitioner and the Respondent No.3 drifted apart due to the allegation and counter-allegation of lack of proper mutual support and affinity. He next submitted that at present the Respondent No.2 company has no on-going project or any Bank loan or any further unpaid credit and there is no possibility that the company may take hold on any project in near future and therefore, if the company is wound up then there is no possibility of any prejudice or harm to any third party or any creditor, as can be evident from the Auditor's Report. The learned advocate submitted that since the company could not hold any Annual

General Meeting (AGM), the Auditors Report though are final but could not be approved.

Pursuant to this Court's order of admission dated 16.01.2023 the usual notices were published in two National Newspapers, the petitioner filed affidavit in compliance in time, and further, the petitioner served usual notices to all the respondents as per direction of this Hon'ble Court vide registered post.

Despite publication of the presentation of this application before this Hon'ble court in the two national newspapers and serving notices upon the respondents no one appears to oppose this application. Therefore, the facts narrated in the substantive petition may be presumed as correct.

I have heard the learned advocates for the petitioners, perused the petitions as well as other materials on record.

It appears that the petitioners and the respondent no. 3 are the 100% holder of shares of the respondent no. 2 company. The birth of the respondent no. 2 company originated from Co-operation agreement between the petitioner and respondent no. 3. However, due to breaches of the agreement the petitioner issued notice of termination of the agreement to the respondent no. 3 on 25.01.2019 (Annexure-G) and on 27.03.2019 (Annexure-G-1). Subsequently, the Board of Directors of the respondent no. 2-company by a resolution dated 20.02.2020 decided to liquidate the company (Annexure-H) and thereafter the shareholders by an Extra-ordinary General Meeting (EGM) dated 07.04.2020 (Annexure- H-1) resolved to liquidate the respondent no. 2- company. Pursuant to the said decision liquidator was also appointed. However, due to non-cooperation of respondent no.-3 the liquidation process became stagnant. The petitioners served several legal notices to the respondent no. 3 for taking effective steps since the said respondent was relegated with the power to do the needful in this regard and it was further mentioned that in default steps would be taken for winding up under the supervision of the court. Following the non-cooperation of the respondent no. 3 in spite of his repeated assurance the petitioner has filed the instant company matter. It further appears from the record that the company has lost its substratum. The settled principle of law in this regard is that loss of substratum is often a significant factor that can lead a court to grant an order for the winding up of the company on the grounds that it is "just and equitable." As it appears that the entire original purpose of the respondent no. 2 has failed or has become impossible to achieve, it is now considered just and fair to this court to dissolve the company.

Accordingly, I find merit in this winding up petition. Hence the same is allowed. The respondent no. 2-company namely “Channel VAS Bangladesh Limited” having incorporation number C-129465/2016 is hereby wound up from the date of filing of this winding up petition.

Mr. Abuzer Ghaffari FCA, Executive Director, Grant Thorton Consulting Bangladesh Limited, House No. 14 (Level-4), Road No. 16A, Gulshan-1, Dhaka (Mobile: 01301328281) and (email: a.ghaffari@bd.gt.com) is hereby appointed as Official Liquidator. The official liquidator is hereby directed to comply section 255(1) of the Act, 1994 read with Rules 76 of the Companies Rules, 2009. The respondent No. 2 company shall pay Tk. 2,00,000/-(Two lac) as fees to the liquidator and shall bear all the costs incidental to the liquidation process. The Liquidator will open a Bank Account to do the liquidation process in any Commercial Bank.

Official Liquidator is hereby directed to submit his report within 3(three) months from the date of receipt of the order.

Let a copy of this Judgment and Order be sent to the Registrar of Joint Stock Companies and Firms, Dhaka, official liquidator as well as to the company in liquidation for information and necessary action.

(Sikder Mahmudur Razi, J:)