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

Present:
Mr. Justice Sikder Mahmudur Razi

Company Matter No. 54 of 2023
IN THE MATTER OF:
An application under Section 241 read with sections 242 and 245 of the Companies Act, 1994.

-AND-

IN THE MATTER OF:
M & H Telecom Limited
…………. Petitioner.

- V E R S U S -

Telex Limited and others.
................Respondents.

Mr. Khokon Pervez, Advocate
.......For the Petitioner.

Mr. Mirza Sultan-Alraza, Advocate with
Mr. Abdul Basit, Advocate with
Mr. Md. Raton Ali, Advocate
.......For the respondent No. 3.

Heard on: 22.10.2025
And
Judgment on: The 23rd October, 2025

Sikder Mahmudur Razi, J:

This is an application under section 241 read with sections 242 and 245 of the Companies Act, 1994 for winding up of the respondent No. 1 company. The petitioner before this court is **M & H Telecom Ltd.** represented by its Managing Director.

Tersely the facts gathered from the substantive petition are as follows:

The petitioner is a licensed Interconnection Exchange-(ICX) operator in Bangladesh and obtained the ICX license from Bangladesh Telecommunication Regulatory Commission (BTRC). As part of its business the petitioner-company as an ICX operator was required to connect with International Gate Way (IGW) operators through interconnection agreement. Accordingly, the petitioner company in its usual course of business entered into an agreement with the respondent No. 1 company on 08.08.2012. The scope of the agreement relates to the interconnection between the petitioner as an ICX operator and the respondent No. 1 company as an IGW operator for passing the incoming outgoing international calls through their network. Accordingly, the petitioner was carrying out its business with the respondent No. 1 since August, 2012. It was agreed between the companies that the respondent No. 1 would pay all the dues as per the invoices sent over by the petitioner-company within the stipulated period of time. Accordingly, the petitioner was sending its invoices periodically every month to the respondent No. 1. From October, 2012 to July, 2013 the petitioner-company sent to the respondent No. 1 total 10 (ten) invoices. Out of the invoice amount of Tk.4,31,44,649/- only for the month of October, 2012 the respondent no. 1 only paid an amount of Tk.1,00,00,000/- only. The rest of the amount for the month of October, 2012 as well as the invoice amount of other months remain unpaid till date. The dues of the respondent No. 1 not only crossed the stipulated time limit as per the agreement but also attained its maximum limit. The respondent No. 1 never raised any dispute regarding the amount of the dues rather always accepted its' liability. The total outstanding amount as on the date of filing of the winding up petition stood at Tk.5,70,35,287/- (Taka five crore seventy lac thirty-five thousand two hundred and eighty-seven) only and an additional interest over the outstanding amount as per Clause-16 of the agreement. As the petitioner company is under an obligation to pay BTRC a greater portion of the revenue and the petitioner is under an enormous pressure by the BTRC to pay the revenue, but since the petitioner was not getting his payment from the respondent No. 1, therefore, it was not possible for the petitioner to pay Bangladesh Telecommunication Regulatory Commission (BTRC). To recover its dues the petitioner continuously contacted with the respondent No. 1. The petitioner vides its letters dated 15.01.2013, 18.04.2013, 09.05.2013, 09.06.2013, 01.08.2013, 20.08.2013, 11.09.2013 requested the respondent No. 1 to make the payment but without any avail. The petitioner also vides its letter dated 20.05.2014, 16.10.2014, 22.10.2014, 26.10.2014, 28.10.2014, 09.11.2014 requested respondent no. 3 to intervene into the matter and to take steps for recovery of that amount. But that also did not bring any positive outcome. Finding no other alternative the petitioner-company sent to the respondent No. 1-company a winding up notice on 05.01.2023 under section 242 of the Companies Act, 1994. But unfortunately, even after lapse of a reasonable time the petitioner company received no reply from the respondent No. 1 company. Against this backdrop the petitioner has filed the instant company matter praying for winding up of the respondent no. 1- Company.

Mr. Khokon Pervez, learned Advocate appearing on behalf of the petitioner -company submits that as per agreement the respondent no. 1-company was under an obligation to pay the petitioner-company as per the invoices sent by the petitioner-company. The amount covered by those invoices was never disputed by the respondent no.1- company rather very much admitted by the respondent No. 1 time and again. But from the conduct of the respondent No. 1, it appears that they not only neglected to clear their dues but also unable to pay the same to the petitioner and therefore, the respondent No. 1 company should be wound up for ends of justice.

No one appears on behalf of the respondent no.1-Company.

On the other hand, Mr. Mirza Sultan-Alraza and Md. Raton Ali learned Advocates appearing on behalf of the respondent No.3 *i.e.* Bangladesh Telecommunication Regulatory Commission (BTRC) submits that they have no objection if this winding up petition is allowed as because it will ultimately facilitate them to recover its huge outstanding dues from respondent no. 1 company which stands Tk. 1,131,297,548/-. The learned advocate further submits that as per Sections 24(3) and 26 of the Bangladesh Telecommunications Act, 2001 all charges, fees, administrative fines and other dues receivable by the Commission may be realized by it as Public Demand and as per section 325(1)(a) of the

Companies Act, 1994 the Government or a local authority shall get priority in respect of payment in a winding up proceeding. The learned advocate concludes by submitting that to evade the payment management of some of the companies has been changed without prior permission from BTRC and without such prior approval any change in the Board will have no effect in the eye of law.

I have heard the learned Advocates for the petitioner as well as other respondent-claimant. I have also perused the substantive application as well as papers and documents annexed therewith.

It appears from the agreement dated 08.08.2012 which was entered into between the petitioner and the respondent No. 1 company that as per Clause-14.1 and 14.2 of the said agreement the petitioner-company shall submit their invoices for incoming and all calls to the respondent No. 1 company, based on their CDR record on monthly basis and payments shall made as per BTRC approved flow chart, as shown in Annexure-2 of the said agreement. In Clause-14.4 of the said agreement, it has further been provided that if there is no dispute, the total invoiced amount shall be paid by the respondent No. 1 company within next 5 weeks after 3 weeks of the following month. In case of any dispute, the undisputed amount shall also be paid within the same period of 5 weeks. The disputed amount, on the other hand, shall be paid within 1 week after resolution of the dispute which is to be made within 4 weeks. From Annexure-H series of the instant petition, it appears that the petitioner company issued several reminders and legal notice to the respondent no. 1-company for making payment of the overdue amount but ultimately, they failed to pay. It further appears that, the overdue amount was never objected and disputed by the respondent No. 1- company.

Now, let us examine the legal position in this respect. In the case of National Bank of Pakistan Vs. Punjab National Silk Mills Limited reported in PLD 1969 Lahore 1994 the court held that -

"It is also well settled by authorities that a winding up petition is a legitimate method of enforcing payment of a just debt. A creditor who is unable to obtain the payment of his debt has the right ex-debito justitiae to a winding up order".

The aforesaid principle was cited with approval in the case of BSRS Vs. M/s. Ashraf Jute Mills, reported in 10 BLD 1990(HCD) 344. In the case of Thai Airways International Vs. Air Route Services Limited, reported in 48 DLR (1996) 412 the court held that the company was a defaulter and was unable to pay its debt and allowed the application on the ground that it is just and proper that the respondent-company be wound up.

In Ataur Rahman (Md) and another-Vs-Edruc Limited, reported in 57 DLR page 337 the term 'debt' was defined in several paragraphs in reference to different authorities. I would like to refer in particular paragraph no. 25 of the said judgment which runs as follows-

"I have already quoted the relevant paragraph from the Halsbury's Laws of England, Vol. 6 and also referred to certain English

decisions wherein the expression of 'debt' has been defined and explained. From a review of all these decisions there is no room to hold that an uncertain sum of money does amount to debt within the meaning of sub-section (v) of section 241 of the Act. There is no difference of opinion in any jurisdiction as to the connotation of the expression 'debt'. Therefore, it appears to me that 'debt' within the meaning of sub section (v) of section 241 of the Act must be a definite amount payable in presenti or in futuro……"

In the same cited judgment the High Court Division further relied upon a Judgment passed by the Gujarat High Court of Indian jurisdiction which was reported in 58 Company Cases 156. In the said judgment it was observed that sustainability of a petition for the winding up of a company on the ground that it is unable to pay its debts does not depend upon on whether the company is able to pay the debt of the person who moves the petition; the company must be unable to pay its debts, which means that inability is not to pay the debt of the person moving for winding up, but the debt as a whole due by the company.

In the instant case in hand since the amount demanded by the petitioner as well as other claimants as its legitimate dues are ascertained amount and since the said amount has not been disputed rather admitted by the respondent no. 1- company as well as since from the conduct of the respondent no.1 company it is evident that they not only neglected to repay their liabilities but also commercially insolvent to clear the dues of the petitioner as well as other claimants, therefore, the petitioner has rightly come up before this court with the instant winding up petition which deserves to be allowed.

Accordingly, the instant application under section 241 read with sections 242 and 245 of the Companies Act, 1994 is allowed. It is pertinent to mention that a winding up order in respect of respondent No.-1 company, namely Telex Ltd., having incorporation number C-96952/11 has already been passed in other Company Matters. Therefore, the directions relevant for the present order are as follows:

A. The petitioner shall send to the Registrar of Joint Stock Companies a notice of this Order, in Form No. 18, as required by Section 251(1) of the Companies Act read with Rule 75 of the Companies Rules.

B. Mr. Akhtar Farhad Zaman, Advocate, Supreme Court of Bangladesh, Room No. 105(Ground Floor) Annex Extension Building, Supreme Court Bar Association, Shahbag, Dhaka-1000 (Mobile: 01711362503), is hereby appointed as 'the Official Liquidator' of Telex Ltd. and others (in liquidation), as per Section 255(1) of the Companies Act, 1994 read with Rule 76 of the Companies Rules, 2009. The petitioner as well as other claimants shall pay a consolidated fee of BDT: 1,00,000/-(One lac) only to the Official Liquidator, out of which 25% shall be paid within four weeks from the date of receipt of this order. The rest payment shall be made before he files the application for dissolution of this wound-up company under section 271 of the Companies Act. The professional fee as well as other expenditure of the liquidator will be borne by the petitioner as well as other respondents-claimants in equal portion. The said amount will be treated as credit given by the petitioner and others to the company in liquidation.

C. The Official Liquidator is hereby directed-

i. To advertise, as required by Rules 76 and 133, the order of liquidation, to submit claims giving 14 days' time, with adequate proof (vide Rules 133 to 147), from the claimants, if any, in two national daily newspapers namely "The daily Observer and "The daily Somokal".

ii. To open a bank account with Sonali Bank PLC, Supreme Court Branch, in the name of the "Official Liquidator of Telex Ltd. (in liquidation)," as required by Rule 103. If the Bank Account is already opened pursuant to order passed by this court in any other Company Matter, then there is no need to open any further account. The Bank Account shall be operated under the sole signature of the Official Liquidator. The petitioner-company and other claimants shall deposit an amount of Tk. 50,000/-(Fifty Thousand) in the said account within 15 days for meeting up initial legitimate expenses by the liquidator in doing the needful.

iii. To maintain all books, records and accounts as required under the provisions of the Companies Act, 1994 and the Rule 110 of the Companies Rules, 2009 showing all assets and liabilities of the company.

iv. To submit quarterly reports of the accounts of the company to the Court, till its dissolution or otherwise ordered by this Court.

v. To exercise powers and discretion, vested upon him under Section 262 of the Companies Act with due regard for the interest of the company, its creditors and contributories and subject to the control of the Court.

vi. To prepare and to furnish before this Court a list of all Contributories (subject to this Court's right to rectify the same, if so, required according to law).

vii. To submit his statement/report, further and/or supplementary statement/report to this Court, as required by Section 259 of the Act, read with Rules 119 and 120, as soon as practicable upon receiving the statement of affairs to be filed under Section 258 (since winding up order is made) of the companies Act.

D. The Official Liquidator is directed to take into custody all movable and immovable properties of the company, including the title deeds and to dispose of the same, as permitted by Section 262 of the Companies Act, with prior sanction of this Court (vide Rules 168 to 170) and to use the sale proceeds, if any, towards settling the liabilities of the company, if any, in the manner prescribed by Rules 148 to 162 and regard being had to the provisions of Section 325 concerning preferential payment as well as to show separately the list of secured and unsecured creditors, if any, giving their names, particulars and the amount of their claim, in two columns, one showing the principal and the last column showing the total sum claimed. He shall, to that end, submit an application accordingly for disbursement of the assets, liabilities cash, if any, at hand.

E. The company or its Director/Managing Director/Chairman is directed to submit, to the Official Liquidator, a verified statements of affairs in duplicate, signed by the Chairman/Director/ Managing Director to the aforesaid official liquidator, as required under the provisions of Section 258 of the Act, within 21 (twenty-one) days from the date of drawing up of this winding up Order or from the date of sending this record to the concerned administrative office of the Company Court, whichever occurs later.

F. The company or its Director/Managing Director/Chairman shall furnish to the Official Liquidator the name of the bankers of the company, giving account numbers, enclosing statement of accounts, name of the Signatories and also enclosing authenticated copies of the Resolution regarding operation of the bank accounts, if any, within the time limit prescribed in the preceding paragraph.

G. The persons named in preceding paragraph no. G and/or the official-in charge of the estate, if any, of the company shall give particulars of and handover all title deeds of immovable properties of the company, if any, to the official liquidator within the same time-limit prescribed in the preceding paragraph.

H. The Chairman/Managing Director or any other Director of the company (in liquidation) shall submit an affidavit of compliance as regards directions Nos. E to G within one week thereafter.

I. The Company, the members of the Board, all share-holders/contributories are hereby restrained to operate bank accounts, to remove or transfer or encumber the immovable properties of the company including, but not limited to, the vehicles, equipment, machineries etc., if any, of the company, and not to remove any documents without leave of the Court.

J. The Official Liquidator shall follow and comply with all such provisions laid down in the Companies Act and the Rules, as are applicable in the process of winding up and he shall be solely responsible for the default, if any, committed in the process of winding up. He shall not withdraw any amount more than that may be required to meet the lawful and reasonable costs and expenses and/or to settle the lawful claims and/or to distribute the surplus assets amongst the contributories, if any, as per law and with prior sanction of the Court. Besides, he shall bring, in writing, to the knowledge of the Court all facts that are material to ensure compliance of the provisions of law and to protect interest of the creditors, claimants, contributories, if any, and the company, as the case may be.

K. The Liquidator is directed to file a report within 30 (thirty) days thereafter and also to inform the Court if any further enquiry in the matter of liability and assets of the company is required.

L. If the Registrar of Joint Stock Companies receives the winding up Order form the company/any of its directors within time, he should notify in the Official Gazette that an order has been recorded in his register-book giving effect to winding up of the company.

Let a copy of this Judgment and Order be sent to the official liquidator as well as to the company in liquidation for information and necessary action.

(Sikder Mahmudur Razi, J:)