

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

Present:

Mr. Justice Sikder Mahmudur Razi

Company Matter No. 106 of 2023

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF:

Khondkar Rifat Hossain.

..... Petitioner.

- V E R S U S -

Jahan Ara Clinic Limited and others.

..... Respondents.

Mr. Md. Shazzad Ali Chowdhury, Advocate with
Mr. Parvez Hossain, Advocate

..... For the petitioner.

Mr. Masud Rana Mohammad Hafiz, Advocate with
Mr. Md. Sumon Miah, Advocate

... For the respondent Nos. 2 & 3.

Mr. Kazi Akhtar Hosain, Advocate with

Mr. Tasbir Sharif, Advocate

Mr. Shahrukh Kabir Bhuiya, Advocate

Mr. Zahangir Alam, Advocate

..... For the Respondent No. 6.

Heard on: 28.10.2025

And

Judgment on: The 29th October, 2025

Sikder Mahmudur Razi, J:

This application under section 241 read with section 245 of the
Companies Act, 1994 for winding up of “Jahan Ara Clinic Limited” has

been filed by one of the directors of the company namely Khondkar Rifat Hossain.

Facts essential for disposal of the instant matter are that respondent no. 1 company was incorporated in the year 1993. At present the petitioner and the respondent no. 2 and 3 owns the 100% share of the company. The respondent no. 2 is the Managing Director of the company. On the other hand the petitioner and respondent no. 3 are directors of the respondent No. 1- company. That mother of the petitioner and respondent no. 2 namely Mrs. Hasne Ara Begum was the architect for inception of the respondent company and the whole affairs of the respondent company was dealt by her. During that period, the respondent Company earned a huge reputation and name in the health care medical services sector of the country and has been a successful enterprise by all practical means. Since incorporation, the respondent Company has been running its nursing home and clinical business successfully and the management of the respondent company was smooth and functional. However, on 22.7.2016 the mother of the petitioner Mrs. Hasne Ara Begum died leaving the petitioner and the respondent no.2 as her only legal heirs who inherited the total holding of 800 shares of Hasne Ara Begum and accordingly, 400 shares out of the said 800 shares were transmitted to the petitioner and 400 shares were transmitted to the respondent no.2. 8. Since inception, the respondent company has been running its business on the premises situated at Plot

no.2, Road no. 1, Sector no.1, Uttara, Dhaka, owned by the predecessor of the petitioner. Subsequently, Mrs. Hasne Ara Begum during her lifetime became the leasehold owner of the adjacent Plot being no.4, Road no.1, Sector no.1, Uttara, by way of purchase with the money she earned from the business of the respondent Company. In addition, she made an application to RAJUK for conversion of both plots to commercial use from residential. Later on, as required by RAJUK, the petitioner from his own source deposited all required fees and other charges and got both the plots converted as commercial for the purpose of running the business of the respondent Company smoothly. The names of the petitioner and the respondent no.2 have already been mutated jointly as lessee against the plots. All costs and expenses for such mutation and conversion were borne by the petitioner from his personal income. After the death of Hasne Ara Begum, the petitioner and the respondent No. 2 got involved in disputes and disagreements and in order to dissolve such disputes, the petitioner came to Bangladesh and tried his best to support the respondent no.2 in running the business of the respondent company in a profitable and lawful manner. The petitioner verbally informed the respondent no.2 about the mismanagement and unlawful manner of running the respondent company. With a positive intention, the petitioner agreed to appoint the respondent no.2 as the Managing Director of the respondent Company in order to enable him to run the business of the Company. The petitioner

even agreed to induct the respondent no.3 as new Director after allotment of 3,000 new shares to her on 30.03.2017 out of the fresh allotment of 29,000 shares, i.e. 14,500 shares to the petitioner, 11,500 shares to the respondent no. 2 and 3,000 shares to the respondent no. 3. Thus, the petitioner became the shareholder of 15,000 shares of Tk. 100 each being 50% shares in the capital of the respondent Company. Despite out and out support from the petitioner, the respondents no.2 failed to maintain the good reputation that the respondent company earned during his mother's tenure and informed the petitioner that even after operating for last 5 (five) years, the respondent company could not reach the break-even point. The understanding behind appointing the respondent no.2 as Managing Director and the Respondent no.3 as the Director of the respondent Company was to bring the affairs of the Company in a profitable manner. However, till date there has not been any achievement, rather, the respondent Company has earned an ill reputation in running clinic business in the local area of Uttara, Dhaka, In addition, the respondent no. 2 has illegally usurped and continued in the office of the Managing Director in violation of section 110 of the Companies Act 1994. That after acquisition of shares in the capital of the respondent company by the respondent no.3, who is the wife of the respondent no.2, it gradually became clear to the petitioner that both the respondent nos. 2 & 3 had been running the affairs of the Company in complete disregard to the laws

and regulations in force in the country. It transpired to the petitioner that the said respondents misappropriated huge amount of monies from the accounts of the Company without approval of the Board of Directors and till date they have misappropriated several millions of taka from the accounts of the respondent Company. No meeting of the Board of Directors or of the shareholders of the respondent Company has been held since long time and even if any was held, the same was irregularly held without complying relevant laws as no notice was ever served upon the petitioner. Till date the petitioner received no notice of any Annual General Meeting and thus it transpires that the respondent Company has not been holding any Annual General Meeting and the respondent Company has not filed any Schedule-X to the RJSC after 2016. Despite repeated requests and reminders, the petitioner was not provided with any copy of the audited accounts of the respondent Company and it has now become clear to the petitioner that the accounts of the respondent Company have not been audited. The petitioner has been denied access to the accounts of the respondent Company and as a result the petitioner is in complete darkness about the actual financial condition of the respondent company. Respondent nos. 2 & 3 have availed huge bank loans from different banks without knowledge of the petitioner. The petitioner has been kept in complete darkness about the purpose of obtaining the said bank loans. Documents collected by the petitioner revealed that despite

being unable to pay its existing repayment instalment, the respondent Company is availing loans/credit facilities one after another. The petitioner has further come to know that the respondent nos. 2 & 3 have also mortgaged various properties belonging to the petitioner to secure the aforesaid loan availed by the respondent Company without the knowledge and consent of the petitioner. The petitioner has reasons to believe that the respondent company has availed loans from various banks, financial institutions and private persons and thus the respondent company is now heavily indebted with various creditors. As such, any mismanagement and prejudicial activities of the respondent nos. 2 & 3 will place the respondent Company in a position where the total assets of the respondent Company would be insufficient to meet the total liability of the respondent Company. Further, it appears that the Sanction Letters contain the condition to the effect that all the directors of the respondent Company would execute personal guarantee, however, although the petitioner never executed any personal guarantee in favour of any lender bank and the petitioner has been out of the country for long time, it is unknown and unclear to the petitioner as to how the respondent no.2 complied with the aforesaid condition of the Sanction Letter. The manner in which the affairs of the respondent Company are being conducted or managed by the respondent nos. 2 & 3 are highly oppressive and prejudicial to the interest of the petitioner because of the aforesaid activities of the respondent nos.

2 and 3, the petitioner has lost all faith and belief in them and there is a complete deadlock about managing the affairs of the respondent Company in compliance with the provisions of the Companies Act 1994 and in the prevailing situation no general meeting can be held because the petitioner holds 50% shares and the petitioner is no longer willing to continue the business affairs of the respondent Company. Hence the instant company matter.

Mr. Mohammad Shazzad Ali Chowdhury, learned advocate appearing on behalf of the petitioner submitted that the manner in which the affairs of the respondent Company are being conducted or managed by the respondent nos. 2 & 3 are highly oppressive and prejudicial to the interest of the petitioner and the respondent Company. The petitioner has invested a huge amount of money in the respondent Company and he cannot let his investment be drowned for negligent and irresponsible acts of other shareholders. He next submitted that the respondents have been running and managing the affairs of the respondent Company arbitrarily at their whims, keeping the petitioner in complete darkness about the affairs of the respondent Company. He further submitted that although the petitioner holds 50% shares in the capital of the respondent Company, he cannot remove the respondent nos. 2 and 3 as Director/Managing Director of the respondent Company, because the petitioner does not have the required majority, i.e. 75% shareholding to remove the respondent nos. 2

and 3 as Director, nor the petitioner has majority in the Board. He further submitted that this petitioner holds 50% shares and the respondent nos. 2-3 jointly hold 50% shares in the capital of the respondent Company and as such, there is a complete deadlock in the management of the respondent Company and the petitioner is not interested in the running of the business of the respondent Company. He lastly submitted that the respondent company should be wound up on just and equitable ground.

On the other hand Mr. Masud Rana Mohammad Hafiz and Mr. Sumon Miah learned advocates appear before the court on behalf the respondent no. 2 and 3 on the date of pronouncement of judgment by filing a vokatnama and submits that the respondent- company is a 150 bed (approximately) hospital equipped with all the modern medical diagnostic equipments and over the years it has become a well reputed health service provider and around two hundred employees are working in the different sections of the hospital. He further submitted that the respondent- company is not commercially insolvent and it is committed to repay the credit facilities obtained from different banks. He concluded by submitting that no occasion has arisen for winding up of the company.

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

At the very beginning it is pertinent to mention that power to pass an order for winding up is a discretionary power of the court to be

exercised in an appropriate case. Now, let us examine whether the fact presented by the petitioner has made out any case for exercise of that discretion.

(i) From the statements of the petitioner made in the substantive petition it appears that the respondent no. 1-company is a running concern and it is operating its business profitably for a long period of time. However, even if assuming that the company defaulted in repaying some instalments of bank loan cannot be a ground of winding up at the instance of a director of the company. Had it been a creditor's winding up petition then it would have deserved some considerations. Further a company will not be wound up merely because it is unable to pay its debts so long as it can be revived or resurrected by a scheme or an arrangement or when it has still prospects of coming back to life. As ready reference reliance can be placed in the case of *Rishi Enterprise, In Re (1992) 73 Com Cases 271 (Guj)*, *New Swadeshi Mills of Ahmedabad Ltd vs Dye-Chem Corpn (1986) 59 Company Cases 402 (Guj-DB)*.

The admitted position of the instant case is that a large number of employees are working in the company. It is not the case of the petitioner that the company is unable to pay the salary of its employees. Therefore, the interest of a large number of employees could not be obliterated by an order of winding up only at the wish of a director.

(ii) Another important aspect of the case is that the instant company matter has been filed by the petitioner through his constituent attorney and the said power of attorney has been marked as Annexure- A. On examination of the said power it appears that no power was given to file any winding up petition in respect of the respondent company rather the power was given to file or contest partition suit which the petitioner and respondent no. 2 inherited from their late father. The relevant portion of the recital of the power of attorney runs as follows:

পরম করুণাময় মহান আল্লাহর তায়ালার নামে অত্র বিশেষ আম-মোক্তার নামা দলিলের নিম্নরূপ বিষয়বস্তু বর্ণনা করিতেছি। আম-মোক্তার গ্রহীতা আমরা আম-মোক্তার দলিলদাতার বন্ধু হন বটে। আমরা অত্র “বিশেষ আম-মোক্তারনামা” আম-মোক্তার দাতা ও গ্রহীতা অত্র “বিশেষ আম-মোক্তারনামা” সম্পাদন করতে উপযুক্ত বটে। আম-মোক্তার দাতা সুইজারল্যান্ড প্রবাসে বসবাসরত থাকার কারণে মামলা মোকদ্দমা পরিচালনা করার ক্ষেত্রে সুষ্ঠুভাবে তদারকি করতে পারছি না বিধায় আমার বন্ধু মনজুরুল হক ভুঁইয়া, পিতা-ফজলুল হক ভুঁইয়া, মাতা-সুখেদা খাতুন ঠিকানা: বাড়ি নং: ৭০/ই, গ্রাম/রাস্তা-লেক সার্কাস, কলাবাগান, ডাকঘর: নিউমার্কেট-১২০৫, ধানমন্ডি, ঢাকা, পেশা-ব্যবসা, ধর্ম-ইসলাম, জাতীয়তা-বাংলাদেশী (জন্মসূত্রে), জাতীয় পরিচয়পত্র নং-৬৪২৩৯৮১৮৫ কে বিজ্ঞ জেলা জজ আদালত, ঢাকাতে আমার পিতা মৃত খোন্দকার মোয়াজ্জম হোসেন এর রেখে যাওয়া স্থায়ী ও অস্থায়ী সম্পত্তি যেমন-উত্তরা বাড়ি, সাভারে বাড়ি তার ওয়ারিশ আমি খোন্দকার রিফাত হোসেন এবং আমার ছোট ভাই খোন্দকার রাহাত হোসেন এর সহিত বাটোয়ার মোকদ্দমা দায়ের একান্ত আবশ্যক হওয়ায় এ সংক্রান্তে বিজ্ঞ আদালতে আমাদের পক্ষে মোকদ্দমা

পরিচালনার জন্য আম-মোক্তার গ্রহীতা নিম্নলিখিত শর্তাবলী সাপেক্ষে আম-মোক্তার

নিযুক্ত করলাম :-

In several decisions of Indian jurisdictions, it has been held that where the powers conferred on the constituted attorney do not include authority to file a winding up petition, he has no authority to initiate winding up petition. As ready reference reliance can be placed in the case of *Coromandel International Limited vs Chemical Biotech Limited (2011) 166 Com Cases 676* and in the case of *Deutsche Bank AG –Vs- Prithvi Information Solutions Limited (2012) 717 Com Cases 116*. Therefore, on this count also the instant company matter is incompetent and not maintainable.

(iii) The petitioner also failed to substantiate the alleged deadlock situation. There are 3 directors in the company including the petitioner. Respondent no. 2 is the Managing Director of the company. The fact that the company is fully functional is also evident from the fact that even in 2021 the respondent no. 8 Bank sanctioned credit facility in favour of the company which is sufficient to show that the company is a running concern. Moreover, the petitioner also failed to show that the respondent-company has been closed. Moreover, admittedly the petitioner did not reside in the country and he is conducting his cases through an attorney and if that is the position then even if there is failure to meet the statutory requirements in due course that is because of the non-cooperation of the

petitioner. Therefore, there is no scope to consider a winding up petition at the instance of a single director who appears to be not co-operative in the smooth functioning of the company. Moreover, principle that has developed over the times regarding a winding up petition at the instance of a director is that the same requires support of the shareholders and is presented on the key ground of insolvency of the company. In the instant matter there is no such support of the shareholders and the alleged insolvency of the company has not been substantiated to the extent of justifying winding up of an admitted reputed and profitable long time old company.

In the case of Middlesborough Assembly Rooms Company (1880) 14 Ch D 104, 109 (CA) Lord Justice James said: “But the Act directs the court to have regard to the wishes of the contributories. Here a great majority of the shareholders are opposed to a winding up, and desire to be left to manage their affairs for themselves. We ought not to disregard the wishes of so large a majority unless we see in their conduct something unreasonable, something like tyranny, something amount to an injury of which the minority have a right to complain.”

Here in the instant petition 2 out of the 3 directors are willing and desirous to run the hospital i.e. the respondent-company and therefore, there is no scope to wind up the company which is fully functional in a promising way.

(iv) Moreover, for the allegation that the respondents are running and managing the affairs of the company in a highly oppressive and prejudicial manner affecting the interest of the petitioner, the petitioner has his remedy elsewhere not in this winding up petition.

Considering all these aspects, I do not find any merit in this company matter and accordingly the same is dismissed. However, there will be no order as to cost.

Let a copy of the judgment communicate to the concerned authority at once.

(Sikder Mahmudur Razi, J:)