

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

Writ Petition No. 11484 of 2023.

In the matter of:

An application under article 102 (2) of the
Constitution of the People's Republic of
Bangladesh.

-And-

In the matter of:

Getco Telecommunications Limited
represented by its Authorized representative.
..... Petitioner

-Versus-

Bangladesh represented by the Secretary,
Ministry of Posts, Telecommunications and
Information Technology and others.

. . . . Respondents

Mr. Md. Asaduzzaman with
Mr. Md. Najmul Karim and
Mr. Md. Mazharul Islam, Advocates
. . . . For the petitioner.

With

Writ Petition No. 15132 of 2022.

Tele Exchange Limited represented by its
Managing Director and another.

..... Petitioners

-Versus-

Bangladesh represented by the Secretary,
Ministry of Posts, Telecommunications and
Information Technology and others.

. . . . Respondents

Mr. Mohammad Muddasir Hossain with
Mr. Mohammad Mutahaar Hossain and
Mr. Rashed Ahmed Rishat and
Mr. Md. Saimum Islam, Advocates
. . . For the petitioners.

Mr. Khandaker Reza-E-Raquib with
Mr. Reja-E-Rabbi Khandoker and
Ms. Meherunnesa and

Mr. Nadeya Nazneen, Advocates

. . . For the respondents No.2 in both
the writ petitions.

Mr. Kazi Mynul Hassan, Advocate

. . For the BTCL in writ petitions No. 11484 of 2023.

Present:
Mr. Justice J. B. M. Hassan
and
Mr. Justice Razik Al Jalil

Heard on 17.12.2023, 03.01.2024,
10.01.2024, 23.01.2024, 25.01.2024
and Judgment on 31.01.2024.

J. B. M. Hassan, J.

The facts and laws involved in both the writ petitions are being similar, we have heard the Rules Nisi together and are being disposed of by this common judgment.

In Writ Petition No. 11484 of 2023 the petitioner, namely, Getco Telecommunications Limited (GTL) obtained the Rule Nisi in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the purported decision No. 11(ka) of the 257th meeting dated 25.11.2021 taken by the respondent No.2 cancelling its earlier decision No.9 taken in its 191st meeting dated 18.11.2015, as communicated vide memo No. 14.32.0000.009.36.013.20.1526 dated 11.01.2022 issued under the signature of the respondent No.3 (Annexure-A) and purported demand of Tk. 9,76,68,505/- on account of admitted unrealized revenue sharing amount from the proforma respondent Nos. 8-14 and Tk. 46,76,55,753/- on account of arbitrarily fixed late fees as are evident from memo No. 14.32.0000.900.36.267.22.1726 dated 30.10.2022 issued under the signature of the respondent No.5 (Annexure-A1) and memo No.14.32.0000.800.40.001.18.1651 dated 10.08.2023 issued under the signature of the respondent No. 7 stopping operation of the petitioner (Annexure-A2) should not be declared without any lawful authority and are of no legal effect and/or pass such

other or further order or orders as to this Court may seem fit and proper.”

The petitioners, namely, Tele Exchange Limited (TEL) and another obtained the Rule Nisi in writ petition No. 15132 of 2022 in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned decision of the respondent No.2 taken in its 257th meeting held on 25.11.2021 under সিদ্ধান্ত-১১ঃ(ক) revoking its earlier decision being সিদ্ধান্ত-৯ঃ(ক) and সিদ্ধান্ত-৯ঃ(গ) taken in its 191st meeting held on 18.11.2015, so far it relates to the petitioners, as communicated by memo No. 14.32.0000.009.36.013.20.1526 dated 11.01.2022 (Annexure-A) issued under the signature of the respondent No.3 and the memo No. 14.32.0000.900.36.256.22.46 dated 13.10.2022 (Annexure-A1) issued under the signature of the respondent No.4 directing the petitioner to pay the outstanding amount of Tk. 7,95,000,00/- (Taka Seven Crore Ninety Five lack only) as revenue sharing should not be declared to be without lawful authority and of no legal effect and as to why the respondents should not be directed to resolve the dispute between the petitioners and respondent Nos. 5 and 8 in accordance with Clause No. 18 of the license dated 12.04.2012 (Annexure-B) read with clause No. 27 of the Interconnection Agreement along with Clause No. 34.06 of the Regulatory and Licensing Guideline for ICX Services and/ or pass such other or further order or orders as to this Court may seem fit and proper.”

Basically in both the Rules Nisi, the respective petitioners have challenged the decision No. “11(Kha)” of the 257th meeting dated 25.11.2021 of the Bangladesh Telecommunication Regulatory Commission (BTRC). Although in the Rules Nisi of writ petitions the decision “11(Ka)”

was wrongly mentioned. In both the Rules Nisi, the respective petitioners have also challenged the letters of the BTRC making demand against them on account of unrealized revenue sharing following the aforesaid decision of 257th meeting.

Facts involved in the both the Rule Nisi are being more or less similar, we have summarized the same in the following manner:

The petitioners of both writ petitions are private limited companies and carrying on the business of Interconnection Exchange (ICX) Services having their ICX operator license dated 25.02.2008 (Writ Petition No. 11484 of 2023) and the license issued on 12.04.2012 (Writ Petition No. 15132 of 2022). The licenses were issued by the BTRC on observance of required formalities in accordance with the Regulatory and Licensing Guidelines dated 08.10.2007.

As ICX operators, the petitioners establish and maintain interconnection between International Gateway Service (IGW) operators for international calls and Access Network Service (ANS) operators for local calls. The IGW and ANS operators have also got separate licenses granted by the BTRC under separate Guidelines against certain revenue sharing arrangements. The petitioners as ICX operators act like intermediary connecting IGW operators for all international incoming and outgoing telecommunication. For such interconnection services, as per the terms of the license, the petitioners are getting revenue in the following rate:

(a) 17.50% of the prevailing call rate in case of international incoming calls from IGW operators.

(b) Fixed revenue based on BTRC defined X and Y rates for international outgoing calls to mobile network and PSTN network from IGW operators.

(c) 15% of balance [Z Value= X (call rate)-Y (specific settlement amount payment to foreign carriers)] from ANS operators for international outgoing calls.

(d) 10% of prevailing domestic interconnection charge from ANS operators for routing/switching of domestic inter operator call services. Apart from payment of a fixed license fees annually, the petitioner is under mandate to share 65.75% (subsequently on 04.01.2018 revised as 50%) out of the aforesaid revenue as gross revenue sharing with the BTRC on a quarterly basis and in default to pay a late fee @ 15% per annum.

In course of business, at a certain stage of declining business the petitioners fell in backlog in revenue sharing with the BTRC due to insufficient cash flow and COVID-19 pandemic. The petitioners' financial crisis became acute when some of the IGW and ANS operators closed their businesses without sharing the revenue with the petitioners. These IGW and ANS operators are the pro-forma-respondents No. 8-13 who closed their business surreptitiously in different times failing to share the accrued revenue with the petitioner and also the accrued revenue payable to the BTRC as per the relevant Guidelines and Licenses.

Besides, by this period the pro-forma-respondent No. 14, an IGW operator, also started defaulting in revenue sharing with the petitioner of writ petition No. 11484 of 2023 though its business is still continuing in full swing. Thus, since the aforesaid IGW and ANS operators have failed to

make payment to the petitioners, the petitioners became unable to share stipulated revenue with the BTRC on account of liabilities of those IGW and ANS operators. The details of the receivables revenue amounting to Tk. 25,52,40,859.00 stood outstanding to the petitioner of writ petition No. 11484 of 2023 from the pro-forma-respondents No. 8-14 are as follows:

Name of IGW and ANS Operators	Party to this writ petition	Outstanding Revenue in Tk.	As on
Ratul Telecom Limited	Respondent No.8	4,57,96,776	Nov, 2012-Sep, 2013
Telex Limited	Respondent No.9	2,41,74,521	Oct, 2012-Jul, 2013
Vision Tel Limited	Respondent No.10	47,39,695	May, 2013-Aug, 2013
Apple Globaltel Limited	Respondent No.11	2,07,047,0281	Sep, 2012-Oct, 2013
Bestec Telecom Limited	Respondent No.12	34,82,761	Jul, 2013-Oct, 2013
Pacific Telecom Limited (Citycell)	Respondent No.13	1,28,85,951	Sep, 2010-Oct-2016
Bangladesh Telecommunications Company Limited (BTCL)	Respondent No.14	14,34,13,874	Mar, 2010-June, 2015

Besides, throughout the period i.e till date, the petitioners have to bear huge operational and maintenance costs from the revenue, generated from running IGW and ANS operators so as to keep its network and exchange running, license alive and service at its optimum level. The running IGW and ANS operators very often used to pay revenue to the petitioners regularly and on time. Thus, on that score, the petitioners also failed to share a certain portion of revenue with the BTRC on account of running IGW and ANS operators. All along, the BTRC is well aware as to the closure of the pro-forma-respondents (IGW and ANS) and default in revenue sharing on the part of the Bangladesh Telecommunications company Ltd (BTCL) with

the petitioner (GTL) and the BTRC are also unpaid as to their respective portions of revenue sharing. Despite intervention of the BTRC to resolve the charge sharing and even cancellation of licenses of the default IGW operators, the issue still remains unsettled and unadjusted.

At one stage, the BTRC in its 191st meeting dated 18.11.2015 took decision No. 9 resolving that ICX operators would liable to pay its dues to the BTRC whenever they (ICX operators) would be able to recover their dues from closed IGW and ANS operators. Subsequently, the BTRC in its 257th meeting dated 25.11.2021 unilaterally and whimsically cancelled its earlier decision No. 9 of 191st meeting and consequently, took impugned decision No. 11(Kha) resolving that BTRC will take steps to recover its outstanding dues on case to case basis as revealed and unearthed from the BTRC's letter dated 11.01.2022 (Annexure-A to the writ petition). The BTRC in flagrant violation of its aforesaid own decision and by passing to deal with the petitioners individually or giving any due consideration or opportunity of hearing the petitioners, discriminately issued the said letter dated 11.01.2022 directing to pay their dues on account of all IGW and ANS operators revenue sharing irrespective of their closer.

In writ petition No. 15132 of 2022, the petitioner further states that the petitioner issued numerous letters and memos from time to time requesting the default IGW's (respondent No. 5 to 8) for payment and lastly issued letters dated 12.11.2013, 19.01.2014, 26.01.2014 and 15.01.2014 but to no avail. Clause 18 of the License read with clause 27 of the agreement between the petitioner and the default IGWs (the agreement) and clause No.

34.06 of the Regulatory and Licensing Guidelines for ICX services (the Guidelines) stipulate that if there is any dispute amongst the telecom operators which can not be resolved through negotiation, the same shall be referred to the BTRC for resolution. Consequently, on 13.02.2014 and 12.03.2014, the petitioner (TEL) referred to the aforesaid disputes to the BTRC for resolution as per the condition of the License as well as the mentioned agreement and the Guidelines. In response, the BTRC issued letters dated 27.03.2014, 22.04.2014 and 06.05.2014 in favour of the default IGWs directing them to pay the outstanding invoice amount within a period of 15(fifteen) days. However, the default IGWs have neither complied with the said directives of the BTRC nor communicated with the petitioner (TEL) till date to settle the aforesaid liability.

In the meanwhile, the BTRC vide its memo dated 09.12.2013 informed the petitioner amongst others that the call routing through the default IGWs have been temporarily suspended due to their failure to comply with the terms and conditions of the respective operator's license. Thereafter, sometime during 2015 and 2016, the respondent BTRC cancelled the IGW licenses of 4 (four) default IGWs (respondents No. 5-8) without taking any precautionary measures for the recovery of outstanding invoices which they are obliged to pay the petitioners. As a result of such unilateral and abrupt cancellation of IGW licenses by the BTRC, it has now become more difficult to recover the said outstanding dues. Under the aforesaid circumstances, the petitioner (TEL) by way of its letter dated 12.03.2015 once again referred the aforesaid dispute to the BTRC for resolution as per

the condition No.18 of the license read with clause No.27 of the Agreement along with clause 34.06 of the aforesaid Guideline.

In response, the BTRC having acknowledged the failure of the default IGWs to fulfill their contractual obligations, resolved and decided under সিদ্ধান্ত-৯(ক) in its 191st meeting held on 18.11.2015 that the outstanding payments of BTRC from the ICX operators can be considered against the outstanding payments of ICX operators from the IGW operators. It was further resolved and decided under decision No. সিদ্ধান্ত-৯(গ) of the said meeting that an application has to be made by the ICX operators in favour of the BTRC along with all outstanding invoices and an undertaking needs to be furnished to the effect that the ICX operators shall pay the outstanding dues of BTRC along with late fees as and when any dues are recovered from the defaulting IGW operators.

Thereafter, relying upon the aforesaid decisions taken by the BTRC, the petitioner (TEL) instituted Money Suits No. 83 of 2015, 82 of 2015 and 81 of 2015 in order to realize the aforesaid outstanding invoice amount. The facts of institution of suits were duly communicated by the petitioner (TEL) to the BTRC vide letter dated 22.11.2015. Subsequently, in compliance with the decision taken under সিদ্ধান্ত-৯(গ) of the said meeting, the petitioner furnished a declaration dated 02.12.2015 in favour of the BTRC. However, to the utter surprise and dismay of the petitioner, the BTRC issued the impugned memo dated 11.01.2022 (Annexure-A to the writ petition) informing the petitioner (TEL) that its earlier decision being সিদ্ধান্ত-৯(ক) and ৯(গ) taken in its 191st meeting held on 18.11.2015 has been revoked in the

257th meeting held on 25.11.2022 under সিদ্ধান্ত ১১(খ) and accordingly directed the petitioner to deposit the outstanding payment in favour of The BTRC within the next 30(thirty) days.

In this backdrop, both the petitioners filed their respective writ petitions and obtained the Rules Nisi.

In both the writ petitions, the BTRC as respondent No. 2 has filed affidavits in opposition contending, *inter alia*, are that in 2007, the BTRC issued a regulatory and licensing guidelines being No. BTRC/LL/ICX(248)/2007-3448 dated 08.10.2007 for invitation of proposals/offers to issue license for establishing, operating and maintaining ICX services in Bangladesh. In pursuance to the aforesaid ICX Guidelines 2007, the petitioners obtained respective ICX operator licenses from the BTRC. As per the aforesaid ICX license, the petitioners are authorized to establish, maintain and operate Interconnection Exchange Service and associated systems in pursuance to the terms and conditions of the License. As per clause 2.02 of the license, the ICX licenses shall remain valid for 15 years subject to the payment of annual license fee as well as compliance with the other terms and conditions of the same. Subsequently, in order to facilitate the ICX Services in Bangladesh as envisaged in the ILDTS Policy, 2010. Government further issued the Regulatory Licensing Guidelines on ICX services bearing No. BTRC/LL/ICX(384)/2011-700 dated 20.10.2011. Moreover, as per clause No. 27.09 of the ICX License and clause No. 33.02 of the ICX Guidelines 2011, the ICX Guidelines form an integral part of the ICX license and vice-versa.

As per the provisions of the Bangladesh Telecommunication Act, 2001 (BT Act, 2001) and the terms and conditions of the ICX License, the petitioner company is obliged to perform the duties and responsibilities and to provide the services in the manner stated in the BT Act, 2001, ICX Guidelines 2011 and the ICX License. As per section 37(2)(a) of the BT Act, 2001 and clauses No. 4.02 and 27.05 of the ICX License and clause No. 8.02 of the ICX Guidelines, 2011, it is obligatory on the part of a licensee to comply with the provisions of the BT Act, 2001, all terms and conditions of the ICX license as well as Directions, Directives, Instructions, Orders, Decisions etc. issued by the BTRC from time to time.

The payment of fees and charges remain one of the most vital conditions of the Guidelines and the ICX License. As per section 31(2)(a) of the BT Act, 2001 issuance of any telecommunication license, permits and technical acceptance certificates and providing services thereunder, using radio apparatus, allocation of radio frequency and authorization to sue thereof as well as renewal, suspension and cancellation of the licenses, permits and certificates issued etc are subjected to payment of fees specified by the BTRC with the prior approval of the Government. Moreover, as per sections 24(3) and 26 of the BT Act, 2001 all charges, fees, administrative fines and other dues receivable by the BTRC may be realized by it as a public demand under the Public Demands Recovery Act, 1913.

However, it is stated that soon after obtaining the aforesaid ICX License, the petitioner Companies repeatedly failed to furnish the required payments including the quarterly revenues and other dues to the BTRC

within the stipulated time. As a result, on several occasions the BTRC issued a number of reminder letters to the petitioners for making payment of the outstanding payments along with revenue sharing and late fees till the month of October 2015. Despite the aforesaid reminder letters of the BTRC, the petitioners failed to make any payment whatsoever to the BTRC. Rather, in few occasions, the petitioners furnished replies with unjustified excuses on their behalf which were found to be unsatisfactory by the BTRC.

Meanwhile, the 191st Commission Meeting of the BTRC took place on 18.11.2015, whereby the BTRC decided to realize the revenue sharing for the time being from the concerned ICX operators, after receiving the said unpaid dues from the closed IGW operators. However, all other fees and payments, such as, Annual License fees, quarterly Revenue sharing and other applicable regular fees and charges have to be paid by the ICX operators in accordance with the terms of their respective ICX License and the BT Act, 2001.

It is to be noted that one of the primary focuses behind such flexible decision in 191st meeting of the BTRC was to accommodate the ICX operators (including the petitioners) to grow and expand their business without any hindrance and accordingly, contribute to the advancement of the telecommunication sector. This decision was applicable for all concerned ICX operators including the petitioners. Subsequent to the aforesaid decision of the BTRC, the petitioner GTL (writ petition No. 11484 of 2023) stopped making payment of all other regular fees and charges including the quarterly revenue sharing which it was obliged to pay under the terms of its license

and BT Act, 2001. As a result, during the year 2016-2021, the BTRC issued numerous letters to the Petitioner-GTL and thereby ardently requested it to furnish the long outstanding dues on account of Revenue Sharing as per the terms and conditions of its ICX License and ICX Guidelines, 2011. Moreover, considering the convenience of the petitioners, the BTRC had also provided flexible payment options to the petitioners to ease their hurdle in furnishing the long outstanding dues on account of Revenue Sharing as well as other applicable fees and charges. However, the petitioners were absolutely reluctant to avail the aforesaid options and instead, furnished unsatisfactory replies contending that they are unable to furnish any payment to the BTRC until they receive their outstanding dues from the ANS (Access Network Service Operators) and IGW (International Gateway) Operators.

Subsequently, the BTRC in its 257th Meeting dated 25 November 2021 decided to revoke its earlier decision as taken above in its 191st Commission Meeting dated 18/11/2015 and thereby decided to realize the outstanding dues from concerned individual operators including ICX Operators on case to case basis.

In light of the above-mentioned 257th Commission Meeting dated 25/11/2021, the BTRC communicated its decision to the petitioners vide the impugned Memo No. 14.32.0000.009.36.013.20.1526 dated 11/01/2022 (Annexure-A) and thereby requested the petitioners to take necessary steps to pay their long outstanding dues within 30 (Thirty) days to the BTRC. However, the petitioners failed to furnish any payment whatsoever to the BTRC within the stipulated time. As a result, the BTRC vide its Memo No.

14.32.0000.900.36.267.22.1553 dated 01.03.2022 again directed the petitioners to pay the long outstanding dues to the BTRC within 10 (Ten) days.

In response to that, the petitioner's letters to the BTRC were found unsatisfactory by the BTRC and consequently, the BTRC vide its impugned Memo No. 14.32.0000.900.36.267.22.1726 dated 30/10/2022 (Annexure-A-1) directed the petitioner-GTL to pay long outstanding dues of BDT 82.62 crore (Taka Eighty-Two Crore Sixty-Two Lac Only) on account of revenue sharing amount along with late fees, annual license fees and other long outstanding dues within 10 (Ten) days and on failure the BTRC would take necessary steps including call block against the writ petitioner. The breakdown of the dues to the petitioner GTL are as follows:

Revenue sharing	License Fee	Late Fee	VAT	Total	Taka (In crore)
35,05,98,384 (2015-2022)	65,00,000 (2022-2023)	46,81,57,945	9,75,000	82,62,31,332	82.62

It is further stated that as per the Statement of dues of the BTRC, as of 06 December 2023, a total amount of BDT 15.65 Crore (Taka Fifteen Crore Sixty Five Lac only) on account of revenue sharing along with late fees remains outstanding from the petitioner-TEL. The breakdown of the dues is provided below-

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S/N	Particulars	Amount	Taka in Crore
1	Revenue Sharing	79,264,462	7.93
2	Late Fee (As on 06/12/2023)	77,207,400.16	7.72
Grant Total		156,471,882.16	15.65

”

However, both the petitioners miserably failed to pay the long outstanding dues to the BTRC within the stipulated time. Despite, the BTRC vide its letter dated 10.02.2023 further provided a flexible opportunity to the petitioners and thereby requested them to pay a down payment of 10% of total outstanding dues amount to renew their ICX License and the remaining amount has to be paid within 02 (Two) years by equal monthly installments.

Regarding liability of GTL, the BTRC further states that the GTL furnished an Undertaking on 19/02/2023 for payment of Late Fees, Revenue Sharing and Annual License Fees and other fees. Following the Condition No. 2 of the above-mentioned Undertaking the GTL paid 10% down payment of total outstanding dues amount, renewal fees as well as VAT to renew its ICX License. Consequently, the BTRC vide its Memo being No. 14.32.0000.702.42.105.19.414 dated 02.03.2023 renewed the petitioner's ICX License up to 11.04.2027. However, regrettably soon after the renewal of the ICX License, the petitioner miserably failed to avail the given opportunity by failing to pay the monthly installments amount of BDT 3,11,33,911—(Taka Three Crore Eleven Lac Thirty-Three Thousand Nine Hundred Eleven Only) in violation of the Condition Nos. 3 and 4 of the Undertaking dated 19.02.2023. Instead of furnishing the aforesaid installment amount in favour of the BTRC, the GTL furnished a lump sum amount of BDT 70,00,000/- (Taka Seventy Lac) and BDT 70,00,000/- (Taka Seventy Lac) on 10.05.2023 and 11.07.2023 respectively in the name of 1st and 2nd installments. Apart from the above, the petitioner (GTL) also failed to pay the monthly installments of May 2023, and June 2023 and running

quarter of revenue sharing to the BTRC. Thereafter on 07.06.2023, the petitioner GTL further sent a letter to the BTRC with the following proposals regarding payment schedule.

- (a) To pay Tk. 70,00,000/- (Taka Seventy Lac) only per month to settle the dues against outstanding regular revenue sharing.
- (b) To pay the uncollected revenue sharing portion from closed IGWs, City Cell and BTCL out of total Tk. 9,76,68,505/- (Taka Nine Crore Seventy Six Lac Sixty Eight Thousand Five Hundred Five) and late fees on this amount of Tk. 13,96,25,961/- (Taka Thirteen Crore Ninety Six Lac Twenty Five Thousand Nine Hundred Sixty One) after actual recovery from the above.
- (c) To waive the late fees of Tk. 22,98,42,177/- on paid revenue sharing and Tk. 98187615/- on due revenue sharing.

However, the aforesaid proposals made by the petitioner on its behalf to the BTRC were found to be unsatisfactory by the BTRC.

Meanwhile, the BTRC in its 271st Meeting dated 29.01.2023 vide its decision No. 7 (subsequently executed on 31.07.2023) decided to take the necessary steps to cease the operation of the petitioner for failing to pay 02 (Two) consecutive monthly installments to the BTRC. Accordingly, the BTRC vide its impugned Memo No. 14.32.0000.800.40.001.18.1651 dated 10/08/2023 (Annexure-A-2) asked the petitioner to cease all its operation with immediate effect for its failure to furnish the longstanding unpaid dues.

Nevertheless, in light of the above-mentioned 271st Meeting dated 29/01/2023 (subsequently executed on 31.07.2023), upon receiving the necessary prior approval from the Government, the BTRC served a Show Cause Notice upon the petitioner on 31.08.2023 under Section 46(2) of the BT Act 2001- directing the petitioners to show cause within 30 days from

the date of issuance of the notice as to why the ICX License of petitioners should not be cancelled in pursuance to the applicable provisions of the BT Act, 2001 as well as the ICX Guidelines and License of the Petitioners due to failure to pay the long pending outstanding dues amount to the BTRC. As per the Statement of dues of the BTRC, as of 11 September 2023, a total amount of BDT 82.62 Crore remains outstanding from the petitioner-GTL on account of various heads including Annual License Fee, Revenue Sharing as well as fees for running quarter and installment etc.

In the above circumstances, being aggrieved and dissatisfied with the actions of the BTRC, the petitioners filed the writ petitions obtained Rules Nisi along with the interim orders of stay regarding the demand.

Challenging the aforesaid ad-interim Orders the BTRC filed a Civil Petitions for Leave to Appeal (CPLA) No. 2883 of 2023 and 326 of 2023 before the Hon'ble Appellate Division along with applications for stay. Accordingly, upon hearing the said CPLAs, the full Court of the Hon'ble Appellate Division on 06.11.2023, was pleased to dispose of the matters and referred to the same to this Bench to dispose of the writ petitions as expeditiously as possible, preferably within 01 (one) month from the date of receipt of the order.

The Bangladesh Telecommunications Company Limited (BTCL) has filed an affidavit in opposition in Writ Petition No. 11484 of 2023 contending, *inter alia*, are that the BTCL and the petitioner i.e Getco Telecommunication Limited (GTL) admittedly entered into an agreement on 03.11.2013 containing provisions for billing method, payment of the Bill(s)

and dispute reconciliation and or method to resolve in case of failure and or default as stipulated pursuant to Clause 14 under title “**Payment & Bill Settlement**” and also there is a provision for termination of the Agreement pursuant to Clause 25 under title “**Termination**”. Besides, there is a provision for dispute resolution pursuant to Clause 27 under title “Dispute Resolution”. As per call record, BTCL shared the agreed revenue, time to time and as such, there is no outstanding against the BTCL. If the petitioner took timely steps as stipulated in the Agreement and as per law, then disputed claim/issue, if any, supposed to be obviously resolved at least by the BTRC, on failure to resolve the same by the BTCL. If the petitioner’s claim taken to be correct then obviously they exchanged the CDR with the BTCL to justify their claim which they did not, as stipulated under the Agreement. Besides, the petitioner ought to take steps under section 31 (2) of the Bangladesh Telejogajog Niontran Ain, 2001, if they have any valid demand against the BTCL, as claimed. The petitioner without any lawful basis against the BTCL, stated and claimed “admitted unrealized revenue of outstanding Tk. 14,34,13,874 as on March, 2010 to June, 2015.

Mr. Md. Asaduzzaman with Mr. Md. Najmul Karim and Mr. Md. Mazharul Islam, learned Advocates appear for the petitioner in Writ Petition No. 11484 of 2023 while Mr. Mohammad Mutahaar Hossain with Mr. Mohammad Muddasir Hossain and Mr. Rashed Ahmed Rishat and Mr. Md. Saimum Islam, learned Advocates appear for the petitioners in writ petition No. 15132 of 2022.

On the other hand, Mr. Khandaker Reza-E-Raquib with Mr. Reza-E-Rabbi Khandaker, Ms. Meherunnesa and Mr. Nadeya Nazneen, learned Advocates appear on behalf of the BTRC (respondent No.2) in both the writ petitions.

Mr. Kazi Mynul Hassan, learned Advocate appears on behalf of the BTCL in writ petition No. 11484 of 2023.

Legal submissions of learned Advocates for the petitioners in both the writ petitions are more or less identical and hence summarized herein below:

- (a) The petitioners are running their business under the license given by the BTRC incorporating the terms and conditions therein. The license incorporates the condition for dispute resolution between the International Gateway Service (IGW) operators and the petitioners to be intervened by the BTRC. The petitioners have got outstanding amount against closed IGWs and repeatedly requested the BTRC for settling the dispute as per license clause. But due to their inaction in this regard, the petitioners could not realize the outstanding amount and as a result the petitioners could not pay the outstanding dues to the BTRC as per license terms.
- (b) In view of license terms, the BTRC are under legal obligation to resolve the petitioners' claim against the IGWs but without performing their obligation, the BTRC issued the impugned demands which are arbitrary and malafide.
- (c) Considering the unrealized revenue share from the closed IGWs, the BTRC took decision by their 191th meeting dated 18.11.2015 allowing the petitioners to repay the outstanding dues after realization of outstanding amount from the IGWs. Thus, a right was accrued in favour of petitioners in getting relaxation to pay the outstanding dues of the BTRC. But subsequently without assigning any cause, the BTRC have changed their decision by the subsequent 257th meeting

dated 25.11.2021 and made the impugned claim which is malafide and arbitrary.

(d) Relying upon the decision made in the 191st meeting of the BTRC, the petitioners submitted their undertaking and proceeded with the legal actions against the default IGWs for realization of outstanding revenue and this decision has given a legitimate expectation in favour of the petitioners due to which they have performed their obligation by the aforesaid acts and legal steps and such expectation can not be declined by the impugned decision.

(e) Since the respondent-BTRC by their 191st meeting decided not to claim the outstanding dues remained with the IGWs, their subsequent claim by the impugned decision made in the 257th meeting is barred by principles of estoppel, waiver and acquiescence. In this connection learned Advocates refer to the case of Gujarat State Financial Corporation Vs Lotus Hotels Pvt. Ltd. reported in AIR 1983 (SC) 848 (para-9).

(f) Considering outstanding dues of one ICX licensee, namely, Summit Communications Ltd, by the 257th meeting the BTRC allowed them to transfer their shares. On the other hand, by the same decision, the BTRC are claiming the outstanding dues against the petitioners although they stand on the same footing. Thus, the impugned decision suffers from discrimination violating the petitioners' fundamental rights.

In addition to the aforesaid submissions, Mr. Md. Asaduzzaman, learned Advocate for the GTL supplements that a huge amount a Tk. 36.254 crore are lying outstanding against the closed IGWs and due to which the petitioner GTL could not pay the dues to the BTRC. He, however, submits that although there remains some admitted outstanding dues on account of license fees and other accounts, the GTL is making the payment as per order of the Court by installments.

On the other hand, Mr. Khandaker Reza-E-Raquib, learned Advocate for the respondent No.2 (BTRC) contends that the petitioners are operating the ICX in terms of the license given to them by the BTRC and as per revenue sharing clause, they are under legal obligation to pay the revenue sharing amount in accordance with license terms. There is no term or condition that after realization of revenue from the IGWs, the ICX shall make the payment to the BTRC. He further contends that the 191st meeting was held in the year 2015 and since then, for a long time, the petitioners did not make the payment in terms of license. Considering this situation, the BTRC took decision in its 257th meeting for realization of outstanding dues in terms of license.

Regarding submissions of discrimination, learned Advocate further contends that in the 191st meeting the BTRC took decision considering the realization and liabilities of each ICX, case to case considering position and conduct. Thus, considering conduct of Summit Communications Ltd, the BTRC took decision to transfer share and subsequently they paid the entire outstanding dues while the present petitioners still remain defaulter in making the payment. In view of such position, it can not be said that there was any discrimination in dealing with the matter with the petitioners.

In respect of writ petition No. 11484 of 2023, Mr. Raquib further contends that outstanding dues of GTL are not only in connection with the outstanding dues of closed IGWs. GTL failed to pay regular payment in respect of realization of revenue from the running IGWs and other operators including license renewal fees.

Drawing our attention to the affidavit in opposition, Mr. Kazi Mynul Hassan, learned Advocate for the BTCL submits that the claim of GTL against the BTCL is not true and there is no outstanding amount lies with the BTCL.

We have gone through both the writ petitions, affidavit in opposition filed by the Bangladesh Telecommunication Regulatory Commission (BTRC) in writ petition No. 11484 of 2023, relevant clauses of the licence, Rules, cited cases and other materials on record.

The Getco Telecommunications Limited (GTL) is the petitioner in writ petition No. 11484 of 2023 and the Tele Exchange Limited (TEL) is petitioner in writ petition No. 15132 of 2022. Both of them are licensees, having their operator licenses of Interconnection Exchange (ICX) Services under the Bangladesh Telecommunication Act, 2001 (the BT Act, 2001). The GTL got the license on 25.02.2008 and the TEL got the license on 12.04.2012. Under the said licenses both the petitioners i.e GTL and TEL as ICX pass calls both local and Overseas to the Access Network Services (ANS) and International Gateway Service (IGW) respectively in lieu of which they get revenue as per ratio incorporated in the license. In this regard the relevant clauses of the license are quoted herein below for our better understanding:

6. FEES AND CHARGES

6.01 The Commission shall impose upon the Licensee different fees and charges. Some of the charges or part thereof shall be in proportion to the Licensee's annual audited gross turnover.

6.02 Table of Fees and Charges

Following fees and charges will be applicable to the Licensee

1.	License acquisition fee	Tk. 5,00,00,000.00 (Taka Five crore) only
2.	Annual License Fee (payable every year)	Tk. 2,50,00,000.00 (Taka two crore fifty lac) only
3.	Gross Revenue Sharing with the Commission	65.75% (Sixty Five point Seven Five Percent) fixed through competitive bidding/auction
4.	Interconnection Charge	<p>i) For International incoming calls: *No International incoming call can be terminated for less than US\$ 0.06. This rate will be reviewed from time to time by the Commission from time to time After deducting VAT (if applicable) a) 15% (fifteen percent) of prevailing call rates (call rates to be determined by the Commission from time to time) to be paid to ICX by IGW.</p> <p>ii) For International outgoing calls (both to PSTN and mobile network) the following formula shall prevail: *For International Outgoing calls to mobile network, the revenue of Tk. 16.50 (Taka sixteen paisa fifty) only is fixed by the Commission. For OUTGOING calls to mobile network, a specific settlement amount would be paid to overseas networks. For International Outgoing Calls to PSTN network, the revenue of Tk. 6.00 (Taka six) only is fixed by the Commission. For Outgoing calls to PSTN network, a specific settlement amount would be paid to overseas networks. These rates will be reviewed time to time by the Commission. The revenue distribution/ sharing is based on the balance amount only excluding VAT which is to be paid by the respective ANS. a) Balance amount (Z)=Call rate (X)-specific settlement amount payable to foreign carriers (Y) b) ANS operators will be paying 15% (fifteen percent) of Z to the ICX licensee. iii) For routing/ switching of domestic inter operator call services: a) ANS operators shall pay to ICX 10% (ten percent) of prevailing domestic interconnection charge. Current Interconnection Charge is Tk. 0.40 (paisa forty) only per minute. This rate will be reviewed time to time by the Commission.</p>
5.	Security Deposit in the form of Bank Guarantee	Tk. 5,00,00,000.00 (Taka five crore) only

6.03 The Licensee shall pay all the required fees within the stipulated time frame given hereinafter. All Fees, charges etc. paid by the Licensee are non-refundable and are payable in favour of Bangladesh Telecommunication Regulatory Commission in the form of bank draft or pay order from any scheduled bank mentioned in Bangladesh Bank Order 1972 (P.O. No. 127 of 1972).

a. License acquisition fee: The Licensee shall pay the Licence Acquisition fee of Tk. 5,00,00,000.00 (Taka five crore) only which will be payable within 10 (ten) working days of the annual.

b. Annual License fee: The Licensee shall pay an annual Licence fee of Tk. 2,50,00,000.00 (Taka two crore fifty lac) only every year during the term of the Licence, on or before the date the license was issued of commencement of such year.

c. Revenue sharing with the Commission: The Licensee in addition to the above, shall pay to the Commission on a quarterly basis on account of revenue sharing of the quarterly gross revenue within the first 10 (ten) days at the end of each quarter. The percentage of the revenue to be shared is 65.75% (Sixty five point Seven Five Percent) fixed through competitive bidding /auction. The total revenue sharing shall be reconciled on an annual basis based on the Licensee's audited accounts for that year and if there has been any underpayment the balance must be paid within 60 (sixty) days from the end of the financial year (July to June). In the event of any overpayment by the Licensee, the Licensee may adjust the excess amount against quarterly payments in the next year.

d. Interconnection Revenue: Interconnection Revenue will be as per the table above in Clause 6.02.

e. The Licensee shall pay other fees and charges as may be levied by the Commission from time to time.

6.04 If Licensee fails to pay the fees, charges, etc. in time, it shall be liable to pay a late fee of 15% (fifteen percent) per annum at the compound rate on the outstanding amount. If the amount along with late fee is not paid in full within 60 (sixty) days from the due date, such failure may result in cancellation of the License.

13. BILLING

13.01 The Licensee shall take all reasonable steps to ensure that its billing systems used in connection with the service are reliable and accurate and capable of generating billing information in different formats including itemized billing.

13.02 The Licensee shall keep records of any billing in such form as may be specified by the Commission and shall supply such records at the request of the Commission.

.....

15. DISPUTE RESOLUTION

In the event of any differences or disputes with the other ICX Licensees or other licensed telecom operators and failure to resolve the differences or disputes amicably among themselves, the Licensee shall refer the matter to the Commission for resolution of the same. The decision of the Commission in that regard will be final and binding.

16. ACCOUNTS

16.01 The Licensee shall maintain separate accounts and other records, in accordance with acceptable accounting practices. The Licensee shall at all times, maintain full and accurate books of accounts and other records reflecting all financial matters, in accordance with the sound and acceptable accounting practices. The Commission reserves the right to issue accounting guidelines to the Licensee from time to time.

16.02 The Licensee shall submit certified copies of its financial records and yearly audited accounts to the Commission. The

Commission shall have the access to originals of such records and accounts as and when required.

16.03 The Licensee shall provide an auditing facility that can be accessed by the Commission to verify the reported services revenues. The Commission shall have the access to computerized accounting system of the licensee as and when deemed necessary by the Commission.

16.04 All financial transactions (in local and foreign currency) in relation to the License must be through Scheduled Bank(s) mentioned in the Bangladesh Bank Order, 1972. The Licensee shall inform the Commission of the details of the accounts in operation. The Licensee shall have to submit monthly statement of all the accounts to the Commission within 10th day of the following Gregorian calendar month.”

(Underlined)

According to the aforesaid clauses of the license, the petitioners as ICX licensees have to share revenue commission @ 65.75% (subsequently reduced to 50%) with the BTRC from their earning to be generated from the IGWs. But admittedly it is on record that during period 2013-2014 the 06(six) IGWs, namely, Apple Global Tel Communications Ltd., Bestec Telecom Ltd., Pacific Telecom Ltd (city cell), Ratul Telecom Ltd., Telex Ltd. and Vision Tel Ltd. became defaulters in paying revenue sharing to the petitioners (ICX). In the circumstances, the petitioner of writ petition No. 15132 of 2022 did not pay the revenue sharing to that extent to the BTRC.

On the other hand, the petitioner of writ petition No. 11484 of 2023 also kept a huge outstanding dues on account of revenue income from closed IGWs as well as its annual license fees, late payment fees and other charges

amounting to Tk. 82.58 crore. From the record and submissions of both the parties the claim of the BTRC to the GTL are as follows:

“Total in Summary

S/ N	Particulars	Period	Revenue Sharing	License Fee	Late Fee	VAT	Total	Tk. In Crore
1	Due Revenue Sharing	2015-2022	147,984,350		102,835,302		250,819,652	25.08
2	Late Fee on paid Amount				229,706,561		229,706,561	22.97
3	License Fee	2022-2023		6,500,000	625,068	1,500,000	8,625,068	0.86
4	Closed IGW		60,446,937		141,472,298		201,919,235	20.19
5	Due to BLCL		32,781,177				32,781,177	3.28
6	Due to CityCell		7,862,161		-		7,862,161	0.79
Grand Total			249,074,625	6,500,000	474,639,229	1,500,000	731,713,854	73.17

For Running Quater

S/ N	Date of Issuance License	Quarter	Unpaid Amount	Paying Date as on 11/09/2023	Payable Date	Late days	Late fee @15%	Total
1		Sep-Oct/22	16,859,518	11.09.2023	20.12.2022	265	1,836,071	18,695,589
2		Nov-Dec/22	16,420,281	11.09.2023	20.02.2023	203	1,369,856	17,790,137
3		Jan-Feb/23	18,494,430	11.09.2023	20.04.2023	144	1,094,465	19,588,895
4		Mar-Apr/23	18,739,520	11.09.2023	20.06.2023	83	639,197	19,378,717
5		May-Jun/23	18,444,892	11.09.2023	20.08.2023	22	166,762	18,611,654
			88,958,641				5,106,351	75,453,338

Grand Total In Summary

S/N	Particulars	Period	Revenue Sharing	License Fee	Late Fee	VAT	Total	Tk. In Crore
1	For					-	731,713,854	73.17

	Installment							
2	For Running Quater		88,958,641		5,106,351		94,064,992	9.41
Grand Total			88,958,641	-	5,106,351	-	825,778,847	82.58

”

From the aforesaid data, it appears that the GTL’s liabilities are both on the heads of regular revenue sharing i.e late fees, annual license fees, revenue sharing of closed IGWS, BTCL and Citycel. Claiming the aforesaid dues, the BTRC issued the letter of demand to the petitioner-GTL referring to the Commission’s decision taken in the 257th meeting which led the petitioner to file this writ petition.

There is no dispute that the BTRC is entitled to get the outstanding dues as claimed to the petitioners. However, there are two parts in the outstanding dues to the GTL i.e relating to unrealized revenue from the closed IGWs and other part of revenue, late fees and other charges became due to GTL which were not paid to the BTRC. Regarding later part only the plea of GTL is their financial hardship which is not acceptable in the eye of law and in terms of license given to GTL for doing the business and realization of revenue. Therefore, to that extent there can not be any excuse left to the GTL for non-payment of the said dues. Although Mr. Md. Asaduzzaman, learned Advocate disputes that the GTL is not liable to pay the late fee to the Commission but admittedly since their lies outstanding dues for a longtime to the petitioner (GTL) the Commission is entitled to realize the late fee in accordance with clause 6.04 of the license @ 15% on the total outstanding dues.

Now regarding the unrealized outstanding dues from the closed IGWs the petitioners of both the writ petitions (GTL and TEL) have drawn our attention to the decision of the BTRC in their 191st meeting dated 18.11.2015, held earlier, which runs as follows:

“সিদ্ধান্ত-৯ : কোন আইসিএক্স (ICX) অপারেটরদের নিকট সরকারের বকেয়া পাওনা রাজস্ব আদায় প্রক্রিয়া আরো বাস্তবভিত্তিক ও কার্যকর করার জন্য নিম্নলিখিত সিদ্ধান্ত গ্রহণ করা হলোঃ

(ক) কোন ICX প্রতিষ্ঠান-র অনু-রা-ধ বন্ধ থাকা IGW প্রতিষ্ঠানসমূহ-র নিকট ব-কয়া পাওনার বিপরী-ত বিটিআরসির পাওনার বিষয়টি পৃথকভা-ব বি-বচনা করা যে-ত পা-র।

(খ) বিটিআরসি কর্তৃক Arbitration এর রায় দেয়ার পরও কোন ANS যদি ICX এর পাওনা পরিশোধ না করে সেক্ষেত্রে বিটিআরসি এর সংশ্লিষ্ট পাওনার বিষয়টি পৃথকভাবে বিবেচনা করা যেতে পারে এবং সংশ্লিষ্ট ANS কে কৈফিয়ত তলব করতে হবে।

(গ) অনু-চ্ছদ (ক) ও (খ) এ বর্ণিত ক্ষেত্রসমূহে সংশ্লিষ্ট ICX প্রতিষ্ঠানসমূহ-ক ব-কয়া পাওনার ইনভয়েসসহ লিখিত আ-বদন কর-ত হ-ব এবং “যখনই উক্ত ICX কর্তৃক ব-কয়া আদায় সম্ভব হ-ব তখনই বিলম্ব ফি সহ ব-কয়া পরি-শা-ধ বাধ্য থাক-বা” এ মর্মে অঙ্গীকারনামা জমা দিতে হবে।

(ঘ) কোন ICX প্রতিষ্ঠানের বিরুদ্ধে কি অপারেশনাল ব্যবস্থা নেয়া হবে তা উক্ত প্রতিষ্ঠানের নিকট সরকারের বকেয়ার পরিমাণ, প্রতিষ্ঠানটি কি পরিমাণ অর্থ পরিশোধ করেছে এবং অন্যান্য আনুষঙ্গিক বিষয়সমূহ বিবেচনা করা যেতে পারে। প্রতিটি ক্ষেত্রেই প্রশাসনিক অনুমোদন নিয়ে তা বাস্তবায়ন করতে হবে।”

(Underlined)

Upon perusal of the above decision, it appears that due to non-realization of revenue from the closed IGWs, the BTRC took lenient view in the process of realization of the revenue sharing amount from the ICX and the BTRC required the petitioners to submit an undertaking regarding payment of all outstanding dues with late fees immediately after realization of arrear revenue from the closed IGWs along with an application on furnishing all invoices relating to the said outstanding dues. Learned

Advocate submits that the petitioners furnished all the information regarding outstanding dues and also took legal steps for realization of the said dues from the default IGWs.

After taking the above decision, the BTRC waited more than 6 (six) years but could not realize the said outstanding dues from the petitioners and other default ICXs. In the situation the BTRC had to reconsider the issue towards realization of outstanding revenue sharing and by the 257th impugned meeting, they have changed their method of recovery of outstanding dues only. For better understanding of the issue in question, let us see the relevant portions of the impugned minutes of the 257th meeting of the Commission held on 25.11.2021 which run as follows:

“সিদ্ধান্ত-১১ঃ

(ক) Summit Communications Ltd. নামক NTTN, IIG, NIX, ITC এবং ICX লাইসেন্সধারী প্রতিষ্ঠানের শেয়ার অবকাঠামো পরিবর্তন তথা শেয়ার হস্তান্তর করার বিষয়টি কমিশন কর্তৃক মন্ত্রণালয়ে প্রেরণের সিদ্ধান্ত গৃহীত হলো।

(খ) ১৯১ তম কমিশন সভার সিদ্ধান্ত বাতিল করে বিটিআরসি যাদের নিকট টাকা পাবে তাদের বিষয়টি কেস টু কেস ভিত্তিতে আদায়ের ব্যবস্থা নেয়ার সিদ্ধান্ত গৃহীত হলো।

(Underlined)

Due to aforesaid decision question arises as to whether the BTRC can claim the outstanding dues from the petitioners changing the earlier decision taken in the 191th meeting dated 18.11.2015.

To answer this question we have carefully examined the relevant clauses of the license regarding petitioners’ obligations to pay the revenue sharing to be earned from the IGWs wherein it is unambiguously stipulated that they would share certain portions of the revenue as mentioned in the license from the earned revenue in lieu of the services provided to the IGWs.

Admittedly, as per petitioners' statement they earned the revenue by rendering services. It was not realized to their account, on that plea alone, the petitioners did not pay to the Commission (BTRC) and thereby the amount as mentioned in the notice became outstanding on account of those default payments. Since the license clause does not provide any such situation or condition for making the payment subject to receipt of arrear payment from the IGWs, the petitioners can not take this plea in view of the terms and conditions of the license. Therefore, irrespective of the fact that the closed IGWs kept the revenue outstanding, on that plea the petitioners can not avoid the payment to the Commission (BTRC). In terms of license, they are under legal obligation to make the payment to the Commission when the revenue became due as per accounts statement.

However, considering the prevailing situation in 2015, the Commission took liberal view by the decision of 191st meeting in realization of those amount from the petitioners. But because of this decision, it can not be said that the Commission will never be allowed to realize the admitted outstanding dues from the petitioners for an indefinite period on the plea that the petitioners could not realize the same from the closed IGWs. Non payment by the IGWs is an absolutely liability and dispute between the petitioners and the closed IGWs and that burden can not be shifted upon the Commission (BTRC) as the terms of the license does not provide such scope. The only obligation under the license left to the Commission (BTRC) is to settle the dispute between the petitioners and the IGWS by dispute Resolution.

From the materials on records, we find that the petitioner of writ petition No. 15132 of 2022 (TEL) repeatedly approached the Commission for settling the outstanding liabilities in terms of the clause for resolving the dispute with the default IGWs. Further, regulation-10 of the Bangladesh Telecommunication Regulatory Commission (Interconnection Regulation), 2004 (shortly, the Regulations, 2004) also incorporates provision for dispute resolution process. We find that Commission did not take any such step in response to the approaches of petitioner, TEL. On the other hand, GTL also wrote a letter to the Commission for settling the outstanding liability of the BTCL although the BTCL has filed affidavit in this Rule denying the said liability.

In any view of the matter, since under the license the revenue sharing became due to the petitioners, they are under legal obligation to make the payment to the Commission (BTRC). By the 191st meeting decision taken in 2015, the BTRC did not waive the claim. It only took lenient view relaxing the mode of payment. As such, the decision does not make the BTRC debar in claiming their legitimate demand in accordance with the license conditions under which the petitioners can not deny and at the same time the petitioners can not take the plea of principles of estoppel, waiver and acquiescence. The cited case reported in AIR 1983 (SC) 848 having its distinct facts, is not applicable here. Moreover, considering the nature and contents of the earlier decision (191th meeting) we hold that it does not give rise any legitimate expectation to the petitioners.

Drawing our attention to certain portions of the 257th meeting (decision No. 11(Ka), although Mr. Mohammad Mutahar Hossain, learned Advocate submits that the impugned decision creates discrimination in making the demand inasmuch as similar liability lying with one ICX operator, namely, Summit Communications Limited was not demanded and rather they were allowed to transfer their shares. But we find that it was done within the purview of the decision of Commission because it was considered as case to case basis considering conduct and position of that concerned ICX operator. It is also fact that subsequently the said ICX operator made entire payment of the outstanding dues which is unlike to the conduct of the present petitioners and so, the submissions of discrimination is not acceptable.

In view of above discussions, we do not find any merit in both the Rules Nisi and so the Rules Nisi are liable to be discharged.

However, since the license has given a responsibility to the Commission (BTRC) to take step for dispute resolution in realization of petitioners' claim from the default closed IGWs. The Commission shall take positive steps on the application/approaches of the petitioners regarding realization of outstanding dues from the closed IGWs in accordance with Regulations, 2004.

With this observation, the Rules Nisi issued in writ petition No. 11484 of 2023 and 15132 of 2022 are discharged. However, there will be no order as to costs.

Communicate a copy of this judgment and order to the respondents at once.

Razik Al Jalil, J

I agree.