

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

Present:

Mr. Justice Sikder Mahmudur Razi
Company Matter No. 613 of 2025

IN THE MATTER OF:

Md. Shameem Ahsan and others
.... Petitioners.

- V E R S U S -

One-way Textile Limited and others.
.....Respondents.

Mr. Zahid Rafique, Advocate
....For the Petitioner-applicant.

Mr. Md. Shofiqul Islam, Advocate
....For the respondent No.3-applicant.

The 5th November, 2025.

This matter appeared in the list today for hearing of 3(three) applications. 2(two) applications have been filed by the petitioners, one is for appointment of Provisional Liquidator and the other is under section 250 of the Companies Act, 1994 for staying all further proceedings of the suits and of the cases pending against the petitioners and respondent No.1 company. The 3rd application has been filed by the respondent No.3 Bank, namely Al-Arafah Islami Bank Limited, Uttara Model Town Branch, Dhaka for dismissal of the winding up application.

Mr. Zahid Rafique, learned Advocate for the petitioners submits that they have filed the instant Company Matter under Section 241 read with section 242 of the Companies Act, 1994 for winding up of the respondent No.1 company as because of the fact that they have defaulted to pay the outstanding loan liability of the respondent No. 3

Bank. He further submits that the respondent Bank has already instituted and filed Artha Rin Suit as well as Criminal Cases against the petitioners and respondent No.1 Company. He next submits that as per the report of ACCORD the respondent No.1 company is a non-compliance company and therefore, not in a position to run its business and for the last 6(six) years the company has stopped its business due to financial crisis. He further submits that if the company is not immediately wound up the assets of the company will not be sufficient to pay the debt. In this backdrop before filing of the substantive petition for winding up, the respondent No.1 company by its resolution dated 31.12.2024 unanimously decided to go for liquidation of the respondent No.1 company and to file an application for winding up before the Company Bench of the High Court Division.

The learned Advocate next submits that the application has already been admitted by the court and now as a step forward to repay the liability of the bank a provisional liquidator is required to be appointed to assess the value of the assets of the company. He next submits that since the petitioners have filed the Company Matter for winding up of the respondent No.1 Company, therefore, as per provisions of section 250 of the Companies Act, 1994 all the pending proceedings against the respondent No.1 company should be stayed.

On the other hand, Mr. Md. Shofiqul Islam, learned Advocate appearing on behalf of respondent No. 3 by filing an application for dismissal of the winding up application asserts that the respondent

No.1 company initially obtained investment facility of Tk.5,00,00,000/-(five crore) from the respondent No.3 bank in the year of 2010 which was subsequently renewed and enhanced from time to time and in the year of 2016 the outstanding liabilities were re-scheduled at Tk. 20,00,00,000/-(twenty crore). He next submits that the said investment facility has been secured by execution of registered mortgage deed as well as irrevocable General Power of Attorney Deeds in respect of the properties owned by the company.

The learned Advocate next submits that apart from executing registered mortgage deed the petitioners who are the Chairman, Managing Director and Director of the respondent No.1 company also furnished personal guarantee to secure the said investment facilities. However, as the respondent No.1 company as well as the petitioners failed to repay the bank liabilities, the respondent No.3 bank instituted Artha Rin Suit being No. 319 of 2019 before the Artha Rin Adalat No.4, Dhaka for realization of Tk.21,31,27,251/- (Twenty- one crore thirty- one lac twenty- seven thousand two hundred and fifty- one). In addition the respondent bank also filed Criminal Cases under section 138/140 of the Negotiable Instruments Act against the petitioners and the respondent No.1. Eventually, the said Artha Rin Suit was decreed ex-parte on 28.02.2022 and to implement the said decree the respondent bank filed Artha Jari Case No. 462 of 2022 before the same court for realization of Tk. 29,01,97,831.03/- (Twenty- nine crore one lac ninety- seven thousand eight hundred thirty- one and three paisa). In the said execution case the respondent bank also

obtained certificate under section 33(5) of the Artha Rin Adalat Ain, 2003 in respect of the aforesaid two schedule mortgaged properties. Subsequently, the respondent bank filed 2nd Execution Case being No. 335 of 2024 to realize the decretal amount by selling the personal properties of the petitioners who are also the guarantors of the investment facilities.

The learned Advocate further submits that the petitioners by their application dated 05.12.2023 expressed willingness to repay the outstanding dues of the bank which clearly demonstrates that neither the petitioners nor the respondent No.1 Company is insolvent to repay the said outstanding dues of the respondent No.3 bank. The learned Advocate further submits that when by filing the 2nd Execution Case the respondent bank took steps for attaching the personal properties of the petitioners who are also guarantors of the investment facilities, the petitioner with a *malafide* intention to evade the payment of the liabilities of the bank filed the instant company matter. He next submits that the bank to recover its dues also reserves the right to apply for civil imprisonment of the petitioners. In filing the instant company matter the petitioners had also in their mind the same prospective event and to defeat the law and to evade the payment they filed the instant company matter. With these submissions he prayed for dismissal of the instant company matter.

Heard the leaned Advocates of both the parties and perused the applications filed by the parties.

On perusal of the materials on record as well as the submissions of the learned Advocates of the respective parties the admitted fact as it stands are as follows:-

1. The company in which the petitioners are the Chairman, Managing Director and Director obtained huge investment facilities from the respondent No.3 bank.
2. Since they failed to repay the said liabilities in spite of getting opportunity to repay as per terms of the re-schedulement they did not repay the bank liabilities.
3. To recover the said huge amount of outstanding dues bank instituted Artha Rin Suit and obtained decree as well as filed execution case and obtained certificate in respect of the mortgage properties under Section 33(5) of the Artha Rin Adalat Ain, 2003 and thereafter, filed a 2nd execution case within time. In the said execution proceedings the bank has taken steps to attach the personal properties of the petitioners.
4. Apart from the said Artha Rin and Execution Cases bank also filed criminal cases under sections 138/140 of the Negotiable Instruments Act and admittedly at this point of time the petitioners paid a sum of Tk.300,00,000/-(Three crore) approximately.

Now, the question before this court is to decide whether on the given facts the application so filed by the petitioners for staying of the pending cases should be allowed as well as whether a Provisional Liquidator should be appointed or the application so filed by the

respondent No.3 bank for dismissal of the company matter itself should be taken into consideration.

It is now well settled that Artha Rin Adalat Ain, 2003 being a special statute for recovery of the loan liabilities of the bank and financial institutions, does not supplant the provision of the Companies Act, 1994 rather the provisions of the Companies Act, 1994 shall be considered as supplemental to the provisions of the Artha Rin Adalat Ain, 2003. In the case of *A.N. Sharif Uddin and another –Vs- Ornate Services Ltd., and others reported in 76 DLR 378* this matter has been discussed elaborately and his Lordship expressed his views portraying the position of the law in this regard. From the said reported judgment it is clear that even during pendency of an application for winding up of a debtor company, the Banks/Financial Institutions are duty bound to file Artha Rin Suits and Execution Cases as per dictates of the Special Law and there is no bar to file or to proceed with Artha Rin Suit as well as other Cases filed for recovery of the outstanding dues from the debtor. However, bank will be benefited by obtaining permission from this court to file and to proceed with the Artha Rin Suit/Execution Case, let alone being prejudiced in any manner.

However, since in the present case, both the parties are before this court and has placed their respective submissions in support of their respective applications, therefore, this court in exercise of its power and jurisdiction consider it proper and just to allow the bank to proceed with the pending cases.

Therefore, so far, the application for staying of the pending proceedings is concerned the same is hereby rejected and the respondent No.3 bank is allowed to proceed with the pending Cases.

As to the second point, that is, whether an Official Liquidator should be appointed at this stage or the substantive application itself should be dismissed, I am of the view that the persons who formed a company in a suitable or in a fit case has the right to dissolve it and no one can be pressurized to operate the company against their will. At this stage it is also pertinent to mention another submission so advanced by the learned Advocate for the petitioners to the effect that the said company is a non-compliance one as per report of the ACCORD. But let this be made clear that for such defect or non compliance of a company an outsider, herein the lending bank, should not suffer. In the case of *Asad Ahad and another -Vs- Moushumi Industries Ltd. and others reported in 22 BLD 251* it has been held that an outsider is not required to inquire whether the internal regulations of the company were in fact complied with but are entitled to assume that the company acted in accordance with its Articles of Association. Articles of Association being a public document outsider will be deemed to have constructive notice of the contents of the Articles but will not be bound or be affected for non-compliance. This view so expressed by his Lordship is also applicable in the present case.

Now, as the court has already pointed out that no one should be forced to run or operate his/their business against his/their will,

therefore, the members by taking special resolution can decide to wind up a company. In view of the assertions that the company is non-operational for the last 6(six) years for liquidity crises and not in a position to resume its business, therefore, the petitioners have the right subject to the payment of the liabilities of the creditors, to dissolve the company.

In that view of the matter this court thinks it just and proper to stay the winding up petition itself for the time being. The inherent power of the Court to stay further proceedings in a winding-up petition in order to meet the ends of justice is supported by the decision in *Amin Scales Limited and another v. Md. Yakub*, reported in 39 DLR (AD) 201. Accordingly, let the instant winding up petition be stayed till realization/recovery by the respondent No.3- bank its liabilities following the due process of law. The respondent No.3- bank is directed to intimate this court the final result and outcome of their recovery process and once the court is satisfied that the respondent bank has recovered its debts to its satisfaction following the provisions of law, the winding up petition will be recommenced.

Accordingly, the application for dismissal of the winding up petition is hereby disposed of and the application for appointment of provisional liquidator be kept with the record for consideration when the winding up petition will recommence.

Communicate the order at once.

(Sikder Mahmudur Razi, J.)