

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

Present:

Mr. Justice Sikder Mahmudur Razi
Company Matter No. 242 of 2014

IN THE MATTER OF:

An application under Section 241 read with
Section 242 of the Companies Act, 1994.

-AND-

IN THE MATTER OF:

Banglalink Digital Communications Limited
..... Petitioner.

- V E R S U S -

Bestec Telecom Ltd and others.
.....Respondents.

Mr. Anisul Hassan, Advocate with
Mr. Abdullah Al Mahmud, Advocate
Mr. Md. Ahsan Ullah, Advocate
Mr. Mohammad Syeed Abrar, Advocate
Mr. Hossain Mohammad Shahidul, Advocate

.....For the Petitioner.

.....For the Petitioner.

Mr. Mirza Sultan-Alraza, Advocate with
Mr. Md. Raton Ali, Advocate

.....For the respondent No. 3.

Heard on: 23.10.2025

And

Judgment on: the 26.10.2025

Sikder Mahmudur Razi, J:

This is an application under section 241 read with section 242 of the
Companies Act, 1994 for winding up of the respondent No. 1 company.
The petitioner before this court is Banglalink Digital Communications Ltd.
represented by its Managing Director.

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

The petitioner is a licensed operator of cellular mobile phone services in Bangladesh. On the other hand, the respondent No. 1 company namely Bestec Telecom Ltd. obtained license to operate International Gateway Services (IGW) services in Bangladesh to provide International Gateway facilities to networks of Access Network Service (ANS) via ICX (International Exchange) operators. As per policy, the ANS operators instead of being directly connected to IGW operators are to connect to them through ICX(s) for routing/receiving of their overseas traffic. With this end in view the petitioner and respondent no. 1 company based on a common revenue sharing arrangement agreed to work together for execution of agreement(s) to facilitate fields of mutual cooperation for the purpose of securing transmission to and termination of overseas calls from/to subscribers of the petitioner through International Gateway system(s) of the respondent no. 1 and accordingly entered into an agreement on 06.01.2013. Since, the date of execution of the agreement the petitioner was carrying out its business with the respondent No. 1. Clause 18 of the agreement contained detail provisions as to revenue sharing. As per clause no. 18.2 of the agreement for international incoming calls terminated at the network of the petitioner by the international gateway system(s) of the respondent company via ICXs, the respondent no. 1 company shall pay 20% of the prevailing international termination rate(s)/international incoming call rate(s) to the petitioner as per provision of the relevant BTRC directives/licensing guidelines. As per clause 19.1 of

the agreement for international incoming calls terminated at the network of the petitioner by the international gateway system(s) of the respondent company via ICX(s), the respondent company must pay the undisputed amount of the petitioner's invoice within 03 weeks of end of reconciliation period of the invoice issued by the petitioner. According to the agreement the petitioner was sending its invoices periodically every month to the respondent No. 1 since the starting of their business and received payment accordingly. But from September, 2013 till October, 2013 the respondent no. 1 company failed to pay the petitioner against the invoices issued by the petitioner pursuant to and under the agreement. 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.2,38,59,464/- (Taka two crore thirty-eight lac fifty-nine thousand four hundred sixty-four) only and an additional interest over the outstanding amount as per Clause-20 of the agreement. The petitioner sent several emails to the respondent no. 1 company demanding payments of the due amount and the respondent no. 1 company reassured on time and again to make the payment but eventually did not make any payment. The petitioner informed the regulatory authority namely BTRC regarding non-payment by the respondent no. 1 company by its several letters. The petitioner further requested BTRC vide its letter dated 03.04.2014 to extend their support in realizing the outstanding amount from IGW. To recover its dues the petitioner continuously

contacted with the respondent No. 1 and served legal notice on 18.05.2014 but the petitioner neither received any response nor any payment. Finding no other alternative, the petitioner-company sent the respondent No. 1 a statutory winding up notice on 27.05.2014. 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. Anisul Hassan, 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 before the court on behalf of the respondent no.1 company or its directors to oppose the winding up petition.

On the other hand, Mr. Mirza Sultan-Alraza learned Advocate 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.1,973,530,029/- only. 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 respondent No. 3. I have also perused the materials on record.

It has already been noted above that Clause-18 of the agreement dated 06.01.2013 contained detail provisions of revenue sharing. As per clause no. 18.2 of the agreement for international incoming calls terminated at the network of the petitioner by the international gateway system(s) of the respondent company via ICXs, the respondent no. 1 company shall pay 20% of the prevailing international termination rate(s)/international incoming call rate(s) to the petitioner as per provision of the relevant BTRC directives/licensing guidelines. As per clause 19.1 of the agreement

for international incoming calls terminated at the network of the petitioner by the international gateway system(s) of the respondent company via ICX(s), the respondent company must pay the undisputed amount of the petitioner's invoice within 03 weeks of end of reconciliation period of the invoice issued by the petitioner. From Annexure-C series of the instant petition, it appears that the petitioner company through 2 (two) invoices submitted their bills to the respondent No. 1 company and the respondent company never disputed the claimed amount. Respondent No. 1- company also through various e-mail communications made commitment to clear up their dues within shortest possible time. The e-mail correspondences which have been annexed as Annexure-D series further established that, the bills were never objected and disputed by the respondent No. 1- company. It further appears that respondent no. 3 also owes the respondent no. 1- company a huge sum of money and those amounts are also undisputed.

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 viz respondent no. 3 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 section 242 of the Companies Act, 1994 is allowed. The respondent No.-1 company, namely Bestec Telecom Ltd., having incorporation number C-97336/11 has already been wound up in other Company Matters. Therefore, the relevant directions 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. Niaz Morshed, Advocate, Supreme Court of Bangladesh, Room No. 3018(Annex Building), Supreme Court Bar Association, Shahbag, Dhaka-1000 (Mobile: 01712076657, and Morshed's Chamber, Darus Salam Arcade, 4th Floor, 14, Purana Paltan, Dhaka, is hereby appointed as 'the Official Liquidator' of Bestec Telecom Ltd. (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 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 Janakantha” and “the daily Asian Age”.

ii. To open a bank account with Sonali Bank PLC, Supreme Court Branch, in the name of the "Official Liquidator of Bestec Telecom Ltd. (in liquidation)," as required by Rule 103. If the Bank Account is already opened pursuant to order passed in any 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.1,00,000/-(One lac) 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 (if any) 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 Directors 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 shareholders/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 from 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:)