

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

**Present:**

**Mr. Justice Sikder Mahmudur Razi**

**Company Matter No. 262 of 2015**

**IN THE MATTER OF:**

An application under Section 241 read with sections 242 (1) (i) and (iii) and 245 of the Companies Act, 1994.

**-AND-**

**IN THE MATTER OF:**

Imam Network Limited

..... Petitioner.

**- V E R S U S -**

Telex Limited and others.

..... Respondents.

Mr. Shah Bakhtiar Elias, Advocate

.....For the Petitioner.

Mr. Mirza Sultan-Alraza, Advocate with

Mr. Abdul Basit, Advocate with

Mr. Md. Raton Ali, Advocate

.....For the Pro-forma respondent No. 3.

**Heard on: 28.08.2025 & 03.09.2025**

**And**

**Judgment on: the 4<sup>th</sup> September, 2025**

**Sikder Mahmudur Razi, J:**

This is an application under sections 241 read with sections 242 (1) (i) and (iii) and 245 of the Companies Act, 1994 for winding up of the respondent No. 1 company. The petitioner before this court is Imam Network Limited represented by its Managing Director.

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

The petitioner is a licensed Interconnection Exchange-(ICX) operator in Bangladesh and obtained the ICX license being No.

BTRC/LL/ICX(6)Imama/2012-6 on 12.04.2012 from Bangladesh Telecommunication Regulatory Commission (BTRC). As part of its business the petitioner-company as an ICX operator was required to connect with International Gate Way (IGW) operators through interconnection agreement. Accordingly, the petitioner company in its usual course of business entered into an agreement with the respondent No. 1 on 25.11.2012. The scope of the agreement relates to the interconnection between the petitioner as an ICX operator and the respondent No. 1 company as an IGW operator for passing the incoming outgoing international calls through their network. The petitioner was carrying out its business with the respondent No. 1 since November, 2012. It was agreed between the companies that the respondent No. 1 would pay all the dues as per the invoices sent over by the petitioner-company within the stipulated period of time. According to the agreement the petitioner was sending its invoices periodically every month to the respondent No. 1 since January, 2013 for the billing month of the December, 2012, the due date of which was on January, 2013. From January, 2013 to September, 2013 the petitioner-company sent to the respondent No. 1 total 8 (eight) invoices, none of which has been paid fully till date. The dues of the respondent No. 1 not only crossed the stipulated time limit as per the agreement but also attained its maximum limit. The respondent No. 1 never raised any dispute regarding the amount of the dues rather always accepted its' liability. The total outstanding amount as on the date of filing of the winding up petition

stood at Tk.54,98,515.08 (Taka Fifty four lac, ninety eight thousand five hundred and fifteen and eight paisa) only and an additional interest over the outstanding amount as per Clause-16 of the agreement. As the petitioner company is under an obligation to pay BTRC a greater portion of the revenue and the petitioner is under an enormous pressure by the BTRC to pay the revenue, but since the petitioner was not getting his payment from the respondent No. 1 therefore, it was not possible for the petitioner to pay Bangladesh Telecommunication Regulatory Commission (BTRC). To recover its dues the petitioner continuously contacted with the respondent No. 1. Moreover, the petitioner vides its three letters dated 12.09.2013, 23.09.2013 and 11.11.2013 and Legal Notice dated 17.12.2013 requested the respondent No. 1 to make the payment. Although in response to such letters and legal notice the respondent No. 1 by its letter dated 12.09.2013 and 12.01.2014 requested the petitioner to allow them 6 months time to clear up the dues but ultimately, they failed. Consequent to the failure of the respondent no. 1 the petitioner also failed to pay BTRC. Under such a circumstance, the petitioner was served with a show cause notice from the BTRC on 15.04.2015 informing the petitioner that its' license may be cancelled for default of non-payment of revenue pursuant to which the petitioner informed the BTRC vide its letter dated 13.05.2015 that the petitioner was dependent upon the IGWs for its revenue and since the IGWs were not paying their dues the petitioner was unable to pay the BTRC and requested the BTRC to resolve the payment issue. It has been

further stated that following the show cause notice of the BTRC, it has become clear to the petitioner that if it fails to pay the revenue then BTRC may cancel the license for ICX Operation of the petitioner and such will in no doubt hamper the petitioner company's business and reputation in a great manner. As a consequence, the petitioner was no longer in a situation to consider and to bear any further delay from the respondent no. 1 regarding the over dues. The respondent No. 1 has no legal right to delay the payment in favour of the petitioner company any further and it is crystal clear that the respondent No. 1 is unable to adjust the outstanding dues to the petitioner and the respondent No. 1 has neglected to pay the said sum of Tk.54,98,515.08(Taka Fifty four lac, ninety eight thousand five hundred and fifteen and eight paisa). Finding no other alternative the petitioner-company sent to the respondent No. 1-company a winding up notice on 30.04.2015 under section 242 of the Companies Act, 1994. But unfortunately, even after lapse of a reasonable time the petitioner company received no reply from the respondent No. 1 company. Against this backdrop the petitioner has filed the instant company matter praying for winding up of the respondent no. 1- Company.

Mr. Shah Bakhtiar Elias, learned Advocate appearing on behalf of the petitioner -company submits that as per agreement the respondent no. 1-company was under an obligation to pay the petitioner-company as per the invoices sent by the petitioner-company. The amount covered by those invoices was never disputed by the respondent no.1- company rather very

much admitted by the respondent No. 1 time and again. But from the conduct of the respondent No. 1, it appears that they not only neglected to clear their dues but also unable to pay the same to the petitioner and therefore, the respondent No. 1 company should be wound up for ends of justice.

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

On the other hand, Mr. Mirza Sultan-Alraza and Md. Raton Ali learned Advocates appearing on behalf of the pro-forma 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 dues from the petitioner-company. Apart from that, the learned Advocate submits that they have also some outstanding dues to the said respondent No. 1-company recovery of which will also be facilitated by the winding up order.

I have heard the learned Advocates for the petitioner as well as pro-forma respondent No. 3. I have also perused the substantive application as well as papers and documents annexed therewith.

It appears from the agreement dated 25.11.2012 which was entered into between the petitioner and the respondent No. 1 company that as per Clause-14.1 and 14.2 of the said agreement the petitioner-company shall submit their invoices for incoming and all calls to the respondent No. 1 company, namely Telex Limited, based on their CDR record on monthly

basis and payments shall made as per BTRC approved flow chart, as shown in Annexure-2 of the said agreement. In Clause-14.4 of the said agreement, it has further been provided that if there is no dispute, the total invoiced amount shall be paid by the respondent No. 1 company within next three weeks after the reconciliation of the bill of the following month. In case of any dispute, the undisputed amount shall also be paid within the same time of three weeks. The disputed amount, on the other hand, shall be paid within one week after resolution of the dispute. From Annexure-C series of the instant petition, it appears that the petitioner company through 8 (eight) 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 letters made commitment to clear up their outstanding dues within 06 months but ultimately, they failed. The letter dated 12.09.2013 and 12.01.2014 which have been annexed as Annexure-D and E-1 further established that, the bills were never objected and disputed by the respondent No. 1- company.

Now, let us see 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 instant case in hand since the amount demanded by the petitioner as its legitimate dues is an ascertained amount and since the said amount is never 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, therefore, the petitioner has rightly come up before this court with the instant winding up petition which deserves to be allowed.

Accordingly, the instant application under section 241 read with sections 242 and 245 of the Companies Act, 1994 is allowed. The respondent No.-1 company, namely Telex Limited having its address at Green Delta AIMS Tower (10<sup>th</sup> Floor), 51-52 Mohakhali Commercial Area, Dhaka-1212 and SHa 112/1, Hasan Uddin Road (Ground Floor), North Badda (Old Thana Road), Dhaka-1212 is hereby wound up, subject to the following directions:

- A. The petitioner shall send to the Registrar of Joint Stock Companies a notice of this Order, in Form No. 18, as required by Section 251(1) of the Companies Act read with Rule 75 of the Companies Rules.
- B. Mr. Akhtar Farhad Zaman, Advocate, Supreme Court of Bangladesh, Room No. 105(Ground Floor) Annex Extension Building, Supreme Court Bar Association, Shahbag, Dhaka-1000 (Mobile: 01711362503), is hereby appointed as 'the Official Liquidator' of Telex Limited (in liquidation), as per Section 255(1) of the Companies Act, 1994 read with Rule 76 of the Companies Rules, 2009. The Company/Directors of the



company shall pay a consolidated fee of BDT: 2,00,000/- (two lac) only to the Official Liquidator, out of which 25% shall be paid within four weeks from the date of receipt of this order. If the company in liquidation refused to pay the said 25%, then the petitioner company will make the said payment which will be treated as a credit given by the petitioner to the respondent no.1 company. 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.

C. The Official Liquidator is hereby directed-

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

ii. To open a bank account with Sonali Bank PLC, Supreme Court Branch, in the name of the "Official Liquidator of F. R. Cold Storage Ltd (in liquidation)," as required by Rule 103. The Bank Account shall be operated under the sole signature of the Official Liquidator. The petitioner-company shall deposit an amount of Tk.1,00,000/-(One lac) in the said account within 15 days for meeting up all 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 (if any) and contributories and subject to the control of the Court.

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

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

D. The Official Liquidator is directed to take into custody all movable and immovable properties of the company, including

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

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

of the company, giving account numbers, enclosing statement of accounts, name of the Signatories and also enclosing authenticated copies of the Resolution regarding operation of the bank accounts, if any, within the time limit prescribed in the preceding paragraph.

- G. The persons named in preceding paragraph no. G and/or the official-in charge of the estate, if any, of the company shall give particulars of and handover all title deeds of immovable properties of the company, if any, to the official liquidator within the same time-limit prescribed in the preceding paragraph.
- H. The Chairman/Managing Director or any other Director of the company (in liquidation) shall submit an affidavit of compliance as regards directions Nos. E to G within one week thereafter.
- I. The Company, the members of the Board, all 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.

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(Sikder Mahmudur Razi, J:)