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NEWS LETTER

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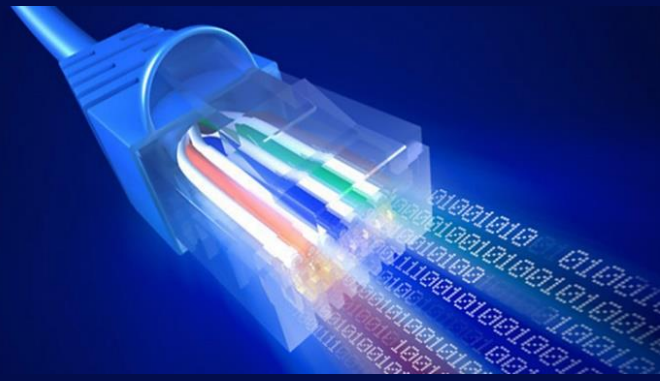
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Affordable Internet - Bangladesh Meets UN Target

Bangladesh has met the affordability target on internet prices set by the United Nations Broadband Commission for Sustainable Development in 2021. The information was revealed in a recent report of the International Telecommunication Union (ITU) and the Alliance for Affordable Internet, giving a high-level overview of the results from the 2021 price data collection exercise, focusing on changes in affordability.



In 2018, the commission set its updated affordability target: to bring prices for entry-level broadband services below 2 per cent of the average monthly gross national income per capita by 2025. According to the report, among the economies for which data were available for both 2020 and 2021, fewer met the affordability target in 2021 than in 2020.

Only 96 economies hit the goal with regard to the data-only mobile broadband basket in 2021, seven less than the previous year, and only 64 economies reached the target with respect to the fixed broadband basket, down by two from the previous year.

Bangladesh met the target of affordability for both broadband and mobile internet, according to the report. The prices of broadband baskets remained far above the 2 per cent target for most of the least-developed countries (LDCs). Of the 18 economies where mobile broadband internet access cost more than 10 per cent of GNI per capita, 16 were LDCs.

Only four LDCs – Bangladesh, Bhutan, Myanmar and Nepal – met the broadband target in 2021. Bhutan and Myanmar achieved the goal thanks to the affordability of data-only mobile broadband and Nepal due to fixed broadband.

In June last year, the Bangladesh Telecommunication Regulatory Commission (BTRC) fixed the monthly cost of a connection with a minimum speed of 5 Mbps at Tk 500, 10 Mbps at Tk 800-1,000, and 20 Mbps at Tk 1,100 -1,200. Bangladesh had 7.5 lakh internet users in 2008 and it stands at 12.18 crore now. The price of data was Tk 2,700 per Mbps in 2008 whereas 5 Mbps internet data now costs Tk 500.

Bangladesh has continued to witness a rise in the number of broadband connections, while mobile operators have lost internet subscribers in recent months. The number of mobile internet subscribers dropped 1.7 per cent month-on-month in January to 11.17 crore, BTRC data showed. However, on a year-on-year basis, the number of mobile internet users rose 8.34 per cent in January.

The number of broadband subscribers rose by 10,000 month-on-month in the month to 10.10 crore and was up 5 per cent year-on-year. Since the pandemic reached on the shores of Bangladesh, the mobile operators and internet service providers added around two crore customers.

CASE LAW UPDATE

SM Ragib vs IBCS – Primax

73 DLR (AD) (2021)

Background Facts:

The petitioners filed an application under section 233 of the Companies Act, 1994 for protection of the interest of the minority shareholders. The authorized capital of the company was raised for the purpose of repaying loan liability of the company without considering the objection raised by the petitioners. It was internally decided that shares would be allotted to the shareholders in the ratio of their respective shareholding position in the company.

It was also decided that the interested shareholders had to pay by a certain deadline to buy shares, and upon expiry of the aforesaid limit the other shareholders or the directors would be empowered to allot those shares in their names for an equivalent of the unpaid amount on a first come first serve basis.

In the subsequent EGM, the expiry date of payment for allocation of new shares was not further extended. The board of directors in its meeting took a fresh decision to allocate new shares only among themselves beyond their decision at a previous EGM. Upon knowing about such decision, the petitioners suggested appointing an independent auditor to assess the value of the shares in addition to the value and goodwill to protect the interests of the shareholders.

The board of directors did not accept the said suggestion which affected the interest of the company as well as of the minority shareholders. The High Court division upon hearing the parties although found no merit but considering the alternative prayers of the petitioners dealt with the petition with six directions. Hence, being aggrieved, the petitioner filed a civil petition for leave to appeal against the said judgment and order.

Issues before the Court:

The decision of the board to keep the newly allotted shares to themselves was taken in a completely illegal manner only to deprive the petitioners from their legitimate right in the company which was in violation of the resolution,

the Articles of Association of the Company and in violation of section 155 of the Companies Act, 1994.

Reasoning of the court:

The decision of the board to increase the subscribed capital to be offered to the members in proportion to their existing shares must be made by issuing notice specifying the number of shares offered and also specifying the time limit. The limit could not be less than 15 (fifteen) days from the date of the said offer, within which, if the offer is not accepted, it will be deemed to have been declined. In such scenario, the directors may dispose of the shares as they think is best for the company.

In this case, it appeared that no such offer was made serving the required notice. Though no such notice was issued, a notice of holding a meeting was sent via email which does not fulfill the requirements.

The board of directors of the company has fiduciary powers to increase the share capital when required. The whole aim of this is that when the share capital is enhanced the existing members should be given preference by an offer to accept the same within a fixed time. But if any of such members does not respond to such offer which has been given by a notice, it would be deemed that the offer has been declined by the member.

It was not found that any such notice was served, which is the requirement of section 155 of the Companies Act, 1994. Thus, it is clear that the board of the directors increased the share capital in violation of section 155 of the Companies Act, 1994.

Decision:

The respondents were directed to appoint an auditor to assess the value of the shares and pay the petitioners' value of respective shares as per assessment and get the share register rectified in accordance with law.

LEGISLATIVE UPDATES

Summary of The Bangladesh Telecommunication Control (License) Regulations, 2022

The Bangladesh Telecommunication Regulatory Commission has issued the new Licensing regulation titled Bangladesh Telecommunication Control (License) Regulation, 2022 by repealing The Bangladesh Telecommunication Regulatory Commission (Licensing Procedure) Regulations, 2004.

The new regulation sets out extended provisions in relation to obtaining licenses through Tenders and Open Procedures. This specifically includes formation of tender opening and evaluation committee including their functions, process of issuance of license and renewal. However, the list of licenses that shall be issued through Tender has been revised in the new regulation.

Similarly, a list of licenses has been included in the Open Licensing Procedures whereby any interested party may apply directly to Bangladesh Telecommunication Regulatory Commission to obtain the licenses and the Commission shall be act in accordance with the regulation to provide and renew the licenses. For ease of convenience, the list of both these category of obtaining licenses is provided hereunder:

Tenders	Open Licensing Procedures
Public Switched Telephone Network Service	Internet Service
Cellular Mobile Telecommunication Service	VSAT Service
Mobile Number Portability Service	Radio Communication Service
Tower Sharing License Services	Amateur Radio Service
Submarine Cable Service	Internet Protocol Telephony Service
International Terrestrial Cable Service	Telecommunication Transmission Service
Satellite Service	National Internet Exchange Service;
International Gateway Service	Transportation Tracking Service
International Internet Gateway Service	
Interconnection Exchange Service	
Broadband Wireless Access Service	
Voice Over Internet Protocol Service	

Having said that, the Commission shall only issue Registration Certificate in regard to: (a) Call Centre, (b) Telecommunication Value Added Service (TVAS), (c) Radio Equipment Importer and Vendor Enlistment, and (d) Application to Person (A2P) SMS. It is pertinent to mention that, the forms in relation to application, renewal of the said licenses, registration certificates, shall be obtained applied, and obtained through the forms mentioned in Schedule-3, Schedule-4, Schedule-5, Schedule-6, Schedule-7 and Schedule-8 respectively.

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LEGISLATIVE UPDATES

Additionally, if any person wants to verify their license, registration certificate or permits provided by the Commission in accordance with law then the relevant officer shall issue letter pertaining to verification of the said license, permit, registration certificate upon receipt of BDT 5,000.00 for License, BDT 100.00 for each permit and registration certificate.

The Commission additionally has the obligation to prepare, include, conserve in the register of description of licenses in the prescribed form given under Schedule-9 of this Regulation. It has been decided under the said regulation that, the licenses, permits and registration certificates issued under the previous regulation, namely, Bangladesh Telecommunication Regulatory Commission (Licensing Procedure) Regulations, 2004 shall remain valid as per the conditions set out therein.

However, after the expiry of the licenses, permits, and registration certificates issued under the previous regulations, those have to be renewed under this new regulation in accordance with the conditions set forth herein. Additionally, any act or action taken under the previous regulation shall be deemed to have been taken under the new regulation and any suit or any act unresolved matter taken under the previous regulations shall be resolved under the new regulation as far as possible.

In Other News

Bangladesh's Merchandise Export Marks 30% growth

A resilient rebound in apparel trade upheld the country's merchandise shipments as Bangladesh recorded over 30% annualized export growth in the current financial year's first eight months.

Exports fetched Bangladesh \$33.84 billion during the July-February period of FY'22, against \$25.86 billion in the corresponding period of last fiscal, according to provisional data available with the Export Promotion Bureau (EPB).

The overall export earnings also surpassed the set target for the period by 16.5%. Besides, single-month export earnings in February also sustained the growth at 34.54% to \$4.29 billion. February is the sixth consecutive month since last September that the country's single-month export earnings rose above the four-billion mark.

The February 2022 earnings also exceeded the target set for the month by 18.8%. Of the total \$33.84 billion worth of export income during the July-February period, readymade garment (RMG) sector made the most fetching \$27.49 billion, showing a 30.73% growth over last fiscal's mark. A breakdown of the clothing-sector performance shows that knitwear subsector of RMG earned \$15.06 billion from exports, registering a growth of 32.87%. Earnings from export of woven garments amounted to \$12.42 billion in the past eight months, up 28.23%. Home-textile exports recorded about 36% growth to \$993.76 million in the first eight months of this fiscal.

The Concept of Lifting The Corporate Veil and Judicial Interference in Company Matters



The courts of Bangladesh have the obligation set by the constitution to oversee that rule of law prevails over everybody including functionaries and legal entities of the land to keep the people of the country free from exploitation, even in the private realm according to the case of Liberty Fashion Wears Limited v. Bangladesh Accord Foundation, (2017).

In matters relating to companies, originally the 'Company Bench' of the High court division which is ordained in the Companies Act 1994 (the "Act") section 3. Also in some procedural scenarios, the civil courts have the jurisdiction to interfere and settle disputes which were settled in the case of Abdul Mohit and Others v Social Investment Bank Ltd. and others, (2009) 61 DLR (AD) 82.

But a salient question arises about the demarcating lines of interference given to the courts by virtue of the statute prevailing in the country while also considering the judicial interpretations on this issue. To function in a democratic, capitalist society, a company needs the right to a certain extent of autonomy. After being conclusively registered u/s 25 of the Act, the company in question becomes a person at law, independent and distinct from its members.

According to corporations' fiction theory, also supported by certain other theories that state, through incorporation, a company ultimately turns into an artificial entity. It has also been enunciated in the case of Richard Oakes v William Turquand and R P Harding (1867) that as a distinct legal personality, a creditor of such a company has remedy only against the company and not against an individual shareholder in general circumstances.

Recently the jurisprudence has developed so far as to hold a company liable for a crime and to attribute liability through the doctrine of attribution to the company for violating penal provisions as seen in the case of Iridium India Telecom Ltd v Motorola Inc (2011) 1 SCC 74 (SC). This behavior of the courts toward the status of incorporated companies actually shed light on the advantages of creating a corporation in the first place.

Through incorporation, a company gains many features like limited liability u/s 6 and 7 of the Act, including the partners perpetual succession, own vested property being separate from shareholders (Macaura v Northern Assurance Co Ltd [1925] AC 619) etc. The commercial significance of limited liability gives economic advantages to shareholders with less risk involved, as observed by Buckley J in Re London and Globe Finance Corporation (1903) 1 Ch D 728, 731.

So, it can be inferred from these factors a company runs as a Separate Legal Personality or Entity First. As a separate legal person, it was settled in the case of Lee v Lee's Air Farming Ltd [1960] UKPC 33 that a registered company can sue and be sued and enter into contracts in its own name even with its controlling members.

Now a pertinent notion can emerge if this separation is unfettered and about the actual demarking lines of non-interference of two main elements of statutory provisions and judicial interpretations in internal company matters. For the answer, the concept of corporate veil lifting must be scrutinized closely. And when this veil is actually lifted, the court can be actually deemed to have interfered.

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There is a belief that a company is a legal person entirely separate and distinct from the members of that company, and between them, there exists a rather hefty veil that can be lifted only in a limited number of circumstances that varies and fluctuates as observed in the case of *Atlas Maritime Co SA v Avalon Maritime Ltd* [1991] No 1 CA 1991 (CA). This corporate veil has been described as an iron curtain that separates the company from its members allowing the company to rest in front of the curtain while its members sit behind the curtain and exercises various powers on behalf of the company.

The dispute in *Carlen v Drury* (1812) 35 ER 61 erupted in the *Bankside Brewery* between its management and the shareholders. This decision became the first reported case to attempt to define a boundary between business organizations and the law. In *The Companies Act, 1994*, a few provisions explicitly promulgate lifting of this corporate veil, but the courts from time to time to deal with different necessities have interfered in company matters, broadening the ambit of interference. Although all the instances can't be crammed in this piece, a couple of examples can be shed light into.

Reduction of members below the statutory limit:

A question of lifting the veil arises when a company body is carrying on business consciously with fewer than seven or, in the case of a private company, two members for more than 6 months. Then, the creditors may look behind the veil as promulgated u/s 222 of the Act.

Trading Fraudulently:

If in the process of winding-up or liquidations, fraudulent elements are found under the act (s.225), the member behind the act can be pinpointed by lifting the veil if the purpose of carrying on of a business would enable anyone to cloak a sham or avoid specific performance to avoid the eyes of equity *Jones v Lipman* (1962) 1 WLR 832.

In the case of *Cotton Corporation of India Ltd v G C Odusumathd* (1992) 22 SCL 228 (Kar) the court held that "heaving of the veil is not acceptable in law unless it is expressly provided by the statute, or whereby the reasons so impregnable satisfy enough that lifting of the corporate veil is a must to prevent a fraud or any kind of trading activities with an enemy company. (See also. *Life Insurance Corporation of India v Escorts Ltd* (1986) 59 Comp Cas 548). Here we can see a set of principles of balancing factors between the statute and the case laws for intervention too.

Also, there are other statutory restrictions (u/s 225) against Non-publication of the company name or the unauthorized use, frauds concerning holding and subsidiary companies. In *Chandler v Cape Plc* the claimant was an employee of a wholly-owned subsidiary of Cape who suffered asbestos-related injuries in the course of his employment. The claimant sought to attribute tortious liability to the parent company because of its control over the subsidiary's health and safety policy. The parent company's assumption of responsibility for the health and safety policy at the subsidiary created a special relationship between the employee and the parent company, giving rise to a duty of care. On the facts of the case, this duty had been breached by the parent company, and damages were payable.

In *Adams v Cape Industries Plc* the court refused to lift the veil between a parent and a subsidiary company as the agency or mere façade requirements were not fulfilled. The parent company did not control the day-to-day business of the subsidiary company. Both the companies under the circumstances were not 'a single economic unit'.

In *Erlanger v New Sombrero Phosphate Co.*, a syndicate purchased a mine containing phosphates for £55,000. The syndicate then formed a company and, through a nominee, sold the mine to it for £100,000 without disclosing their interests in the contract. The phosphate operations proved to be a failure, and the shareholders removed the original directors. The new board successfully brought an action to have the sale rescinded. Although such disclosure will not be sufficient if the original shareholders are not truly independent, and the scheme is designed to defraud the investing public.

Conclusion

In the end, it can be deduced the courts have been reluctant to interfere in company business as long as the operations are going smooth and fluid within the company body. The courts struck a balance to create an environment where businesses can strive while also creating a legal culture of checks and balances. From time to time the courts have also applied principles like 'good faith', 'honesty' as qualifications required of rule against interference with internal company matters.



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