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

Present:
Mr. Justice Md. Toufiq Inam

COMPANY MATTER NO. 125 OF 2016.

IN THE MATTER OF :
An application under section 43 of the Companies Act, 1994.

-AND-

IN THE MATTER OF :
Rokaiya Nasrin,

------ Petitioner.

-Versus-

Neptune Cold Storage Ltd. and others.

------ Respondents.

Mr. Shah Muhammad Ezaz Rahman, Advocate
with
Mr. Sheikh Mohammad Faizul Islam, Advocate
------ For the Petitioner.
Mr. Taufiq Anwar Chowdhury, Advocate
------ For the Respondents.

Judgment delivered On: 16.08.2026.

Md. Toufiq Inam, J

This is an application under section 43 of the Companies Act, 1994, seeking rectification of the Register of Members of Respondent No. 1 Company by recording the name of the Petitioner as the holder of 700 ordinary shares transferred by Respondent No. 7, together with all consequential orders and reliefs arising therefrom.

Background

The Petitioner's case, as disclosed in the application, is that Respondent No.7, being the Chairman of the Company, entered into an MOU dated

07.05.2009 (Annexure-C) with the Petitioner for transfer of her 700 shares in favour of the Petitioner. The Petitioner paid the entire consideration of Tk. 80,00,000/- to Respondent No.7 (Annexure-G series), whereupon Respondent No.7 executed Form 117 (Annexure-D) and an affidavit (Annexure-E) acknowledging the transfer and receipt of the full consideration. Upon transferring her entire shareholding, Respondent No.7 resigned from the office of Chairman/Director of the Company (Annexure-F). Respondent No.7 also informed Respondent No.2, the then Managing Director, by letter dated 07.05.2009 of her intention to transfer the shares and requested that the existing shareholders be given an opportunity, within 15 days, to purchase the same. Neither Respondent No.2 nor any other shareholder responded to or acted upon the said letter.

It is further the Petitioner's case that, following the transfer, Respondent No.7 executed a Power of Attorney dated 28.08.2009 (Annexure-H) appointing the Petitioner to perform functions as a director of the Company. Upon the Petitioner being denied such participation by the Board, Respondent No.7 instituted Company Matter No.121 of 2010 under section 233 of the Companies Act, 1994, seeking a direction upon the Company to permit the Petitioner, who was impleaded therein as pro-forma Respondent No.8, to act as a director. The said Company Matter was ultimately dismissed by this Court by judgment and order dated 12.05.2016, principally on the ground that assignment of the office of a director is prohibited under section 100 of the Companies Act, 1994. During the pendency of that proceeding, and prior to its disposal, the Petitioner approached Respondent No.2 by letters dated 21.01.2016 and 09.02.2016 (Annexures-J and J1 respectively), requesting rectification of the share register by entering her name as the holder of the 700 shares. According to the Petitioner, the Company neither acted upon nor responded to those requests, compelling her to institute the present application under section 43 of the Companies Act, 1994.

Respondent No.1 Company's case is that the alleged transfer of 700 shares by Respondent No.7 in favour of the Petitioner was a private transaction entered into without the knowledge or approval of the Company or its Board of Directors and in clear violation of Articles 20 and 22 of the Articles of Association. The Company contends that, as the Petitioner was an outsider, Respondent No.7 was required to comply with the prescribed procedure for transfer, including giving the existing shareholders an opportunity to exercise their right of pre-emption. The alleged letter dated 07.05.2009 did not disclose the name, address and particulars of the proposed transferee and allowed only 15 days for exercising the option, whereas Article 22 required a period of two months. The Company further denies having received the said letter.

It is further the Company's case that the MOU, Form 117 and affidavit were all executed on the same day, and that the transaction was treated by the parties as complete upon payment of the consideration and execution of Form 117, without first complying with the Articles. According to the Company, such private arrangement could not bind the Company or compel it to recognise the Petitioner as a member. The Company also relies upon the judgment dated 12.05.2016 in Company Matter No.121 of 2010, particularly the observations concerning the Power of Attorney dated 28.08.2009 and the prohibition under section 100 of the Companies Act, 1994 against assignment of the office of a director. It is contended that the earlier judgment attained finality and that the Petitioner cannot now use section 43 to obtain recognition of a transaction which the Company was never bound to recognise.The documents relied upon by the Petitioner, including the MOU, Form 117, affidavit, alleged letter and Power of Attorney, do not establish a valid transfer binding upon the Company. In its view, the alleged transfer was effected without Board approval and in deliberate violation of the Articles of Association and is therefore void and incapable of supporting an order of rectification under section 43.

Submissions on behalf of the Petitioner

Mr. Shah Muhammad Ezaz Rahman, learned Advocate for the Petitioner submits that Respondent No.7 voluntarily transferred her entire holding of 700 shares to the Petitioner for valuable consideration of Tk.80,00,000/-. The transfer is evidenced by the MOU dated 07.05.2009, duly executed Form 117, the sworn affidavit acknowledging the transfer and receipt of consideration, and the other documents.He submits that neither the Limitation Act, 1908 nor the Companies Act, 1994 prescribes any specific period of limitation for an application for rectification of the register of members. Relying on *Tamizul Haque v. Shamsul Haque*, 43 DLR (AD) 34, it is submitted that, although such an application should ordinarily be made within a reasonable time and not after inordinate delay, what constitutes reasonable or inordinate delay depends upon the facts of each case. Reliance is also placed on *Matiur Rahman (Md) v. Dhaka Stock Exchange Ltd. and another*, 51 DLR (1999) 444, wherein it was held that an application under the Companies Act is not subject to any prescribed period under the Limitation Act, 1908 and should not be rejected merely on the ground of delay without considering the circumstances of the particular case.

In the present case, it is submitted that the Petitioner never abandoned or acquiesced in her claim. Following the transfer of the 700 shares on 07.05.2009, the issue was brought before the Court in Company Matter No.121 of 2010, wherein the Petitioner disclosed her claim in respect of the shares. During the pendency of that proceeding, she also requested Respondent No.2 by letters dated 21.01.2016 and 09.02.2016 to rectify the share register, but the Company neither acted upon nor rejected those requests. The present application was filed after disposal of the said Company Matter. It is further submitted that the Respondents did not expressly deny the transfer or decide the Petitioner's requests for rectification until the filing of their Affidavit-in-Opposition in 2025. Thus, the issue remained alive throughout, and any delay was bona fide and occasioned by the Petitioner's continued pursuit of her claim. Accordingly, the learned Advocate submits that the present application cannot be said to have been filed after inordinate delay and is not barred by limitation.

He submits that, contemporaneously with executing the MOU, Form 117 and affidavit on 07.05.2009, Respondent No.7, through Respondent No.2, the then Managing Director, offered the 700 shares to the existing shareholders and allowed them 15 days to exercise their option. Neither Respondent No.2 nor any other shareholder responded to the offer or expressed any willingness to purchase the shares. Even after the Petitioner's letters dated 21.01.2016 and 09.02.2016 seeking rectification, no objection to the transfer was raised by Respondent No.2 or any existing shareholder. It is therefore submitted that, by their prolonged silence and failure to exercise the right of pre-emption, the existing shareholders waived or acquiesced in the transfer and cannot, after such inordinate delay, rely upon the pre-emption clause to defeat the Petitioner's claim.

He further submits that the Company's own subsequent conduct corroborates the Petitioner's case. After the present dispute had arisen, Respondent No.2, during his lifetime, jointly filed Schedule X with Mr.

S. M. Hedayetul Islam, a Director of the Company, showing the Petitioner as the owner of the 700 shares transferred by Respondent No.7. Respondent No.2 himself certified the said shareholding position in his capacity as Managing Director. It is therefore contended that Respondent No.4, being the son of Respondent No.2, cannot now disown or dispute the Company's own certified record showing the Petitioner as holder of the disputed 700 shares.

Regarding the Judgment in Company Matter No. 121 of 2010, he submits that Company Matter No.121 of 2010 was instituted by Respondent No.7, the transferor, under section 233 of the Companies Act, 1994, seeking enforcement of the Power of Attorney executed in favour of the Petitioner and, in substance, to enable the Petitioner to act as a director. The said proceeding was dismissed because assignment of the office of a director is prohibited under section 100 of the Act. It is submitted that the judgment, therefore, concerned the validity and enforceability of the Power of Attorney insofar as it purported to confer the office and functions of a director, and did not adjudicate upon the Petitioner's title to the 700 shares or her entitlement to be registered as a member. The present application under section 43 is founded upon an independent claim to rectification of the register by entering the Petitioner as a shareholder, and not upon any right to act as a director under the Power of Attorney.

With regard to acknowledgment of the petitioner's shareholding and subsequent omission, Mr. Rahman further submits that the Company's own records acknowledge the Petitioner's status as holder of the disputed 700 shares. Schedule X was filed with the RJSC showing the transfer of the 700 shares from Respondent No.7 to the Petitioner, and the said return was signed by Respondent No.2, the then Managing Director, and

S.M. Hedayetul Islam, Respondent No.3. Subsequently, Respondent No.4 filed another Schedule X dated 25.08.2019 showing his late father, Respondent No.2, as the holder of the same 700 shares and sought cancellation of the earlier return showing the Petitioner as shareholder. The RJSC, upon scrutiny, refused to accept the subsequent return or cancel the earlier return because no Form 117 evidencing any transfer of the 700 shares from the Petitioner to Respondent No.2 had been produced. The learned Advocate submits that the RJSC's letter dated 19.09.2019 itself demonstrates that the Petitioner's name had been duly recorded pursuant to the 2009 transfer and that there was no lawful basis for subsequently showing either Respondent No.7 or Respondent No.2 as the holder of those shares. In the circumstances, it is submitted that the Petitioner has established her title to the 700 shares and is entitled to rectification of the register and to enjoy all rights and privileges attached thereto.

Submissions on behalf of the Respondents

Mr. Taufiq Anwar Chowdhury, learned advocate for the Respondent No. 1 Company, on the other hand, submits that the alleged transfer of 700 shares in favour of the Petitioner was never validly recognised by the Company and was made in violation of Articles 20 and 22 of the Articles of Association. He contends that the Petitioner was an outsider and, therefore, the proposed transfer was subject to the pre-emption procedure prescribed by the Articles. Respondent No.7 was required to notify the Board of Directors of her intention to transfer the shares and to disclose the name, address and particulars of the proposed transferee. The alleged letter dated 07.05.2009 did not satisfy those requirements and, moreover, allowed only 15 days for exercise of the right, whereas Article 22 prescribed a period of two months. The Respondents further submit that the MOU, Form 117 and affidavit were all executed on the same date and that the alleged transfer was completed privately between Respondent No.7 and the Petitioner without the approval or recognition of the Board. Such a private transaction, according to the Respondents, cannot override the Articles of Association or bind the Company. Reliance is also placed upon the judgment dated 12.05.2016 passed in Company Matter No.121 of 2010.

This Respondent submit that the said judgment had already considered the Power of Attorney dated 28.08.2009 and the Petitioner's asserted interest in the 700 shares, and that the Court had observed that the tenor of the Power of Attorney involved an impermissible assignment of the office and privileges of directorship under section 100 of the Companies Act, 1994.He further contends that the said judgment was never challenged before the Appellate Division and, therefore, attained finality. The Petitioner cannot, according to them, obtain through the present application what she failed to obtain in the earlier proceeding.It is further submitted that the alleged letter by Respondent No.7 informing the Company of the proposed transfer was never received by the Managing Director or the other directors. The Respondents therefore dispute the Petitioner's assertion that the existing shareholders were duly offered an opportunity to purchase the shares.

On the question of delay, Mr. Taufiq Anwar Chowdhury refers to *Shamsul Alam Bhuiyan v. Joint Stock Companies*, reported in 23 BLC (HCD) 215, and submits that inordinate and unexplained delay in invoking section 43 may, by itself, constitute a sufficient ground for dismissal of an application for rectification. He further relies upon *Giasuddin Ahmed v. Green Delta Insurance*, reported in 52 DLR (HCD) 41, to submit that where the Articles of Association confer upon the Board discretion to decline registration of a transfer, such discretion is required to be exercised bona fide having regard to the interests of the Company and its shareholders. On these grounds, he submits that the Petitioner, having failed to establish a valid transfer in accordance with the Articles and having approached the Court after considerable delay, is not entitled to the discretionary relief of rectification under section 43.

Discussion and Findings

The principal controversy in the present case is not whether the Articles of Association contain provisions regulating transfer of shares. It is also not disputed that a company may, in appropriate circumstances, rely upon such provisions to protect the legitimate interests of the Company and its existing shareholders. The real question is whether, in the facts of the present case, the alleged non-compliance with the pre-emption provisions contained in Articles 20 and 22 is sufficient to defeat the Petitioner's claim, particularly when the subsequent conduct of the Company and its shareholders is taken into consideration.

Pre-emption under the Articles of Association

The Respondents contend that Respondent No.7, being a shareholder, could not transfer her shares to an outsider without first complying with Articles 20 and 22 of the Articles of Association and that the alleged offer made to the existing shareholders was defective, inter alia, as it allowed only 15 days instead of the period prescribed under Article 22. The Court finds some force in the submission that the provisions of the Articles regulating transfer of shares cannot simply be disregarded by the transferor and transferee. However, the legal consequence of the alleged non-compliance must be considered in the context of the subsequent conduct of the parties and, in particular, of those shareholders for whose benefit the pre-emption provision exists. It is significant that, although the Respondents assert that the existing shareholders had a right of pre-emption, none of them exercised that right, claimed the disputed 700 shares, or expressed any willingness to purchase them, either upon the alleged offer in 2009 or after the dispute came to light in Company Matter No.121 of 2010 and in the present proceeding instituted in 2016.

The Respondents' case gives rise to a further difficulty. If the pre-emption provision was intended to protect the existing shareholders against the introduction of an outsider, a shareholder intending to exercise that right would reasonably be expected to assert it when the proposed transfer came to his or her knowledge. Yet, even after the Petitioner expressly sought rectification by her letters dated 21.01.2016 and 09.02.2016, no shareholder came forward either to purchase the shares or to object on the ground that he or she intended to exercise the right of pre-emption. Nor has any competing claim been asserted throughout the prolonged pendency of the present proceeding. In these circumstances, the Court is not persuaded that the pre-emption clause can now be invoked merely as a technical objection to the Petitioner's claim when the very persons for whose benefit the provision was incorporated have, with full knowledge of the transaction and the Petitioner's claim, neither exercised nor asserted the right for many years. Their prolonged and conscious inaction, in the circumstances of the present case, amounts to waiver or acquiescence in the transfer and substantially undermines the Respondents' reliance upon the pre-emption provision.

Company's Subsequent Conduct

The Court considers the Company's subsequent conduct to be of particular significance. The materials on record show that Schedule X was subsequently filed with the RJSC showing the Petitioner as the holder of the disputed 700 shares, and the said return was signed by Respondent No.2, the then Managing Director, along with Respondent No.3. This was not an act of the Petitioner alone; it was a representation made on behalf of the Company as to its shareholding position.

The subsequent attempt to show the same 700 shares in the name of Respondent No.2 stands on a materially different footing. No Form 117 evidencing any transfer of those shares from the Petitioner to Respondent No.2 has been produced. The RJSC, upon scrutiny, did not accept the subsequent return or cancel the earlier return showing the Petitioner as shareholder for want of such transfer instrument. The Respondents have offered no satisfactory explanation as to how the same 700 shares could subsequently be shown in the name of Respondent No.2 without any corresponding instrument of transfer.This subsequent conduct substantially weakens the Respondents' contention that the Company had at all times treated the Petitioner's claim as wholly non-existent or incapable of recognition. On the contrary, the Company's own statutory return, at least at one stage, reflected the Petitioner as the holder of the disputed shares. The later attempt to alter that position, unsupported by a Form 117, cannot be relied upon to defeat the Petitioner's claim.

<u>Effect of the Decision in Company Matter No. 121 of 2010</u>

The reliance placed by the Respondents upon the judgment dated 12.05.2016 passed in Company Matter No.121 of 2010 is misplaced. The said proceeding was instituted by Respondent No.7, the transferor, for enforcement of the Power of Attorney executed in favour of the Petitioner and, in substance, for permitting the Petitioner to perform the functions of a director. The proceeding was dismissed on the ground that assignment of the office of a director was prohibited under section 100 of the Companies Act, 1994. The issue before the Court in that proceeding was, therefore, materially different from the issue arising in the present application.

The present application does not seek recognition of the Petitioner as a director on the strength of the Power of Attorney. It seeks rectification of the register of members by recognising the Petitioner's title to the 700 shares transferred by Respondent No.7. The finding that the office of a director could not be assigned does not, without more, amount to a finding that the underlying transfer of the shares was void or that the Petitioner had no right to be registered as a member in respect thereof. The earlier judgment must, therefore, be confined to the issue actually adjudicated therein. Indeed, the institution of Company Matter No.121 of 2010 by Respondent No.7 herself, seeking to secure the Petitioner's participation in the affairs of the Company on the strength of the Power of Attorney executed after the alleged transfer, is itself a significant circumstance corroborating the Petitioner's case that Respondent No.7 had already transferred her 700 shares to the Petitioner. The Respondents cannot rely upon the dismissal of that proceeding, which concerned the assignment of directorship, as though it amounted to an adjudication against the validity of the transfer of shares itself.

<u>Delay, Laches and Acquiescence</u>

The Respondents have relied upon *Shamsul Alam Bhuiyan v. Joint Stock Companies*, reported in 23 BLC (HCD) 215, to submit that delay in invoking section 43 may itself constitute a ground for dismissal. The proposition that a Court exercising jurisdiction under section 43 may take into account unreasonable or inordinate delay is not disputed. But the question is not merely the length of time between the alleged transfer and the institution of the proceeding; the Court must examine whether, during that period, the claimant abandoned the claim, acquiesced in the contrary position, or otherwise slept over the right now asserted.

The principle stated by the Appellate Division in *Tamizul Haque v. Shamsul Haque*, 43 DLR (AD) 34, is instructive in this regard. The Court recognised that, although there is no prescribed period bringing an application for rectification within the residuary limitation provision, such application should be made within a reasonable time and not after inordinate delay, the question depending upon the facts of each case. The decision also proceeded upon the consideration whether the claimant had continued to assert the right and had acquiesced in the acts complained of.

The facts of the present case do not disclose such abandonment or acquiescence. The Petitioner's claim to the 700 shares was brought to the Company's and the Court's attention in the proceedings initiated in 2010 by Respondent No.7. More importantly, before disposal of that proceeding, the Petitioner herself requested the Company by letters dated 21.01.2016 and 09.02.2016 to rectify the register. The Company admittedly did not communicate any decision on those requests. The present application was thereafter instituted in 2016. Thus, the Petitioner cannot be said to have remained silent throughout or to have accepted the Company's refusal to recognise her claim. Nor can the Respondents derive advantage from their own failure to make a decision. If the Company had rejected the Petitioner's claim in 2009 or 2016 and communicated such decision, the Petitioner would at least have been confronted with a definite adverse position. Instead, the issue remained unresolved, while the Company's own subsequent Schedule X reflected the Petitioner as holder of the 700 shares. In these circumstances, the passage of time cannot, without more, be characterised as acquiescence.

The Court therefore distinguishes the present case from a case where a shareholder, having full knowledge of an adverse entry in the register, remains inactive for an inordinate period and subsequently seeks to reopen a concluded matter. Here, the Petitioner continuously asserted her claim, sought rectification before the Company, and thereafter approached the Court. The principle regarding reasonable time, therefore, does not defeat the present application.

Discretion under the Articles of Association

The reliance upon *Giasuddin Ahmed v. Green Delta Insurance Company Limited*, reported in 52 DLR (HCD) 41, also requires consideration. That decision recognises that where the Articles confer upon the Board a discretion regarding registration of a transfer, such discretion is not an arbitrary power and must be exercised bona fide and having regard to the interests of the Company and its shareholders. The principle is consistent with the fiduciary character of the directors' position; the discretion must involve a genuine and proper consideration of the proposed transfer rather than a bare acceptance or rejection.

The principle, however, does not assist the Respondents on the facts of the present case. There is no material before the Court demonstrating that the Board, upon consideration of the Petitioner's transfer documents, actually exercised its discretion to refuse registration on a bona fide assessment of the interests of the Company or its shareholders. What is asserted is essentially that the transfer was not recognised because of alleged non-compliance with the pre-emption provisions. More significantly, the Company's subsequent conduct in filing Schedule X showing the Petitioner as holder of the 700 shares is inconsistent with the assertion that the Board had, after due consideration, exercised its discretion to refuse registration.A statutory or contractual discretion vested in the Board cannot be converted into an unreviewable power to defeat a shareholder's claim. Where the Articles confer discretion, that discretion must be exercised lawfully, bona fide and for the purpose for which it was conferred. The principle in *Giasuddin Ahmed* therefore does not authorise the Court to uphold an unexplained or inconsistent refusal, particularly where the Company's own records subsequently recognised the transferee.

The Court accordingly holds that where a transfer of shares is challenged on the ground of non-compliance with a pre-emption provision in the Articles of Association, the existence of such provision does not, by itself, conclude the transferee's claim for rectification. The Court must examine whether the pre-emption right was actually exercised or asserted by any entitled shareholder and whether the Company itself subsequently recognised the transfer. Where no shareholder exercises or asserts the alleged pre-emption right despite prolonged knowledge of the transfer, and the Company's own statutory records subsequently recognise the transferee as shareholder, the Company cannot rely upon the unexercised pre-emption provision, in the absence of a bona fide and properly exercised decision refusing registration, to defeat rectification under section 43.

Likewise, delay in filing an application under section 43 is not, by itself, determinative. The Court must consider whether the delay amounts to abandonment or acquiescence, or whether the claimant has continuously asserted the right and the issue has remained alive because of the Company's failure to take or communicate a final decision. Where the claimant has consistently pursued the claim and the Company itself has maintained inconsistent records concerning the disputed shares, the delay cannot, without more, be characterised as inordinate delay disentitling the claimant to rectification.

On the facts of the present case, the Court finds that the Petitioner has not abandoned or acquiesced in her claim; no existing shareholder has asserted the alleged pre-emption right; the Company subsequently recorded the Petitioner as holder of the 700 shares in Schedule X; and the later attempt to show the shares in the name of Respondent No.2 was unsupported by any Form 117 and was not accepted by the RJSC. These circumstances, taken cumulatively, materially distinguish the present case from the authorities relied upon by the Respondents.

Order and Directions

The Court is satisfied that the Petitioner has established the transfer of the 700 shares by Respondent No.7 for valuable consideration, supported by the MOU, Form 117, affidavit and proof of payment. More importantly, the subsequent conduct of the Company materially corroborates the Petitioner's claim. The Company's own Schedule X subsequently reflected the Petitioner as the holder of the 700 shares. Thereafter, an attempt was made to show the same shares in the name of Respondent No.2, but no Form 117 evidencing any transfer in his favour was produced, and the RJSC did not accept the subsequent return or cancel the earlier return showing the Petitioner as shareholder. Such inconsistent treatment of the same shares by the Company cannot, in the absence of any satisfactory explanation, be used to defeat the Petitioner's claim.

Accordingly, the application succeeds and is allowed.

The Respondent No. 1 Company is hereby directed to rectify its Register of Members within 15 (fifteen) days from the date of receipt of this judgment by deleting the existing entry in respect of the 700 (seven hundred) ordinary shares standing in the name of Respondent No. 7 and entering therein the name of the Petitioner as the holder of the said shares, together with all consequential rights, benefits and privileges attached thereto.

The Respondent No. 1 Company shall take all necessary consequential steps to give full effect to this judgment and shall file the requisite returns, forms and documents with the Registrar of Joint Stock Companies and Firms (RJSC) forthwith, in accordance with law.

The records of the RJSC be sent back forthwith.

There shall be no order as to costs.

(Justice Md. Toufiq Inam)

Ashraf/ABO.