

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

Present:

Mr. Justice Sikder Mahmudur Razi

Company Matter No. 185 of 2017

IN THE MATTER OF:

An application under Section 43 of the Companies Act, 1994.

-AND-

IN THE MATTER OF:

Md. Golam Rabbani

..... Petitioner

- V E R S U S -

Diamond Egg Limited and others.

..... Respondents

Mr. Md. Yousuf Ali, Advocate with

Mr. Md. Uzzal Hossain, Advocate with

Mr. Gobinda Biswas, Advocate

.....For the Petitioner.

Mr. Khan Mohammad Shammed Aziz, Advocate
with

Mr. Mostafa Mosharaf Hossain, Advocate

....For the Respondent Nos. 1-3.

Heard on: 30.07.2025 & 26.08.2025

And

Judgment on: The 31st August, 2025

1. This company matter has been filed by Md. Golam Rabbani under section 43 of the Companies Act, 1994 for rectification of register of members of respondent no. 1 company namely Diamond Egg Limited.
2. From the substantive application as well as from different affidavit-in-replies filed against the affidavit-in-oppositions, the case of the petitioner stands as follows:

That the Petitioner is one of the sponsor directors of the respondent no. 1 company having 10% shares in its capital who never transferred his shares in the company but the name of the petitioner has illegally been

omitted from the register of members of the company. The respondent No. 1 is a company limited by shares and incorporated on 04.06.2012 under the Companies Act, 1994 with the objectives amongst others to carry on the business of poultry commercial layer farm, poultry commercial hatcheries, poultry commercial broiler farming, dairy farming beef fattening, fish hatcheries, fish farming, pisciculture, agricultural farming etc. (*Annexure-A & A-1 to the substantive petition*). The Authorized Share capital of the Company is Tk.10,00,00,000/- (Ten crore) divided into 10,00,000 (ten lac) ordinary shares of Tk. 100/- each. The petitioner is a sponsor director of the Company and holds 2500 Nos. of fully paid ordinary shares of taka 100 each in the capital of the Company. At the time of its incorporation, the management of the respondent No. 1 Company submitted its particulars of Directors (Form-XII) to the Office of the of the respondent No. 5 in which the petitioner has been shown as the Director of the respondent No. 1 Company. (*Annexure-B to the substantive petition*). After incorporation the respondent No. 1 Company commenced its business and held the statutory annual General meetings both in year 2013 and 2014 and submitted the annual returns in Schedule -X under section 36 of the Companies Act, 1994 (*Annexure-C & C-1 to the substantive petition*). The respondent No. 2 and 3 are husband and wife and also the Managing Director and the Chairman of the respondent No.1 Company respectively and they have been hatching up conspiracies to overthrow the petitioner from the company immediately after its inception and in furtherance of such conspiracy they fabricated the share transfer instrument purporting to transfer the entire shares of the petitioner in favor of the respondent No. 3 which the petitioner never executed. In addition to the aforesaid forgery, the respondent No. 2-3 collusively fabricated a complete set of documents including the affidavit of the

petitioner stating such transfer and submitted a new Particulars of Director (PD) of the respondent No. 1 Company to the Office of the respondent No. 5 on 08.02.2015 eliminating the name of the petitioner from the board.*(Annexure-D to the substantive petition)*. The petitioner on 30.03.2015 brought the aforesaid matter to the notice of the respondent No. 5 by a written application and requested not to record any such changes in the shareholding structure of the company as depicted in the documents submitted by the respondent Nos. 2-3 without hearing the petitioner in person.*(Annexure-E to the substantive petition)*. The respondent Nos. 2 and 3 came to know about the application filed by the petitioner through the corrupt official of the respondent No. 5 and thereafter the cunning respondent nos. 2-3 again made a forged Affidavit with regard to withdrawal of the earlier objection made in the application dated 30.03.2015 which was shown to have been notarized on 30.03.2015 and submitted the same to the office of the respondent No. 5 vide submission No. 2015461958 dated 22.04.2015. The petitioner subsequently came to know about the aforesaid forged affidavit purporting to withdraw his objection dated 30.03.2015 and again lodged complaint to the office of the respondent No. 5 on 04.06.2015 and personally appeared before the officer concerned of the respondent No. 5 on 23.06.2015 to clarify that the affidavit submitted by the respondent No. 2-3 withdrawing his initial objection dated 30.03.2015 is false and fabricated and requested the respondent No. 5 not to act upon the same. Upon such representation of the petitioner the respondent No. 5, issued notice on 23.11.2015 to all the directors of the company to appear before the Deputy Registrar Mr. Md. Abul Khaer Khan scheduling the date on 03.12.2015 for verifying the veracity of the share transfer as shown in the annual return.*(Annexure – F to the substantive petition)*. The petitioner received the

notice from the office of the respondent No. 5 and personally appeared before its concerned officer and continued to maintain his original objection filed earlier on 30.03.2015 regarding the transfer of the share in question as shown in the aforesaid annual return and requested not to record the same once again. However, the office of the respondent No. 5 ignoring the objection of the petitioner, recorded the annual return of the respondent No. 1- Company submitted on 30.12.2015 effectuating the impugned transfer therein. (*Annexure-G, G-1 to the substantive petition*). The petitioner neither filed any application to the respondent no. 1 company for transfer of his shares nor, did he receive any notice under section 38 (1) of the Companies Act, 1994 as to the transfer of his shares in the respondent No. 1 Company, nor did he receive any consideration against the alleged transfer. The Petitioner never executed the Instrument of Transfer (Form 117) for his 2500 shares of the Respondent No. 1 Company and therefore never sold the said shares.

3. Respondent nos. 1-3 contested the instant matter by filing affidavit-in-opposition. Apart from filing affidavit-in-opposition they have also filed two supplementary affidavit-in-oppositions as well as one affidavit-in-reply. The facts narrated by the respondents tersely are that the Respondent No.1 Company-Diamond Egg Limited was incorporated on 04.06.2012 under the Companies Act, 1994 having Certificate of Incorporation No.C102199/12. The Respondent No. 1 was fully comprised of family members where the Respondent No.3 is the wife of Respondent No.2, Respondent No.4 is full brother of Respondent No.3 and the Petitioner is brother-in law of the Respondents No.2, 3, and 4. The Company was incorporated with an authorized capital of Tk. 10,00,00,000 (ten crore) divided into 10,00,000 (ten lac) ordinary shares of Tk. 100 (one hundred) each. The initial

subscribed shares were 25,000 (Twenty five thousand) out of which respondent no. 2 holds 15,000 shares, respondent no. 3 holds 3,750 shares, respondent no.4 holds 3,750 shares and the petitioner holds 2,500 shares. The aforesaid four subscribers became the founder directors of the Company. The Respondent No.3 was appointed as Chairman while the Respondent No.2 was appointed as the Managing Director of the Company. Thereafter on 08.02.2015, the petitioner decided to sell his entire 2,500 shares and offered to the Respondents No.3 to buy the same. After a successful negotiation, the Respondents No.3 agreed to purchase the entire 2,500 shares of the Petitioner. As per the aforesaid decision and agreement between the Petitioner and the Respondent No.3, the Petitioner, sold his entire 2,500 shares on 08.02.2015 to the Respondent No.3 on receipt of valuable consideration. The seller-petitioner on 08.02.2015 executed and signed Form 117 with his signature and by putting his Thumb impression. The execution of the Form 117 of the Petitioner also witnessed by two lawyers (*Annexure "1" to the affidavit in opposition*). The above transfer of shares was duly approved in the Board meeting of the Company held on 08.02.2015, in which all the shareholder-directors including the petitioner were present. (*Annexure "2" to the affidavit-in-opposition*). To comply with the RJSC requirement in respect of the aforesaid share transfer, the petitioner sworn affidavit before the Notary Public confirming the transfer of shares. The petitioner sworn the affidavit on 04.03.2015. (*Annexures "3" to the affidavit-in-opposition*). Due to the above transfer of shares by the petitioner to the Respondent No.3 and his resignation from the Board of Directors of the Company; certain statutory returns became due namely, (i) Schedule X and (ii) List of Directors (Form XII). The Respondent No.1- Company duly submitted the aforesaid Schedule X and Form XII with the

Respondent No.5- RJSC on 04.03.2015 along with (i) Forms 117 dated 08.02.2015 (ii) Affidavits sworn by the petitioner dated 04.03.2015 and on 05.03.2015 made payment of the necessary fees including the stamp duty of Tk.3,750 representing 1.5% of the transfer fees. (*Annexure "4" to the affidavit-in-opposition*). That all of a sudden, the petitioner, on 30.03.2015 filed a letter of objection to the office of the Respondent No.5-RJSC requesting it not to record his transfers of shares. That subsequently, the petitioner filed another letter dated 22.04.2015 to the Respondent No.5 informing it that the matter had been resolved mutually and he has withdrawn his earlier letter of objection dated 30.03.2015. (*Annexure "5" to the affidavit-in-opposition*). Respondent No.1-Company has availed loan facilities from (i) Eastern Bank Limited, (ii) The City Bank Limited and (iii) LankaBangla Finance and also obtained No-objection Certificate from those banks in transferring the shares of the petitioner and his resignation from the post of Directorship of the Respondent No.1-company. (*Annexures-"6", "7" and "8" to the affidavit-in-opposition*). In these circumstances, the office of the Respondent No.5-RJSC by issuing its Letter dated 23.11.2015 directed all the parties to present before the RJSC on 03.12.2015 to clarify the issue. The petitioner appeared before the RJSC and denied submission of his letter of withdrawal dated 22.04.2015. The Respondents No.2 and 3 also personally appeared before the office of the Respondent No.5-RJSC and confirmed that the petitioner sold his entire 2,500 shares to the Respondent No.3 on receipt of valuable consideration and by signing Form 117 and putting Thumb Impression. The Respondents No.2 and 3 also clarified the issue in writing by their letter dated 09.12.2015 (*Annexures "9" and "10" to the affidavit-in-opposition*). As per the RJSC requirement, in order to approve the share transfers, the transferor should be personally present

before the RJSC for confirmation of the transfer. In course of examination of the records, the Respondents No.2 and 3 requested the petitioner to personally attend before the RJSC to confirm his transfer of shares. The petitioner informed the Respondent No.2 and 3 that he will not be able to personally attend the office of the RJSC but he will apply for issuance of a Commission from the office of the RJSC. Accordingly, the petitioner applied to the Respondent No.5, RJSC for issuance of a Commission vide submission No.2016656281/7 dated 30.11.2016. (*Annexure "11" to the affidavit-in-opposition*). Thereafter, the petitioner sworn another affidavit before the Notary Public, Dhaka confirming withdrawal of his objection and submitted the same to the RJSC vide submission No.2017671639 dated 16.01.2017. (*Annexures "12" to the affidavit-in-opposition*). That RJSC, upon scrutiny of documents filed by the Company and on the basis of the confirmation of the petitioner, approved the transfer of shares of the petitioner to the Respondent No 3. That RJSC also recorded the changes in the Board of Directors of the Company and accordingly supplied certified copy of the Schedule X on 08.06.2017 and Particulars of Directors (Form XII) on 29.05.2016. (*Annexures "13" and "14" to the affidavit-in-opposition*). Similarly, the Respondent No.4 also transferred his entire 3,750 shares to the Respondent No.2 by executing necessary relevant documents on 05.04.2016 and resigned from the Board of Directors of the Respondent No.1- Company on that date which was also duly recorded by the RJSC at the time of recording of transfer of 2,500 shares of the petitioner. The respondents denied committing any fraud or forgery.

The respondents further contended that after filing of the instant Company Matter and Company Matter No. 55 of 2016 (which was in respect of transfer of shares of another company and among different persons), the

Petitioner and the Respondents with the initiative of the Petitioner and Respondents and their father-in-law, who is the owner of INC Bricks had entered into a family arrangement wherein the Respondent No. 2 as consideration for transfer of shares had made payment an amount of Tk.4,00,00,000/- (Four Crore) vide Cheque no. 8174623 dated 07.02.2017 in favor of M/s INC Bricks. Subsequently, the petitioner received the respective consideration amount from the Father-in-Law of the respondent no. 2. The respondents further contended that on 09.02.2017, the said cheque was encashed in the bank account of INC Bricks bearing account number 20502830100023106. Subsequently, on 16.02.2017, the Father-in-Law of the Petitioner had withdrawn an amount of Tk. 7,00,000 (Seven Lac) vide Cheque Number IBG 07750173 from the bank account of INC Bricks in order to make payment to Tajul Islam as consideration of transfer of shares. Thereafter, on 26.02.2017, the Father-in-Law of the petitioner had withdrawn an amount of Tk. 20,00,000 (Twenty Lac) vide Cheque Number IBG 07750172 from the bank account of INC Bricks in order to make payment to Tajul Islam as consideration of transfer of shares. Subsequently, on 19.03.2017, the Father-in-Law of the petitioner had withdrawn an amount of Tk. 5,00,000 (Five Lac) vide Cheque Number IBG 07750175 from the bank account of INC Bricks in order to make payment to Shahjahan (Pro-forma respondent no. 7 in Company Matter No. 55 of 2016). Thereafter, on 02.04.2017 the Father-in-Law of the petitioner had withdrawn an amount of Tk. 3,00,00,000 (Three Crore) vide Cheque Number IBG 07750174 from the bank account of INC Bricks in order to make payment to Tajul Islam (Respondent No. 4) as consideration of transfer of shares and after receiving the same, immediately, on 02.04.2017 the said Tajul Islam deposited the aforesaid amount in his own bank account by opening an FDR.

Subsequently, on 05.04.2017 the Father-in-Law of the Petitioner had withdrawn an amount of Tk. 10,00,000 (ten Lac) vide Cheque Number IBG 07750176 from the bank account of INC Bricks in order to make payment to Tajul Islam as consideration of transfer of shares. Subsequently, on 30.05.2017 and 05.06.2017 the Father-in-Law of the petitioner had withdrawn an amount of Tk. 75,000 (Seventy Five Thousand) and Tk. 9,85,000 (Nine Lac Eighty Five Thousand) vide Cheque Number IBG 07750181 and IBG 07750182 respectively from the bank account of INC Bricks in order to make payment to Tajul Islam as consideration of transfer of shares (*Annexure -17 to the supplementary affidavit- in- opposition dated 28.11.2019*). Thus, altogether, Tajul Islam (Respondent No. 4) received an amount of Tk.3,47,60,000 (Three Crore Forty Seven Lac Sixty Thousand) out of the aforesaid Tk.4,00,00,000/- (Four Crore). That the payment of Tk.4,00,00,000 (Four Crore) was received by INC Bricks and subsequently, an amount of Tk. 3,47,60,000/- (Three Crore Forty Seven Lac Sixty Thousand) has been paid to Tajul Islam (Respondent No. 4) and Shahjahan. That as per the said family arrangement Mr. Haji Yousuf Ali, father-in-law of the respondent no. 2 has withdrawn his claim and the petitioner no. 2 of the Company Matter No.55 of 2016 has also withdrawn himself from the said company. Furthermore, the petitioner did not make any contribution for subscribing shares at the time of the incorporation of the company (*Income Tax return of the petitioner Annexure- 16 of the supplementary affidavit- in- opposition dated 14.11.2019*). In the affidavit-in-reply while the respondents reiterated the statements made in the affidavit-in-opposition and supplementary affidavits further stated that the petitioner out of greed has been denying the execution of share transfer instruments. Furthermore, when the respondents submitted Form 117 and the related affidavit to record the

transfer of the petitioner's shares, the respondent no. 5 RJSC has received the documents with a receiving seal and imposed a Diary number on its face. The respondent no. 2-3 retained copies of the aforesaid documents and re-submitted those documents with the RJSC under cover of their letter dated 09.12.2015 but because of failure of RJSC to produce those documents before the Court, the presumption will be in favour of the respondent nos. 2-3 that the documents they have submitted with the affidavit-in-opposition are true copies of the original. The respondents further stated that they did not file any other copy of the Form 117 save and except the copy of which has been filed along with the affidavit-in-opposition. That when the Court by its order dated 28.10.2018 called for the records of RJSC, the RJSC transmitted certain documents including a purported affidavit dated 04.03.2015. The said purported affidavit dated 04.03.2015 does not correspond to the affidavit dated 04.03.2015 filed by the respondents no.2-3. But when the court by its order dated 03.12.2018 again called for the records, the RJSC again transmitted certain documents including a genuine affidavit dated 04.03.2015 which corresponds with the affidavit filed by the respondent nos. 2-3. The respondents apprehend that forged documents are available with RJSC record and the petitioner might be involved in this forgery and accordingly the petitioner is now taking advantage of the situation when the RJSC fails to provide the letter dated 09.12.2015.

4. As against the affidavit-in-opposition and supplementary affidavit- in-oppositions the petitioner by filing affidavit-in-reply stated that the petitioner never attended any such meeting alleged to be held on 08.02.2015 and therefore, there is no question of approving the alleged resolution of transferring his shares and resignation from the board of directors of the respondent no.1- company by putting his signature thereon. The affidavit

sworn on 04.03.2015 was never signed and executed by the petitioner rather the petitioner is quite unknown of any such affidavit. The petitioner never sold his shares and consistently denied it time and again to the respondent no.5 by written objection dated 30.03.2015, and lodging complaint regarding the fake withdrawal of objection to the respondent no.5 on 04.06.2015 and by personal appearance on 23.06.2015 and lastly denied the transfer of shares before the concerned official of the respondent no.5 on 03.12.2015. The imaginary application for calling a commission after the complete disposal of the proceedings before the respondent no. 5 on 03.12.2015 is a blatant lie and the respondents has created the same in the name of the petitioner only to grab the shares of the petitioner in the company. The Respondent No. 1-3 forged the Instrument of Transfer (Form-117) and supporting Affidavit and relevant Board Resolution and committed fraud before the respondent no. 5 and thereby obtained the alleged certified copies of the Particulars of Directors (Form XII) dated 29.05.2016 and the Annual Return dated 08.06.2017 in connivance with the relevant dealing clerks of the office of the Respondent no. 5. More so, the instant company matter has been admitted by this Court on 30.05.2017 while the contesting respondents in their supplementary affidavit-in-opposition dated 14.11.2019 stated that after institution of the instant company matter, the father- in- law of the petitioner on behalf of the petitioner, received the consideration of the shares in question vide a cheque dated 07.02.2017. Further by producing payment document of Tk.4.00 crore the respondent made another attempt to mislead the court while it is evident from the statement of the account of INC Bricks that it was merely an inter-company transaction with which this petitioner has no nexus in any manner. Respondent No. 1- Company is the brainchild of the petitioner and the petitioner had the key role in all stages of the

incorporation of the company and he duly subscribed the shares capital of the company. The tax return file of the petitioner by no means negates the subscription of the share capital in the respondent no.1-company by the petitioner. Moreover, from the affidavit-in-opposition *vis-a-vis* the supplementary affidavit-in-oppositions it would be evident that the stance of the respondents shifted at different times which demonstrates that the intention of the respondents is nothing but to delay and defeat the proceedings.

5. Mr. Yousuf Ali learned advocate along with Mr. Gobinda Biswas learned advocate for the petitioner taking me through their petition, supplementary affidavit, reply and record of the RJSC submitted that the Petitioner submitted a Written Objection to the office of the Respondent No. 5, i.e. RJSC on 30.03.2015 requesting them not to record the fraudulent transfer. To circumvent the aforesaid innocent request of the petitioner, the respondent Nos. 2-3 created another letter dated 22.04.2015 and submitted the same to the office of the respondent No. 5 in the name of the petitioner claiming that this petitioner has given a go to the respondent No. 5 to record the same. Upon receiving such contradictory submissions, in the name of the petitioner, the office of the Respondent No. 5, arranged a hearing of the parties on 03.12.2015 and accordingly notified all the concerned parties to appear before it by its letter dated 23.11.2015. He next submitted that it is also admitted that, in the aforesaid hearing dated 03.12.2015 in the office of the Respondent No. 5, the petitioner categorically denied the execution of any instrument of transfer in favour of the respondent No. 3. Upon such verification of the authenticity of the documents, submitted by the respondent Nos.-2-3, the process of recording the returns (being Form XII

and Schedule X) dated 04.03.2015 showing transfer of shares of the petitioner has been effectively concluded and nothing remains pending before the respondent No. 5 except for drawing up a proceeding against the Respondent No. 5 under section 193 of the Companies Act, 1994 and to prosecute them in accordance with the said law by the Government upon their report. He next submitted that even after such exhaustive conclusion of the recording process of the return dated 04.03.2015, the Respondent Nos. 2-3 developed a different story stating that after the aforesaid hearing on 03.12.2015 they have submitted another set of documents including the transfer instrument and accompanied affidavit not by a return under the provision of the Companies Act, 1994 rather through a letter dated 09.12.2015 and upon such submission, as per respondent Nos. 2-3, the aforesaid proceeding of recording the returns has been completed. The learned advocate next submitted that the respondent nos. 2 & 3 further claimed that the petitioner, all of a sudden, requested the RJSC on 30.11.2016, almost a year down the line, to issue a commission to confirm the said fraudulent transfer and accordingly the commission was conducted six months thereafter on 12.04.2017 in an imaginary place and on the basis of that commission, the transfer was recorded on 27.04.2017. To prove this imaginary story of commissioning, respondent Nos. 2-3 tendered the employer of the respondent No. 5, Mr. Shoriful Islam, as witness who claimed to be the commissioner. During examination, he claimed that he has conducted the commission but he cannot state in whose office and where exactly the commission was conducted. He, even, cannot state when (evening or morning), and how he went there (by bus or by car). So, from the deposition of the said Shoriful Islam, it is abundantly clear that there had been no commission, at all, for taking confirmation of the petitioner as

claimed by the respondents. According to the learned advocate the respondent Nos. 2-3 might have staged a drama of commission and impersonated the innocent petitioner to get the transfer recorded in favour of them. He further submitted that to prove the authenticity or genuineness of the transaction, the respondent Nos. 2-3 prayed to the Court to call for the records from the office of respondent No. 5 and accordingly the Court directed the respondent No. 5 to transmit the entire documents to the Court. The learned advocate next submitted that on perusal of the records, it appears that the instrument of transfer and the accompanied affidavit as recorded by the respondent No.5 is completely different from the one as are annexed by them with their Affidavit-in-Opposition which clearly established the fact that they have forged as many documents as they wish. He next submitted that as for the last version, the Respondent Nos. 2-3 attempted completely to reverse their defense from their earlier version, and stated that the transfer basically took place as late as on 07.02.2017 when this respondents paid Tk.4.00 (Four) crore to the father-in-law of the petitioner to be paid to him as the consideration of the transfer by their Supplementary Affidavit-in-Opposition dated 14.11.2019. Again, such a fraudulent defense taken by the Respondent Nos. 2-3 has completely dislocated the original defense of the Respondent Nos. 2-3 as they clearly stated earlier that the petitioner executed the transfer instrument receiving valuable consideration for the same. According to the learned advocate such departure from the original defense clearly established the fact that respondent nos. 2 & 3 have basically forged all the documents they have submitted so far with the respondent No. 5 and they have staged the drama of a commission and impersonated the innocent petitioner to get the fraudulent transfer recorded in their favour. As per the petitioner to prove

this new and fraudulent defense plea, they have tendered the Father-in-law of the Respondent No. 2. But the father-in-law of the Respondent No. 2, clearly denied their claim and categorically stated that the said amount of BDT. 4.00 (Four) Crore was paid for another person and for another purpose and there exists no nexus, whatsoever, between these two transactions. The learned advocate finally submitted that it is abundantly clear that the name of the Petitioner has been omitted from the register of members of the Respondent No. 1 Company without sufficient cause as the same has been omitted practicing fraud on the petitioner by the respondent Nos. 2-3 collusively with dishonest officer of the respondent No. 5.

6. Per Contra, Mr. Khan Mohammad Shameem Aziz, learned advocate for the respondent nos. 2 and 3 submitted a written submission. From record I have found another written submission filed by the previously engaged advocate of the petitioner which happened to be filed as per direction of the court dated 26.08.2019. In the said written submissions they have basically reiterated their version of the case as narrated in their affidavit-in-opposition, supplementary affidavits and affidavit-in-reply. However, the learned advocate accentuated that the petitioner did not make any contribution for subscribing shares at the time of incorporation which is also evident from his income tax file. He further submitted that RJSC issued letter dated 23.11.2015 directing all parties to be present before RJSC on 03.12.2015 to clarify this issue regarding transfer of shares. The petitioner and the respondent Nos. 2 and 3 personally appeared before RJSC on 03.12.2015. The petitioner denied submission of his letter of withdrawal dated 22.04.2015. On the other hand, respondent Nos. 2 and 3 asserted their position that the petitioner sold his entire shares to the respondent No. 3 on

receipt of valuable consideration by signing Form 117 and putting thumb impression thereon. The respondent Nos. 2 and 3 clarified the issue in writing vide letter dated 09.12.2015 attaching therewith all the documents/papers relating to the share transfer which was received by RJSC on 09.12.2015. He next submitted that in course of examination of records the respondent Nos. 2 and 3 requested the petitioner to attend personally before RJSC to confirm his transfer of shares as per RJSC requirement but the petitioner rather than attending RJSC personally applied for issuance of a commission from RJSC vide submission No. 2016656281/7 dated 30.11.2016. Thereafter the petitioner sworn another affidavit before the Notary Public, Dhaka confirming withdrawal of his objection and submitted the same to RJSC vide Submission No. 2017671639 dated 16.01.2017. He next submitted that it is evident from page 26 of the Note Sheet maintained by RJSC that the petitioner vide submission No. 2016656281 filed an application for issuance of commission. Upon receiving the said application for commission, RJSC appointed Mr. Jalal Uddin Khan, UDA, as commissioner. He further submitted that from Page Nos. 7 to 8 of the Note Sheet it is further evident that Mr. Shoriful Islam, Office Assistant of RJSC has confirmed the re-signature of the petitioner on commission. It is evident from Page No. 27 of the Note Sheet that upon receiving the said affidavit, RJSC entered the same on 18.04.2017 and RJSC recorded the same which is evident from Page No. 28 of the Note Sheet. At the same page, RJSC recorded on 25.04.2017 that the return may be recorded. He next submitted that RJSC, upon scrutiny of the documents filed by the Company and on the basis of the confirmation of the petitioner approved the transfer of shares of the petitioner to the respondent No. 3. RJSC also recorded the Schedule X made up to 30.12.2015 and Form XII dated 05.03.2015 reflecting the change

in the shareholding and management position of the Company. The learned advocate further submitted that the certified copies obtained by the respondents reflects the correct state of affairs of the company and such certified copies has a presumptive value as to due recording and execution. He further submitted that similarly the respondent No. 4 transferred his entire 3,750 shares to the respondent No. 2 by executing necessary relevant documents on 05.04.2016 and resigned from the Board of Directors of the Company on the said date which was recorded with RJSC duly. The learned advocate emphasized that the letter dated 09.12.2015 and the documents attached/enclosed thereto are highly relevant for the proper and effective adjudication of the matter, however, it appears from the Affidavit-in-Compliance dated 24.01.2019 of RJSC that RJSC had admitted that they could not sent the letter dated 09.12.2015 despite order dated 03.12.2018 of this Court. RJSC has admitted that they have misplaced those documents. However, the respondent Nos. 2 and 3 have retained the original received copy of the letter dated 09.12.2015 with them. According to the learned advocate, when the respondent No. 5, RJSC has received the letter dated 09.12.2015 along with the documents attached thereto, it is duty bound to produce those documents before the Court and in the absence of such letter being produced by RJSC, the presumption will be in favour of the respondent Nos. 2 and 3 that the documents they have submitted with the Affidavit-in-Opposition are true copies of the original. The learned advocate strongly submitted that the respondents did not file any other copy of Form 117 save and except the copy of which has been filed along with the Affidavit-in-Opposition as Annexure-1. He next submitted that in order to resolve the dispute between the very close relations arising out of the instant Company Matter No. 185 of 2017 and Company Matter No. 55 of 2016

(filed by Mr. Humayun Kabir against Protein House Ltd. and others), Mr. Yousuf Ali, father-in-law of the petitioner and the respondent No. 2 and father of the Respondent No. 3 and 4, who is the owner of INC Bricks, has initiated a settlement arrangement whereby the respondent No. 2 made payment of amount of Tk.4.00 crore only vide Cheque No. 8174623 dated 07.02.2017 in favour of M/s. INC Bricks. The cheque for Tk.4.00 crore only was encashed in the bank account of INC Bricks and out of Tk.4.00 crore an amount of Tk.3,47,60,000.00 has been paid to the respondent No. 4, Mr. Tazul Islam, on different dates. Finally, the learned advocate submitted that since highly disputed questions of fact is involved in this particular matter, therefore, as per decision of the Hon'ble Appellate Division as held in the case of Tamizul Haque and another –vs- Shamsul Haque and others, reported in 43 DLR (AD) page 34, the exercise of summary jurisdiction for rectification of share-register should be refused.

7. As against the last submission of learned advocate Mr. Khan Mohammad Shamim Aziz, the learned advocate Mr. Md. Yousuf Ali, submitted that Section 43 of the Companies Act, 1994 gives the Court ample jurisdiction to scrutinize any fraud, error or undue influence or misrepresentation in the matter of transfer of shares and grant relief accordingly. In support of his submission Mr. Yousuf cited some decisions which are Ahmed Impex (Private) Ltd. -vs- Moqbul Ahmed reported in 56 DLR (AD) page 92; Sirajul Haque –vs-Apollo Ispat Complex Limited, reported in 18 BLC (2013) page 704; Reza Bin Rahman and Ors. -vs- A.T.G. Mortaza and Ors., reported in 7 LM(AD) 2019 page 8; Faisal Ahmed -vs- Noor Holdings Ltd. and Ors, reported in 21 ADC (2024) page 753.

8. I have heard the learned advocates of the respective parties, perused their substantive application, affidavit-in-oppositions, supplementary affidavits, affidavit-in replies, different applications filed by the respective parties, the depositions, order sheets, as well as the record forwarded by the office of RJSC.

9. Let me deal with the last submission at first. The submissions of the learned advocate Mr. Khan Mohammad Shamim Aziz, based on the decision held in the case of Tamizul Haque (*supra*) is that since this matter involves highly disputed question of fact therefore, this court sitting on summary jurisdiction exercising summary procedure should not interfere in this particular matter rather this particular matter should be left for adjudication by a competent civil court.

In contrast to such submission learned advocate Mr. Yousuf Ali cited a number of decisions. I have also gone through those decisions. In the case of Ahmed Impex (Private) Ltd. -vs- Moqbul Ahmed, reported in 56 DLR (AD) page 92 it has been held that-

"24. The provision of section of 38 the Companies Act gives the court a wide discretion to scrutinise any fraud, error or undue influence or misrepresentation in the matter of transfer of any share and grant relief commensurating with the appropriate relief contemplated under the said section."

In the case of Sirajul Haque -vs- Apollo Ispat Complex Limited, reported in 18BLC (2013) page 704 it has been held that-

"54. A bare reading of section 43 on its own language does not indicate that the jurisdiction conferred by the section is one hedged in with a condition that it can only be exercised when relief can be granted in a summary manner. There is nothing in the language of section 43 which excludes decision of questions of title to shares that may arise in an application for rectification of the share register. On the other hand, the language of sub-section (3) of section 43 makes it abundantly clear that in such an application, the court has power to decide the question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register and the court would have further jurisdiction to decide the question of title even when it arises between members or alleged members or between members or alleged members on the one hand and the company on the other hand. It further widens the jurisdiction of the court when it permits or enables the court generally to decide any question which is necessary or expedient to decide in connection with the application for rectification."

In the case of Reza Bin Rahman and Ors. -vs- A.T.G. Mortaza and Ors., reported in 7LM(AD) 2019 page 8 it has been held that-

"11. We note from the impugned judgment that the learned Judge of the Company Bench compared the signature of the petitioner (respondent No. 1 herein) appearing on Form-117 dated 8.10.2007 with those of his signatures appearing on other documents on record, including the Memorandum of Association. This is well within the jurisdiction of the learned Judge under the provisions of section 73 of the Evidence Act. Upon comparison, the learned Judge of the Company Bench found that the signature of the petitioner was forged and fabricated on the Form-117 dated 8.10.2007 showing transfer of 2,27,167 shares to Reza Bin Rahman. There is no illegality in the process adopted by the learned Judge...."

In the case of Faisal Ahmed -vs- Noor Holdings Ltd. and Ors., reported in 21 ADC (2024) page 753 it has been held that-

"19. In view of the above, it is our considered view that a thorough inquiry is required to be made whether respondent Israt Safi put her signatures on the relevant Forms and the resolution in question and other relevant documents. The fate of the resolution dated 10.06.2015 obviously depends upon the fate of transfer of shares of Israt Safi in favour of respondent Nos. 4-6 and, as such, we are of the view the justice would be best served if the matter is sent to the High Court Division for holding an inquiry whether the signatures of Israt Safi appear on the relevant documents for transfer of share are genuine documents and she transferred her shares actually in favour of respondent Nos.4-6 (in Company Matter No.40 of 2015) and, thereafter, the High Court Division is at liberty to decide the issue of the Managing Directorship of the Company and resolution dated 10.06.2015."

10. Therefore, from all those judgments as cited above by Mr. Yousuf as well as on going through section 43 of the Companies Act, 1994 it is evident that this court has ample jurisdiction to decide disputed question of title as well as disputed question of fact. Even in the cited decision by learned advocate Mr. Shamim Aziz, the Hon'ble Appellate Division in that particular case found that, "the facts involved are not complicated calling for a detailed investigation in a separate forum". However, the principles as relied upon by the learned advocates of both the sides are not something sacrosanct and each case has to be decided from its own perspective. If on exploration of any matter it appears that it can be resolved taking into consideration the documents on the face of it, then why instead of resolving the matter the court should thrust the parties to start another legal battle? To

me, taking a pragmatic approach and trying to resolve the matter based on available documents will secure justice more than anything. Therefore, my endeavor in this company matter will be to arrive at a conclusion based on materials and documents available on record.

11. In this particular company matter the disputes relates to transfer of shares of the petitioner in favour of respondent no. 3 who was also a sponsor shareholder of the company and was the 1st Chairman. While the petitioner's claim is that he has never transferred his share, the respondents' case is that the petitioner has transferred his share by taking full consideration and the same has been recorded and approved by RJSC in accordance with law. Therefore, to resolve the dispute we need to see whether the share transfer instruments were duly executed or not, to see whether any consideration against such transfer was passed at all and whether the recording and approval of such transfer was duly made.

12. To find out the answer to the 1st question I have gone through the annexures of the respective parties as well as the record of RJSC. On going through those documents, I have found two types of signatures of the petitioner. The respondents claimed that the signature as appearing in Form 117, in the Board Resolution dated 08.02.2015 as well as in the affidavit in support of transfer dated 04.03.2015 which they have annexed with their affidavit-in-opposition as Annexure- 1, 2 and 3 is the correct signature of the petitioner. The respondents further claimed that they have duly submitted all these documents before the RJSC on 04.03.2015. But from record it appears that RJSC did not act on that submission as because there were multiple

loans from different banks and financial institution [Note Sheet page 4 and 5]. From record it appears that-

- (a) In the meantime, the petitioner raised objection about such transfer by way of an application printed on non-judicial stamp which was notarized on 29.03.2015 and submitted and received by RJSC on 30.03.2015.
- (b) From Note sheet [page 34] it appears that RJSC received on 02.06.2015 an affidavit (in form of an application) dated 22.04.2015 notarized on 23.04.2015 purportedly signed by the petitioner whereby the earlier objection dated 30.03.2015 is said to be withdrawn by the petitioner.
- (c) The petitioner again filed an objection (no date) to RJSC expressing his apprehension about fraudulent transfer of his share and change in the Board of Directors and thereby requested RJSC not to make any change and record any transfer without his physical presence. The said application was received by RJSC on 07.06.2015 and forwarded on 08.06.2015. It also appears from the record that there is a statement of the petitioner (signed on 03.11.2015) whereby he stated that he has not withdrawn the objection.
- (d) The commission was held on 12.04.2017 and there is an affidavit and Form 117 purported to be signed by the petitioner on that day in presence of Md. Shoriful Islam, Office Assistant cum Computer Operator of RJSC, Dhaka. [From the back page of the non-judicial stamps of the said affidavit it is found that one has been purchased from Stamp Vendor Md. Aminul Islam and the vendor's stamp serial

number is 9801 and the other has been purchased from vendor Md. Maksudur Rahman and the vendor's stamp serial number is 7218. The date has been interpolated in both the stamps for antedating purpose and the affidavit was shown to be dated 08.02.2015. There is also a lot of difference in the serial number of the two stamps inscribed on the front page].

13. Now it appears to this court that the signature of the petitioner as appearing in the wokatnama and in the affidavit sworn before the Commissioner of Affidavit at the time of filing this company matter, the signature appearing in the objection dated 29.03.2015 which was submitted and received by RJSC on 30.03.2015, the signature appearing in the objection of the petitioner received by RJSC on 07.06.2015 as well as the signature of the petitioner as appearing in Form 117, in the Board Resolution dated 08.02.2015 and in the affidavit in support of transfer dated 04.03.2015 which have been annexed with the affidavit-in-opposition as Annexure- 1, 2 and 3 prima facie appears to be similar.

The reprographics/image of those documents are given below:

Image of the signature appearing in the wokatnama



Image of affidavit sworn before the Commissioner of Affidavit

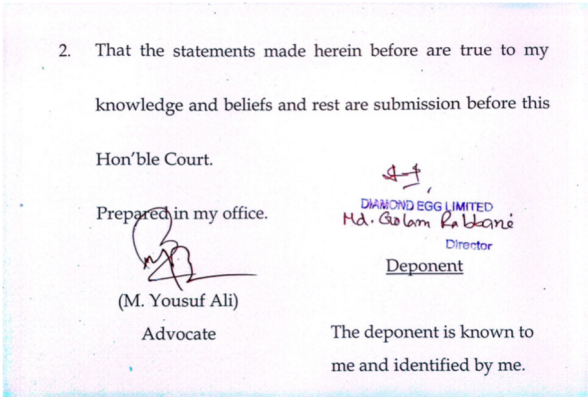


Image of the objection dated 29.03.2015 (received on 30.03.2015)

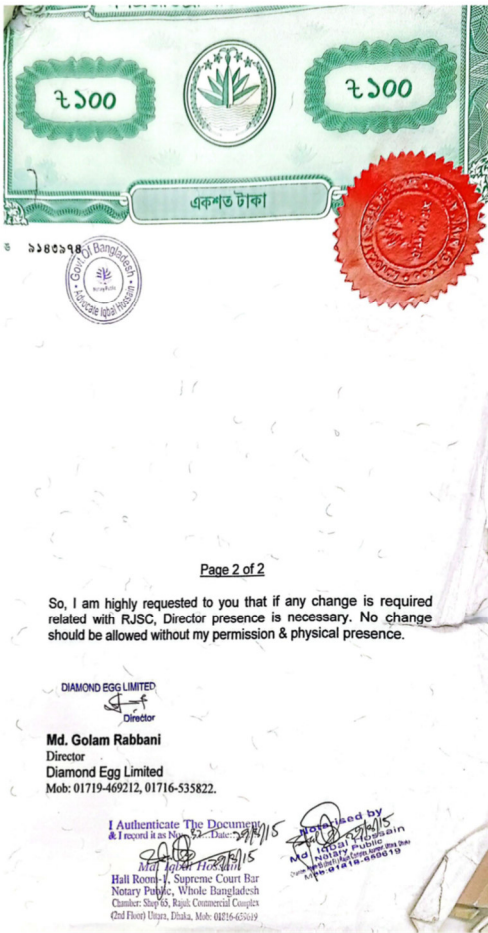
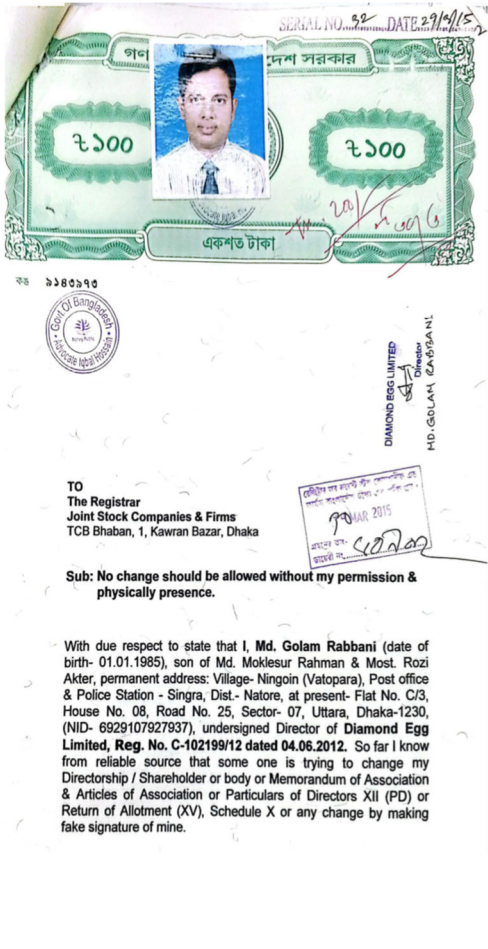




Image of the objection received by RJSC on 07.06.2015



DIAMOND EGG LIMITED
Flat # A6, House # 03, Road # 35, Sector # 07
Uttara, Dhaka-1230, Bangladesh.
Tel : + 88 02 7912136
Fax : + 88 02 7912807
Email : kayser101@yahoo.com



DIAMOND EGG LIMITED
Flat # A6, House # 03, Road # 35, Sector # 07
Uttara, Dhaka-1230, Bangladesh.
Tel : + 88 02 7912136
Fax : + 88 02 7912807
Email : kayser101@yahoo.com

সেতিস্টার অফ দায়িত্ব
কোম্পানির ও ফার্মসমূহের পরিচালক
পরিচালক, ঢাকা, বাংলাদেশ
তারিখ: ০৭ জুন ২০১৫
স্বাক্ষর: ৬৬০০

বরাবর,
রেজিস্ট্রার
মৌখ মূলধনী কোম্পানী ও ফার্মসমূহের পরিচালক
টিসিবি ভবন ১, কাওরান বাজার,
ঢাকা-১২০৫।

বিষয়ঃ **স্বাক্ষর জাল করে আমার পরিচালক পদ পরিবর্তন ও শেয়ার হস্তান্তরের সন্দেহ ও সন্দেহনা থাকা প্রসঙ্গে।**




জনাব,

যথা বিহীন সম্মান পূর্বক নিবেদন এই যে, আমি মোঃ গোলাম রাব্বানী, **DIAMOND EGG LIMITED**. এর একজন পরিচালক। আমার রেজি নং- সি- ১০২১৯৯/১২, তারিখঃ ০৪/০৬/২০১২ইং। কোম্পানী প্রতিষ্ঠা লগ্ন থেকে কোম্পানীতে আমার নিজ নামে ২,৫০০ (দুই হাজার পাঁচশত) টি শেয়ার বরাদ্দ আছে। গোপনীয়ভাবে শেয়ার হস্তান্তরের সন্দেহনা থাকায় আমি একজন পরিচালক হিসাবে খ-সরীতে আমার উপস্থিতি ছাড়া আমার শেয়ার হস্তান্তর, পরিচালক পদ থেকে পরিবর্তন কিংবা কোম্পানীর যে কোন সভা কিংবা যে কোন পরিবর্তন, পরিবর্তন, সংযোজন এবং আমার স্বাক্ষর ছাড়া কোন কার্যক্রম না হয় সেদিকে আপনার সদয় দৃষ্টির আকর্ষণ করছি। এতদ্ব্যতীত দরখাস্তের সাথে আমি আমাকে চিহ্নিতকরণকরে দরখাস্তের সাথে আমার ছবি সংযুক্ত করে দিলাম এবং ছবির অপর পৃষ্ঠায় আমার স্বাক্ষর ও করিয়া দিলাম।

অতএব, উপরোক্ত কারনের প্রেক্ষিতে আমার শেয়ার এবং কোম্পানীর ব্যবস্থানা পরিচালক পদ এর ব্যাপারে কোন প্রকার জাল বা জালিয়াতী না করতে পারে সে জন্যে প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য বিশেষ ভাবে আবেদন করছি।


২৬/৫/১৫

নমুনা স্বাক্ষর

১. 
২. 
৩. 

২৬/৫/১৫

বিনীত নিবেদক,



(মোঃ গোলাম রাব্বানী)
পরিচালক

DIAMOND EGG LIMITED.
স্থায়ী ঠিকানাঃ গ্রামঃ নিংগাইন (ভাটোপাড়া), পোঃ সিংড়া,
থানা-সিংড়া, জেলা-নাটোর।
মোবাইলঃ ০১৭১৯৬৯২১২, ০১৭১৬৫৩৫২২

Image of Form 117

FORM-117
INSTRUMENT OF TRANSFER OF SHARES


Transfer No. 1

Name of the Company : **DIAMOND EGG LIMITED**


I We **MD. GOLAM RABBANI** of Vill- Ningoin (Vatopara), P.O- Nin-Goin, P.S- Singra, Dist- Nature, of consideration of the sum Taka. 2,50,000/- paid to me/us by **TASLIMA KHATUN** of House-8, Road-21, Sector-7, Uttara, Dhaka (hereinafter called "the said Transferee") hereby bargain/assign and transfer the said Transferee 2,500 Shares of Tk 2,50,000/- each Tk. 100/- Paid up numbered from ----- to ----- inclusive in the **DIAMOND EGG LIMITED** to hold up to the said Transferee his/her executors administrators and assign subject to the Several conditions on which I hold the same at the time/execution hereof and I the said Transferee, do hereby agree to accept and take the said shares subject to the conditions aforesaid

As witness out hands this...8thday of ...February.....2015.

Signed by the above named
In the presence of:

(i) Witness to :
Sign. Here : 
Occupation : **Md. Shaukat Alam (Tuhin)**
Address : **W. Van C. M. L. B.**
W. Van C. M. L. B.
W. Van C. M. L. B.

Signed by the above named
In the presence of:

(ii) Witness to :
Sign. Here : 
Occupation : **Md. Abu Bakar Siddique**
Address : **The President & Chairman**
Chairman, Haryana, India
Chairman, Haryana, India

Approved-vide Resolution of the Board of Directors in the meeting held on. 08-02-2015



(**MD. KAYSER AHMED**)
Managing Director

Image of Board Resolution dated 08.02.2015

ON

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ANNEXURE-2

DIAMOND EBB LIMITED
Flat # A5, House # 05, Road # 35, Sector # 07
Uttara, Dhaka-1230, Bangladesh.
Tel : + 88 02 7912136
Fax : + 88 02 7912897
Email : kayser101@yahoo.com

Minutes of the board meeting of the Board of **DIAMOND EGG LIMITED** held in the registered office of the company on 8th February, 2015 at 03-00 p.m.

The following Directors were present in the meeting:

Name

1. MD. KAYSER AHMED-
2. TASLIMA KHATUN-
3. MD. TAZUL ISLAM-
4. MD. GOLAM RABBANI-

Signature

TRUE COPY
ADVOCATE

Signature
TASLIMA KHATUN
Chairman

ASLIMA KHATUN, Chairman of the Company presided over the meeting. The Chairman then read out the Agenda of the meeting as circulated in the notice dated 08-02-2015 and discussed the same in details. After discussion, the following resolution were unanimously approved.

Resolved that MD. GOLAM RABBANI resigned from the post of Director of Company with effect from today in afternoon be and is hereby approved.

Resolved that transfer of 2,500 fully paid up ordinary shares of Tk. 100/- (One hundred) each in 1 (One) instruments (duly executed & stamped) shown below be and are hereby approved.

Name of Transferee	Name of Transferee	No. of Shares.
MD. GOLAM RABBANI	TASLIMA KHATUN	2,500

Resolved that the list of Directors be filed to the Registrar of Joint Stock Companies & Firms, Dhaka, Bangladesh, for information & record in time.

There being no other business to transact. The meeting ended with a vote of thanks to the chair.

TASLIMA KHATUN
(TASLIMA KHATUN)
Chairman

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Image of affidavit dated 04.03.2015

The image shows a scanned document, likely a legal affidavit or a share transfer document, featuring two identical green banknotes of ৳ ১০০ (100 Taka) from Bangladesh. The document is signed by Md. Golam Rabbani and includes a notary public stamp from Dhaka, Bangladesh, dated 05 MAR 2015. The text is in Bengali and English, detailing the transfer of shares in Diamond Egg Limited. The document is marked 'Page-2' and includes a red circular stamp at the bottom right.

On the other hand, signature of the petitioner appearing in the affidavit which is also purported to be notarized on 08.02.2015 and purported to be re-signed at the time of commissioning on 12.04.2017, the signature appearing in Form 117 which is also purported to be re- signed for confirmation at the time of commissioning and found in the record of RJSC are apparently different from those mentioned earlier.

The reprographics/image of those documents are given below:

Image of affidavit which is also purported to be notarized on 08.02.2015 and re-signed at the time of commissioning on 12.04.2017

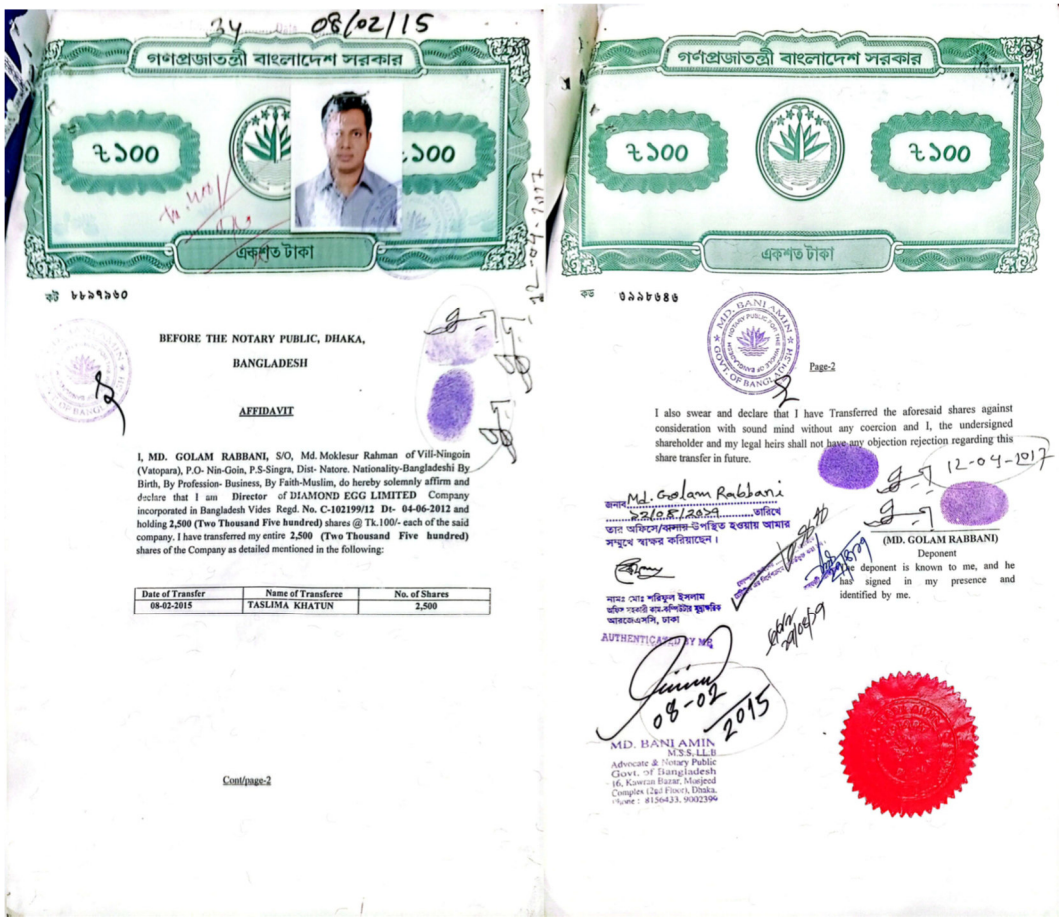


Image of purported Form 117

FORM-117
INSTRUMENT OF TRANSFER OF SHARES
Transfer No. 01

Name of the Company : **DIAMOND EGG LIMITED**

I/We **MD.GOLAM RABBANI** of Vill-Ningoin (Vatopara), P.O- Nin-Goin, P.S- Singra, Dis- Natore, of consideration of the sum Taka.. **2,50,000/-** paid to me/ us by **TASLIMA KHATUN**, of House -8, Road-21, Sector-7, Uttara, Dhaka (hereinafter called "the said Transferee") hereby bargain/ assign and transfer the said Transferee **2,500** Shares of **TK 2,50,000/-** each **TK. 100/-** paid up numbered from ----- to ----- inclusive in the **DIAMOND EGG LIMITED** to hold up to the said transferee his/ her executors administrators and assign subject to the several conditions on which I hold the same at the time/ execution hereof and I the said Transferee, do hereby agree to accept and take the said shares subject to the conditions aforesaid.

As witness out hands this... 8th day of ... February..... 2015.

Signed by the above named
in the Presence of:

(i) Witness to Sign. Here
Occupation
Address
: **Md. Shaukat Hossain (Tahin)**
: **MD. Faruk Hossain, MD**
: **The Secretary**
: **Rafique Hossain & Associates**
: **52, New E. C. Road, Dhaka**

Signature of Transferor
(**MD.GOLAM RABBANI**)

Signed by the above named
in the Presence of:

(ii) Witness to Sign here
Occupation
Address
: **Md. Abu Bari or Siddique**
: **Tax Consultant & Auditor**
: **Chamber: Rafique Hossain & Associates**
: **52, New E. C. Road, Dhaka**

Signature of Transferee
(**TASLIMA KHATUN**)

Approved-vide Resolution of the Board of Directors in the Meeting held on : **08-02-2015**

(MD. KAYSER AHMED)
Managing Director

But the in spite of such variations in the signature of the petitioner, the signature of Taslima Khatun i.e. the alleged transferee appears to be similar in all the Form 117 and the said signatures match with the signature found in the Board Resolution dated 08.02.2015.

The images of the relevant documents are reproduced below/ The reprographics of those documents are given below:

Image of Form 117

FORM-117
INSTRUMENT OF TRANSFER OF SHARES
Transfer No. 1

Name of the Company : **DIAMOND EGG LIMITED**

I/We **MD. GOLAM RABBANI** of Vill- Ningoin (Vatopara), P.O- Nin-Goin, P.S- Singra, Dist- Natore, of consideration of the sum Taka.. **2,50,000/-** paid to me/us by **TASLIMA KHATUN** of House-8, Road-21, Sector-7, Uttara, Dhaka (hereinafter called "the said Transferee") hereby bargain/assign and transfer the said Transferee **2,500 Shares** of **Tk 2,50,000/-** each **Tk. 100/-** Paid up numbered from ----- to ----- inclusive in the **DIAMOND EGG LIMITED** to hold up to the said transferee his/her executors administrators and assign subject to the Several conditions on which I hold the same at the time/execution hereof and I the said Transferee, do hereby agree to accept and take the said shares subject to the conditions aforesaid

As witness out hands this...8thday of ...February.....2015.

Signed by the above named
In the presence of:

(i) Witness to :
Sign. Here :
Occupation :
Address :

Signed by the above named
In the presence of:

(ii) Witness to :
Sign. Here :
Occupation :
Address :

Approved-vide Resolution of the Board of Directors in the meeting held on. 08-02-2015

(MD. KAYSER AHMED)
Managing Director

Image of purported Form 117

FORM-117
INSTRUMENT OF TRANSFER OF SHARES
Transfer No. 01

Name of the Company : **DIAMOND EGG LIMITED**

I/We **MD. GOLAM RABBANI** of Vill-Ningoin (Vatopara), P.O- Nin-Goin, P.S- Singra, Dist- Natore, of consideration of the sum Taka.. **2,50,000/-** paid to me/ us by **TASLIMA KHATUN**, of House -8, Road-21, Sector-7, Uttara, Dhaka (hereinafter called "the said Transferee") hereby bargain/ assign and transfer the said Transferee **2,500 Shares** of **Tk 2,50,000/-** each **Tk. 100/-** paid up numbered from ----- to ----- inclusive in the **DIAMOND EGG LIMITED** to hold up to the said transferee his/ her executors administrators and assign subject to the several conditions on which I hold the same at the time/ execution hereof and I the said Transferee, do hereby agree to accept and take the said shares subject to the conditions aforesaid.

As witness out hands this...8thday of ...February.....2015.

Signed by the above named
In the Presence of:

(i) Witness to :
Sign. Here :
Occupation :
Address :

Signed by the above named
In the Presence of:

(ii) Witness to :
Sign here :
Occupation :
Address :

Approved-vide Resolution of the Board of Directors in the Meeting held on : 08-02-2015

(MD. KAYSER AHMED)
Managing Director

14. It further appears that the respondents in their supplementary affidavit-in-opposition dated 14.11.2019 has stated in paragraph no.4 that,

“after filing the instant Company Matter and Company Matter No. 55 of 2016, the Petitioner and the Respondents with the initiative of the Petitioner and Respondents and their father-in-law, who is the owner of INC Bricks had had entered into a family arrangement wherein the Respondent No. 2 as consideration for transfer of shares had made payment an amount of Tk.4,00,00,000/- (Four Crore) vide Cheque no. 8174623 dated 07.02.2017 (AB Bank Limited) in favor of M/S INC Bricks. Subsequently, the petitioner had received the respective consideration amount from the Father-in-Law of the respondent no. 2.”

Then again, respondent no. 3 filed an application on 31.05.2022 for buying out the shares of the petitioner with the following prayer,

“Wherefore, it is most humbly prayed that Your Lordship would be graciously pleased to pass an order for allowing the Respondent No.3 for buying out 2500 shares of the Respondent No. 1 Company owned by the Petitioner after proper valuation by an independent auditor and/or pass such other order or further order or orders as to Your Lordship may deem fit and proper”

The said application was allowed on 02.06.2022. Consequently, an auditor was appointed and the auditor also filed his report but without purchasing the share at the rate shown by the auditor the respondent filed objection and prayed for appointing another auditor and the same was also

allowed on 15.11.2023 but as the petitioner refused to sell those shares the said audit was never held and the order so passed thus become infructuous.

15. From the above observations it appears to this court that the petitioner though once signed the board resolution, Form 117 and affidavit in support of sale but subsequently he changed his mind as he did not receive any consideration against such transfer. Therefore, he filed those objections and since the petitioner categorically requested the RJSC not to record any change and transfer without his presence, therefore, after 03.12.2015 the event like withdrawal of objection again on 16.01.2017 by an affidavit (no such affidavit has been found in the record of RJSC), filing application for commission and the re-signature for confirmation in presence of the commissioning staff/employee of RJSC has been staged and the signature of the petitioner as appearing in the subsequent affidavit and in Form 117 are fake and forged. Moreover, Mr. Md. Shoriful Islam who conducted the alleged commission also failed to give proper answer of vital events like when exactly the commission was held (evening or morning), how did he get there, where the commission was held, who else was present there. Failure to give answer to these questions raised serious doubt about any proper commissioning. The respondents tried to impress the court that if there be any fraud then it has been done by the petitioner. On the contrary the petitioner claimed that, to deprive him from the shareholding the respondents fraudulently did all these things. But the question that appears to my mind is, if the petitioner were involved in duplicating these documents then how the signature of respondent no.3-Taslima Khatun can be genuine in those duplicate documents? The respondents have no satisfactory answer of this question. It is also surprising that how the official of the RJSC failed to

notice the gross discrepancy in the signature of the transferor while they have in their custody 3 (three) objections of the transferor. It is also difficult to believe that the respondents let those documents to be recorded without verification. Therefore, the analogy which can be drawn very safely is that the respondents are accountable for such misdemeanor. Moreover, the subsequent stance of the respondents during pendency of this matter endorsed my above observation and analogy.

16. As to the issue of passing of any consideration against the alleged share it appears that the respondents by producing the tax return copy of the petitioner tried to impress the court that the petitioner did not contribute anything at the time of incorporation. However, going through those tax file I have found that the petitioner has declared those shares and investment in his tax return. Moreover, the respondents' claim to make payment of the consideration as per family settlement after institution of this matter is also unfounded in two counts. First of all, the respondents failed to show that the petitioner at all received any money. Moreover, father-in-law of the petitioner and respondent no. 2 namely Hazi Mohammad Yousuf Ali deposed before the court and denied making any payment to the petitioner. Moreover, the respondents in their supplementary affidavit-in-opposition dated 28.11.2019 *as well as in their written submission* stated that out of Tk.4.00 crore Tk.3,67,60,000/- (taka three crore sixty seven lac sixty thousand) was received by Md. Tazul Islam i.e. respondent no. 4 of the company matter and Tk.5.00 lac was received by one Shajahan Miah. Secondly, by filing an application on 31.05.2022 to buy out the shares of the petitioner, the respondents have in fact acknowledged and established the fact that the shares were not at all sold by the petitioner and the petitioner

received nothing as consideration at any point of time. The application filed by the respondent no. 3 to buy out the shares of the petitioner during pendency of this matter was enough to decide the matter in favour of the petitioner. However, from the conduct of the respondents it appears that their strategy was to prolong the matter by raising other contentious issues for which I have dwelled on all the issues.

17. As to the last issue as to whether the recording and approval of such transfer was duly made it has already been observed by me that the signature of the petitioner on the Affidavit and Form 117 based on which the transfer was approved and recorded was not genuine, therefore, the said approval and recording is also illegal.

18. At the end of the submissions of the respective parties, I also asked the learned advocate for the petitioner as to whether his client has any intention to sell his shares. The learned advocate answered in the negative very robustly.

19. In the light of the above facts and circumstances of the matter, I am of the view that the name of the petitioner has been omitted from the register of members of the Respondent No. 1 Company without sufficient cause as the same is the outcome of fraud and forgery and therefore the instant company matter is allowed. Respondent No. 1 Company is directed to rectify its register of Members inserting the name of the petitioner against 2500 ordinary shares in the Company as well as to notify the respondent no.5-RJSC about such rectification and for necessary correction. The respondent

nos.1-3 are further directed to pay dividend to the petitioner out of the profit of the company from 08.02.2015 till date (if there be any).

20. The petitioner expressed his willingness to donate Tk. 1,00,000/- (One Lac) which is to be given in the form of pay order. Out of the said amount Tk. 50,000/-(Fifty thousand) to be paid in favour of “Khaja Ajmiri Jame Masjid”, A/C No. 20502260201389000, Islami Bank Bangladesh Limited, Rampura Branch, Dhaka and Tk.50,000/- (Fifty thousand) to be paid in favour of “Pachdorilla Jame Masjid” A/C No. 0100004218218, Janata Bank PLC, Nandail Road Bazar Branch, Mymensingh. Upon furnishing receipt of the payment, the order may be drawn up, if so, prayed for.

The court wishes that the parties will be able to overcome their differences and run the company in a friendly atmosphere.

Communicate the Judgment at once.

(Sikder Mahmudur Razi, J:)