

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

Present:

**Mr. Justice Md. Toufiq Inam.**

**COMPANY MATTER NO. 381 OF 2018.**

**IN THE MATTER OF:**

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

**AND**

**IN THE MATTER OF:**

Md. Shahidullah and others.

----- Petitioners.

-VERSUS-

Md. Monir Hossain and others.

----- Respondents.

Mr. Mohammad Ashraf Uddin Bhuiyan, Advocate

----- For the Petitioners.

Mr. Md. Zafarullah Chowdhury, Senior Advocate,  
with

Mr. B.M. Mamunor Rashid, Advocate

----- For the Respondents.

Mr. Md. Imam Hasan, Advocate

----- For Respondent No. 6

**Judgment Delivered On 09.06.2026.**

**Md. Toufiq Inam, J:**

The present application has been filed under section 43 of the Companies Act, 1994 seeking rectification of the register of members of respondent No. 5, Modern Image Sweater (Pvt.) Limited.

The petitioners' case, in short blurb, is that in 2007 they acquired 100% shares of respondent No. 5 from its erstwhile shareholders

and that the transfer was duly recorded with the Registrar of Joint Stock Companies and Firms (RJSC). At the time of acquisition, respondent No. 5 was availing credit facilities from Rupali Bank Limited, Ramna Corporate Branch, Dhaka, respondent No. 6, and the petitioners assumed control of the company together with its assets and liabilities. The petitioners subsequently agreed to transfer their entire shareholding in respondent No. 5 to respondent Nos. 1 to 3 and, accordingly, executed an agreement dated 04.03.2010 for transfer of 100% shares of the company. The parties thereafter approached respondent No. 6 for approval of the proposed transfer and change of management. By Board Resolution dated 02.01.2011 and letters dated 17.01.2011 and 25.01.2011, the Bank accorded approval, subject to compliance with the requisite formalities.

The petitioners contend that respondent Nos. 1 to 3 took over possession and control of the factory, machinery and other assets of respondent No. 5 and represented to the Bank that they had purchased the company and would complete the remaining formalities relating to transfer of shares and directorship. It is further alleged that all relevant documents, including share transfer instruments and Form-117, were handed over to facilitate completion of the transaction. The petitioners assert that although they fulfilled their obligations under the arrangement, respondent Nos. 1 to 3 failed to complete the statutory formalities before the RJSC, resulting in the register of members remaining unaltered.

In the meantime, disputes arose regarding liability for the company's outstanding bank dues. Respondent No. 6 thereafter instituted Artha Rin Case No. 3230 of 2017 against the petitioners, respondent No. 5 and others for recovery of the outstanding loan.

Upon an application under Order I Rule 10 of the Code of Civil Procedure filed by the petitioners, respondent Nos. 1 to 3 were subsequently added as defendants in the case by order dated 12.09.2018. The petitioners thereafter served a legal notice demanding completion of the transfer process and rectification of the register of members. As no effective steps were taken, they filed the present application seeking removal of their names from the register and substitution of respondent Nos. 1 to 3 as shareholders of respondent No. 5.

The application is contested by respondent Nos. 1, 2, 4 and 6. Their case is that no valid or completed transfer of shares ever took place. According to them, the agreement dated 04.03.2010 was contingent upon fulfillment of certain conditions precedent, which were never satisfied by the petitioners. They contend that neither the transfer of shares nor the change of management was completed in accordance with law and, therefore, no case for rectification of the register under section 43 of the Companies Act, 1994 has been made out.

Mr. Mohammad Ashraf Uddin Bhuiyan, learned Advocate appearing for the petitioners, submits that the petitioners acquired 100% shares of Modern Image Sweater (Pvt.) Limited in 2007 and thereafter assumed management and control of the company. Subsequently, they decided to transfer their entire shareholding to respondent Nos. 1 to 3 and, for that purpose, entered into an agreement dated 04.03.2010. He submits that pursuant to the said agreement, both the petitioners and respondent Nos. 1 to 3 undertook various steps towards completion of the proposed transfer. By letters dated 02.09.2010, petitioner No. 1, in his capacity as Chairman and Managing Director of the company, and

respondent No. 1, as Managing Director of respondent No. 4, jointly approached Rupali Bank Limited seeking approval for the transfer of shares and consequent change in management. Thereafter, the Head Office of the Bank, by Board Resolution dated 02.01.2011 and subsequent communications dated 17.01.2011 and 25.01.2011, accorded approval to the proposed transfer and change of directorship.

He further submits that respondent No. 1 repeatedly acknowledged the transaction. In letters dated 02.03.2011, 06.03.2011 and 11.07.2011 addressed to the Bank, respondent No. 1 expressly stated that respondent Nos. 1 to 3 had purchased the company, taken possession of its machinery and assets, and would complete the remaining formalities, including execution and filing of Form-117 with the Registrar of Joint Stock Companies and Firms (RJSC). The petitioners duly discharged all obligations incumbent upon them for completion of the transfer. Original company records were handed over to respondent No. 1 by letter dated 27.02.2011, while original share transfer instruments and related documents were forwarded to respondent Nos. 2 and 6 on several occasions between September 2011 and April 2012. The Bank also issued repeated reminders requesting completion of the transfer formalities. By letter dated 21.07.2012, petitioner No. 1 informed the Bank that all relevant transfer documents, including Form-117 and the requisite affidavits duly signed and sealed, had already been delivered to respondent Nos. 1 to 3.

He further submits that respondent No. 1 thereafter acted as the proposed Managing Director of the company and, by letter dated 28.12.2014, sought the Bank's approval regarding repayment

arrangements, rescheduling of the loan account and change of management. The Bank approved the said proposals by its letter dated 02.03.2015. The cumulative effect of the aforesaid correspondence unequivocally establishes that respondent Nos. 1 to 3 accepted the transfer arrangement, assumed control and management of the company, and took possession of its assets and machinery. Having enjoyed the benefits arising out of the transaction, they subsequently failed and neglected to complete the statutory formalities before the RJSC, with the result that the petitioners' names continue to remain in the register of members. It is, therefore, contended that the register no longer reflects the true ownership of the company and requires rectification under section 43 of the Companies Act, 1994.

Conversely, Mr. Md. Zafarullah Chowdhury, learned Senior Advocate, appearing with Mr. B.M. Mamunor Rashid for respondent No. 1, by filing an affidavit-in-opposition, opposes the application. He submits that the approvals relied upon by the petitioners were merely conditional in nature and never attained finality. He further points out that respondent No. 3 died on 06.12.2014, long before institution of the present proceeding. He submits that the approvals reflected in Annexures-D and D(1) were expressly subject to fulfillment of several conditions' precedent, including compliance with the statutory and regulatory requirements necessary for transfer of the company and its assets. According to him, the petitioners failed to satisfy those conditions.

In elaboration, he contends that the petitioners failed to renew the bonded warehouse license, update customs-related documentation, renew the Export Registration Certificate (ERC) and Import

Registration Certificate (IRC), restore the gas connection and complete other essential regulatory formalities. As a consequence, the financial condition of the company deteriorated and its adverse CIB status rendered the proposed acquisition commercially unattractive and impracticable. Since the conditions stipulated in the agreement were never fulfilled, no occasion arose for execution of Form-117 or completion of the transfer process. According to him, the alleged transfer of shares and change of management never received the approvals required by law and, therefore, never became effective. Consequently, the petitioners continue to remain the lawful registered shareholders and directors of the company.

He further argues that section 43 of the Companies Act, 1994 does not provide a forum for enforcement of disputed contractual obligations arising out of an incomplete or contested share transfer arrangement. Since the very existence and validity of the alleged transfer are seriously disputed, the petitioners cannot invoke the jurisdiction of this Court for rectification of the register of members. Lastly, he contends that the company was subsequently declared a sick industry and that the financial disputes arising from the loan liabilities were ultimately settled through compromise in the Artha Rin proceedings. According to him, none of the documents relied upon by the petitioners establishes a completed transfer of shares or assumption of liabilities by respondent Nos. 1 to 3. He therefore submits that the present application is misconceived, not maintainable under section 43 of the Companies Act, 1994 and liable to be rejected.

Mr. Md. Imam Hasan, learned Advocate appearing for respondent No. 6, Rupali Bank Limited, upon filing an affidavit-in-opposition,

submits that the Bank has never released the petitioners from their liabilities arising out of the loan facilities availed by respondent No. 5 company. He contends that notwithstanding the alleged transfer arrangement between the petitioners and respondent Nos. 1 to 3, the petitioners continue to remain liable to the Bank as borrowers/guarantors in accordance with the relevant loan documents. The loan dispute was subsequently resolved through a compromise (solenama) entered into between the Bank and the petitioners in the Artha Rin proceeding. Pursuant to the terms of the said compromise, the petitioners acknowledged their liability and undertook to repay the outstanding dues. He submits that the petitioners are continuing to make payments towards the loan liabilities in accordance with the terms and conditions of the solenama. He therefore submits that the alleged transfer of shares and management has no bearing on the petitioners' continuing liability to respondent No. 6 under the loan transactions.

Having heard the learned Advocates for the respective parties and examined the materials on record, this Court finds that the following questions arise for determination:

- (i) Whether the alleged arrangement between the petitioners and respondent Nos. 1 to 3 constituted a concluded and legally enforceable transfer of the ownership and control of respondent No. 5 company;
- (ii) Whether any valid transfer of shares, takeover, acquisition, amalgamation or assumption of liabilities of respondent No. 5 was completed in accordance with the provisions of the Companies Act, 1994 and the applicable regulatory requirements;

- (iii) Whether the approvals granted by respondent No. 6 Bank amounted to a novation of contract or discharge of the existing liabilities of respondent No. 5 and its shareholders/directors;
- (iv) Whether the solenama executed in the Artha Rin proceeding can create or impose liability upon respondent Nos. 1 to 3 in the absence of their participation therein;
- (v) Whether the relief claimed falls within the jurisdiction of rectification contemplated under section 43 of the Companies Act, 1994; and
- (vi) Whether the disputed questions raised in the present proceeding are amenable to adjudication in a rectification jurisdiction.

At the outset, it must be remembered that section 43 of the Companies Act, 1994 confers a limited and special jurisdiction upon the Company Court. The jurisdiction is not intended to determine disputed commercial rights or to enforce executory contractual arrangements. Its object is to ensure that the register of members correctly reflects an already existing legal right of membership. The provision presupposes the existence of a completed and legally recognizable transaction affecting membership and empowers the Court to correct the register when such completed legal position has not been accurately recorded. Therefore, before exercising jurisdiction under section 43, the Court must first be satisfied that a legally enforceable right to

membership has already come into existence and that the register fails to reflect that right. The provision cannot be invoked for creation of membership, enforcement of an incomplete transfer, or adjudication of disputed contractual claims.

The entire case of the petitioners' rests upon an agreement dated 04.03.2010 and subsequent correspondence exchanged among the parties and the lending Bank. According to the petitioners, respondent Nos. 1 to 3 agreed to acquire the company together with its assets and liabilities, took possession of the factory and machinery, and undertook to complete the formalities relating to transfer of shares. Even if all such assertions are assumed to be true for the sake of argument, they do not, by themselves, establish completion of a transfer of membership recognized by law.

A company incorporated under the Companies Act possesses a separate juristic personality distinct from its shareholders, directors and creditors. Consequently, transfer of ownership of a company is effected through transfer of shares in accordance with the statutory framework prescribed by law. Such transfer does not become complete merely because parties enter into an agreement, exchange correspondence, hand over possession of assets or even act upon a proposed commercial understanding. The statutory requirements relating to execution of transfer instruments, approval by the competent corporate authorities, registration of transfer and corresponding alteration of the register of members must be complied with before legal ownership of shares can pass.

In the present case, although the petitioners assert that Form-117 and other documents were prepared and handed over, there is no

material demonstrating that the transfer was ever completed in accordance with law and duly registered before the Registrar of Joint Stock Companies and Firms. No document has been produced showing that respondent Nos. 1 to 3 were ever recorded as shareholders of respondent No. 5. Equally absent is any evidence of a statutory merger, amalgamation, acquisition or takeover sanctioned under the Companies Act, 1994.

The distinction between a proposed transaction and a completed legal transfer is fundamental. The former may create contractual rights and obligations between parties; the latter alone creates rights of membership capable of being reflected in the register of members. Section 43 concerns itself with the latter, not the former.

The reliance placed by the petitioners upon the approvals granted by respondent No. 6 Bank is likewise misplaced. The documents relied upon reveal, at best, the Bank's willingness to consider restructuring of management and liabilities subject to fulfillment of specified conditions. Such conditional approvals cannot be elevated to the status of novation.

Novation is never presumed. It requires a clear and unequivocal agreement whereby an existing obligation is extinguished and substituted by a new obligation accepted by all concerned parties. The intention to release the original debtor and substitute another debtor must be explicit and unmistakable. Nothing on record demonstrates that respondent No. 6 Bank agreed to discharge respondent No. 5 or its shareholders/directors from their existing liabilities. On the contrary, the materials placed before this Court indicate that the Bank continued to treat the petitioners as liable

persons and ultimately entered into a solenama with them for repayment of the outstanding dues.

The solenama itself furnishes a complete answer to the petitioners' contention regarding transfer of liabilities. Admittedly, respondent Nos. 1 to 3 were not parties to the compromise. A compromise binds only those who enter into it or claim through them. It cannot impose obligations upon strangers. Therefore, neither the terms of the solenama nor the liabilities arising therefrom can be enforced against respondent Nos. 1 to 3 in the absence of their consent or participation.

More importantly, the core dispute in the present proceeding is not whether an already completed transfer has been omitted from the register. Rather, the dispute concerns whether any valid transfer was completed at all; whether the conditions of the alleged agreement were fulfilled; whether respondent Nos. 1 to 3 assumed the liabilities of the company; whether the Bank accepted such assumption; whether there was novation of contract; and whether the parties performed their reciprocal obligations under the alleged commercial arrangement.

These are not questions of rectification. They are questions of contract, liability, performance, breach, novation and commercial accountability. Their determination would necessarily require detailed examination of disputed facts, oral and documentary evidence, and adjudication of rival contractual claims. Such matters lie beyond the scope of the jurisdiction conferred by section 43.

The Company Court, while exercising rectification jurisdiction, cannot transform itself into a forum for enforcement of disputed commercial arrangements. Nor can it declare a transfer complete merely because one party alleges performance and the other disputes it. To do so would amount to creating rights of membership through judicial declaration rather than recognizing rights already created in accordance with law.

The petitioners have strongly relied upon allegations that respondent Nos. 1 to 3 took possession of machinery, enjoyed benefits arising from the arrangement and represented themselves before the Bank as prospective purchasers. Even if such allegations are ultimately established before a competent forum, they may at best give rise to contractual, equitable or restitutionary remedies. They cannot substitute the statutory requirements governing transfer of shares. Equity may supplement the law, but it cannot supplant mandatory statutory provisions. A person cannot become a shareholder merely because he has acted as a purchaser or enjoyed the benefits of a proposed transaction. Membership of a company is a legal status created only in the manner recognized by the Companies Act.

This court is of the considered view that jurisdiction under section 43 of the Companies Act, 1994 is confined to correction of the register of members so as to reflect an already completed and legally recognizable right of membership. The provision cannot be invoked for enforcement of disputed contractual arrangements, determination of alleged takeovers, transfer of business, assumption of liabilities, novation of loan obligations or creation of membership where the underlying transfer of shares has not been

completed in accordance with the statutory requirements of company law.

In view of the foregoing discussions, this Court holds that:

- (a) the petitioners have failed to establish any concluded and legally effective transfer of the ownership or membership rights in respondent No. 5 company;
- (b) no valid transfer, acquisition, takeover, amalgamation or assumption of liabilities has been shown to have been completed in accordance with the Companies Act, 1994;
- (c) the conditional approvals granted by respondent No. 6 Bank did not amount to novation of contract nor discharge the original borrower and its shareholders/directors from their liabilities;
- (d) the solenama executed in the Artha Rin proceeding cannot bind respondent Nos. 1 to 3, who were not parties thereto;
- (e) the disputes raised in the present proceeding involve contested questions of contractual rights and liabilities which are incapable of determination in a proceeding under section 43 of the Companies Act, 1994; and
- (f) the petitioners have failed to establish any legal basis for rectification of the register of members as prayed for.

Accordingly, this Court finds no merit in the application. The application under section 43 of the Companies Act, 1994 is therefore dismissed.

There shall, however, be no order as to costs.

The petitioners shall be at liberty to pursue such remedy as may be available to them before the competent forum in accordance with law, and if any such proceeding is instituted, the same shall be decided on its own merits, independently and without being influenced by any observation made in this judgment.

**(Justice Md. Toufiq Inam)**