

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

COMPANY MATTER NO. 57 OF 2019.

IN THE MATTER OF:

An application under Section 233 of the
Companies Act, 1994.

AND

IN THE MATTER OF:

Md. Saiful Islam.

----- Petitioner.

-VERSUS -

Safina Park Ltd. and others.

----- Respondents.

Mr. Mia Mohammad Ishtiaque, with
Mr. Md. Monjur Islam Munna,
Mr. Tanjib Rashid Khan, and
Mr. Atique Towhidul Islam, Advocates

----- For the Petitioner.

Mr. Mahfuzur Rahman Milon, Senior Advocate
with

Mr. Md. Golam Hasnaen, Advocate

----- For the Respondents.

Judgment Delivered On 18.05.2026.

Present

Md. Toufiq Inam, J.

This Company Matter No. 57 of 2019 under section 233 of the Companies Act, 1994 was admitted by this Court on 24.02.2019 at the instance of the petitioner seeking declarations, directions and consequential reliefs in relation to the affairs of the respondent No. 1-company, particularly concerning shareholding, directorship, validity

of statutory filings, and implementation of an alleged settlement dated 01.01.2015.

The case of the petitioner, as set out in the application, is that on 01.01.2015 a settlement was arrived at between the petitioner, the deceased Md. Fazlur Rahman and respondent No. 2 through local mediation, whereby it was agreed that the shareholding of the company would stand at 65% in favour of Md. Fazlur Rahman, 30% in favour of the petitioner, and 5% in favour of respondent No. 2. It was further agreed that Md. Fazlur Rahman would act as Chairman, the petitioner as Vice-Chairman, and respondent No. 2 as Managing Director. According to the petitioner, the said settlement was reduced into writing and duly executed in the presence of local dignitaries; however, the same was not implemented due to the non-cooperation of the respondents.

It is further the case of the petitioner that certain statutory returns, including Form XII dated 01.11.2014, were fraudulently submitted before the RJSC by forging his signature and falsely showing changes in the composition of the Board, including his removal from the position of Managing Director. The petitioner claims to have lodged objections and affidavits before the RJSC in this regard, but no effective action was taken. The petitioner further alleges that subsequent documents, including Form IX, Board resolutions and AGM resolutions, were fabricated in collusion with respondent Nos. 3 to 5, who, according to him, are strangers to the company and whose names were never lawfully entered into the register of members.

During the pendency of the proceeding, the petitioner also sought directions for payment of dividends, rectification of the share register

to reflect his alleged 30% shareholding, and preparation of audit reports showing his entitlement in the company.

Mr. Mia Mohammad Ishtiaque, the learned Advocate appearing for the petitioner, submits that the petitioner's entitlement to 30% shareholding in the respondent-company is founded upon the settlement dated 01.01.2015, which was arrived at through local arbitration and mediation and which, according to him, reflected the true intention and understanding of the parties concerned. He contends that the petitioner contributed 2.30 acres of land out of the total land comprising the amusement park project and that, on the basis of such contribution, his proportionate share in the company was determined at 30%, which was subsequently recognized and reflected in the distribution of profits and management arrangements of the company.

He further submits that the independent auditor's report dated 31.10.2019 disclosed serious irregularities and mismanagement in the affairs of the company, including failure to maintain proper asset registers, ledgers and books of accounts, absence of supporting vouchers and resolutions, and non-compliance with fundamental corporate formalities relating to approval of transactions by the Board of Directors. According to the learned Advocate, such findings lend substantial support to the petitioner's allegation that the affairs of the company have been conducted in an unlawful, opaque and non-transparent manner. He also submits that the auditor appointed by this Court, in its report dated 24.03.2022, specifically reflected the petitioner's 30% shareholding for the fiscal years 2015, 2016 and 2017. He submits that the said audit report was duly approved and adopted by the Board of Directors in its meeting held on 24.03.2022 under Agenda No. 2. Thereafter, the Annual General Meeting held on

16.04.2022 under the chairmanship of the Court-appointed Chairman also resolved under Agenda No. 1 to approve and adopt the said audit report, thereby affirming and recognizing the petitioner's shareholding and financial entitlement in the company.

Per contra, Mahfuzur Rahman Milon, the learned Senior Advocate appearing for the respondent No. 1-company together with Mr. Md. Golam Hasnaen, submits that the reliefs sought in the application have already been substantially addressed and that the disputes between the parties were amicably settled in Company Matter No. 385 of 2018, which was disposed of by this Court by judgment dated 05.12.2022 on agreed terms. He submits that pursuant to the said settlement, AGMs for the years 2013–2021 were duly held, including the AGM dated 30.03.2021, and that an Extraordinary General Meeting was also held in the presence of the petitioner. He further submits that after disposal of the said matter, a Managing Director was duly appointed on 14.02.2023 for a tenure extending up to 2028.

He contends that the petitioner did not raise any issue regarding shareholding at the relevant time and, as such, the present application has become infructuous. He further submits that any local arbitration or private settlement cannot override the provisions of the Companies Act, 1994 or the Articles of Association of the company. It is also argued that the petitioner has no lawful investment in the company in terms of share capital and that shares and dividends can arise only from valid issuance or transfer of shares in accordance with law. According to him, the issues now sought to be raised stand concluded by the earlier settlement in Company Matter No. 385 of 2018.

Upon hearing the learned Advocates for both sides and upon perusal of the materials on record, this Court proceeds to examine the matter in greater detail.

The present proceeding has been instituted under section 233 of the Companies Act, 1994 alleging oppression, mismanagement and unlawful conduct in the affairs of the respondent No. 1-company. The principal foundation of the petitioner's claim rests upon the alleged settlement dated 01.01.2015, whereby the shareholding structure and management arrangement of the company were purportedly reconstituted through local mediation amongst the petitioner, late Md. Fazlur Rahman and respondent No. 2. The petitioner has also challenged the validity of several statutory filings made before the Registrar of Joint Stock Companies and Firms (RJSC), alleging forgery of signature, fabrication of resolutions and unlawful induction of directors.

At the outset, it is necessary to examine the scope and object of section 233 of the Companies Act, 1994. The jurisdiction under section 233 is equitable and preventive in nature, intended to protect minority shareholders against oppressive conduct and mismanagement in the affairs of a company. While exercising such jurisdiction, the Court may grant relief where it is established that the affairs of the company are being conducted in a manner prejudicial to public interest or oppressive to any member or members, or where the acts complained of disclose persistent illegality, lack of probity or unfair exclusion from management. However, such jurisdiction is not intended to adjudicate disputed title to shares in the abstract, nor can it be exercised contrary to the statutory framework governing

incorporation, allotment and transfer of shares under the Companies Act and the Articles of Association of the company.

The first and foremost question, therefore, is whether the petitioner has been able to establish a lawful and enforceable right to the alleged 30% shareholding in the company.

The petitioner has placed substantial reliance upon the settlement dated 01.01.2015. According to him, the said settlement was arrived at through local arbitration and reflected the true understanding between the parties regarding contribution of land and distribution of ownership in the company. It has further been contended that the petitioner contributed 2.30 acres of land in the project area and that his entitlement to 30% shareholding was accordingly acknowledged by all concerned.

This Court has carefully considered the said contention. Even assuming that such settlement was genuinely executed between the parties, the same by itself does not ipso facto create or transfer shares in a limited company unless the statutory requirements prescribed under the Companies Act and the Articles of Association are duly complied with. Shareholding in a company is not merely a matter of private understanding or informal arrangement. It is a statutory right arising from valid subscription, allotment or transfer of shares duly reflected in the register of members and supported by necessary corporate acts and statutory filings. Any agreement inconsistent with the statutory scheme governing company law cannot automatically confer legal status upon a claimant as shareholder.

In the present case, no allotment letters, share certificates, return of allotment, transfer deeds or contemporaneous entries in the register of members have been produced showing lawful induction of the petitioner as holder of 30% shares in accordance with law. The petitioner has also failed to demonstrate that any additional shares were issued or transferred in his favour pursuant to resolutions passed in compliance with the Articles of Association.

Nevertheless, the materials on record disclose that disputes among the parties concerning the management and financial affairs of the company had indeed persisted for a considerable period of time. The independent audit report dated 31.10.2019, as referred to by the petitioner, indicates several deficiencies in the maintenance of corporate records and accounts, including absence of proper ledgers, asset registers and supporting resolutions. Such findings undoubtedly reflect lack of proper corporate governance and casual management of company affairs during the relevant period.

More importantly, it appears from the record that during the pendency of the proceeding, this Court appointed an independent auditor, who submitted report on 24.03.2022. In the said report, the petitioner was shown as holder of 30% shares for the fiscal years 2015, 2016 and 2017. It further appears that the Board meeting held on 24.03.2022 adopted the audit report under Agenda No. 2 and that the AGM held on 16.04.2022 under the chairmanship of the Court-appointed Chairman also approved the said report under Agenda No. 1.

However, this Court is unable to accept the proposition that such audit report or its approval in the AGM conclusively determines or legally creates shareholding rights in favour of the petitioner. An audit report

is essentially an accounting and financial document prepared on the basis of records and materials supplied before the auditor. The auditor possesses no adjudicatory authority to determine disputed title to shares, nor can an audit report override the mandatory statutory requirements relating to issuance or transfer of shares. Even approval of such report in an AGM cannot operate as lawful allotment or transfer of shares unless the underlying statutory formalities required by company law are independently satisfied.

The petitioner has also alleged that Form XII dated 01.11.2014 and other statutory documents were fraudulently submitted before the RJSC by forging his signature and unlawfully removing him from management. Allegations of forgery and fabrication are undoubtedly serious in nature. However, such allegations require strict proof by cogent and reliable evidence. Save and except making assertions and filing objections before the RJSC, no conclusive expert evidence or competent adjudication establishing forgery has been brought before this Court. In a proceeding under section 233, this Court cannot embark upon a full-fledged trial akin to a civil suit involving complicated questions of forgery, handwriting examination and disputed title.

At the same time, the subsequent developments in Company Matter No. 385 of 2018 cannot be ignored. The respondents have produced materials showing that the disputes between the parties were subsequently resolved on agreed terms before this Court, resulting in disposal of the said proceeding by judgment dated 05.12.2022. Pursuant thereto, AGMs for several years were held, including the AGM dated 30.03.2021 and subsequent Extraordinary General Meeting in the presence of the petitioner. It further appears that a

Managing Director has already been appointed on 14.02.2023 for a fixed tenure. Significantly, the petitioner has failed to demonstrate that, after disposal of Company Matter No. 385 of 2018, he raised any immediate challenge against the subsequent AGMs, resolutions or appointments on the ground that his alleged 30% shareholding had been unlawfully denied.

This Court is also mindful that the jurisdiction under section 233 is fundamentally remedial and preventive in character, intended to bring an end to oppressive conduct and to ensure smooth administration of the company. The Court should ordinarily refrain from passing orders that would unsettle completed corporate actions and reopen settled affairs unless clear and continuing oppression is established. Commercial certainty and continuity of management are also important considerations in the exercise of equitable company jurisdiction.

In the present case, although certain irregularities in maintenance of records and internal management are evident from the audit materials, the petitioner has failed to establish by legally admissible materials that he acquired enforceable 30% shareholding in accordance with law or that the present affairs of the company continue to be conducted in a manner oppressive to him within the meaning of section 233 of the Companies Act, 1994. The principal relief claimed by the petitioner essentially requires declaration of title to shares and rectification of the shareholding structure on the basis of a disputed private settlement, which cannot appropriately be adjudicated in the present proceeding.

However, considering the audit observations regarding deficiencies in maintenance of corporate records and accounting practices, this Court is of the view that certain directions are necessary in the interest of proper corporate governance and transparency. Accordingly, the respondent No. 1-company is directed—

(i) to maintain and preserve proper statutory books, including the register of members, minutes books, asset register, books of accounts and all other statutory records, strictly in accordance with the provisions of the Companies Act, 1994 and the applicable rules framed thereunder;

(ii) to ensure that all future meetings of the Board of Directors, Annual General Meetings (AGMs), Extraordinary General Meetings (EGMs), and all statutory filings before the RJSC are convened, conducted, recorded and submitted strictly in accordance with law and the Articles of Association of the company;

(iii) to furnish copies of audited financial statements, annual reports, directors' reports and other statutory disclosures to all existing shareholders, including the petitioner, in accordance with law;

(iv) to declare and pay dividends to the shareholders, including the petitioner, strictly in accordance with the audited accounts, applicable law and lawful resolutions of the company;

(v) to ensure that the petitioner, being an existing shareholder/director, is allowed to participate in the affairs and lawful functions of the Board, including attendance at meetings

and access to notices and resolutions, in accordance with law and the Articles of Association of the company;

(vi) to ensure that all payments, transactions, withdrawals and financial dealings of the company are conducted, as far as practicable, through proper banking channels, including account payee cheques, pay orders, bank transfers or other traceable banking instruments. No substantial cash withdrawal shall be made except for bona fide day-to-day operational expenses strictly necessary for maintaining the company as a going concern; and

(vii) to ensure that all corporate and financial decisions relating to the management, administration, assets, liabilities and affairs of the company are duly supported by lawful resolutions, proper documentation and transparent record-keeping.

All shareholders, officers and employees of the company, including the respondents and the petitioner, are hereby directed to extend full cooperation, assistance and compliance to the Board in implementing this order and in ensuring smooth administration of the affairs of the company without obstruction. Any act of non-cooperation, obstruction, interference, intimidation, direct or indirect influence, or deliberate non-compliance shall be viewed seriously. In such event, this Court shall be constrained to take appropriate coercive and punitive measures against the persons concerned.

It is further observed that if the petitioner claims any independent civil, contractual, proprietary or equitable right of 30% shareholding, private settlement, investment or any other separate transaction, he

shall be at liberty to seek appropriate remedy before the competent forum in accordance with law. However, if any suit, proceeding or case is instituted by the petitioner before any competent forum, the concerned Court shall decide the same independently on its own merits and in accordance with law, without being influenced by any observation made herein, which are confined solely to the adjudication of the present company matter.

With the observations and directions made above, Company Matter No. 57 of 2019 is disposed of without any order as to costs.

(Justice Md. Toufiq Inam)