

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

Present:

Justice Md. Toufiq Inam.

Company Matter No. 155 of 2020.

In the Matter Of:

An application under section 43 of the Companies Act, 1994 read with Rule-8 of the Companies Rules, 2009 for rectification of the share register of Ganges International (Pvt.) Ltd. and cancellation of the board resolution dated 23.05.2019 and special resolution dated 18.06.2019.

-And-

In the matter of :

Shaikh Farhana Haque, Director, Ganges International (Pvt.) Ltd. 3/4, A, Purana Paltan Sabbir Tower (8th Floor), Suit No. 905, Dhaka-1000, Present Address : Sathkhira Consulting Firm Ltd. 43/B, Maya Kanon, Atish Dipankar Road, Sabujbag, Dhaka-1214.

----- Petitioner.

-Versus-

Mr. Shaikh Ehsanul Haque, Shareholder, Ganges International (Pvt.) Ltd. 3/4, A, Purana Paltan, Sabbir Tower (8th Floor), Suit No. 905, Dhaka-1000, Residence: Excelsia Park, 6/3, Segunbagicha, Flat No.3-C, Dhaka-1000 and others.

----- Respondents.

Mr. Md. Monjur Nahid, Advocate with
Mrs. Eshita Tasmin, Advocate.

----- For the Petitioner.

Mr. Md. Belayet Hossain, Senior Advocate with
Mr. Md. Shaikhul Islam, Advocate,
Mr. Habib Baher Asif, Advocate.

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

Heard On: 21.07.2026, 24.08.2026;

Judgment delivered On: 06.09.2026.

Md. Toufiq Inam, J:

This application under section 43 of the Companies Act, 1994 has been filed by the petitioner seeking, inter alia, rectification of the register of members of Respondent No.3 Company-Ganges International (Pvt.) Ltd. by

deleting 100 shares purportedly allotted in favour of Respondent No.1 on 23.05.2019 and for declaring the alleged Board Resolution dated 23.05.2019 and the consequential EGM Resolution dated 18.06.2019, whereby Respondent No.1 was shown as Managing Director, to be illegal, void and of no legal effect.

The petitioner is a shareholder and Director of Respondent No.3-Company, holding 1,583 shares therein. Respondent No.1 is her brother and a shareholder of the Company, while Respondent No.2 is their mother and the Managing Director of the Company. The Company was incorporated on 08.09.1981. Its founder Managing Director, late Sk. Zohrul Haque, who was the father of the petitioner and Respondent No.1, died on 18.01.2019. Following his death, his 2,000 shares were transmitted among his legal heirs pursuant to a Succession Certificate issued by the learned Joint District Judge, 1st (Delegate) Court, Khulna. Consequently, the petitioner became the holder of 1,583 shares, Respondent No.1 of 1,167 shares, and Respondent No.2 of 301 shares.

The petitioner's case is that, after the death of her father, Respondent No.1, with a view to acquiring additional shares and taking control of the management of the Company, fabricated a notice dated 15.05.2019 and a purported Board Resolution dated 23.05.2019. According to the petitioner, no such Board meeting was held and her signature appearing in the relevant documents was forged or otherwise not genuine. It is alleged that, on the basis of those documents, 100 shares were purportedly allotted to Respondent No.1 and he was shown as having been appointed a Director. Thereafter, Form XV and Form XII were submitted to and recorded by the Registrar. By a purported Special Resolution dated 18.06.2019, Respondent No.1 was subsequently shown in the amended Articles of Association as Managing Director. The petitioner contends that neither the alleged Board meeting nor the alleged EGM was lawfully held and that the allotment and subsequent entries were founded upon fabricated documents and were made without compliance with the requirements of the Companies Act, 1994. She therefore seeks rectification of the register and consequential reliefs.

Respondent No.1 contests the application. His case is that the Board meeting dated 23.05.2019 was duly convened pursuant to notice dated 15.05.2019 and was attended and signed by the Directors then in office. At that meeting, 100 shares were lawfully allotted to him and he was appointed a Director. He further states that the EGM held on 18.06.2019 duly amended the Articles of Association and incorporated his name as Managing Director. The relevant statutory returns were thereafter submitted to and recorded by the Registrar. The petitioner herself had participated in the EGM and signed the relevant documents and, having acquiesced in the subsequent corporate acts, cannot now challenge the same. He also alleges that the petitioner had not paid any consideration for the 1,000 shares earlier allotted to her and that she was made a shareholder and Director by her father for purposes connected with her proposed visit to the United Kingdom.

Mrs. Eshita Tasmin, learned Advocate for the petitioner submits that although the petitioner received the notice dated 15.05.2019 convening the Board meeting, the notice contained no agenda or indication regarding any proposed allotment of new shares. She nevertheless did not attend or sign the alleged Board Resolution dated 23.05.2019, although her name appears therein as a signatory with an incorrectly spelt name. It is further submitted that no offer of the proposed shares was made to the existing shareholders, nor was any opportunity afforded to the petitioner to exercise her right of pre-emption. The allotment of 100 shares in favour of Respondent No.1 was thus made without complying with the statutory requirements and cannot be sustained merely on the basis of the subsequent recording of Form XV and Form XII by the Registrar.

Mr. Md. Belayet Hossain, learned Senior Advocate appearing for Respondent Nos.1-3, on the other hand, submits that Respondent No.3 is essentially a family company and that the petitioner herself had earlier been allotted 1,000 shares by her father for facilitating her studies and visa-related purposes. It is further submitted that the petitioner subsequently

attended and participated in the meeting dated 18.06.2019, at which Articles 61, 62 and 64 of the Articles of Association were substituted, and thereby acquiesced in the relevant corporate arrangements and waived any right of pre-emption available to her. It is contended that, having participated in and accepted the subsequent corporate proceedings, the petitioner cannot now challenge the allotment made in favour of Respondent No.1 and the resolution of the EGM dated 18.06.2019.

At the outset, it is necessary to bear in mind the scope of the jurisdiction under section 43 of the Companies Act, 1994. The jurisdiction to rectify the register is not confined merely to correcting clerical or accidental errors. Where an entry in the register is alleged to have been made without a valid corporate act or on the basis of a transaction which did not confer a lawful title to the shares, the Court may examine the underlying transaction for the purpose of determining whether the impugned entry ought to remain on the register.

In the present case, the foundation of Respondent No.1's claim to the additional 100 shares is the alleged Board meeting dated 23.05.2019. If the said meeting was not lawfully held, or if the resolution purportedly passed thereat is not proved to be a genuine resolution of the Board, the subsequent filing of the return of allotment cannot, by itself, validate the allotment. Likewise, the mere receipt and recording of Form XV and Form XII by the Registrar cannot, by themselves, conclusively establish the validity of the underlying corporate acts.

The petitioner has specifically denied having signed the purported Board Resolution and has alleged that the signature appearing therein was forged or subsequently struck through. More importantly, she has challenged the very holding of the alleged Board meeting. In such circumstances, the existence and validity of the Board meeting and the resolution said to have been passed thereat become foundational issues. The burden, therefore, lies upon Respondent No.1, who relies upon the alleged resolution as the source

of his title to the additional 100 shares, to establish that the meeting was duly convened and held and that the resolution relied upon was genuinely and lawfully passed by the Board. Unless that foundational corporate act is established, the subsequent statutory filings cannot, by themselves, confer validity upon the impugned allotment.

There is also a material dispute concerning the alleged EGM dated 18.06.2019 and the amendment of the Articles of Association. The petitioner categorically denies that such EGM was lawfully held and disputes the consequential alteration. Respondent No.1, on the other hand, relies upon the amended Articles and the recording thereof by the Registrar. Again, the recording of the amended Articles cannot dispense with proof that the Special Resolution required by law was duly passed.

The contention of Respondent No.1 that the petitioner subsequently acquiesced in or participated in the EGM also requires consideration. Mere participation in a meeting or the presence of a person's signature on a document cannot, without examination of the circumstances in which the document was executed and the nature of the consent thereby expressed, conclusively establish waiver or acquiescence. In any event, where the validity of the very corporate resolution is under challenge, the Court must first ascertain whether the statutory requirements for passing such resolution were satisfied. The allegation that the petitioner had not paid consideration for the 1,000 shares allotted to her in 2017 does not, in the facts of the present case, provide a legal answer to the challenge now raised. That allotment was made on 25.11.2017, the Company submitted the relevant statutory returns, and the allotment was recorded by the Registrar. More importantly, the present proceeding concerns the subsequent allotment of 100 shares to Respondent No.1 on 23.05.2019. The validity of that allotment cannot be established merely by questioning the consideration paid for an earlier and distinct allotment made in favour of the petitioner.

Equally, the fact that Respondent No.1's name was subsequently recorded by the Registrar as a shareholder or Director does not by itself cure a fundamental defect in the corporate act from which his alleged rights originated. Registration of a return is evidentiary of the fact that the return was filed and recorded; it does not necessarily amount to adjudication by the Registrar of the validity of every underlying transaction or resolution. The Court is therefore required to examine whether there existed a valid corporate foundation for the impugned allotment. On consideration of the materials placed before the Court, this Court finds that Respondent No.1 has failed to satisfactorily establish that the alleged Board meeting dated 23.05.2019 validly authorised the allotment of the additional 100 shares in his favour. The subsequent statutory filings cannot independently create or perfect an allotment which was not validly authorised by the Company. Once the allotment itself is found not to have been validly established, the consequential entry showing Respondent No.1 as holder of those additional 100 shares cannot lawfully remain in the register. The register must correspond with the actual and legally effective shareholding of the Company.

As regards the alleged appointment of Respondent No.1 as Managing Director, the position is even more apparent. The purported Board Resolution dated 23.05.2019 does not, on its face, appoint Respondent No.1 as Managing Director, whereas Form XII subsequently represented him as such. The subsequent Special Resolution dated 18.06.2019 is relied upon to support his position, but the validity of that resolution itself has been challenged and has not been satisfactorily established in accordance with the statutory requirements. Consequently, the entry showing Respondent No.1 as Managing Director cannot be sustained merely on the strength of the subsequent statutory recording.

The Court, however, considers it necessary to distinguish between rectification of the register and the wider allegations of fraud and forgery made by the parties. In a proceeding under section 43, the Court is principally concerned with whether the impugned entry in the register is

legally sustainable. It is unnecessary, for the purpose of granting rectification, to return a definitive finding on every allegation of criminal fraud or forgery where the corporate transaction itself has not been shown to be validly established.

The contention of Respondent No.1 that the petitioner waived her pre-emption rights or acquiesced in the allotment also cannot assist him unless the underlying allotment is first shown to have been lawfully made. Acquiescence cannot, by itself, validate an allotment which was not authorised in accordance with law. Nor can an entry made in the Company's records or subsequently recorded by the Registrar become immune from scrutiny merely because it has remained on record for some period.

Upon consideration of the entire matter, this Court is of the view that the impugned allotment of 100 shares in favour of Respondent No.1 on 23.05.2019 has not been proved to be founded upon a valid Board Resolution. Consequently, the consequential entry in the register of members showing Respondent No.1 as holder of those additional 100 shares is liable to be rectified. As a necessary consequence, the statutory records of the Company maintained with the Registrar, insofar as they give effect to the said invalid allotment, are also required to be brought into conformity with the rectified shareholding. The Registrar shall accordingly make the necessary consequential corrections in accordance with law.

In the result, the application is allowed in part, without any order as to costs.

- i. The register of members of Respondent No.3 Company shall be rectified by deleting the 100 shares purportedly allotted in favour of Respondent No.1 on 23.05.2019.
- ii. The consequential entries in the statutory records of Respondent No.3 Company and the records maintained by Respondent Nos.4 and 5, insofar as they give effect to the said allotment, shall stand corrected accordingly.

- iii. Respondent Nos.4 and 5 are directed to make the necessary consequential corrections in their records in accordance with this judgment.

(Justice Md. Toufiq Inam)

Sayed.BQ.