

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

Present:

Mr. Justice Sikder Mahmudur Razi

Company Matter No. 17 of 2021

IN THE MATTER OF:

Shahidur Rahman and others.
..... Petitioners.

- V E R S U S -

Dhaka Regency Hotel and Resort Limited
and others.
..... Respondents.

With

Company Matter No. 24 of 2021

Minaz Ahmed and others
..... Petitioners.

- V E R S U S -

Dhaka Regency Hotel and Resort Limited
and others.
..... Respondents.

With

Company Matter No. 235 of 2014

Shamsuddoha and others
..... Petitioners.

- V E R S U S -

The Registrar, Joint Stock Companies and Firms
and others.
..... Respondents.

With

Company Matter No. 199 of 2019

Muslehuddin Ahmed
..... Petitioner.

- V E R S U S -

The Registrar, Joint Stock Companies and Firms
and others.
..... Respondents.

With

Company Matter No. 84 of 2019

Moinul Islam and another
..... Petitioners.

- V E R S U S -

Dhaka Regency Hotel and Resort Limited
and others.
.....Respondents.

With
Company Matter No. 27 of 2020

Mojid Khan
..... Petitioner.

- V E R S U S -

Dhaka Regency Hotel and Resort Limited
and others.
.....Respondents.

With
Company Matter No. 149 of 2018

Mohammed Mohed Ali Mithu
..... Petitioner.

- V E R S U S -

Dhaka Regency Hotel and Resort Limited
and others.
.....Respondents.

With
Company Matter No. 836 of 2024

Md. Shahidur Rahman
..... Petitioner.

- V E R S U S -

The Registrar, Joint Stock Companies and Firms
and others.
.....Respondents.

With
Company Matter No. 957 of 2024

Badrul Haque and others
..... Petitioners.

- V E R S U S -

Dhaka Regency Hotel and Resort Limited
and others.
.....Respondents.

And

Company Matter No. 82 of 2018

Mohammed Mohed Ali Mithu and others

..... Petitioners.

- V E R S U S -

Dhaka Regency Hotel and Resort Limited and others.

.....Respondents.

Mr. Shah Muhammad Ezaz Rahman, Adv.

Mr. Mustaque Ahmed Chowdhury, Adv.

Mr. Asif Bin Anwar, Adv. with

Mr. Mohammad Mehdi Hasan, Adv.

Mr. Shahed Ahmed Sadi, Adv.

Ms. Nahid Yesmin, Adv.

Mr. Iqbal Hasan, Adv.

Mr. Golam Noor Toron, Adv.

.....For the Petitioners.

Mr. Mustafizur Rahman Khan, Sr. Adv. with

Mr. Mohammad Shishir Manir, Sr. Adv

Ms. Mehreen Hassan, Adv.

Ms. Sumaiya Ifrit Binte Ahmed, Adv

Mr. Mohammad Iftekhar Hossain, Adv.

Mr. Shafayet Ahmed, Adv.

Mr. Pranta Barua, Adv.

Mr. Mohammad Saddam Hossen, Adv.

Mr. Md. Anisul Hassan, Adv.

Mr. Mohammad Syeed Abrar, Adv.

Mr. Abdullah Al Mahmud, Adv.

Mr. Hossain Mohammad Shahidul, Adv.

....For the respondents.

Mr. Ahmed Fouzad Bin Raunak, Adv.

...For the Court appointed Independent directors.

Mr. Jalal Uddin, Adv.

...For the Auditor.

Heard on: 03.08.2025, 06.08.2025, 26.08.2025,**27.08.2025, 22.10.2025, 28.10.2025,****29.10.2025 & 03.12.2025.****And****Judgment on: The 3rd February, 2026**

Sikder Mahmudur Razi, J:

A total of ten Company Matters, being Company Matters Nos. 957 of 2024, 84 of 2019, 836 of 2024, 149 of 2018, 27 of 2020, 17 of 2021, 24 of 2021, 235 of 2014, 199 of 2019 and 82 of 2018 were placed before this Court by the Hon'ble Chief Justice of Bangladesh for analogous hearing and disposal.

Out of the aforesaid matters, Company Matters Nos. 957 of 2024, 84 of 2019, 836 of 2024, 149 of 2018, and 27 of 2020 were filed under section 43 of the Companies Act, 1994. Company Matters Nos. 17 of 2021, 24 of 2021, and 235 of 2014 were filed under section 233 of the Companies Act, 1994, while the remaining Company Matters, namely Nos. 199 of 2019 and 82 of 2018, were filed under section 81(2) read with section 85(3) of the Companies Act, 1994.

In all the matters, respondent No. 1, namely Dhaka Regency Hotel and Resort Limited, is the company in question, and the petitioners in each of the Company Matters are Group-B shareholders of the said company.

It has been brought to the notice of this Court that the Company Matters filed under section 81(2) read with section 85(3) of the Companies Act, 1994 have since become infructuous. Accordingly, those matters have been excluded from further consideration and detailed discussion and those are hereby dismissed as being infructuous.

For the purpose of convenience and effective disposal, this Court has, therefore, segregated the remaining Company Matters into two broad categories, namely:

1. Rectification of the Register of Members, and
2. Minority Shareholders' Protection.

The present judgment shall address the issues arising out of the aforesaid Company Matters within the above two frameworks, upon an analogous hearing.

Furthermore, for the sake of convenience and for the purpose of the present judgment, the shareholders of the company are categorized into two groups, namely Group-A Shareholders and Group-B Shareholders. The Group-A Shareholders consist of respondent Nos. 2 to 4, as defined in the Shareholders' Agreement, together with such other shareholders who have been impleaded as respondent-shareholders in the company matters. On the other hand, the Group-B Shareholders are those designated as such under the Shareholders' Agreement, which group includes the petitioners as well.

Section-43: Rectification of Share Register

Company Matters being nos. 957 of 2024, 84 of 2019, 836 of 2024, 149 of 2018 and 27 of 2020 are under section 43 of the Companies Act, 1994.

1. **Facts gathered from all these company matters are as follows:**

(a) That the Petitioners are shareholders of Respondent No. 1- Company. Currently the petitioners of company matter no. 957 of 2024 and

84 of 2019 are the registered owners of 1,74,000 shares each in the said Company; on the other hand, the petitioner of company matter no. 836 of 2024 is the registered owner of 5,22,000 shares in the company and the petitioner Nos. 1, 2 and 3 of company matter no. 149 of 2018 are the registered owners of 1,74,000 shares each. The Petitioners being citizens of the United Kingdom of Bangladeshi origin reside in the United Kingdom and are represented by their respective authorized representatives.

(b) That the Respondent No.1, Dhaka Regency Hotel and Resort Limited, is a public limited company (hereinafter also referred to as 'the Respondent No.1 Company' or 'the Company') incorporated under the Companies Act, 1994 bearing registration No. C-64465 (1956)/06 dated 14.11.2006 to establish and carry on, among others, the business of hotels, holiday accommodations, rest house, resorts, motels and cottages of international standard.

(c) That the Respondent Nos. 2-8 are shareholders and former Directors of the Respondent No.1 Company, Respondent Nos. 9 and 10 are respectively the son and brother of Respondent Nos. 4 and 3 who have purchased shares of the Company using the Company's fund; Respondent No.11 in Company Matter Nos. 957 of 2024, 84 of 2019 and 27 of 2020 is the Company Secretary of Respondent No.1 company. Other respondents in different company matters are Government offices and members of the Court appointed Board of Directors.

(d) That with a view to establishing an international standard five star hotel at Dhaka, the Respondent Nos. 2-4 visited the United Kingdom on several occasions in 2005 and to raise the fund of the proposed Company offered directorship of the Company @ GBP 25,000 to the people of Bangladeshi community living in the United Kingdom by publishing advertisements in the media, brochures, pamphlets and holding seminars: relying on the commitment of the Respondent. Nos. 2 the petitioners and several other British citizens of Bangladeshi origin entered into shareholders' agreements on different dates with the said Respondents stipulating therein the rights, duties, privileges and responsibilities of both the parties.

(e) That in the Shareholder's Agreement the petitioners have been referred to as a "Group B Shareholder" while the Respondent Nos. 2-4 have been referred to as "Group A Shareholders". It is stipulated in Clause 2.2(d) of the Shareholder's Agreements that the Group A Shareholders (i.e. Respondent Nos. 2-4 herein) have invested in 177 Blocks of Investment in the form of 51,358 shares amounting to total Tk.51,35,800/- (Taka fifty one lac thirty five thousand and eight hundred) only and Shareholders' loan of Tk.50,84,42,700/- (Taka fifty crore eighty four lac forty two thousand and seven hundred) only in the project and the Group B shareholders (i.e. the petitioners) need to invest at least against one Block of Investment each amounting to a total of Tk.29,00,000/- (Taka twenty nine lac) only which shall be in the form of 290 shares amounting to Tk.29,000 (Taka twenty nine thousand) and Shareholders loan of Tk.28,71,000/- (Taka twenty eight lac and seventy one thousand) only.

(f) That under Clause 2.5 of the Shareholder's Agreement a Group B shareholder has the option to hold/own up to 20 Blocks of Investment and accordingly, several Group B shareholders including some of the Petitioners made investment in more than 1(one) Block of Investment; the Petitioners of Company Matter No. 957 of 2024, 84 of 2019, 836 of 2024 and 149 of 2018 made investment in different number of Blocks pursuant to the respective Shareholder's Agreement by making payment of a total sum of GBP 25,000 (Twenty five thousand sterling pound) for each Block which is equal to Tk.29,00,000/- (Taka Twenty nine Inc) only per Block.

(g) That the Petitioners having duly made payment of the money as per the respective Shareholders Agreement, the Respondents issued separate Share Certificate in favour of the Petitioners showing each of them as owner of 290 ordinary shares of Tk. 100 each for each block and a Loan Certificate showing that each applicant had provided a loan capital of Tk.28,71,000/- (Twenty eight lac seventy one thousand) to the Respondent No.1 Company for each block.

(h) That Clause 7(a) of the Shareholders' Agreements stipulates inter alia that all the members of Group A shareholders (Respondent Nos. 2-4) and Group B shareholders (the Petitioners and all other British investors) shall form the Board of Directors of the proposed Company subject to the Shareholders' Agreement and that the Group A shareholders shall be termed as the Executive Directors' while the Group B shareholders shall be termed as

the 'Non-executive Directors'; Article 7(b) provides that the Group B shareholders i.e. the British investors, shall have voting right in the Board of Directors.

(i) That surprisingly, the Respondent Nos. 2-4 incorporated the Respondent No.1 Company on 14.11.2006 without showing the Petitioners or any other British investors as shareholder or director of the Company which is a clear breach of the Shareholders' Agreement; although the Petitioners and the other British investors made investment both in shares and in the form of loan as per the respective Shareholder's Agreement only the Respondent Nos. 2-4 being local shareholders and the Respondent Nos.5-8 being their close relatives were shown as subscribers at the time of incorporation, despite the fact that none of the Respondent Nos.5-8 was party to the Shareholder's Agreement. The persons shown as the subscribers to the Memorandum of Association of the Respondent No.1 Company at the time of incorporation were as follows:

SL No.	Name	Number of shares	Designation
1	Arif Motahar	17,000	Chairman and Managing Director
2	Musleh Uddin Ahmed	17,000	
3	Kabir Reza	17,000	
4	Dilkush Begum	100	
5	Najma Arif	55	
6	Rokeya Khatun	155	

7	Zebun Nesa	155	
Total		51465	

(j) That the Respondent Nos.2-4 though did not show the petitioners or any other Group B shareholder as subscribers to the Memorandum and Articles of Association at the time of incorporation of the Company but subsequently the said Respondents filed returns with the RJSC from time to time showing allotment of shares in favour of the Petitioners and other Group B shareholders.

(k) That at the time of incorporation of the Company on 14.11.2006 the total number of paid-up shares alleged to have been subscribed by the Respondent Nos. 2-8 was 51,465. Subsequently, the Respondents increased the share capital of the Company by way of allotment of shares details of which are given below:

Date of Allotment	Number of shares allotted	Unit price
20.11.2006	28,710	Tk.100
27.11.2008	19,825	Tk.100
25.6.2009	49,00,000	Tk.100
27.12.2010	1,00,00,000	Tk.10

(l) That it transpires from record that on 20.11.2006 the Respondent No.1 Company allotted 28,710 shares of Tk. 100/- each in favour of 88 (Eighty-eight) persons including the Petitioners and some other British

investors and filed return of allotment dated 20.11.2006 with the office of RJSC. Thereafter the Respondent No. 5 being the then Managing Director filed return of allotment dated 27.11.2008 showing allotment of 19,825 ordinary shares of Tk. 100/- each in favour of 43 (Forty-three) persons including the Respondent Nos. 2-8 and some of the Group B shareholders; the Respondent No.5 also filed return of allotment dated 25.06.2009 showing allotment of 49,00,000 ordinary shares of Tk 100/- each in favour of 126 (one hundred twenty six) persons including Respondent Nos.2-8 and some UK investors including the Petitioners, lastly, the Respondent No. 3 filed return of allotment dated 27.12.2010 showing allotment of 1,00,00,000/- ordinary shares of Tk.10/- each in favour of different shareholders including the Respondent Nos. 2-8, the Petitioners and other Group B shareholders.

(m) That the Respondent Nos. 2 - 4 without holding any Annual General Meeting as per the provisions of law filed and got recorded with the office of RJSC Annual Summary of Share Capital (Schedule- X) showing changes in the share capital of the Company from time to time. That the Respondents also filed Particulars of Directors (Form XII) with the RJSC from time to time showing only the Respondent Nos. 2-8 as Directors of the Company to the exclusion of the Group B shareholders from the management.

(n) That from the Annual Summary of Share Capital dated 01.09.2013 it appears that currently the Company has a paid-up capital of 60,00,00,000/- (Sixty crore) divided into 6,00,00,000 (six crore) shares of

Tk.10 each out of which the foreign shareholders are holding altogether 2,70,68,215 (Two crore seventy lac sixty- eight thousand two hundred fifteen) shares of Tk. 10 each.

(o) That as per the Shareholder's Agreement Group B shareholders initially made investment in shares of the Respondent No.1 Company and in the form of loan to the Company but it appears from the Summary of Share Capital filed with the RJSC that the Respondents being in the management, subsequently increased the share capital by way of allotment of shares among the shareholders against part of their investment made in the form of loan.

(p) That the Petitioners as Group B shareholders made investment in different number of Blocks pursuant to respective Shareholder's Agreement and the investment made by them is GBP 25,000 (Twenty-Five Thousand Sterling Pound) each which is equal to BDT 29,00,000/-(Taka Twenty lac) only per Block; thus, the Petitioners are entitled to a total number of 2,90,000 shares each of Tk. 10 per share against each Block but while allotting further shares, the local shareholders have not issued required number of shares in favour of the Petitioners in proportion to their respective investment. The investments made by the Petitioners and the shares so far issued in their favour are shown in the following table:

SI No	Name of the Shareholder	Block	Amount Invested in GBP	Shares Entitled to	Shares allotted	Shortfall Shares
Petitioners of Company Matter No. 957 of 2024						

1.	Badrul Hoque	1	25,000	2,90,000	174,000	116,000
2.	Suraiya Khatun	2	50,000	5,80,000	348,000	232,000
3.	Shah Jahan	1	25,000	2,90,000	174,000	116,000
4.	Shofique Uddin	1	25,000	2,90,000	174,000	116,000
5.	Ashraf Khan	1	25,000	2,90,000	174,000	116,000
6.	Matin Rashid Khan	1	25,000	2,90,000	204,000	146,000
7.	Abdul Asad Chowdhury	1	25,000	2,90,000	174,000	116,000
8.	Shahidul Islam	1	25,000	2,90,000	174,000	116,000
9.	Imranul Islam	1	25,000	2,90,000	174,000	116,000
10.	Goyas Miah	4	1,00,000	1,160,000	696,000	464,000
11.	Samsul Hoque	1	25,000	290,000	174,000	116,000
12.	israk Ali	6	160,000	1,800,000	1,104,000	696,000
13.	Abdul Basith Khan	4	1,00,000	1,160,000	696,000	464,000
14.	Abdul Hamid	1	25,000	2,90,000	174,000	116,000
15.	Afzal Khan	1	25,000	2,90,000	174,000	116,000
16.	Mamun Chowdhury	1	25,000	2,90,000	174,000	116,000
17.	Mustafa Kamal	1	25,000	2,90,000	174,000	116,000
18.	SadaqurRhamnChowdhury	1				
19.	Badar Uddin Ahmed	1	25,000	2,90,000	174,000	116,000
20.	Kabir Ahmed	1	25,000	2,90,000	174,000	116,000
21.	Layekul Islam	1				
22.	Mustafizur Rahman	1	25,000	2,90,000	174,000	116,000
23.	Salim Uddin	1	25,000	2,90,000	174,000	116,000
Petitioners of Company Matter No. 84 of 2019						
24.	Moinul Islam	1	25,000	2,90,000	174,000	116,000
25.	Monzoor Hossain	1	25,000	2,90,000	174,000	116,000

Petitioners of Company Matter No. 836 of 2024						
26.	Shahidur Rahman	4	100,000	11,60,000	6,96,000	464,000
Petitioners of Company Matter No. 149 of 2018						
27.	Mohammed Mohed Ali	2	50,000	5,80,000	1,74,000	406,000
28.	Moinul Islam	1	25,000	2,90,000	174,000	116,000
29.	Monzour Hossain	1	25,000	2,90,000	174,000	116,000

(q) That it appears from the Summary of Share Capital dated 01.09.2013 that out of 6,00,00,000 paid-up shares the Group A shareholders i.e. Respondent Nos. 2-4, along with Respondent Nos. 5-8 own 3,29,31,784 shares in the Respondent No.1 Company while the Petitioners along with the other Group B shareholders own 2,70,68,219 shares; thus, as per the Summary of Share Capital filed with the RJSC the Respondent Nos. 2-8 hold 54.89% shares while the Group B shareholders hold 45.11% shares which, in fact, does not reflect the actual contribution of the Group-B shareholders to the share capital of the company.

(r) That as per the Shareholders Agreements signed between the Group A shareholders and each of the Group B shareholders, the Group A shareholders are supposed to contribute Tk,51,75,00,000/- (Fifty one crore seventy five lac) being 52.94% of the total investment while the Group B shareholders should contribute Tk.46,00,00,000/- (Forty six crore) being 47.06% of the total investment; according to the respective Shareholder's Agreement, the 120 (One hundred twenty) Group B shareholders including the Petitioners contributed a total sum of Tk.46,00,00,000/- (Forty six crore)

and thus, the total share capital of the Company being Tk.60,00,00,000/- (sixty crore) as on 01.09.2013, the Group A shareholders i.e. Respondent Nos. 2-4, may claim to have invested at best a total sum of Tk. 14,00,00,000/- (Fourteen crore) and that also, subject to production of sufficient evidence but in the Summary of Share Capital they along with their relatives i.e. Respondent Nos. 5-8, have been shown as owner of 3,29,31,784 shares amounting to Tk.32,93,31,784/- which represents 54.88% stake in the Company whereas the Group B shareholders have been shown as owner of 2,70,68,219 shares amounting to 27,06,82,190/- which represents 45.11% stake in the Company; this proves that the Respondents without making any payment have allotted large number of shares in their names by misappropriating the shares of the Petitioners and other Group B shareholders, in fact, the investment made by the Group A shareholders represents only 23.33% of the total investment while the rest has been invested by the Petitioners and other British investors being Group B shareholders.

(s) That although none of the Respondent Nos.5-9 was party to the Shareholders Agreement the Respondent Nos. 2-4 most illegally and in violation of the Shareholder's Agreement showed the Respondent Nos. 5-8 as subscribers to the Memorandum and Articles of Association at the time of incorporation of Respondent No.1 Company and subsequently, allotted large number of shares in their favour and also in favour of Respondent No.9

thereby depriving the Petitioners and other Group B shareholders of their legal entitlement.

(t) That the respondents have allotted appropriate number of shares in favour of some of the Group B shareholders in proportion to their total investment as evidenced by the Summary of Share Capital dated 01.09.2013 but in case of the Petitioners and several other Group B shareholders, shares were not issued in proportion to their respective investment, rather the shares were allotted in the name of local shareholders.

(u) That the Respondent Nos. 2-4 being Group A shareholders not only showed the Respondent Nos.5-8 as subscribers to the Memorandum but have also purchased shares of some Group B shareholders in the name of Respondent Nos. 3-5 and 8-10 using Company's fund; this is a clear violation of Clause 6.01 of the Shareholder's Agreement which provides that no shareholder of the Company shall sell, transfer or otherwise dispose all or any part of its investments in the Company without sending notice in writing to the other shareholders so that they can exercise their right of pre-emption within a certain time limit but in the instant case, no such notice was sent by the transferors before selling their shares.

(v) That being aggrieved by the fraudulent activities of the Respondent Nos.2-4 some of the Group B shareholders lodged a complaint with the High Commission for the People's Republic of Bangladesh based in London and also with the Assistant High Commission for the People's Republic of

Bangladesh based in Manchester pursuant to which both the High Commission and the Assistant High Commission wrote letters to the Bangladesh Securities and Exchange Commission (BSEC) and other authorities on 07.12.2017 and 06.12.2017. That earlier, some of the British investors staged a demonstration at Dhaka Regency Hotel in 2014 seeking justice against the fraudulent activities of the Respondent Nos.2-4.

(w) That the Respondents not only allotted large number of shares in their name without making any investment but also purchased shares of some Group B shareholders in the name of Respondent Nos.3-5 and 8-10 using Company's fund which constrained the Group B shareholders to send legal notices to the Respondents asking for rectification of the situation or return of the money to the Company's fund but the Respondents took no steps to that effect.

(x) **In Company Matter No. 957 of 2024** the petitioners further stated that the Respondent Nos.2 and 4 submitted affidavits in four cases being Complaint Petition Case Nos.403/2019, 404/2019 and 303/2020 and Khilkhet Police Station Case No. 8(12)20 filed by some foreign shareholders, thereby admitting their wrongdoing with undertaking to refund the money and shares to the foreign investors.

(y) **In Company Matter No. 836 of 2024** the petitioner further stated that vide order dated 04.03.2021, the Metropolitan Magistrate of CMM Court, Dhaka in a Criminal Case, against the Respondents, being GR case no.

320/20, arising out of Khilket PS Case No. 8 (12) 20 under sections 406/420/467/468/471/506/109, observed that 4,64,000 shares should be transferred to the Petitioner and Form 117 should be issued, but the petitioner is yet to receive the Form 117 with regards to the additional shares. The order of the Metropolitan Magistrate is quoted below:

"উভয় পক্ষের আইনজীৱীৰ এং পক্ষদেৱ উপস্থিতিতে িজ্ঞ আদালতেৰ সম্মুখে উভয়পক্ষ হলফপূৰ্ণক অঙ্গীকাৰ কৰেন ে, আসামীৰ াদী পক্ষৰ দাৰ্শিকৃত ৪৬,৪০,০০০/- টাকাৰ তৎকালীন মাদাৰশেয়াৰ ৪,৬৪,০০০/- টাকা শেয়াৰ কম প্রদান কৰেছিল। অত্র হলফনামাৰ মাধ্যমে আগামী ৬০ (ষাট) দিনেৰ মধ্যে াদীকে পাওনা ৪,৬৪,০০০/-টাকা শেয়াৰ আসামী অত্র কম্পানীৰ াক্তিগত শেয়াৰ হতে ংথাংথ প্রক্রিয়াৰ কম্পানীৰ আইনে িধান মতে ১১৭ ফৰম প্রদান কৰেন এং াদীপক্ষে উভ শেয়াৰ চুৰে পেলে অত্রমামলা প্রত্যাহাৰ কৰে নিে।"

(z) **In Company Matter No. 149 of 2018** the petitioners additionally relied on Annexure-O which is e-mail correspondences made by respondent No. 3, namely Musleh Uddin Ahmed wherein he admitted that the Board had taken legal opinion before acquiring share of shareholders and as the shares were bought by using the companies fund, the said shares will be offered for distribution amongst rest of the shareholders. Relying on Annexure-O-1 the petitioner has further stated that an opinion has also been

taken by respondent no. 2 on 17.02.2018 regarding purchase of shares using company's fund from a reputed Law Chamber of the Country.

In the said company matter statements relating to payment of GBP 12,500 was annexed as Annexure- B-4 to B-7. The petitioner has also annexed as Annexure-P (series) copy of different news published in national print and electronic media in respect of fraudulent activities of the respondents.

It further appears from record that in Company Matter No. 149 of 2018 the petitioner no. 1 deposed before the court in support of his investment in the company as he was lacking required share and loan certificate against his investment.

1.1 On the other hand, in **Company Matter No. 27 of 2020** the case of the petitioner namely Mojid Khan is that -

(a) He is also a citizen of United Kingdom of Bangladeshi origin and is represented by his authorized representative. That the petitioner entered into a shareholders' agreement with Respondent No. 02-04 to be shareholder of 1,45,000 Group B shares of Respondent No. 1, Company and paid to that effect but the aforementioned respondent allotted him only 87,000 Group B shares, and denied to allot rest of his rightful shares and when the petitioner appeared in Bangladesh and met with the aforesaid respondents physically in the year of 2014 they threat him to leave the country and several false cases were lodged against him, subsequently on 29.04.2014 the petitioner was arrested from Dhaka Regency Hotel (copy of

cases and police reports has been attached and marked as Annexure- B-1 Series) and all documents along with shareholder agreement were taken away by the respondents from the said hotel room from where the petitioner was arrested.

(b) That while the petitioner was in jail, the aforementioned respondents made an offer to him to transfer his shares in the name of Nazma Arif, wife of respondent No. 04 and finding, no other way the petitioner signed a share sale document on 02.07.2014 and released from prison on bail in the next day on 03.07.2014 and the petitioner was forced by the respondents to leave the country.

(c) That thereafter the applicant got to know that on 03.09.2014 a form 117 was submitted to the Registrar of Joint Stock Companies and Firms, Dhaka (Submission No. 2014378594) and the same was witnessed and signed on 26th June, 2014 and the transferee of the shares is Farhana Yesmin and after getting all these information the applicant made a complain and objection before the Registrar, Joint Stock Companies and Firms, Dhaka on 23.10.2019 (Photocopy of aforesaid complaint has been attached and Annexed as Annexure- "C").

(d) That the petitioner has paid for and the said respondents signed shareholder agreement with the petitioner for 1,45,000 Group B Shares and he is rightfully and legally entitled to get such number of shares but the clever Respondents tactfully violate the lawful right of the applicant abusing legal process of the country; therefore the petitioner have genuine interest in

the subject matter of the instant application under section 43 and desirous to refer all statements and annexures of company matter being number 149 of 2018 as long as it relates to the rightful claims of the petitioner against the selfsame respondents.

2. At the time of hearing, only respondent No. 2 appeared before this Court. Respondent No. 2 filed affidavit-in-opposition in the respective Company Matters. The case of respondent No. 2, as disclosed in the affidavit-in-oppositions filed in the different matters, is set out hereinafter.

2.1. At the outset, learned counsel for respondent No. 2 submitted the following points:

(a) That even if the averment that, monies were paid by the petitioners to the respondent No. 3-Musleh Uddin Ahmed for purchasing shares sometime between 2005 and 2006 is admitted, such monies were paid prior to the incorporation of the Company in 2006. These monies were paid in the United Kingdom and never remitted to Bangladesh through banking channel in compliance with Foreign Exchange Regulation Act, 1947 "(the 1947 Act)". Section 5 of the 1947 Act clearly provides that no payment can be received abroad as subscription for shares to be issued in Bangladesh as it would otherwise constitute money laundering.

(b) The 1947 Act and the Foreign Exchange Guidelines Volume 1 framed thereunder makes specific provisions by which shares can be issued where the shareholders are non-resident Bangladeshi living abroad, but the

money must come through proper banking channels and shares would have been issued against the encashment certificate evidencing crediting of the monies to the account of the Company. Short of such evidence, any transaction between the petitioners and the respondent No. 3 is a matter that is strictly between them, and does not bind the Company. In this particular instance, the monies the petitioners claimed to have paid never came into Bangladesh through proper banking channel. So, a rectification of the share register in this particular instance would essentially be condoning the violations of the 1947 Act and allow the petitioners to perpetuate an illegality.

(c) Money was given, if at all, to only one promoter, prior to incorporation of the Company. So, effectively if shares were to be issued to persons for the alleged subscriptions of shares, then the Company would have to be made bound by a pre-incorporation contract entered into between a single promoter of the Company and an outsider/third party. A company is not bound by the act of a promoter. A pre-incorporation agreement, until and unless ratified by the Company expressly upon incorporation through a board resolution, cannot bind the Company post-incorporation. As this has not happened in the present case, the Company is not bound by that acts of its promoters. Furthermore, in the absence of such ratification the alleged transactions of money, is a personal transaction between the petitioners and the promoters and cannot bind the Company.

(d) Some of the petitioners filed multiple criminal cases in Bangladesh against the promoters of the Company, i.e., the respondents- share holders,

and some of the cases relate to allegations of fraud and shortfall of shares issued to the petitioners by the respondents, which allegations have been investigated by the law enforcement agencies, and none of the allegations were proven against the respondents.

(e) The alleged subscription took place in 2005 and 2006. The case of the petitioners is that, they had invested in different Blocks of shares and paid the money accordingly. But shares were not allotted to them as per their payment. But the petitioners did not raise any issue for a long period of time. Such delay in raising the issue has not been explained. In the meantime, on the basis of the 1,74,000 shares that were in fact issued to the petitioners, the petitioners have participated in the Annual General Meetings of the Company beginning on 2008, voted in these Meetings and received dividends, but not once did they raise any issue about the alleged shortfall of shares. Hence, the claim has become barred by waiver, acquiescence and estoppels. In this regard, in the case of *Tamizul Haque and another Vs. Shamsul Haque and another, reported in 1991, 11 BLD (AD) 280*, it was held that "the application for rectification of a share register under Section 38 is left to be governed by the general principle that it shall be filed within a reasonable time and not after inordinate delay is left to be determined by the Court on consideration of facts and circumstances of a particular case....". In the case of *Tabassum Kaiser vs. Partex Cables Limited in Civil Appeal No.149 of 2023* the Hon'ble Appellate Division held that a relief under Section 43 is equitable in character, and not *ex debito justitiae*, and the conduct of the petitioner in the present case, operates as an *estoppel* against him with asserting the right.

2.2. Respondent no. 2 in his affidavit-in-oppositions while denying the assertions and allegations of the petitioners made the following statements-

(a) The directors on the Board were chosen from amongst persons who would be able to ensure the welfare of the Company. Moreover, the power to appoint directors of a company is vested upon the shareholders who would exercise such right in a general meeting.

(b) That some of the petitioners physically attended the 7th Annual General Meeting which is evident from the photograph, therefore, it is not true that respondents did not hold any AGM. (Copy of the photograph has been annexed with the affidavit-in-opposition)

(c) That on the basis their shares the petitioners accepted dividends until 2017.

(d) The respondents have not taken advantage of their position in the management to increase share capital by way of allotment. The allotment was made upon following proper procedure and no advantage of the management position was taken by the respondents.

(e) The summary of share capital filed with the RJSC correctly reflects the contribution of the Group B shareholders of the Company. Shareholder's agreement being pre-incorporation agreement does not bind the Company.

(f) That over the same allegations, some of the petitioners filed criminal cases in Bangladesh against the respondents, which have been

investigated by the law enforcement agencies, and final report has been provided. Thereafter the Court below dismissed the cases. (Copies of the CR cases and the Final Reports and Orders of the Court have been annexed with the affidavit-in-opposition)

(g) That alleged monies were given prior to incorporation of the Company. So, effectively if shares were to be issued to persons for the alleged subscriptions of shares, then the Company would have to be made bound by a pre-incorporation contract entered into between a promoter of the Company and an outsider/third party. A company is not bound by the act of a promoter. A pre-incorporation agreement, until and unless ratified by the Company expressly upon incorporation through a board resolution, cannot bind the Company post incorporation. As this has not happened in the present case, the Company is not bound by that acts of its promoters. Furthermore, in the absence of such ratification the alleged transaction of money is a personal transaction between the petitioners and the promoters and cannot bind the Company.

(h) That some of the petitioners availed the remedy of the Court below under Penal Code, 1860, and now the petitioner cannot be allowed to open a parallel front of litigation. The only conceivable purpose for launching this front in litigation in this instance is to procure a different outcome which is an abuse of the process of the court and as such the company matters ought to be rejected/dismissed.

Section 233: Minority Protection

3. There are three petitions under section 233 of the Companies Act, 1994, namely Company Matter No. 17 of 2021, Company Matter No. 24 of 2021 and Company Matter No. 235 of 2014. In Company Matter No. 17 of 2021 the petitioners are holding 8611000 Shares which is 14.35% of the total issued share. On the other hand, in Company Matter No. 24 of 2021 the petitioners are holding 6405000 Shares which is 10.68% of the total issued share. On the other hand, in Company Matter No. 235 of 2014, it is admitted that the petitioners are presently holding less than 10% of the total issued share capital of the company. Although, at the time of institution of the said matter i.e. Company Matter No. 235 of 2014, the petitioners fulfilled the statutory shareholding requirement, they have since lost such qualification; Company Matter No. 235 of 2014 is no longer maintainable in law. However, the petitioners of the two other company matters being nos. 17 of 2021 and 24 of 2021 have fulfilled the required threshold of shareholding to maintain an application under section 233 of the Companies Act, 1994. The petitioners' allegations are that the respondent nos.2-9 are conducting the affairs of the company in such a manner which is prejudicial to the interests of the minority shareholders and the major grounds assailed by the petitioners are as follows:

(a) That on 08.01.2014 the Respondent No. 1 Company filed Particulars of Directors showing retirement, re-election, and continuation of Directors on 01.09.2013; further on 12.06.2014 the Respondent No. 1 Company filed Particulars of Directors showing the appointment of Respondent No. 4 as Managing Director for 3 years, appointment of the

Respondent No. 3 as Vice-Chairman for 3 years, and the appointment of Respondent No. 2 as Chairman for 3 years on 01.10.2013, and got the same recorded. The abovementioned Particulars of Directors (From-XII) filed on 12.06.2014 was submitted with the office of the RJSC showing the date of Annual General Meeting as the date of retirement and re-election of Directors, where no Annual General Meeting was held on the date in question, and no notice of AGMs were served upon the Petitioners. It is therefore apparent that the Respondents No. 2-8 are conducting the affairs of the Respondent No. 1 Company in utter violation of the provisions of the Companies Act, 1994 and Articles of Association of the Respondent No. 1-Company. (The particulars of Directors (From-XII) dated 17.08.2010, 10.04.2011, 30.05.2011, 24.07.2012, 08.01.2014 and 2.06.2014 has been annexed as Annexure- C. C-1,C-2, C-3, C-4 and C-5 respectively in Company Matter No. 17 of 2021).

(b) That from the audit report of the Company submitted to the office of the RJSC, it appears that the auditor signed the audit report for the year 2007 on 07.01.2009 while the Annual General Meeting was shown as held on 30.04.2008 where the audit report for the year 2007 was placed, audit report for the year 2008 was signed on 14.10.2009 while the Annual General Meeting was shown as held on 30.06.2009. It is crystal clear from the audit report of the Company for the year 2007 and 2008 that the Company did not hold Annual General Meeting in due course of time and following due process. Rather the Respondent. Nos. 2-8 in collusion with each other manufactured the resolution and submitted the same before the office of the

RJSC and got the same recorded which is testimony of the fact that the Respondent No. 2-8 are running the company arbitrarily and whimsically without complying with the provisions of Companies Act, 1994 and Articles of Association of the Company.

(c) That the respondent Nos. 2-8 did not hold Annual General Meetings of the respondent No.1 Company following the provisions of the Companies Act, 1994 and therefore, Company Matter No. 82 of 2018 has been filed by one of the shareholders/investors, Mohammed Mohed Ali Mithu under section 81(2) read with section 85(3) of the Companies Act, 1994 seeking directions of the Court for holding Annual General Meeting for the years 2007 to 2017 which is pending for disposal.

(d) That Respondents No. 2-4, 7 and 8 have misappropriated and used the funds of the Respondent No. 1 Company to purchase shares from some shareholders in their own names and in the names of their family members, including in the name of Mohiuddin Ahmed who is the brother of Respondent No. 3, and deceased Dilkush Begum who is the mother of Respondent No. 4, as evidenced by e-mail correspondences between Respondent No. 3 and other shareholders. This is a clear violation of section 58(2) of the Companies Act, 1994 and Article 74 of the Articles of Association of the Respondent No. 1 Company, which is supported by the legal opinion in this regard which was sought by the Respondent No. 2.(The relevant documents has annexed as Annexure- D and D1 respectively)

(e) That the Respondent No. 6 is the wife of Respondent No. 2, the Respondent No. 7 is the wife of Respondent No. 3, the Respondent No. 5 is the wife of Respondent No. 4 and the Respondent No. 8 is the son of Respondent No.4. The Respondents No. 2-8 are running the affairs and business of the Respondent No. 1 Company violating the provisions of the Companies Act, 1994 and Articles of Association of the Respondent No. 1 Company which is detrimental to the interest of the Petitioners, other shareholders and stakeholders who live in the UK. That Respondents No. 5-8 are merely the signatories of the Board and have no idea about the day-to-day affairs of the Respondent No. 1 Company or the business, and nor do they have any requisite efficiency or qualification to run the Respondent No. 1 Company as Directors of the Board. That Respondents No. 2-4 also frequently stays out of the country, and as such the operation of the Respondent No. 1 Company has been conducted in a wholly haphazard and careless manner.

(f) That the respondents Nos. 2-4 from the very inception of the company did not secure the interest of the shareholders who on good faith relied on the commitment of the Board of Directors to run the Company efficiently and profitably. On several occasions the shareholders of the company requested the respondents Nos. 2-4 to furnish proper audit report as well as to issue share as per their commitment but unfortunately respondent no 2-4 did not pay any heed to the request of the shareholders. Over the period of time the respondent no 2-4 misappropriated huge amount of money of the company.

(g) The Dhaka Regency is a five-star hotel run, operated, managed and controlled by the Respondent No. 1- Company from which each year the Respondent No 1- Company has been earning and making huge profit. But the Respondent No. 2-8 till date did not declare any dividend nor give any financial benefit to the Shareholders except in three occasions, rather the Respondent No. 2-8 in collusion with each other misappropriated the fund of the company which is detrimental to the interest of the petitioners and others shareholders and stakeholders of the Company.

(h) That the respondent Nos. 2-8 received money from the petitioners with commitment to issue shares in the Company, but the respondent Nos. 2-8 did not issue the promised shares and thereby committed fraud with the petitioners for which some of the shareholders filed criminal cases against respondent 2-8.

(i) That from the audit report of the company submitted with RJSC, it revealed that the Company has earned net profit of 2,18,78,928.18 in the year 2008; Tk. 6,62,54,540/- in the year 2011 and Tk. 16,73,73,856/- in the year 2012. But yet the Company did not declare any dividend, Rather the Respondent No. 2-8 misappropriated the same.

(j) That notwithstanding such profits being available for distribution to the shareholders, the respondent no. 2 to 8 who are managing the affairs of the Company in collusion with each other have effectively prevented the company from paying any dividends to the shareholders in violation of the provisions of Articles of Association of the Company and thereby unfairly

depriving the petitioners from receiving any benefits out of their shareholding in the Company.

(k) That from the incorporation of the Company on 14.11.2006 till date, the Respondent No. 1 Company did not hold any Annual General Meeting or Extra-Ordinary General Meeting of the company and no notice was ever served upon the Petitioners. The Petitioners were also not supplied with the Directors Report and audited Balance Sheet and Profit Loss Accounts of the Company at the behest of the Respondents No. 2-8 in violation of the provisions of Companies Act, 1994.

(l) That the access of the Company's Books or Accounts and other documents of the Company is being unlawfully denied to the Petitioners who are the shareholders of the Company at the behest of the Respondents No. 2-8 in violation of the provisions of Companies Act, 1994.

(m) That the Respondents No. 2-8 have been enjoying and drawing all the benefits and profits of the Company without disclosing the same to the Petitioners and in the financial statement of the Company and have been filing false Annual Profit and Loss Account and Balance Sheet and Audit Report of the Company with the Registrar of the Joint Stock Companies and Firms with ulterior motive for their personal wrongful gain.

(n) That Respondent Nos. 2-8 in collusion with each other have been receiving undue advantages, facilities and drawing remuneration as Directors of the Company without approval of the Company in the General Meeting in violation of the Articles of Association of the Company.

(o) That three of the shareholders namely, Mr. Musleh Uddin Ahmed, Mr. Kabir Reza and Mr. Arif Motahar purchased land measuring 24 decimals at Cox's Bazar for BDT 1,50,00,000/- (Taka One Crore and Fifty Lacs) vide Deed No. 620 dated 08/02/2011 and 2 decimals of land valued at BDT 12,00,000/- (Twelve Lacs only) vide Deed No. 2926, dated 17.07.2013, respectively using the Respondent No. 1- Company's funds in connivance with each other, in their own names. That thereafter, an Agreement for Sale was executed, being Deed No. 3460, dated 20/09/2015, wherein it can be seen that Mr. Musleh Uddin Ahmed, Mr. Kabir Reza and Mr. Arif Motahar agreed to sell the land measuring 23.62 decimals to Dhaka Regency Hotel & Resorts Ltd. at BDT 13,00,00,000/- (Thirteen Crores only). That out of BDT 13,00,00,000/- (Thirteen Crores only), the said three shareholders received BDT 8,85,00,000/- (Eight Crores and Eighty-Five Lacs only) at the time of executing the Agreement for Sale and the remaining BDT 4,15,00,000/- (Four Crores and Fifteen Lacs only) were to be received at the time of executing the Registered Deed. However, on 20/09/2018, the said three shareholders transferred the said land to "Cox's Regency Hotel & Resort Ltd", at BDT 1,63,00,000/- (One Crore and Sixty- Three Lacs only), further evidenced by Deed No. 3337 and Mutation Khatian No. 15433. That the owners/shareholders of Cox's Regency Hotel & Resorts Ltd. are the same three shareholders of Dhaka Regency Hotel & Resorts Ltd, namely, Mr. Musleh Uddin Ahmed, Mr. Kabir Reza and Mr. Arif Motahar who initially purchased the land in their own names. (True copies of Deed Nos. 620 and 2926 and Deed No. 3460 has been annexed as Annexures- H, H-1 and I. True

copy of Deed No. 3337 and Mutation Khatian No. 15433 has been annexed as Annexures J and J-1. True copies of the Memorandum, Articles of Association, Form IX and Form XII of Cox's Regency Hotel & Resorts Ltd has been annexed as Annexures- K, K-1, K-2 and K-3 in Company Matter No. 17 of 2021).

(p) That as per the Audit Report for the year ending 2020 (page 4), it was revealed that the said shareholders embezzled BDT 7,22,00,000/- (Seven Crores and Twenty-Two Lacs only) through fraudulent transactions. They had initially sold the land for BDT 13,00,00,000/- (Thirteen Crores only) and received BDT 8,85,00,000/- (Eight Crores and Eighty-Five Lacs only), while its market value at the time was only Tk. 1,63,00,000/- (One Crore and Sixty-Three Lacs). This significant disparity in the sale price reflects the extent of the financial misconduct, and the unjust enrichment of the shareholders at the expense of the Respondent No. 1- Company.

(q) That the aforesaid transactions depict that the three shareholders named Mr. Musleh Uddin Ahmed, Mr. Kabir Reza and Mr. Arif Motahar did not make an honest mistake, but rather tried to make a fraudulent gain, by purchasing the land in their names. The sequence of events from the initial purchase of the land in their own names, the Agreement for Sale in the name of Dhaka Regency Hotel & Resorts Ltd for the receipt of a large initial payment, transferring the land to Cox's Regency Hotel & Resorts Ltd, a company which is owned by the same shareholders, and, thereafter, reinstating the ownership of the said land in their names, is a clear depiction

of premeditated actions aimed at maximizing personal financial gain through embezzlement of Respondent No. 1- Company's funds.

(r) That the audit reports for the year ended 2018, 2019, 2020 of Dhaka Regency Hotel & Resort Ltd, also highlighted several other irregularities, most of which pertain to financial mismanagement, misuse of company resources, committed by Group A shareholders, including, *interalia*:

- i. Taking unapproved financial benefits: For instance, Respondent Nos. 2, 3, and Ms. Dilkush Begum received excess and unapproved remuneration of BDT 92,80,000/-each in 2018;
- ii. Respondents Nos 2, 3, and 5, namely Mr. Musleh Uddin, Mr. Kabir Reza, and Mrs. Nazma Arif, received financial advantages of BDT. 75,23,330/-, BDT. 75,73,330/-, and BDT. 75,10,830/- respectively, which exceeded their approved monthly salaries;
- iii. An amount of Tk. 59,00,000/- was recorded as travel expenses, but was in fact taken by Mr. Musleh Uddin Ahmed, Mr. Kabir Reza, and Mrs. Nazma Arif as undue and unapproved financial benefits;
- iv. Company's funds were improperly used to repurchase 36,54,000 shares in the names of Respondents 3, 4, 7, and 8, as well as Mrs. Dilkush Begum, the mother of Respondent No. 4. This action directly contravened the legal advice/opinion provided to the company, which clearly stated that such purchases were illegal. Despite this clear

guidance, Respondent No. 2 actively facilitated the transaction by issuing share certificates in favor of the abovementioned individuals.

v. Legal fees of BDT 98,23,000/- were reported in the financial statements, of which BDT 77,50,000/- was used for Mr. Arif Motahar's (Respondent No. 4) personal litigation.

(s) That the impugned Articles in the Articles of Association of the Respondent No. 1- Company, on the strength of which Group A shareholders exercised dominance on the Board, effectively preventing them being accountable for their misconduct, are quoted herein below:

"2e. The Directors means the Executive Directors and Non-executive Directors of the Company. Executive Directors shall have voting rights in Board of Directors and Non-executive Directors shall not have any voting rights in the Board of Directors.

5. The authorized Share capital of the Company is Tk.1,000,000,000/- (Taka one hundred crore) divided into 100,000,00 (One crore) ordinary shares of Tk. 100/-(Taka one hundred) each. Minimum subscription of the Company Tk. 5000/-.The shareholders shall be divided in Group A and Group B shareholding. Group-A shareholders shall be the promoters of the company and shall serve as executive directors of the board of directors which shall consist of the following persons: Mr. Arif Motahar, Mr. Musleh Ahmed, Mr. Kabir Reza, Mrs. Dilkush Begum, Mrs. Najma Sharif, Mrs. Rukeya Khatun, Mrs. Zebun Nesa

Group B shareholders shall be the investors in the Company who shall have only Non-executive Directorship in the Board of Directors.

121. The member of directors shall neither be less than four nor more than fifty. There shall be two groups of directors, group A shareholders shall be the executive directors who shall have the voting rights in the board meeting. Group B shareholders shall have the right to attend and shall have no voting rights in the board meeting.

150. The directors shall elect a chairperson of the company after every annual general meeting from the directors representing the sponsor group.

165. The control of the company shall be vested in the executive directors and the business of the company shall be managed by the executive directors, who may pay all expenses informing and registering the company, and may exercise all such powers of the companies as are not, by the act or any statutory modification thereof for the time being in force or by the articles, required to be exercised by the company in general meeting subject nevertheless to any regulation of the articles, to the provisions of the act, and to such regulations being not in consistent with the regulations or provisions, as maybe prescribed by the company in general meeting but no regulation made by the company in general meeting shall invalidate

any prior act of the directors which would have been valid if that regulation had not been made.”

4. Several respondents filed separate affidavit-in-oppositions. However, at the time of hearing only the learned advocates for the respondent no. 2 made their submissions before the court.

4.1 Respondent no. 2 in his affidavit-in-opposition denied the material allegations made in the substantive petitions and further contended that -

(a) Company matter No. 17 of 2021 was filed by 31 petitioners who collectively hold 14.35% shares of the respondent No. 1 Company. Subsequently the petitioners were divided and 18 out of the 31 petitioners in the this Company Matter being petitioner Nos. 02, 03, 08, 09, 10, 11, 12, 13, 14, 15, 16, 22, 23, 25, 26, 27, 28 and 30 by a letter addressed to the Independent Chairman changed their power of attorney holder from the petitioner No. 1 to the petitioner Nos. 17 and 18 by executing new letters of authority. In such event, 11 petitioners are being represented by the petitioner No. 1 Mr. Shahidur Rahman and 20 petitioners are being represented by the petitioners Nos. 17 and 18 being Mr. Ishrak Ali and Mr. Abdul Bashit Khan respectively and because of such division Company matter No. 17 of 2021 cannot be maintained in its present form and is liable to be rejected. (True copy of the letter changing authorized representative has been annexed as Annexure "X-1").

(b) That because of such division amongst the shareholders the shareholding position of the respective groups has been reduced below 10% and therefore, the company matter no. 17 of 2021 is not maintainable and liable to be rejected.

(c) That five petitioners in the Company Matter No. 17 of 2021, being petitioner Nos. 10, 16, 18, 25 and 27 respectively, were also the petitioners in Company Matter No. 235 of 2014, which is also an application under Section 233 of the Companies Act, 1994, filed against the self-same respondent No. 1 Company, and which is also currently pending before the Hon'ble Court. In the said Company Matter No. 235 of 2014, the petitioner Nos. 16, 18, 25 and 27 by separate letters dated 20.09.2015 withdrew the authority earlier given for continuation of any legal proceedings against the respondent No. 1. Such withdrawal was also confirmed by separate affidavits, all dated 30.09.2015, affirmed by them, along with the petitioner No. 10 who affirmed an affidavit dated 12.10.2015 confirming such withdrawal. (True copies of the letters dated 20.09.2015 and the affidavits dated 30.09.2015 and 12.10.2015 has been annexed as Annexures-"X-3", "X-4", "X-5", "X-6", and "X-7").

(d) That the application under section 233 of the Act, 1994 is not maintainable as the authorization provided by the petitioners to their power of attorney holder is not in the correct form and as such the application is liable to be rejected forthwith.

(e) That there is no cogent ground to file an application under Section 233 of the Companies Act, 1994. The allegation of the petitioners that no Annual General Meeting (AGM) of the Company was held on 01.09.2013 and that no notice of such AGM was given is false. That notice dated 14.08.2013 for the 6th AGM of the Company held on 01.09.2013 was issued by registered post to all shareholders along with a copy of the Annual Report for the year 2012. However, by the time the printed copies of the Annual Report were received, the respondents were requested to defer the AGM so that shareholders abroad could attend the meeting. That apart from sending the notices by post, the notice dated 14.08.2013 was sent as an attachment to an email sent by the respondent No. 9 to the email accounts of all the shareholders of the Company including the petitioners. Subsequently, the meeting was duly held on 01.09.2013 and was attended by shareholders.

(f) That the AGM that was held on 01.09.2013 declared cash dividends of 12% which was duly received by the shareholders, including the petitioners. (True copy of the certificate issued by the concerned bank evidencing payment of such dividends has been annexed as Annexure-"X-11").

(g) When the Company detected an apparent discrepancy on the dates of the audit report being subsequent to the relevant AGMs, it wrote a letter dated 25.01.2011 to the auditor, who by letter dated 02.02.2011 stated that there was a clerical error in the two reports. The Company then, notified RJSC of the same by letter dated 07.02.2011, which was received by RJSC

on that date. As a matter of fact, this issue was raised earlier in Company Matter No. 235 of 2014 being an application under Section 233 of the Companies Act, 1994 filed by some shareholders of the Company, which is still pending, and in the said Company Matter, the Company has already submitted an affidavit giving the explanation. (True copies of the letter dated 25.01.2011; 02.02.2011 and 07.02.2011 has been annexed as Annexures "X-12", "X-13" and "X-14").

(h) That the AGM of the Company was duly held on 30.04.2008, 30.06.2009, 31.08.2010, 29.05.2011, 07.06.2012, 01.09.2013, 21.12.2014, 03.09.2015, 29.12.2016 and 26.08.2018. The notices and minutes of these meetings has been annexed as Annexures "X-15" to "X-24" and photographs evidencing holding of these AGMs has been annexed as Annexure "X-24A". The petitioners attended in the said AGMs and petitioner No. 17- Mr. Israk Ali not only attended these meetings but also confirmed the minutes of the 6th AGM by personal attendance at the 7th AGM of the respondent No. 1- Company. There is photographic and video evidence of such attendance for the 7th to 10th AGM. Besides, at the request of certain shareholders, the Company went to the extent of making *ex gratia* payments to them of various amounts in order to facilitate their attendance, which is evidenced from Annexure "X-25".

(i) That apart from the 6th AGM, the Company also declared 20% cash dividends in the 5th AGM and 7% interim and 15% further cash dividends in the 10th AGM. (Bank Statements of the respondent No. 1 Company

evidencing transfer of dividends to the petitioners has been annexed as Annexure "X-26" and "X-26A")

(j) That the respondent No. 2 did not purchase any share using the fund of the Company. In January, 2018, the respondent No. 2 came across alleged minutes of a Board Meeting purportedly held on 10.08.2017 where the respondent No. 3, respondent No. 5 and respondent No. 7, together with Mrs. Dilkush Begum (the mother of respondent No. 4) discussed purchase of shares with the funds of the Company, and adopted the following resolution:

"RESOLVED THAT the proposal to purchase shares by the members of the board of directors from the shareholders intending to sell their shares subject to the condition the same will be offered as dividends to the shareholders willing to buy and the money accrued therefrom will be adjusted in favour of the Company is hereby approved."

The respondent No. 2 or his wife, respondent No. 6, who is also a director, had no knowledge of such meeting before January 2018; they never received any notice of any meeting held on 10.08.2017, let alone attend it. The respondent No. 2 struggled to understand the purport of the resolution; when the respondent No. 2 confronted the respondent No. 3 about this matter, the respondent No. 3 said that the shares have been purchased by the respondent Nos. 3, 4, 7, 8 and Mrs. Dilkush Begum on the basis of the majority decision of the Board using Company funds, which they will adjust from their dividends. The respondent No. 2 still objected to this and obtained legal opinion and demanded that the money be refunded to the Company

immediately, which the respondent No. 3 undertook to do. Respondent No. 2 did not sign any of the cheques that were issued for settlement of the purchase price of the shares in question.

(k) That the petitioners have suppressed their participation in previous AGMs. In none of these AGMs they have raised any note of dissent or objection about the composition and performance of the Board of Directors or proposed any of themselves as candidates for election/appointment on the Board of Directors. (Photographic evidence of such attendance for the 7th to 10th AGM has been annexed as Annexure "X-27").

(l) That the criminal cases have been filed on false allegations and with the sole purpose of harassing the respondents and creating a vacuum in the management of the Company so that the petitioners themselves can grab it. In fact the above Company Matter is precisely such a device. The allegation of misappropriation of funds of the Company is vague and unsubstantiated; the allegation of taking excess money at the time of issuing shares is false; the accounts of the Company as annexed by the petitioners themselves show that shares were issued at a premium, and that such premium, far from being misappropriated, is accounted for in the balance sheets and profit and loss account.

(m) That there is no crisis in the management of the Company. The management of the hotel is being conducted by a team of qualified professionals headed by a Director (Operations). The utility bills and salary of employees are being paid regularly and are not outstanding. That all

salaries have been paid through bank transfer except the salary for one month, which the Company was constrained to pay in cash since the respondent No. 2 was under arrest and was not there to sign the cheques.

(n) That the petitioners have not been able to make out any case under Section 233 of the Companies Act, 1994, the main planks of the petitioners case are demonstrably false, inasmuch that where the petitioners are claiming AGMs have not been held, the evidence shows that they have been held; where the petitioners allege that the Company has not paid dividends, the evidence shows that it has; where the petitioners allege misappropriation of money, there is no evidence of any; where the petitioners alleged excess money being taken for issue and allotment of shares, the evidence shows such monies being kept in the premium account of the Company; where the petitioners allege non-payment of utility and salary, the evidence shows that these are in fact being paid; where the petitioners alleged vacuum in management, the evidence shows existence of a professional management team.

4.2 By filing supplementary affidavit- in- opposition respondent no. 2 asserts as follows:

(a) That on 26.12.2024 the petitioner No. 1 of Company Matter No. 82 of 2018 namely Mr. Mohammad Mohed Ali Mithu, wrote to all the shareholders of the respondent No. 1 Company-Dhaka Regency Hotel and Resorts Ltd alleging amongst others that the petitioner No. 1 of Company Matter No. 17 of 2021 namely Mr. Shahidur Rahman, who is also one of the

Court Appointed Board member from among the shareholder group, has been abusing his position in the Board and embezzling fund of the Company using his position as joint signatory to the cheques of the Company. (Copy of the letter dated 20.12.2024 from Mr. Mobed Ali Mitho has been annexed as Annexure X)

(b) That Mr. Shahidur Rahman in response to the letter above, by his reply dated 26.12.2024 attempted to clarify several issues amongst which he asserts that it is in fact the Court appointed Chairman who is authorized to sign all the cheques while Mr. Shahidur Rahman is out of Bangladesh and Mr. Shahidur Rahman only signs cheques in limited instances. (Copy of the reply dated 20.12.2024 from Mr. Shahidur Rahman is annexed herewith and marked as Annexure- "X-1")

(c) That several correspondences between 27.12.2024 and 29.12.2024 and more recently between 03.01.2025 to 12.01.2025 reveal much conflict and divide among the shareholders themselves that more importantly bring to light many illegalities and embezzlement of funds of the Company that are being committed by the present Court appointed Board members, which it is submitted, is the main planks for prolonging the submission of audit reports and holding of AGM and procrastinating the present cases in Court with frivolous interim applications.(Copies of the correspondences between 27.12.2024 and 29.12.2024 and between 03.01.2025 to 12.01.2025 has been annexed as Annexures - "X-5", "X-6", "X-7", "X-8" and "X-9")

(d) That petitioner No. 13- Mr. Quazi Kaiser Ahmed who was the holder of 1.45% shares of the respondent No. 1 Company had entered into an agreement to sell off/transfer all of his shares in the respondent No. 1 Company by entering a settlement agreement dated 28.03.2022 following legal proceedings in the United Kingdom, in the High Court of Justice, Business and Property Courts under case number BL-2020-002197. The respondent No. 2 came to learn about this settlement agreement from a mutual contact. That Clause 21 of the Settlement Agreement states that: "This Agreement is in full and final settlement of Proceedings and of any other claims or counterclaims, appeals, rights, demands or set offs and/or other obligations between the Parties.....anywhere in the world". That to the best knowledge of the respondent No. 2, the physical transfer of shares however has not taken place as the Annual General Meeting of the respondent No.- 1 Company is still due and in observance of the order of the Hon'ble High Court Division dated 09.03.2023.

(e) Respondent No. 2 submitted that the respondent Nos. 3, 4, 7 and 8 may be directed to refund these funds to the Company along with interest at the market rate, failing which their shares may be forfeited.

4.3 In addition to the facts as narrated by the respondent no. 2 respondent nos. 4 and 5 in their affidavit-in-opposition additionally adds the follows:

(a) That a number of potential outgoing share-holders wished to sell their shares and the then Chairman of the respondent No.1 Company took legal opinion from late Tanvir Parveez, Barrister-at-Law, Advocate, Supreme

Court of Bangladesh as to whether the fund of the respondent No.1 Company could be used for purchasing shares from the outgoing share-holders and based on the said opinion the Directors chose the 2nd option for purchasing the shares from the outgoing share- holders with the intention to distribute the same equally among the existing share-holders in the next Annual General Meeting (AGM). However subsequently, the shares purchased by using the Company Fund could not be transferred to the existing share-holders due to filing of three company matters bearing Nos. 149 of 2018, 82 of 2018 and 84 of 2019 by some share-holders. In view of the afore-said facts and circumstances, the Hon'ble Court may direct sale of the shares in question to all the existing share-holders or to direct the Company to redeem the same.

(b) That the allegation of misappropriation of funds of the Company is vague and unsubstantiated; the allegation of taking excess money at the time of issuing shares is false; the accounts of the Company as annexed by the petitioners themselves show that shares were issued at a premium, and that such premium, far from being misappropriated, is accounted for in the balance sheets and profit and loss account.

4.4 In addition to the facts as narrated by the respondent no. 2 respondent nos. 1 and 9 in their affidavit-in-opposition additionally adds the follows:

(a) That upon receiving the opinion, the consideration for purchase finally came from the personal funds of the purchasers, i.e. Company funds were never finally used to finance purchase of shares.

4.5 Respondent no. 3, 4 and 6 by filing affidavit-in-opposition further stated that the petitioners have been duly allotted 1,74,000 shares against Tk.29,00,000. The face value of the 1,74,000 shares is Tk.17,40,000/- only. The balance Tk.11,60,000 has been adjusted against premium payable upon the shares allotted in their favour.

The said respondent no. 3, 4 and 6 further stated that the petitioner namely Mohed Ali paid in total GBP 25,000 out of which GBP 10,000 was paid through UTL for which proper receipt in the letter head pad of the respondent no. 1 company was given. The balance GBP 15,000 was received from the petitioner on different dates upon issuing proper receipt. However, records of those receipts were not preserved by the respondents as they were in friendly terms. It has further been stated that statements relating to payment of GBP 12,500 has no relevance with the payment of purchase of shares. The amount was paid to UTL which is an international money transfer agency and there is no piece of evidence to suggest that this payment was transferred in favour of the respondent company. It has further been stated that due to some technical reason in order to ensure expediency the British investors were not shown as subscribers to the Memorandum or as Directors. Admittedly on a later date they were shown as shareholders by allotment and in no way they were prejudiced. Regarding holding of AGM it has been stated that the notice of AGM and the postal receipts, Minutes of AGM are annexed with the affidavit-in-opposition of Company Matter No. 82 of 2018 as Annexure 1 series. It has further been stated that for purchasing of 29,000 shares the petitioner had to pay a premium @TK.40 only for each share.

5. Submissions of the learned advocates:

5.1 Mr. Shah Muhammad Ezaz Rahman, Mr. Mustaque Ahmed Chowdhury, Mr. Mr. Asif Bin Anwar, Mr. Mehdi Hasan, learned Advocates made their submissions on behalf of the petitioners of the company matters. Taking us through the substantive petitions, supplementary affidavits, audit reports the learned advocates submitted that-

(a) Certain provisions in the Articles of Association of Respondent No. 1 Company have been structured in such a manner that the Respondents have been able to exercise unfettered control over the Company's management while systematically excluding the Petitioners and other foreign investors from any participation in its affairs.

(b) That this Court possesses ample power under Section 233(3)(c) of the Companies Act, 1994, to amend any provision of the memorandum or articles of association of a company, if, after hearing the parties, the Court is satisfied that the interests of the applicant(s) have been, are being, or are likely to be prejudicially affected for reasons specified in the application.

(c) The materials on record and the reports of the Court-appointed auditor clearly demonstrate that the Respondents managed the affairs of the Company from the outset to the exclusion of the Petitioners and other foreign investors, in a manner that is wholly prejudicial to the Petitioners' interests. Unless the abovementioned Articles are amended by this Hon'ble Court, the Petitioners will remain excluded from management, allowing the

Respondents to continue exercising unfettered control, thereby perpetuating oppressive conduct, frustrating the Petitioners' legitimate expectations, and causing irreparable prejudice to the corporate governance of the Company.

(d) The share premium account as shown in the balance sheet and relied upon by the respondent is merely a balance sheet declaration and the share was never issued on premium and the respondents failed to show any supporting documents in this regard.

(e) The respondents have failed to produce a single piece of documentary evidence in support of their alleged investment in the company, and in the absence of any such evidence, their entitlement to claim status as shareholders of the company is seriously in question.

With these submissions the learned advocates prayed for allowing the company matters and to grant reliefs in favour of the petitioners as per their prayers made in the substantive petition as well as in the supplementary affidavit.

5.2 Mr. Mustafizur Rahman Khan, learned Senior Advocate, Mr. Mohammad Shishir Manir, learned Senior Advocate, Ms. Mehreen Hassan, learned Advocate made their submissions on behalf of the respondent no. 2 namely Mr. Kabir Reza. The learned advocates submitted that-

(a) The alleged subscription took place in 2005 and 2006 but some of the petitioners only took issue with the alleged shortfall of shares issued back in 2006 for the first time after 8 years in 2014 (in Company Matter No. 235

of 2014, which is in fact a Section 233 application and still pending before the Hon'ble High Court, and the rest of the Petitioners first raised their claim regarding the alleged shortfall of shares in 2021 in Company Matter no, 24 of 2021 and in Company Matter No.17 of 2021, which are both Section 233 applications) and it was only in the year 2024 under the present Section 43 Applications, that most of the petitioners have sought relief for an alleged shortfall, 18 long years after such shares were issued. In the present case, the petitioners are disentitled from seeking a relief under Section 43 for the unexplained inordinate delay and laches on their part in failing to file such an application within reasonable time: *Tamizul Haque v. Shamsul Haque (1991 11 BLD (AD) 280)*

(b) In the meantime, on the basis of the shares that were in fact issued to the petitioners, the petitioners have participated in the Annual General Meetings of the Company, voted in these meetings and received dividends, but not once did they raise any issue about the alleged shortfall of shares then and hence, on any view of the matter, the claim has become barred by waiver, acquiescence and estoppel. In support of this submission the learned advocate relied on *Mukundlal Manchanda vs. Prakash Roadlines Lid (MANU/KA/0225/1994: 1996) 7 SCL 42* wherein it was held that "the Court can, in an appropriate case, decline to exercise its powers under Section 155 (equivalent to Section 43 of the Companies Act, 1994) if it finds that the petitioner before it has disentitled himself of the said relief for any reason like suppression of material facts, acquiescence, delay and laches etc. Relief

envisaged by section 155 is equitable in nature, and all such considerations as are relevant to the grant or refusal of any such relief would be attracted to proceedings under the said provision."

(c) The petitioners have consistently maintained that the Company has never held any AGMs or distributed any dividends against their investments, but there are photographic evidence of some of the petitioners attending the AGM of the Company and as such they have come before this Court with unclean hands, and in a recent judgment of the Hon'ble Appellate Division in *Tabassum Kaiser vs. Partex Cables Limited in Civil Appeal No.149 of 2023* the subsequent conduct of the petitioner and suppression of material facts disentitled the petitioner to a relief under Section 43 of the Companies Act, 1994.

(d) The petitioners through their conduct by participating in the AGMs of the Company, voting therein, accepting dividends and not raising any issue of the alleged shortfall of shares until recently, have clearly waived their right to any equitable remedy under Section 43 of the 1994 Act and hence their conduct operates as an *estoppel* against them in asserting their rights. A relief under Section 43 is equitable in character, it is not *ex debito justitiae*, and the conduct of the petitioners in the present case, operates as an *estoppel* against them with asserting the right.

(e) In any event of the matter, the share premium account of the Company evidences that shares received by the petitioners have been accurate and the balance amount is being held in the share premium account as premium for those shares. As such, there has been no shortfall of shares issues, warranting any rectification of the share register and as such, the Section 43 applications are misconceived and liable to be rejected.

(f) That none of the petitioners have sworn affidavit for the Section 43 applications in proper form and the same has neither been duly consularised nor notarized which is a grave procedural impropriety, that questions the authenticity of the claim and the identity of the petitioners (some of whom had long sold off their shares and are no longer shareholders of the Company, and some have passed away before initiation of the Section 43 applications), and as such the applications are liable to be rejected.

(g) The allegations of misappropriation of funds of the Company is vague and unsubstantiated; the allegation of taking excess money at the time of issuing shares is false; the accounts of the Company as annexed by the petitioners themselves show that shares were issued at a premium, and such premium, far from being misappropriated, is accounted for in the balance sheets and profit and loss account of the Company.

(h) Expenses relating to salaries, travelling costs, and others incurred during course of office of Managing Director are not recoverable. Rather, an amount of Tk.1,21,23,000 has till date not been withdrawn in

dividends by the respondent No. 2 and his wife for the year 2017. The Balance Sheet of the Company as on 30.06.2020, as submitted by the Auditor Mowla Mohammad & Co confirms under the head "current liabilities" that total "unclaimed dividends" of Tk.4,15,55,347/- for the year 2020 is still lying with the Company. This issue has not been considered or purposely suppressed by the Auditor in his Audit Review.

(i) The Audit report otherwise is fraught with anomalies rendering the Audit report provided by the Court Appointed Auditor unreliable.

(j) In any event, none of the petitioners have sworn affidavit for the Section 233 applications in proper form and the same has neither been duly consularised nor notarized which is a grave procedural impropriety. Such a procedural infraction questions the authenticity of the claim and the identity of the petitioners since some of whom had long sold off their shares and are no longer shareholders of the Company, rendering the Section 233 applications to fall below the statutory threshold of 10% to be maintainable. As such the applications are liable to be rejected.

5.3 In response to the submissions of the learned advocate for the respondent no.2 Mr. Ezar submitted as follows:

The shares were issued in favour of the petitioners not in a single year, but over a period extending from 2006 to 2010, which led the petitioners to believe that the process had not concluded but was a continuing one.

Furthermore, there is no scope to contend that the petitioners remained silent in respect of the irregularities as they unfolded from time to time; rather, the petitioners were at all material times vigilant in pursuing their lawful rights. Consequently, there is no basis to suggest that the petitioners waived their rights.

6. I have heard the learned advocates for the respective parties, perused the substantive petitions, supplementary affidavits, affidavit-in-oppositions, the audit reports and the responses thereof. At the very outset, it is pertinent to mention that the original Articles of Association were subsequently amended to some extent, and, as a result of such amendment, the serial numbers of some of the articles were also changed.

7. Now, for a proper appreciation of the cases of the respective parties, this Court has also perused the annexures filed by both sides and considers it expedient to record certain important features noticed during the course of such perusal.

7.1 At the very outset, it appears from record that the latest Summary of Share Capital placed before the Court by the parties, as reflected in the records of the RJSC, pertains to the position as on 01.09.2013. It also appears from the order sheet of Company Matter No. 235 of 2014 that, upon admission of the matter on 23.07.2014, the records of the respondent

company were called for from the RJSC and the same was transmitted 24.12.2014.

In all these Company Matters, the documents annexed by the petitioners as well as the respondents substantially overlap. Accordingly, for the sake of convenience, the annexure numbers and the corresponding Company Matter numbers have not been mentioned, unless such reference is considered necessary for ready reference. Instead, the nature of the annexures and the relevant portions thereof are set out below.

(a) Articles of Association:

Article-219 (New 217) provides that in case of contradiction between this articles of association and the shareholders agreement, the shareholders agreement shall take precedence over this articles of association.

Article-74 provides that none of the monies of the company shall be employed in the purchase of land on the security of shares of the company and the company shall not give to any person any guarantee or financial assistance whether directly or indirectly for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company.

(b) Brochure:

From brochure it appears that the promoter made statement that over 70% has already invested. Only limited directorship shares are available for amazing offer of £25000/-. In the said brochure it was further mentioned that *“you need to invest a minimum of £25000/- to become a*

shareholder(director)”. And individual may invest up to £1,00,000/- which will give them a position of senior director. In the said brochure profile of four persons, namely Arif Motahar, Mojibul Islam, Musleh Ahmed and Kabir Reza were enclosed terming them as executive directors.

Based on so many lucrative offers some UK citizens of Bangladeshi origin invested in the company and on different dates of the month of November, 2005 entered into separate agreements with the persons, named above. All those shareholders agreement had common format and features. Some of the important features of the said agreement are as follows;

“AND WHEREAS, both the Group A Shareholders and the Group B Shareholder along with other Group & Shareholders have mutually agreed that the total Investment of the Proposed Company would be GBP 8.5 million or BDT 97,75,00,000 (taka ninety seven crore and seventy five lacs) only as on the Effective Date and that the Group A Shareholders and Group B Shareholder along with Other Group B Shareholders shall jointly form the "Board of Directors" of the Proposed Company.

AND WHEREAS, the Group A Shareholders shall invest TK. 51,75,00,000 (taka fifty one crore seventy five lacs only) that is 52.94 % of the total Investment of the Proposed Company whereas the Group B Shareholders collectively shall invest a total of TK 46,00,00,000 (taka forty six crore only) that is 47.06 % of the total Investment to the Proposed Company on the Effective Date and co-operate with each

other to develop, manage and expand the operations of the Proposed Company subject to the terms and conditions contained hereunder.

"Investment" means Investment jointly in Shares and Loan to the Proposed Company.

"Loan" means the amount of loan provided by the Shareholders of the Proposed Company as an investment jointly with the Shares of the Proposed Company.

2.2(a) That the Group A Shareholders have invested in 51,358 shares amounting to TK. 51,35,800 (taka fifty one lacs thirty five thousand and eight hundred) and Group B Shareholders along with Other Group B Shareholders has the option to invest in 46,392 number of shares amounting to TK 46,39,200 (taka forty six lacs thirty nine thousand and two hundred) only of the Proposed Company.

(b) Further, Group A Shareholders shall also invest in the form of loan in the proposed company as loan amounting to TK 50,84,42,700 (taka fifty crore eighty four lacs forty two thousand seven hundred only) and Group B Shareholder along with Other Group B Shareholders shall also Invest in the form of loan in the proposed company as loan capital amounting to TK 45,92,82,300 (taka forty five crore ninety two lacs eighty two thousand three hundred) for which the Shareholders shall be entitled to profit at the same rate of ordinary shareholders'.

(c) That in the above ratio for every 1 (one) hundred Taka investment in shares, TK 99 (ninety nine) is to be invested in the form of Loan in

the Proposed Company. Therefore, in one Block of Investment of TK. 29,00,000 (taka twenty nine lacs) only, TK 29,000 (taka twenty nine thousand) shall be invested in 290 shares of TK 100 (one hundred) each and the rest of the money of Taka 28,71,000 (taka twenty eight lacs and Seventy one thousand only) shall be invested in the form of Loan.

(d) Therefore, the Group A Shareholders has already invested in 177 Blocks of Investment in the form of 51,358 shares amounting to total TK 5135800 (taka fifty one lacs thirty five thousand and eight hundred) only and Shareholders loan of TK 50,84,42,700 (taka fifty crore eighty four lacs forty two thousand and seven hundred) only in the project and the Group B Shareholder Invests in 1 Block of Investment amounting to a total of TK 29,00,000 (taka twenty nine lacks) which shall be in the form of 290 shares amounting to TK 29,000 (taka twenty nine thousand) and Shareholders loan of TK 28,71,000 (taka twenty eight lacks and seventy one thousand only).

2.6 That the Group A Shareholders shall ensure that all permission, consent and/or approval, if any, that may be required from all regulatory authorities for the proposed investment of the Group B Shareholder lawfully ("Requisite Consents") has been obtained.

6.02 Pre-emption Right

(a) When any Shareholders (Disposing Party) wishes to sell, transfer or otherwise dispose (including for this purpose the creation of any

charge or other security interest over such investments) of all or part of its Investments in the Proposed Company, it shall notify the in writing of the proposed terms and conditions of such sale, assignment or disposal ("Assignment Notice") which shall notify other shareholders (Non-disposing Party) of the assignment.

7.01 Formation of the Board

(a) All the parties hereto have mutually agreed that all the members of Group A and B Shareholders shall form the Board of Directors of the Proposed Company subject to the Shareholders' Agreement. Group A Shareholders shall be termed as 'the Executive Directors and the Group B Shareholders shall be termed as "The Non-executive Directors'.

13.01 Waiver

Any failure or delay by any Party hereto to exercise any rights, powers or privileges under this Agreement and the Appendices hereto shall not be deemed as a waiver of such rights, powers and privileges. Any waiver or partial waiver of any rights, powers or privileges shall not preclude any other future exercise of such rights, powers and privileges”.

7.2 Share Certificates and Loan Certificate:

There is no dispute regarding payment of entire amount against each block made by the Group-B shareholders. Admittedly, the Group-B

shareholders finally contributed a total sum of Tk.48,00,00,000/- (Taka forty eight crore). There is also no dispute regarding allotment of shares as it stands today in respect of Group-B shareholders. The latest shareholding position of all the shareholders has been reflected in Schedule-X which contains the recording of shares up to 01.09.2013. From the said Schedule-X it further appears that as of 01.09.2013 there were 122 Group B shareholders.

From Annexure G-9 which is Form-XII (Company Matter No. 84 of 2019) it appears that Mr. Musleh Uddin Ahmed, Mr. Kabir Reja, Dilkush Begum, Ms. Nazma Arif, Ms. Rukeya Khatun and Ms. Zebun Nessa was the Board Members of the company and the date of their last appointment was 03.09.2015.

From Annexures H-H(13) of the said company matter as well as company matter no. 957 of 2024 it appears that some Group-B shareholders transferred their shares which were purchased by some of the Group-A shareholders using company's fund.

From Annexures L-L(4) (Company Matter No. 84 of 2019) it appears that some of the Group-B shareholders issued Legal Notice challenging the purchase of share using company's fund.

From Annexure- M and M-1 (Company Matter No. 957 of 2024) it appears that in C.R. Case No. 403 of 2019, C.R. Case no. 404 of 2019, C.R. Case No. 303 of 2020, in Khilkheth Police Station Case No. 08(12)2020 filed by some Group-B shareholders, Mr. Kabir Reza and Mr. Arif Motahar filed

total 5 number of affidavits admitting their wrongdoing and further declaring that the complainants are entitled to the rest of the shares as per investment.

With slight variation the documents annexed in all these company matters are same.

From Annexure-O (Company Matter No. 149 of 2018), it appears that, through e-mail correspondence made by respondent No. 3, namely Musleh Uddin Ahmed, he admitted that the Board had obtained appropriate legal opinion prior to acquiring the shares of certain shareholders and that, since such shares were purchased by using the company's funds, the said shares would be offered for distribution among the remaining shareholders.

From Annexure-O-1 of the said company matter, it further appears that respondent No. 2 obtained a legal opinion dated 17.02.2018 from a reputed law chamber of the country in respect of the purchase of shares using the company's funds, wherein such purchase was strongly deprecated and opined to be illegal.

In the said Company Matter, statements relating to payment of GBP 12,500 were annexed as Annexures B-4 to B-7. The petitioner has also annexed, as Annexure-P (series), copies of various news items published in national print and electronic media alleging fraudulent activities on the part of the respondents.

It further appears from the record that, in Company Matter No. 149 of 2018, petitioner No. 1 deposed before this Court in support of his investment

in the company, as he was unable to produce the requisite share and loan certificates in respect of such investment.

In Company Matter No. 17 of 2021, the documents annexed by the petitioners are the same as those annexed with their application for rectification of the register of members.

Respondent No. 9 in Company Matter No. 17 of 2021 annexed, as Annexure-8 (series), copies of notices (sent through e-mail) convening the Annual General Meetings, except the 6th AGM. The notice of the 6th AGM has been annexed separately as Annexure-2.

Annexures-1-11 filed by respondent Nos. 4 and 5 in Company Matter No. 17 of 2021 consist of certificates issued by City Bank Limited showing payment of dividends to the shareholders.

8. Comparison of Audit report and reply:

Comparison of the audit reports of the court appointed auditor and the response of Mr. Kabir Reza is also import for adjudication of the instant company matters.

The auditor tried to identify a series of financial and operational irregularities and Mr. Kabir Reza in his response made an attempt to rebut those allegations. The issues raised by the auditor include:

- The fraudulent inflation of share capital from approximately Tk. 48 Crore to Tk. 100 Crore, falsely attributing a non-existent Tk. 52 Crore investment to the sponsor shareholders.
- The use of fictitious fixed assets and inflated valuations, including an enormous overstatement of the hotel building's value and the deliberate misappropriation of company's funds for a land transaction in Cox's Bazar that was diverted for personal gain.
- The widespread and multi-faceted embezzlement of company's funds for personal benefits, including unapproved remuneration, personal litigation fees, and fraudulent cash withdrawals.
- A complete breakdown of internal controls and legal compliance, which are evinced from the alleged destruction of electronic accounting records, lack of a fixed asset register, and non-compliance with statutory requirements under the Companies Act, 1994.

As per audit report the prejudice to the general shareholders is demonstrably direct and multifaceted. They have been financially harmed in several ways, including the dilution of their proportional ownership stake from the company's inception due to fraudulent capital reporting. The misappropriation of funds and the misstatement of accounts directly reduced the company's reported profits, depriving the shareholders from rightful dividends. Furthermore, the absence of proper financial records and the destruction of data created a non-transparent and unaccountable environment,

rendering shareholder oversight impossible and fostering a climate of distrust.

All these company matters led this court to examine the corporate dispute surrounding Dhaka Regency Hotel and Resort Ltd. These matters involve a conflict between the company's sponsor shareholders specifically Mr. Kabir Reza, Mr. Arif Motahar, and Mr. Musleh Uddin Ahmed and the company's general shareholders. A central component has been revealed in the audit review of the company's financial statements from 2007 to 2017, conducted by the court-appointed auditor, Mowla Mohammad & Co., and the subsequent rebuttal of the auditor's findings by the respondent namely Mr. Kabir Reza.

This court has tried to examine each claim point by point and tried to evaluate the evidence placed by the auditor as well as the respondent. This court also tried to explore the broader implications of each finding of the auditor and the nature of the alleged irregularities.

As per order of this court, the court-appointed auditor presented before the court summary of his findings for the periods ending June 30, 2018, 2019, 2020, 2021, 2022, and 2023, as well as an initial audit review covering the years 2007-2017. The auditor's reports present a series of numbered "Issues" each detailing a specific finding of financial irregularity. As against these reports the respondent filed reply and supplementary reply, which provides a rebuttal to many of the auditor's allegations. This court

wholeheartedly tried to reconcile and to make a comparative study of different contentious issues in the following paragraphs and under the following heads:

8.1. Shareholder Capital and Investment:

8.1.1. The Auditor's Position:

The most foundational findings of the auditor are that the company's paid-up share capital was fraudulently inflated from approximately Tk.48 Crore to Tk.100 Crore. The auditor's report for the period 2007-2017 claims that the financial statements for the year ended December 31, 2010, show a share capital of Tk.100 Crore, with Tk.52 Crore purportedly paid by the three sponsor shareholders. However, the auditor states that neither the sponsors nor the previous auditor (Ahmed Zaker & Co.) could provide any supporting evidence for this payment. A highly incriminating email correspondence allegedly from a general shareholder was provided to the auditor, which contains an alleged plan from an auditor's representative to "fraudulently increase the share capital". The auditor suggests that bank loans were deceitfully treated as share capital to make the company's balance sheet appear balanced.

8.1.2. The Respondent's Counter-argument:

The respondent, Mr. Kabir Reza, vehemently denies this allegation, characterizing it as "false, baseless and misconceived". He accuses the auditor of being biased and intentionally ignoring evidence of sponsor shareholder investments. The respondent in his reply claims that the auditor was "silent on the balance amount" of Tk. 65,44,78,994 deposited into the company's Dhaka Bank account, which was allegedly not accounted for in the auditor's report. This large, unexplained amount, according to the respondent, was deposited from 2005 to 2008 and stands as proof of the sponsor shareholders' investment. The respondent attempts to discredit the incriminating email.

8.2. Analysis of Fixed Asset Valuation and Transactions:

8.2.1. The Auditor's Position:

The auditor repeatedly alleges that the value of the company's fixed assets has been inflated. In the 2007-2017 review, the auditor claims the main hotel building was recorded at Tk. 63.76 Crore instead of its deed value of Tk. 17.87 Crore. This overstatement of Tk. 45.89 Crore was allegedly a fraudulent accounting entry to "cover up" the non-existent Tk.52 Crore sponsor share capital. Subsequent audit reports from 2018 through 2023 consistently identify "fictitious additions" to fixed assets, with an unverified amount of Tk.16,90,99,776/- shown as additions in 2018 and Tk.51,427,374/-

in 2019. The auditor also notes the complete absence of a fixed asset register, which makes physical verification and tracking of assets impossible.

8.2.2. The Respondent's Counter-argument:

The respondent argues that the auditor's fixed asset valuation is "completely false and motivated" because it only takes into account the deed value and ignores the actual price of the property, extensive costs incurred for registration, fees to RAJUK, and the significant expenses for civil construction, sanitary facilities, and interior work to convert the building's empty space into a five-star hotel. The respondent provides specific figures, claiming payments of Tk.41,20,00,000/- to RAJUK and Tk.2,44,46,337/- for registration fees. Mr. Kabir Reza also claims his absence due to being in jail may have led to tampering with records that would substantiate these expenditures.

8.2.3. The Cox's Bazar Land Transaction

The auditor in his report tried to provide information and evidence of mismanagement and fraud on the company's transactions related to land in Cox's Bazar. It has been found that 26 decimals of land (situated at Kadamtali Sea Beach Road, Cox's-Bazar) was purchased in the name of the three Directors/Shareholders (Mr. Musleh Uddin Ahmed, Mr. Kabir Reza & Mr. Arif Motahar) by using the company's fund. Mr. Musleh Uddin Ahmed, Mr. Kabir Reza & Mr. Arif Motahar purchased land measuring 24 decimals at Cox's Bazar at Tk. 1.50 Crore on 08/02/2011. Subsequently a registered baina deed was executed between the above three directors (first party) and

Dhaka Regency Hotel & Resorts Ltd. (Second party) on 20/09/2015 fixing the price of the land Tk. 13 (Thirteen) Core. Out of Tk. 13 (Thirteen) Core the said three directors/ Shareholders received Tk 8.85 Crore from Dhaka Regency Hotel & Resorts Ltd. at the time of executing the baina Deed and rest of the amount Tk. 4.15 Crore to be received at the time of executing the Registered Deed. On 20/09/2018 the said three directors/ Shareholders transferred the said land to "Cox's Regency Hotel & Resort Ltd". at Tk. 1.63 Crore. It has been found that the Shareholders of Cox's Regency Hotel & Resorts Ltd. are the said same three Directors/Shareholder of Dhaka Regency Hotel & Resorts Ltd. As per audit report the said directors/shareholders embezzled Tk.8.85 Crore of the company by this fraudulent transaction. Though the said land was subsequently transferred in favour of Dhaka Regency Hotel and Resort Ltd., but the money that has been embezzled through this device has not been accounted for till date.

8.3. Director Embezzlement and Personal Benefits:

8.3.1. The Auditor's Position:

The auditor's reports spanning for a multiple years detailed a consistent pattern of directors misappropriating company funds. The auditor claims that Tk.20.85 Crore was embezzled by cheque signatories who were board members. Furthermore, a series of personal advances are alleged, including Tk.9.84 Crore to Mr. Kabir Reza, Tk. 4.43 Crore to Mr. Arif Motahar, and Tk. 2.37 Crore to Mr. Musleh Uddin Ahmed. The reports also highlight the taking of huge unapproved financial benefits in excess of

approved salaries, the payment of personal litigation fees from company funds (Tk.1.97 Crore) and the misclassification of expenses (travel, entertainment, third-party reservation) to hide personal benefits. For example, the 2020 audit found that Tk.59,00,000/- as personal benefits which were recorded as travelling expenses. Some of those unapproved benefits are as follows:

(i) In 2018, the Respondents misused the Company's fund for the purpose of buy-back of 36,54,000 shares in the name of Respondent Nos.3, 4, 7, 8 and one Mrs. Dilkush Begum, the mother of Respondent No.4, by making payment of Tk.12,01,50,850/- mostly to unknown recipient who are not part of the transaction.

(ii) The Respondent No.2 along with Respondent No.3 and Mrs. Dilkush Begum (Vice-Chairman) received undue/unapproved financial benefits amounting Tk.92,80,000/- each in the form of monthly remuneration and yearly bonus in 2018.

(iii) Mrs. Dilkush Begum (mother of Mr. Arif Motahar) took short-term loan of Tk.2,00,00,000/- only from the company and committed to return back the said amount within 2 days from the date of receiving this advance but this amount has not been returned back to the company.

(iv) In 2019, Respondent No.2 along with Respondent Nos.3 and 5 received undue/unapproved financial benefits amounting Tk.92,80,000/-each in the form of monthly remuneration and yearly bonus.

(v) In 2020, Respondent Nos.2, 3 and 5 received undue/unapproved financial benefits of Tk. 75,23,330/-, Tk.75,73,330/- and Tk.75,10,830/- respectively in excess of their approved monthly salary and bonus.

(vi) In 2020, a sum of Tk.1,27,70,041/- has been shown in the ledger as Travelling Expenses but the actual expense was Tk.68,70,041/- and thus, an excess amount of Tk.59,00,000/- was booked under the head "Travelling Expenses" which was actually taken by Respondent Nos.2, 3 and 5 as undue/unapproved financial benefit.

(vii) In 2020, a sum of Tk.2,04,46,818/- has been shown as 'Third Party Reservation Expenses in the Financial Statements while the actual expense was Tk.37,39,328 and thus, an excess amount of Tk.1,67,07,490/- was booked under the head 'Third Party Reservation Expenses' which was actually taken by Respondent Nos.2, 3 and 5.

(viii) The Respondent namely (a) Musleh Uddin Ahmed, (b) Kabir Reza, (c) Arif Motahar/Nazma Arif/Dilkush Begum each of them took undue/unapproved financial benefits of Tk.1,80,00,000/- each in excess of their approved monthly salary of Tk.6 lac.

(ix) An amount of Tk.78 lac (approximately) has been paid from Company's fund which is actually a personal loan of the Directors i.e the Respondent Nos. 2-4. The Court-appointed auditor did not find existence of any such loan.

8.3.2. The Respondent's Counter-argument:

The respondent offers fragmented and often contradictory explanations for these allegations. Regarding Tk. 20.85 crore embezzlement, the respondent claims the money was properly accounted for in the company's cash book, which the auditor allegedly disregarded. As instance the respondent pointed out (i) withdrawal of Tk.35 lacs and Tk.25 lacs on 24.11.2009 and 25.11.2009 respectively from Shahjalal Islami Bank and deposit of Tk.60 lacs on 25.11.2009 (page 292 and 319 of the part 2 of the audit report from 2007-2017); (ii) withdrawal of Tk.19 lacs on 16.01.2013 from Shahjala Islami Bank and deposit of the same amount on 16.01.2013 (page 301 and 333 of the part 2 of the audit report from 2007-2017); (iii) withdrawal of Tk.36 lacs on 13.02.2014 from Uttara Bank and deposit of the same on 13.02.2014 (page 308 and 335 of the part 2 of the audit report from 2007-2017). The respondent no. 2's further claim is that the auditor failed to identify and record 16 more transactions amounting to Tk.9,99,60,000/- and therefore, the auditor's report cannot be fully relied upon.

On the other hand, Tk. 9.84 Crore 'advance' to Mr. Kabir Reza is claimed to be a mix of legitimate business expenses and money the directors loaned back to the company. The respondent denies receiving unapproved perquisites and bonuses, claiming the auditor miscategorised payments to third-party vendors for reservations and travel. Mr. Kabir Reza also attempts to distance himself from the share buyback transaction, stating that he protested it and should not be held responsible for the actions of other board members.

8.4. Assessment of Corporate Governance

8.4.1. The Auditor's Position:

Beyond the financial irregularities, the auditor's reports consistently highlight a severe breakdown in corporate governance. The auditor claims that the company's electronic accounting data was destroyed; calling for a forensic audit to investigate what they believe was a deliberate act to hide information. The reports also detail a litany of non-compliance issues, including the failure to hold Annual General Meetings following the rules, the absence of meeting minutes books, the lack of share certificates for shareholders, and the non-existence of critical corporate policies (e.g., procurement, fixed asset management). The auditor further notes that the Managing Director, Mr. Kabir Reza, held his office without being legally appointed or re-elected, a direct violation of the company's Articles of Association and the Companies Act, 1994.

8.4.2. The Respondent's Counterargument:

The respondent attempts to explain these systemic failures by attributing the data loss to Cyclone Roanu in 2016, noting that a General Diary was filed at the time. The respondent also claims that the company was in the process of ensuring compliance before litigation began and that the non-compliance was a result of the ongoing disputes. Mr. Kabir Reza defends his tenure as Managing Director by arguing that his initial appointment was lawful and his continuation in office was with the consent of the board and

was due to the pending litigation and the inability to hold an Annual General Meeting.

9. From the affidavit-in-oppositions as well as submissions of Mr. Mustafizur Rahman, learned Senior Advocate along with Ms. Mehreen Hassan, learned advocate it is evident that the payments of entire money against each block by the Group – B shareholders are admitted fact. However, the respondents standing are that the summary of share capital filed with the RJSC correctly reflected the contribution of the Group B shareholders of the Company and since share premium has been issued subsequently at the time of allotting further shares therefore, the entire investment of Group-B share holders have been duly applied and materialized.

The petitioners denied issuance of such share premium and submitted that the said share premium has no existence rather it is a mere statement/declaration made in the audit reports/financial statements to legalize the illegality and fraud committed by the respondent shareholders-directors.

Therefore, the question that needs to be adjudicated in all these applications under section 43 of the Act, 1994 is the existence of the share premium. If the share premium exists then the petitioners have no case and conversely if it does not exist then the share register of the respondent no. 1 company is liable to be rectified as per payment made by Group- B

shareholders. So far ‘share premium’ is concerned the burden to prove its existence lies on the party claiming premium. Apart from a mere declaration in the audit report/RJSC filings, for a private company, at least it further requires existence of proper Board Resolution, reflection in the share certificate if issued at a premium, clear and separate identifiable bank trail of “share premium” account. The respondents failed to show existence of any of these elements.

It further appears to this Court that the stance of the respondents regarding the issue of shares is ambivalent. If the respondents claim that the investments made by the Group-B shareholders were utilised as share premium, it is unclear why they have taken the defence of *estoppel*. Such contradictory positions on the part of the respondents, rather, lend support to the case of the petitioners that, in reality, no share premium ever existed.

Therefore, this Court finds no legal or factual basis to hold that any share premium was ever duly issued or existed in respect of the shares in question.

9.1 It is also pertinent to mention that although the respondents, in their affidavit-in-opposition, raised the ground of non-remittance of foreign currency through proper channel, the said grounds were not pressed at the time of hearing and therefore was, in effect, relinquished.

9.2 Another important aspect which requires adjudication is whether respondent nos. 2 to 8 at all made any payment against their respective

shareholdings. One significant matter that has come to the notice of this Court is that the respondents failed to produce before the Court any share certificates or loan certificates, as were produced by the petitioners. From the annexures, it is evident that the mode of investment was the same for all Group-A and Group-B shareholders. Therefore, the loan certificates constitute one of the primary pieces of evidence of payment against each block of shares.

The respondents' claim of having invested a total sum of Tk. 52 crore in the company has not been substantiated by any convincing evidence. There is no direct evidence to show that such a huge amount of money was deposited into the company's account, nor is there any separate loan agreement between the respondents and the company. Even the bank statements of the sponsor-directors, annexed with the reply to the auditor's report, do not support their claim.

However, at the same time, it is difficult to comprehend that a five-star hotel could have been started and established in Dhaka with an investment of only Tk.90–100 crore, (taking into account the investment of the Group-B shareholders, bank loans, and initial profits) even in the year 2006. Major and significant costs involved in establishing a five-star hotel includes land acquisition, construction (building materials, labour, and structural work), interior fit-out, fixtures & equipment, approvals & permits, and marketing & branding.

Another aspect is that while the petitioners stated that the Group-A shareholders did not invest any money in the company, some of their prayers suggest otherwise. Furthermore, the respondents have strongly asserted that the Group-B shareholders ransacked the company's documents and removed and destroyed many important documents belonging to the respondents. In support of this assertion, reliance has been placed on certain photographs marked as Annexure-3 in Company Matter No. 17 of 2021 attached with the reply dated 23.02.2025 to the affidavit- in-compliance filed by the court appointed auditor.

In view of the dichotomy of facts and attendant practical realities, this Court has refrained from presuming that no investment was made by the Group-A shareholders or from embarking upon an adventurous exercise to determine their actual investment, and has instead, on a dialectical assessment, proceeded on the footing that their claimed investment (as reflected in the shareholders' agreements) is up to the tune of Tk. 52.00 (Fifty-Two) crore, and not more than that.

9.3 Using Bank loan, that has been granted in favour of the respondent company, to purchase shares by respondent nos. 3, 4, respondent no. 5 namely Mrs. Dilkush Begum (now deceased), respondent nos. 8, 9 and 10 is another illegality and this illegality has been clearly mentioned in the Legal Opinion obtained by respondent no. 2 in this regard.

Moreover, the position of respondent no. 2 in this regard is that in January, 2018, the respondent No. 2 came across alleged minutes of a Board

Meeting purportedly held on 10.08.2017 where the respondent No. 3, respondent No. 5 and respondent No. 7, together with Mrs. Dilkush Begum (the mother of respondent No. 4) discussed purchase of shares with the funds of the Company, and adopted the relevant resolution. The respondent No. 2 or his wife, respondent No. 6, who is also a director, had no knowledge of such meeting before January 2018; they never received any notice of any meeting held on 10.08.2017, let alone attend it. The respondent No. 2 struggled to understand the purport of the resolution; when the respondent No. 2 confronted the respondent No. 3 about this matter, the respondent No. 3 said that the shares have been purchased by the respondent Nos. 3, 4, 7, 8 and Mrs. Dilkush Begum on the basis of the majority decision of the Board using Company funds, which they will adjust from their dividends. The respondent No. 2 still objected to this and obtained legal opinion and demanded that the money be refunded to the Company immediately, which the respondent No. 3 undertook to do. Respondent No. 2 did not sign any of the cheques that were issued for settlement of the purchase price of the shares in question. Finally respondent No. 2 submitted that the respondent Nos. 3, 4, respondent no. 5 namely Mrs. Dilkush Begum (now deceased), respondent nos. 8, 9 and 10 may be directed to refund these funds to the Company along with interest at the market rate, failing which their shares may be forfeited.

On the other hand, the respondent nos. 4 & 5 prayed that the Hon'ble Court may direct sale of the shares in question to all the existing shareholders or to direct the Company to redeem the same.

9.4 It further appears from the materials on record of Company Matter No. 27 of 2020 that the petitioner was subjected to threats, intimidation, and criminal prosecution and was arrested on 29.04.2014, and while in custody he was compelled to execute a share transfer document dated 02.07.2014, whereafter he was released on bail on 03.07.2014 and forced to leave the country. The subsequent submission of Form-117 before the Registrar of Joint Stock Companies and Firms on 03.09.2014, showing transfer of the petitioner's shares in favour of a third party, therefore, appears to have been made pursuant to such coercion and undue influence. On consideration of the facts and circumstances, it appears that the alleged transfer of shares was not voluntary but was the result of coercion, undue influence, and abuse of the legal process, thereby vitiating the same. The purported transfer of the petitioner's shares effected through the share transfer document dated 02.07.2014 and reflected in Form-117 (Submission No. 2014378594) is hereby declared to be illegal, void, and of no legal effect. The petitioner is hereby declared the rightful and lawful owner of 1,45,000 (one lakh forty-five thousand) Group-B shares of respondent No. 1 company.

9.5 Furthermore, the alleged agreement for sale and/or transfer of shares executed by Mr. Quazi Kaiser Ahmed, who holds 1.45% of the shares of respondent No. 1 Company, on 28.03.2022 is also held to be illegal, inasmuch as the same was entered into during the subsistence and in clear violation of a restraining order earlier passed by this Court on 09.02.2022.

9.6 Now, turning to another aspect; one of the arguments of the respondents is that shareholder's agreement being pre-incorporation agreement does not bind the Company, since the same has not been ratified or formally accepted after incorporation of the company. But it appears that, Article-219 (New 217) of the Articles of Association of the company provides that in case of contradiction between these Articles of Association and the shareholders agreement, the shareholders agreement shall take precedence over these Articles of Association. Thus, in the present case the company's own Articles of Association have incorporated the shareholders' agreement by reference and as such by Article 219 (New 217) the company has effectively adopted the shareholders' agreement as part of its constitution. Therefore, the submission of the respondents in this regard does not stand.

9.7 So far, formation of the Board is concerned Clause 7.01 of Shareholders' Agreement provides as follows:

(a) All the parties hereto have mutually agreed that all the members of Group A and B Shareholders shall form the Board of Directors of the Proposed Company subject to the Shareholders' Agreement. Group A Shareholders shall be termed as 'the Executive Directors and the Group B Shareholders shall be termed as "The Non-executive Directors'.

However, this provision was not incorporated in the Articles of Association at the time of incorporation or subsequently thereafter which is

another wrongful act on the part of the Group- A share holders to deprive the Group-B shareholders. This deprivation was systematic and was done to oppress the Group- B shareholders. Therefore, to prevent future oppressions the Articles of Association should not only be amended by including them as “Non-Executive Directors” as per original agreements but also they should be allowed to be in the Board as “Executive Director”.

9.8 One of the submissions were that, since the cases for rectification of share register has been filed after so many years, therefore, the cases are now barred by the principles of *estoppels* and *waiver*. But from clause 13.01 of the agreements provides that-

Any failure or delay by any Party hereto to exercise any rights, powers or privileges under this Agreement and the Appendices hereto shall not be deemed as a waiver of such rights, powers and privileges. Any waiver or partial waiver of any rights, powers or privileges shall not preclude any other future exercise of such rights, powers and privileges”.

In view of such provision in the original agreements the defence taken by the respondents cannot be said as a bar to grant proper reliefs to the petitioners if they are otherwise entitled. Equitable principles like *estoppel*, *waiver* or *laches* will not defeat a clear statutory remedy without compelling reason and there is no such compelling reason in the instant matters. It further appears that the shares were issued in favour of the shareholders over a

period of time spanning from 2006 to 2010. Such a consistent course of conduct reasonably led the Group-B shareholders to believe that further shares would be issued in the same manner. Moreover, the records indicate that from 2013–2014 protest commenced over the irregularities committed by the respondents in conducting the affairs of the company, and the petitioners thereafter remained vigilant regarding the issue as well as litigation started from 2014. Therefore, in any view of the matter there is no scope to hold that the petitioners waived their rights.

9.9 As to the audit reports the observations of this court are as follows:

(a) So far as it relates to the acquisition of the main hotel property from RAJUK, the response of respondent No. 2, together with the documents furnished in support thereof, which may be treated as *parol* evidence, appears to be cogent. The said response also corresponds with the relevant correspondence relied upon by the petitioner (Annexure M to the supplementary affidavit filed by petitioner no. 17 and 18 of company matter no. 17 of 2021 and some other documents) and placed before this Court at the time of hearing by the learned Advocate Mr. Shah Muhammad Ezar Rahaman.

However, the mode of transactions so far Cox's Bazar land purchase is concerned it depicts that the three shareholders namely Mr. Musleh Uddin Ahmed, Mr. Kabir Reza and Mr. Arif Motahar did not make an honest mistake, but rather tried to make a fraudulent gain, by purchasing the land in their names. The sequence of events from the initial purchase of the land in

their own names, the Agreement for Sale in the name of Dhaka Regency Hotel & Resorts Ltd for the receipt of a large initial payment, transferring the land to Cox's Regency Hotel & Resorts Ltd, a company which is owned by the same shareholders, and, thereafter, reinstating the ownership of the said land in their names, is a clear depiction of premeditated actions aimed at maximizing personal financial gain through embezzlement of Respondent No. 1- Company's funds.

(b) This court on examination of the relevant statements and ledger has found reflection of some deposit which was claimed by the auditor not have been deposited. Apart from that the respondent has also pointed out some instances of non-consideration or overlooking. As for instance the respondent pointed out (i) withdrawal of Tk.35 lacs and Tk.25 lacs on 24.11.2009 and 25.11.2009 respectively from Shahjalal Islami Bank and deposit of Tk.60 lacs on 25.11.2009 (page 292 and 319 of the part 2 of the audit report from 2007-2017); (ii) withdrawal of Tk.19 lacs on 16.01.2013 from Shahjalal Islami Bank and deposit of the same amount on 16.01.2013 (page 301 and 333 of the part 2 of the audit report from 2007-2017); (iii) withdrawal of Tk.36 lacs on 13.02.2014 from Uttara Bank and deposit of the same on 13.02.2014 (page 308 and 335 of the part 2 of the audit report from 2007-2017). The respondent no. 2's further claim is that the auditor failed to identify and record 16 more transactions amounting to Tk.9,99,60,000/- and therefore, the auditor's report cannot be fully relied upon. Apart from the instances pointed out by the respondent, this court also found some instances

of non-consideration by the auditor: (i) withdrawal of Tk.12 lac on 30.04.2012 from Shahjalal Islami Bank. Apart from that amount another amount of Tk.3,45,462/- only was withdrawn on 30.04.2012 and a total of Tk.15,45,462/- was then deposited on 30.04.2012 (page 300 and 330 of the part 2 of the audit report from 2007-2017). (ii) Withdrawal of Tk.15 lac on 03.02.2014 from Uttara Bank. Apart from that amount another amount of Tk.6 lac only was withdrawn on 03.02.2014 and a total of Tk.21,10,000/- was then deposited on 03.02.2014 (page 307 and 334 of the part 2 of the audit report from 2007-2017). Therefore, the allegation of embezzlement of Tk. 20.85 crore cannot be said to have been established in its entirety. Rather, the response of respondent No. 2 in this regard appears to be acceptable, and applying the rule of balance of probabilities, this Court holds that the explanation furnished by respondent No. 2 is correct and therefore, the auditor's findings on this count being questionable cannot be accepted.

So far as the issues relating to "personal advances" are concerned, it is to be noted that the auditor, namely Md. Moahadul Mowla, FCA appeared personally before this Court and, while explaining the audit report, admitted that certain expenses were incurred for promotional activities. His explanation, however, was that those expenses were not properly recorded or maintained in the relevant registered books, for which reason he had shown amounts of Tk. 9.84 crore in the name of Mr. Kabir Reza, Tk. 4.43 crore in the name of Mr. Arif Motahar, and Tk. 2.37 crore in the name of Mr. Musleh Uddin Ahmed as misappropriated funds. This Court has examined the supporting documents against the relevant issues as well as the response of

the respondents. It appears to this court that different amount of money was received by these directors from the company under different heads; such as “advance and prepaid”, loan, travelling expenses, fuel costs, personal tax assessment etc. The reply of the respondent against these allegations is vague in nature. However, upon perusal of the relevant documents, vouchers and registrar book this court has come to the conclusion so far these issues are concerned that the said directors should not be held responsible for the monies taken by them except under the caption namely “advance and prepaid”, “personal tax assessment” taking into consideration underlying business realities including promotional activities. As per accounting principle “Advance and prepaid” entries must later be adjusted, supported by vouchers, and reflected as business expenditure. Therefore, unless the respondents are able to give proper explanation against these withdrawals they must have to account for this.

However, the reports also highlighted the receipt of unapproved financial benefits in excess of the approved salaries, personal loan to directors and the payment of personal litigation expenses from company funds. The response of respondents on these issues does not appear to be satisfactory and, therefore, the auditor’s findings on these issues are upheld.

On the other hand, the auditor, while explaining the audit report appearing in person before this Court, admitted the underlying business realities and the necessity of incurring expenditures for business promotional activities. Therefore, considering the said aspects, the amounts shown by the

auditor as having been received by the respondents towards travelling expenses, including fuel costs, third-party reservations, and other incidental expenditures, are hereby considered by this Court to have been withdrawn from the company and duly spent in the interest of respondent No. 1-company.

(c) The auditor's reports explicitly connect the mismanagement to the company's precarious financial position, stating that its "going concern basis will be threatened" if these issues cannot be addressed. The repeated non-compliance with the Companies Act and the lack of proper documentation demonstrate a fundamental breach of fiduciary duty. Directors are legally and ethically obligated to act in the best interest of the company and its shareholders. The collective actions from misusing funds for personal share buybacks to failing to maintain basic corporate records prove that the board, as a whole, was operating in a manner opposing to this duty.

(d) Regarding mentioning wrong date in the audit report the respondents has given an explanation in their affidavit-in-oppositions but this explanation when placing juxtaposition of other allegations raised against the respondents and by the auditor it appears to this court that the said mistake is not bona fide mistake rather represents the actual state of affairs which when detected was tried to overcome. The reasons which lead this court to reach such conclusion are that the date was mentioned wrongly not only in one page but in number of pages. Moreover, the date that was mentioned was

future date from the date that was supposed to be there. Such sort of mistake is unusual.

9.10 The analysis of the reports of the court-appointed auditor Mowla Mohammad & Co., and the response from sponsor director, Mr. Kabir Reza, reveals that the company's affairs were not merely subject to poor management but can be characterized as a profound and systemic failure of corporate governance. This failure is evident in a pervasive pattern of financial irregularities, including the intentional manipulation of financial records, the flagrant misuse of company's fund, and a consistent disregard for the fiduciary duties owed to all shareholders. The company's management was not only a series of isolated incidents of oversight, but also a deliberate and comprehensive effort to obscure financial reality and benefit a selected group of sponsor shareholders at the expense of the company and its general investors.

9.11 One of the objections of the respondents was that the letter of authority given by the petitioners in favour of some of the petitioners to file and conduct these company matters is not in form. Genuineness of the signatures appearing in those letters of authority is not disputed. Further none of the petitioners appeared before this court and denied that they have not given the letter of authority to file the cases. Permission was also obtained from the court at the time of filing the substantive petitions. It further appears that the person who was so authorized was not legally incapacitated person. The

alleged defect is of formal nature, not affecting the substance of the petition or going to the root of the cause. It is the settled position of law that procedural defect should not defeat a just cause. In this regard reliance can be placed in the case of *Satpal Singh Satti and Ors. Vs. State of H.P. and Ors.*, reported in MANU/HP/1856/2023.

In *Grafitek International Vs. K.K. Kaura and Ors.*, reported in 2002 III AD(Delhi)485, 96(2002) DLT 385, 2002(62) DRJ 72: MANU/DE/0032/2002, it was held that merely because the power of attorney is not duly notarised does not mean that the concerned person was not authorised to institute the suit. Notarization raises presumption as to its authentication and no more. Notarization of power of attorney is a matter of procedure and raises the presumption of authority of the person to institute the suit. In other words, it does not mean that power of attorney executed in favor of a particular person but not duly notarised does not confer power upon the person to institute the suit. In the said case it was further held that “*However, any provision which governs the procedure should not be subjected to strict legal interpretation but should be interpreted in a manner so as to meet the interests of justice and not scuttle them.*”

Therefore, the objection so raised by the respondents should not stand as a bar in doing justice. However, since, the letter of authority was not properly stamped, therefore, the petitioners are directed to deposit Tk.1500/- against each letter of authority by way of treasury challan to the Government’s relevant account and to submit the copy of the challans in the concerned section of this court within 30 days from the date of receipt of this judgment.

9.12 With regard to the submission advanced on behalf of the respondents concerning the submission of final reports in certain criminal cases instituted by some of the petitioners in connection with the affairs of respondent No. 1-company, this Court is of the considered view that it is a settled principle of law that the findings and conclusions of a criminal court are not binding upon a civil court as well as on this court. In this regard, reliance may be placed on the decisions in *Akhtar Hosain Shariff and others –vs– Munshi Akkas Hossain and others*, reported in 3 BLD (1983) (AD) 334, and *Md. Elias Miah –vs– Habibullah Munshi*, reported in 8 LG (2011) HCD 359. The aforesaid principle is equally applicable to the present matters in hand.

10. In view of the foregoing discussions and observations, this court is of the view that the petitioners of Company Matter nos. 957 of 2024, 84 of 2019, 836 of 2024, 149 of 2018 and 27 of 2020 have been able to make out a case of rectification of share register so far their shares are concerned i.e. as Group- B shareholders they are entitled to have shares against their entire investment. Furthermore, the purported transfer of petitioner's share in Company Matter No. 27 of 2020 is also declared illegal, void and is of no legal effect and the petitioner is declared the rightful and lawful owner of 1,45,000 shares in respondent-company. Accordingly, the respondent no. 1- company is directed to rectify its share register as well as to issue required number of shares i.e. shares that has been fallen short against the petitioners' respective investment as well as to notify Registrar of Joint Stock Companies and Firms about such rectification and for necessary correction. The Registrar of Joint Stock Companies and Firms,

Dhaka, is directed to take note of such rectification and to make necessary corrections in its records in accordance with law.

Furthermore, since this Court has held that the Group-A shareholders' claimed investment, as reflected in the shareholders' agreements, is up to the tune of Tk. 52.00 (Fifty-Two) crore, their respective shareholdings shall, subject to compliance with the directions contained in the following paragraphs, be restructured by the Court-appointed Board. Further, in the event of failure on the part of any Group-A shareholders to make payment of the amount so directed within the stipulated time, the shares corresponding to such unpaid amount shall stand forfeited and shall be reallocated in favour of the Group-B shareholders on a pro rata basis. Therefore, after such forfeiture & redistribution (in case of non-payment) as well as redemption, the share register of the company and the record maintained with RJSC will also be rectified accordingly.

10.1 Regarding the claims of oppression and prejudicial conduct raised in Company Matter Nos. 17 of 2021 and 24 of 2021, the Court is persuaded that the affairs of the company were indeed conducted in a manner oppressive to the Group-B shareholders (including the petitioners), and that the controlling Group-A shareholders engaged in persistent misconduct and breaches of duty that caused direct prejudice to the petitioners'/Group-B shareholders' interests. The petitioners' legitimate expectations of participating in management and enjoying the company's dividends were subverted by the respondents' acts of exclusion, financial misappropriation, and

mismanagement. This conduct meets the threshold of Section 233 of the Companies Act, 1994, as it was prejudicial to the petitioners and discriminatory against them as a class. Therefore, the said company matters are allowed and the petitioners are entitled to the following substantial remedial orders to put an end to the oppression and to protect their rights going forward.

In granting remedies under section 233 of the Companies Act, 1994, the Court is guided by the principle that relief under Section 233 is corrective and comprehensive, designed to bring the unfair conduct to an end and, if possible, to undo its consequences. The Court's orders will thus aim not only to compensate the company and indirectly the minority for past financial wrongs, but also to reform the company's governance structure to prevent the recurrence of such abuses. The goal is to restore a measure of balance and accountability in the company, so that all shareholders majority and minority alike can move forward on a fair footing.

Therefore, the petitioners are entitled to the following reliefs:

(a) Mr. Kabir Reza, Mr. Arif Motahar and Mr. Musleh Uddin Ahmed are hereby directed to refund the money/amount withdrawn by them under the caption namely "advance and prepaid", "personal tax assessment" within a period of 6 (six) months, unless they are able to give proper explanation with supporting documents in support of subsequent adjustment & expenditure.

(b) Mr. Kabir Reza, Mr. Musleh Uddin Ahmed, and Mr. Arif Motahar/Nazma Arif (Dilkush Begum being deceased) each of them are

severally and individually directed to reimburse the Company a sum of Tk.1.80 (One Point Eighty) crore, received by them respectively as undue and/or unapproved financial benefits beyond approved salaries, together with interest at the rate of 6% per annum from the date of such withdrawal, within a period of six (6) months.

(c) Mr. Kabir Reza, Mr. Arif Motahar and Mr. Musleh Uddin Ahmed are directed to repay/refund Tk.78 lac which they received from Company funds as personal loans, with interest at the rate of 6% per annum from the date of such withdrawal, within a period of six (6) months.

(d) Mr. Kabir Reza, Mr. Arif Motahar and Mr. Musleh Uddin Ahmed are directed to reimburse Tk.1.97 (One point ninety- seven) crore spent from Company funds for their personal litigations with interest at the rate of 6% per annum from the date of such withdrawal, within a period of six (6) months.

(e) Mr. Kabir Reza, Mr. Arif Motahar and Mr. Musleh Uddin Ahmed are directed to reimburse Tk.7.22 (Seven point twenty- two) crore embezzled from the Company in the name of purchasing Cox's Bazar land, within a period of six (6) months.

(f) Mr. Kabir Reza, Mr. Musleh Uddin Ahmed as well as Mr. Arif Motahar (son of Dilkush Begum) each of them are severally and individually directed to reimburse the Company Tk.92.80 (Ninety-two point eighty) lac received as unapproved financial benefits in the form of monthly remuneration and yearly bonus in the year 2018 with interest at the rate of

6% per annum from the date of such withdrawal, within a period of 6 (six) months.

(g) Mr. Kabir Reza, Mr. Musleh Uddin Ahmed and Mrs. Nazma Arif each of them are severally and individually directed to reimburse the Company Tk.92.80 (Ninety –two point eighty) lac received as unapproved financial benefits in the form of monthly remuneration and yearly bonus in the year 2019 with interest at the rate of 6% per annum from the date of such withdrawal, within a period of 6 (six) months.

(h) Mr. Kabir Reza, Mr. Musleh Uddin Ahmed and Mrs. Nazma Arif each of them are severally and individually directed to reimburse the company unapproved financial benefits in the form of monthly remuneration and yearly bonus of Tk.75.73 lac, Tk. 75.23 lac, and 75.10 lac respectively which they received from the company in the year 2020, with interest at the rate of 6% per annum from the date of such withdrawal, within a period of 6 (six) months.

(i) Since, Mrs. Dilkush Begum has died therefore, his son namely Mr. Arif Motahar will refund the short-term loan of Tk.2.00 (Two) crore only taken by her with interest at the rate of 6% per annum from the date of such withdrawal, within a period of 6 (six) months.

(j) In the event of failure on the part of Mr. Kabir Reza, Mr. Musleh Uddin Ahmed, Mr. Arif Motahar and Mrs. Nazma Arif to reimburse the respondent No. 1-company the amount mentioned hereinabove within the specified period i.e. within 6 (six) months from the date of receipt of the

instant judgment, the shares equivalent to the said amount held by the said respondent- shareholders shall stand forfeited and the respondent No. 1- company shall redistribute such shares among the petitioners and other Group-B shareholders (as it was termed originally) on a pro-rata basis. If the existing shares of the said respondents are found to be insufficient to fully adjust the dues, the company shall be at liberty to initiate appropriate legal proceedings for recovery of the remaining amount in accordance with law.

(k) Respondent No. 1-Company is directed to redeem 36,54,000 shares purchased by and in the name of Respondent Nos. 3, 4, respondent no. 5 namely Dilkush Begum (now deceased), respondent nos. 8, 9, 10 using Company funds, and to recover Tk.8,36,10,850/- from them paid in excess of face value and if necessary the company shall be at liberty to initiate appropriate legal proceedings for recovery of the said amount in accordance with law.

(l) The original Group-B shareholders are entitled to receive shares in proportion to their respective investments, in the same manner as the petitioners in Company Matter Nos. 957 of 2024, 84 of 2019, 836 of 2024, 149 of 2018 and 27 of 2020, and respondent No. 1-company is hereby directed to do the needful accordingly.

(m) Article 2e, 5, 121, 122, 124, 138, 150, 167, 217 of the Articles of Association are hereby amended and a new Article as Article 2nn after Article 2n is hereby inserted in the following manners:

Article 2e. A Director means any person duly appointed as a director of the Company in accordance with the provisions of the Companies Act, 1994. All Directors shall have equal rights, powers and voting rights at meetings of the Board, unless otherwise expressly provided by the Companies Act, 1994.

Article 2nn. ‘General shareholders’ means the shareholders defined as “Group-B shareholders” in the “Shareholders’ Agreement” and includes their respective successors-in-interest, legal representatives, heirs and assigns.

Article 5. The Authorised Share Capital of the Company is BDT 3,000,000,000/- (Taka Three Hundred Crore) divided into 30,00,00,000 (Thirty Crore) ordinary shares of BDT 10/- (Taka Ten) each, with power to increase, reduce, consolidate, subdivide or otherwise alter the share capital in accordance with the provisions of the Companies Act, 1994 and these Articles. The minimum subscription of the Company shall be BDT 5,000/- (Taka Five Thousand).

Notwithstanding anything contained in these Articles, all ordinary shares of the Company shall rank *pari passu* i.e. on equal footing in all respects including voting, and no distinction, preference or discrimination shall be made between shareholders on the basis of the number of shares held, the time of acquisition, promoter status, investment status, or otherwise.

The Board of Directors shall be constituted in accordance with the Companies Act, 1994 and these Articles. Directors may be appointed as Executive or Non-Executive Directors based solely on the nature of their

functions, responsibilities and engagement with the management of the Company, and not by reason of shareholding status.

The appointment, removal, powers, duties, remuneration and terms of office of Executive Directors and Non-Executive Directors shall be determined by the Board and/or the shareholders, as applicable, in accordance with the Companies Act, 1994, these Articles and applicable corporate governance principles.

Article 121. The number of directors of the company shall not be less than 6 (six) and more than 20 (twenty). The Board of Directors shall be elected in such a manner that the Board is composed of an equal number of representatives from:

- (i) The sponsors;
- (ii) The general shareholders.

Article 122. The persons hereinafter named shall become and be the first directors of the Company:

1. Mr. Arif Motahar
2. Mr. Musleh Ahmed
3. Mr. Kabir Reza
4. Mrs. Dilkush Begum
5. Mrs. Najma Arif
6. Mrs. Rukeya Khatun
7. Mrs. Zebun Nesa

Article 124. The words “as an addition to Board” shall be deleted.

Article 138. The Directors may from time to time appoint one or more of their body to the office of Managing Director or Manager for such term, and at such remuneration, whether by way of salary, or commission, or

participation in profits, or partly in one way and partly in another as they may think fit; and a Director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the time of retirement of such directors, but his appointment shall be subject to determination *ipso facto* if he ceases for any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

Nothing in these articles shall prevent the Board of Directors to appoint an individual as the Managing Director of the company under an agreement with the Company or under a resolution.

Article 150. The Board of Directors, in the first board meeting after every annual general meeting, shall select one of their members as the chairman of the company.

Article 167. The control of the Company shall be vested in the Board of Directors, and the business of the Company shall be managed by the Board of Directors, who may pay all expenses incurred in forming and registering the Company, and may exercise all such powers of the Company as are not, by the Companies Act, 1994 or any statutory modification thereof for the time being in force or by these Articles, required to be exercised by the Company in general meeting; subject nevertheless to any regulation of these Articles, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the Company in general meeting.

All Directors shall have equal rights, powers and voting rights at meetings of the Board, unless otherwise expressly provided by the Companies Act, 1994.

The Board of Directors may delegate such of its powers as it thinks fit to one or more Directors, committees of Directors, or Executive Directors, subject to such conditions and limitations as the Board may determine.

Article 217. In the event of any conflict, inconsistency or contradiction between these Articles (as amended/modified by the order of the Hon'ble High Court Division), the Articles of Association of the Company, and any shareholders' agreement or similar arrangement entered into by the shareholders, the following order of precedence shall apply, unless repugnant to the context or inconsistent with applicable law:

- I. These Articles of Association, as amended, modified or supplemented pursuant to an order or direction of the Hon'ble High Court Division;
- II. The Memorandum of Association; and
- III. Any Shareholders' Agreement or other contractual arrangement among the shareholders.

Provided always that nothing contained in any shareholders' agreement shall be construed so as to override, vary or derogate from the provisions of these Articles or the Memorandum of Association, particularly where such Articles have been amended or modified by and pursuant to an order of the Hon'ble Court.

(n) In the event the Respondents fail to comply with the payment obligations within the time stipulated by this Court, and their shares consequently stand forfeited in accordance with this Judgment and the applicable provisions of law, in such eventuality, the Company shall be at liberty to take all consequential, incidental and necessary steps for making appropriate amendments to Article 121 of the Articles of Association, should the existing provision (as amended above by this Court) regarding equal representation of general shareholders and sponsors become impracticable or inconsistent with the post-forfeiture shareholding structure of the Company. It is further clarified that no provision of the Articles of Association shall be construed in a manner that defeats or frustrates the implementation of this Judgment.

(o) The Court-appointed Board of Directors shall ensure and take all necessary steps to carry out the directions and orders of this Court immediately upon receipt of a copy of this judgment and, shall hold the Annual General Meetings (AGMs) that have fallen due, namely, the AGMs for the years 2020, 2021, 2022, 2023, 2024 and 2025, as well as the AGM for the year 2026, within a period of one (1) year upon completion of the requisite formalities and upon recording all necessary changes and amendments. The delay that has occurred up to this time is hereby condoned.

The Court-appointed Auditor, namely, M/s. M. I. Chowdhury & Co., Chartered Accountants, Managing Partner: Md. Iqbal Chowdhury, FCA,

shall complete the statutory audit of respondent No. 1-company for the financial years that have fallen due, namely, the financial years ending on 30 June 2024 and 30 June 2025, prior to the holding of the AGMs, if not already completed, in terms of the order of this Court dated 26.08.2025. The said auditor shall also complete the statutory audit for the financial year ending on 30 June 2026. The auditor shall further submit a report identifying the amounts recoverable from Mr. Kabir Reza, Mr. Arif Motahar and Mr. Musleh Uddin Ahmed, received by them under the heads “advance and prepaid” and “personal tax assessment”, within one (1) month from the date of receipt of the instant judgment.

(p) In the said AGMs dividend to be declared from 2020 based on changed shareholding position.

(q) The Court-appointed Board of Directors shall conduct the election at the AGM for the year 2026 for the formation of a new Board of Directors in accordance with the amended Articles of Association.

10.2 The remuneration of the auditor shall be fixed in accordance with the rates prescribed by the Institute of Chartered Accountants of Bangladesh.

10.3 All the applications filed by the parties during the pendency of these company matters are hereby disposed of in the light of the findings, observations and directions made above.

10.4 Accordingly, Company Matters Nos. 957 of 2024, 84 of 2019, 836 of 2024, 149 of 2018 and 27 of 2020 filed under section 43 of the Companies Act, 1994 as well as Company Matters Nos. 17 of 2021 and 24 of 2021 filed under section 233 of the Companies Act, 1994 are hereby allowed to the extent as directed above.

On the other hand, Company Matter No. 235 of 2014 is hereby dismissed, the same having failed to meet the minimum shareholding requirement necessary for its maintainability.

Furthermore, Company Matter Nos. 199 of 2019 and 82 of 2018 under section 81(2) read with section 85(3) of the Act, 1994 are dismissed as being infructuous.

10.5 Today, Mr. Ahmed Farzad Bin Raunak, learned Advocate, filed two applications seeking acceptance of the resignation of the Court-appointed Chairman Mr. Justice Moyeenul Islam Chowdhury, Former Judge, High Court Division of the Supreme Court of Bangladesh and the Independent Director Mr. Margub Kabir, Advocate, Supreme Court of Bangladesh, on the ground of their inability to perform their respective functions due to their domestic and international engagements. The said resignations are hereby accepted. Consequently, to fill the vacancy, the Court hereby appoint Mr. Justice A. F. M. Abdur Rahman, Former Judge, High Court Division of the Supreme Court of Bangladesh as Chairman (Mobile No. 01711544222) and Mr. Mohammad Hossain, learned senior Advocate of the Supreme Court of Bangladesh having Membership No. 2504 (Mobile No. 01726511225) as

Director respectively. All other existing Court-appointed Directors shall continue to hold office in accordance with the order of this Court; however, any Director who has already incurred disqualification to act as a Director of the Company shall continue to remain under such disqualification until a regular Board of Directors is duly constituted. The Chairman and any one of the Independent Directors shall be the authorized signatories of the Company's cheques, and in the absence of the Chairman, the cheques shall be signed by two (2) Independent Directors. The learned advocate who is presently rendering secretarial services shall continue to function until the formation of the regular Board of Directors. The Court-appointed Independent Chairman, Directors, and the learned advocate rendering secretarial services shall enjoy full immunity in respect of acts done by them in the discharge of their duties. The Court-appointed Independent Chairman and other Directors shall receive honorarium at the rate of Tk. 1,00,000/- and Tk. 75,000/- respectively for each Board meeting. They shall further receive honorarium at the rate of Tk. 3,00,000/- and Tk. 1,50,000/- respectively for each Annual General Meeting (AGM). The quorum shall be sufficient if 3 (three) directors are available. The honorarium of the learned advocate rendering secretarial services may be determined/re-fixed by the Board.

11. Donation of Tk. 5,00,000/-(Five Lac) is to be given in the form of pay order from the respondent No. 1 company's account. Out of the said amount, Tk. 2,00,000/-(Two lac) is to be paid in the account of "Dean, Faculty of Law, University of Dhaka". Tk. 50,000/- (Fifty thousand) is to be paid in

favour of “Char Purbadhaniram Lillah Bording” A/C No. 0200017904520, Agrani Bank Limited, Fulbari Branch, Kurigram. Tk. 75,000/- (Seventy-Five thousand) is to be paid in the name of “Al Amin” A/C No. 0010020421201, Community Bank Limited, Motijheel Corporate Branch, Dhaka for purchasing a computer for his son who is a student of Notre dame College, Dhaka. Tk. 75,000/-(Seventy-Five thousand) is to be paid in the name of “Md. Dulal Miah” A/C No. 4435434030661, Sonali Bank Limited, Supreme Court Branch, Dhaka who is a Jomadar of Bangladesh Supreme Court, Dhaka for the purpose of repairing his village homestead damaged due to river erosion. Tk. 75,000/-(Seventy-Five thousand) is to be paid in the name of “Md. Shajahan Mondol, A/C No. 4435434126311, Sonali Bank Limited, Supreme Court Branch, Dhaka for purchasing a computer for his son who is a student of Dr. Mahbubur Rahman Mollah College, Dhaka. Tk. 25,000/-(Twenty-Five thousand) is to be paid in favour of “Panchhut Islami Somaj Kallyan Hafizia Madrasha” A/C No. 3508901019325, Sonali Bank Limited, Khaliajuri Branch, Netrokona.

Communicate the Judgment to all concerned at once.

(Sikder Mahmudur Razi, J.)