

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

COMPANY MATTER NO. 309 OF 2021.

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Mrs. Shamsun Nahar and others.

----- Petitioners.

-VERSUS -

Packstone Limited and others.

----- Respondents.

MrA.K.M. Badruddoza, Senior Advocate with
Mr. Md. Ibrahim Hossain,
Mr. Md. Didarul Islam Perves,
Ms. Sabnam Mustary,
Ms. Rabeya Afroz, and
Mr. Muhammad Shafriful Islam, Advocates

----- For the Petitioners.

Mr. Morshed Ahmed Khan, Advocate

-----For Respondent Nos.1 and 2.

Mr. Khan Mohammad Shamim Aziz, Advocate

----- For respondent Nos.4-5.

Judgment Delivered On 19.05.2026.

Present:

Justice Md. Toufiq Inam.

This application under section 43 of the Companies Act, 1994 (“the Act”) has been filed seeking rectification of the register of members of the respondent No.1 Company, namely Packstone Limited, by recording the names of the petitioners as shareholders/directors

against the share money allegedly deposited by them and for consequential reliefs.

The case of the petitioners, in brief, is that the respondent No.1 Company was incorporated on 08.02.2000 under the Act for carrying on business relating to production, import and marketing of packaging materials and that respondent Nos.2-12 are its directors/shareholders. According to the petitioners, on 28.07.2010 an Agreement of Understanding (MoU) was executed between respondent Nos.2-10, being the then existing directors/shareholders including the Managing Director, on one part and petitioner Nos.1, 2 and late Md. Nurul Huda, predecessor of petitioner Nos.3-7, on the other. Under the said MoU, the investment made by the petitioners and late Md. Nurul Huda in the Company as share money was acknowledged and it was contemplated that, subject to permission of Bangladesh Development Bank Limited (BDBL) and compliance with other formalities, shares would be reallocated and the petitioners would be inducted into the Board of Directors.

The petitioners further assert that the paid-up capital of the Company then stood at Tk.6,70,40,000/- divided into 6,70,400 shares of Tk.100/- each and that the shares of the existing directors were under lien with BDBL. It is their case that pursuant to a Board decision dated 09.08.2010, the Company Secretary issued notice dated 25.08.2010 inviting further share subscription from existing and proposed directors/shareholders, whereupon petitioner No.1 deposited Tk.10,48,000/-, petitioner No.2 deposited Tk.2,55,000/- and late Md. Nurul Huda deposited Tk.2,50,000/- and obtained money receipts from the Company. According to the petitioners, together with previous investments, a total sum of Tk.1,18,79,000/- was invested by them as share money in the Company.

Their grievance is that despite repeated requests the respondents neither allotted shares in their favour nor inducted them as directors. Rather, by several communications beginning from 2014, the respondents denied their status as shareholders/directors and offered refund of the deposited money. The petitioners thereafter approached the Registrar of Joint Stock Companies and Firms (RJSC), which by memo dated 08.11.2020 informed them that their names did not appear in the annual summary of share capital and that rectification of the register falls within the jurisdiction of the High Court Division. Hence, the present application has been filed.

The respondent Nos.1-12 contested the application by filing affidavit-in-opposition denying the material allegations. Their principal contention is that the petitioners never became shareholders or members of the respondent Company and therefore cannot invoke section 43 of the Act. According to the respondents, the jurisdiction under section 43 is confined to rectification of the register in cases where a person has already become or ceased to be a member, but due to wrongful omission or delay the register does not reflect the correct position. Since admittedly no shares were ever allotted or transferred in favour of the petitioners, no share certificates were issued and their names never appeared in the register of members or annual returns, the petitioners do not fall within the ambit of section 43.

The respondents further contend that the petitioners are placing undue reliance upon certain expressions used in the notice dated 25.08.2010 issued by the Company Secretary, although, according to the affidavit subsequently sworn by the said Company Secretary, those expressions were inadvertent linguistic errors and the

petitioners were merely proposed shareholders/directors. It is further contended that the MoU itself contemplated only a future arrangement subject to fulfilment of various conditions including approval of BDBL and regular CIB status and that the proposal ultimately failed and was subsequently cancelled by Board resolution dated 20.11.2011. According to the respondents, even assuming that money was received from the petitioners, such payment at best gives rise to a disputed contractual or monetary claim and does not confer membership in the Company.

Mr. A. K. M. Badrudozza, the learned Senior Advocate appearing for the petitioners, submits that respondent Nos.2-10, being the existing shareholders/directors of the respondent No.1 Company including its Managing Director, entered into the MoU dated 28.07.2010 with petitioner Nos.1, 2 and late Md. Nurul Huda acknowledging their investment in the Company as share money and agreeing to induct them into the ownership and management of the Company. He submits that pursuant to the said MoU and Board decision dated 09.08.2010, the Company Secretary issued notice dated 25.08.2010 offering further shares to the petitioners and late Md. Nurul Huda and requested payment of share money. Acting thereupon, the petitioners deposited substantial amounts and the Company accepted the same and issued money receipts. According to him, the petitioners invested a total sum of Tk.1,18,79,000/- as share money, which has never been specifically denied by the respondents.

He further contends that all the controlling directors/shareholders including the Managing Director were parties to the MoU and acted pursuant thereto through Board resolutions, notices and acceptance of money. Therefore, the respondents are now estopped from

denying the petitioners' status as shareholders merely because the Company itself was not a formal signatory to the MoU. Referring to section 43 of the Act, he submits that the petitioners became members/shareholders in substance upon payment and acceptance of share money but the respondents deliberately failed to record their names in the register of members. He therefore prays for rectification of the register and consequential directions.

It has also been asserted that section 148(7) of the Act was enacted to prevent abuse and arbitrary retention of share subscription money by companies and their controlling directors and, therefore, the respondents are estopped both in law and equity from asserting that the petitioners remained strangers to the Company despite accepting and retaining their investment as share capital. He therefore contends that the admitted acceptance of share money, coupled with the representations embodied in the MoU, Board decisions and official communications of the Company, sufficiently establishes the petitioners' entitlement to seek rectification under section 43 of the Act and consequential reliefs.

Conversely, Mr. Morshed Ahmed Khan, learned Advocate appearing for respondent Nos.1 and 2, and Mr. Khan Mohammad Shamim Aziz, learned Advocate appearing for respondent Nos.4-5, submit that the instant proceeding under section 43 of the Act is wholly misconceived and not maintainable in law since the petitioners were never shareholders or members of the respondent Company. Referring to section 43, they submit that the jurisdiction under the said provision is limited to rectification of the register in cases where a person has already become or ceased to be a member. Since admittedly no shares were ever allotted or transferred in favour of the petitioners, no share certificates were issued and their

names never appeared in the register of members or annual returns, the petitioners do not fall within the ambit of section 43 and as such lack locus standi to maintain the present proceeding.

They further submit that the claim of the petitioners is founded primarily upon erroneous expressions used in the notice dated 25.08.2010 issued by the Company Secretary. Referring to the affidavit sworn by the Company Secretary, they contend that such expressions were inadvertent linguistic mistakes and that the petitioners were only proposed shareholders/directors. It is also submitted that the MoU dated 28.07.2010 merely contemplated a future arrangement subject to fulfilment of several conditions including approval of BDBL and regular CIB status. The proposed arrangement never matured and was subsequently cancelled by Board resolution dated 20.11.2011. According to them, even if the petitioners deposited money, the same at best gives rise to a disputed contractual or monetary claim and does not confer membership in the Company.

They lastly submit that complicated and seriously disputed questions relating to contractual obligations, alleged investment, enforceability of the MoU and equitable entitlement cannot be adjudicated in a summary proceeding under section 43 of the Companies Act. They therefore pray for discharge of the Rule leaving the petitioners to seek remedy before the competent civil forum, if so advised.

Having heard the learned Advocates for both sides, perused the application, affidavits and the annexures appended thereto, this Court finds that the principal question requiring determination in the present proceeding is whether the petitioners can invoke the

jurisdiction under section 43 of the Act for rectification of the register of members of the respondent Company.

Section 43 of the Act empowers the Court to rectify the register of members where the name of a person has been wrongfully entered into or omitted from the register or where default or unnecessary delay has occurred in recording the fact of a person having become or ceased to be a member. The very foundation of the jurisdiction, therefore, presupposes the existence of a legally recognizable right to membership. Although sub-sections (2) and (3) confer ancillary powers upon the Company Court to determine questions of title or entitlement connected with rectification, the provision does not authorize the Court to create membership or originate shareholding for the first time in absence of completed corporate acts required by law.

Under the statutory scheme of the Companies Act, shares in a company can only be allotted through lawful corporate action of the company, ordinarily by resolution of the Board of Directors and in strict compliance with the Articles of Association and other mandatory statutory requirements. A person becomes a member either by subscribing to the Memorandum at the time of incorporation or by subsequent allotment or transfer of shares duly completed and recorded in the register of members. Mere expectation of future allotment, equitable understanding between parties, payment of money towards a proposed subscription or even acknowledgment of intended induction into the company does not, by itself, create membership in the eye of law unless shares are actually allotted or transferred in accordance with law and the person's name is entered into the statutory register.

In the instant case, it is an admitted position that the names of the petitioners never appeared in the register of members of the respondent Company. No Form-XV, return of allotment, transfer deed, share certificate, Board resolution of allotment or statutory filing has been produced before this Court demonstrating that shares were ever allotted or transferred in favour of the petitioners. On the contrary, the memo issued by RJSC dated 08.11.2020 specifically records that the names of the petitioners were not reflected as shareholders in the annual summary of share capital maintained by the statutory authority.

It is true that the MoU dated 28.07.2010 was executed by all the then existing directors/shareholders including the Managing Director and that the said MoU acknowledged investment by the petitioners and contemplated their future induction into the management structure of the Company. The notice dated 25.08.2010 issued by the Company Secretary and the money receipts issued by the Company also unmistakably indicate that negotiations and arrangements were underway for possible restructuring of shareholding and induction of the petitioners into the Company.

However, the Court cannot lose sight of the fact that the MoU itself expressly demonstrates that the proposed arrangement was contingent upon fulfilment of further conditions including permission of BDBL and completion of necessary formalities. Significantly, no final corporate act implementing such arrangement has been placed before this Court. There is no material whatsoever to show that any definite number of shares carrying distinctive numbers were ever allotted or transferred in favour of the petitioners through lawful Board action and statutory

compliance. The Company itself was also not a formal signatory to the MoU.

The submission with regard to section 148(7) of the Act, even if construed in its widest amplitude, cannot be interpreted so as to dispense with the mandatory statutory requirements governing creation of membership in a company. The provision may impose certain obligations upon a company in relation to money received towards proposed share subscription and may furnish a basis for appropriate civil or statutory remedies in case of unlawful retention or misuse of such money, but it does not, either expressly or impliedly, create automatic membership nor authorize the Court to treat an intending investor as an existing shareholder in absence of lawful allotment or transfer of shares. The principles of estoppel or equity likewise cannot be invoked to create a legal status which the statute itself recognizes only upon fulfilment of specific corporate formalities. Therefore, while the admitted receipt and retention of money by the respondents may expose them to civil liability or other legal consequences, the same by itself does not confer upon the petitioners the legal status of members/shareholders so as to attract rectification jurisdiction under section 43 of the Act.

More importantly, the subsequent conduct of the parties unmistakably demonstrates that the contemplated arrangement remained disputed, incomplete and ultimately unconsummated. From as early as 2014, the respondents consistently denied the petitioners' status as shareholders/directors and repeatedly offered refund of the deposited money. Thus, the controversy between the parties is not a simple case of wrongful omission of an existing member's name from the register; rather, it involves substantial and contentious questions as to whether there existed any concluded

agreement for allotment of shares, whether the respondents acted in breach of the MoU, whether the cancellation of the proposed arrangement was lawful and whether the petitioners acquired any enforceable contractual or equitable rights arising out of the alleged investment.

Such disputed questions necessarily require detailed examination of evidence and adjudication of contractual obligations, reciprocal promises, commercial understandings and equitable considerations, all of which travel far beyond the limited and summary jurisdiction contemplated under section 43 of the Act. The Company Court, while exercising rectification jurisdiction, cannot assume the role of a civil court for enforcement of disputed commercial arrangements nor can it create or originate shareholding in absence of completed statutory acts of allotment or transfer.

The admitted receipt of money by the respondents, howsoever substantial the amount may be, cannot by itself elevate the petitioners to the status of shareholders in absence of lawful allotment of shares and entry of their names in the statutory register. Equity cannot override mandatory statutory requirements governing corporate membership. The petitioners may have a serious grievance arising out of the alleged representations and financial transactions entered into with the respondents, but such grievance cannot be converted into a right of membership through an expansive interpretation of section 43 contrary to the statutory framework of the Act.

Accordingly, this Court is constrained to hold that the petitioners have failed to establish that they had ever become members/shareholders of the respondent Company within the

meaning of section 43 of the Act so as to entitle them to seek rectification of the register of members. Consequently, the petitioners lack the necessary locus standi to invoke the jurisdiction of this Court under the said provision.

Nevertheless, the materials on record, particularly the admitted execution of the MoU by the directors/shareholders of the Company and the admitted receipt of substantial sums of money from the petitioners, prima facie disclose a serious civil dispute arising out of alleged investment, contractual obligations and representations made by the respondents. Therefore, although the petitioners are not entitled to relief under section 43 of the Act, they are not remediless. They remain at liberty to seek appropriate relief before the competent civil forum for enforcement of their alleged contractual and equitable rights including, if so advised, recovery of the money invested, compensation, damages, restitution, rendition of accounts or any other relief available under law.

Accordingly, the application is dismissed.

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

The petitioners are at liberty to seek appropriate remedy before the competent forum in accordance with law and if any such proceeding is instituted, the same shall be decided independently on its own merit without being influenced by any observation made in this judgment.

(Justice Md. Toufiq Inam)