IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(STATUTORY ORIGINAL JURISDICTION)

Present:

Mr. Justice Sikder Mahmudur Razi

Company Matter No. 709 of 2026

IN THE MATTER OF:

An application under Section 85(3) of the Companies Act, 1994 and Rule 8 of the Companies Rules, 2009.

-AND-

IN THE MATTER OF:

Towhid Samad and others

…. Petitioners.

- V E R S U S -

The Registrar, Joint Stock Companies and Firms and others

....Respondents.

Mr. Mr. Fida M. Kamal, Sr. Adv. with

Ms. Nihad Kabir, Sr. Adv. with

Md. Anisul Hassan, Adv. with

Mr. Hossain Mohammad Shahidul, Adv.

……For the petitioners.

Mr. Mustafizur Rahman Khan, Sr. Adv. with

Ms. Anita Ghazi Rahman, Sr. Adv.

...For the Respondent Nos. 2-4.

Heard on: 12.08.2026

And

Judgment on: The 24th August, 2026

1. This Company Matter has been filed by three members of respondent No.2, Dhaka Club Limited, under section 85(3) of the Companies Act, 1994 read with rule 8 of the Companies Rules, 2009. The petitioners principally challenge a notice dated 06.06.2026 issued by the Club for holding an

Extraordinary General Meeting on 27.06.2026 at 11:00 a.m. at its Main Lounge. The notice places before the members an agenda for consideration and, if deemed appropriate, approval of the proposed construction/renovation of the Main Lounge and Phase-II at an estimated aggregate cost of Tk.30 crore.

2. The petitioners have prayed, inter alia, for a direction upon respondent No.2-Club to cease from convening, holding or conducting an EGM upon the said agenda or any similar agenda and further to cease from seeking approval for such construction. They have also prayed that, "pending disposal of the application, declare the EGM notice dated 6 June 2026 (Annexure-B) as illegal and unlawful". The substantive relief, therefore, seeks to prevent the Club from placing the subject before its general body.

3. Mr. Fida M. Kamal and Ms. Nihad Kabir, learned Senior Advocates with Mr. Anisul Hassan**,** learned advocate appearing for the petitioners, submit that the requirement of notice of a general meeting is not an empty formality. According to them, the legislature prescribed a period of notice so that every member may receive adequate information, consider the proposed business, prepare himself for the meeting and decide whether and in what manner he should participate in the deliberation and voting.

3.1 The learned Senior Advocates further submit that the respondents issued the impugned notice on 06.06.2026 for a meeting to be held on 27.06.2026 and purported to treat the same as a notice of twenty-one days under section 85(1)(a) of the Companies Act, 1994. They contend that, if the Club intended to proceed upon an ordinary twenty one day notice and not upon the shorter-notice period contemplated by the proviso to section 85(1)(a), each member was entitled to the full statutory period.

3.2 The learned Senior Advocates next submit that the Club did not serve the notices through the mode prescribed by law or by its Articles of Association. They point out that the respondents transmitted the notices through a private courier service. According to them, neither the Act nor the Articles recognise ordinary private courier as a substitute for service by post. Referring to section 27 of the General Clauses Act, 1897, they submit that, where a statute requires or authorises service by post, the statutory presumption of service arises upon proper addressing, prepayment and transmission by registered post.

3.3 They further submit that service of notice cannot become a ceremonial exercise in which the company merely dispatches a document and thereafter treats the date appearing upon it as the commencement of the statutory period. According to them, the statutory period must run from service or deemed service in accordance with law.

3.4 The learned Senior Advocates also challenge the proposed agenda. They contend that the existing Main Building of the Club possesses considerable historical and architectural significance and that the question whether the building should receive protection as an antiquity or heritage structure remains before the competent Government authority. They therefore question the propriety of placing the proposed construction before the members before the competent authority finally decides that issue.

3.5 The learned Senior Advocates lastly submit that the notice does not conform to section 87 of the Companies Act, 1994 and that, having regard to the nature and magnitude of the proposed expenditure, the respondents could not proceed in the manner contemplated by the impugned notice.

3.6 On the question of maintainability, they contend that section 85(3), read with rule 8 of the Companies Rules, 2009, gives this Court sufficient authority to intervene where the manner in which a meeting has been called infringes the statutory rights of the members. According to them, the Court should not allow a meeting founded upon an invalid notice merely because the company has physically fixed a date, place and agenda for that meeting.

4. Per contra, Mr. Mustafizur Rahman Khan, learned Senior Advocate with Ms. Anita Ghazi Rahman, learned advocate appearing for respondent Nos.2-4, relies upon their affidavit-in-opposition. Mr. Mustafizur Rahman Khan, learned Senior Advocate submits that the petitioners have invoked a statutory provision which does not contemplate the relief sought by them.

4.1 Mr. Khan further submits that section 85(3) is a facilitative provision. It operates where, for any reason, it becomes impracticable to call, hold or conduct a meeting in the manner prescribed by the Act or the Articles. Once that jurisdictional condition exists, the Court may devise a workable mechanism so that the meeting can take place. According to him, the provision facilitates corporate decision-making; it does not authorise the Court to prevent the general body from meeting. In support of this proposition the learned advocate has relied, among others, upon *Anil Kumar Poddar v Pilani Investment & Industries Corporation Ltd.*, reported in [2011] 164 Comp Cas 291 (CLB), *Md. Mujibur Rahman Chowdhury v Registrar of Joint Stock Companies and another*, reported in 15 ALR 96, and *Bengal and Assam Investors Ltd. v J.K. Eastern Industries Private Ltd.*, reported in AIR 1956 Cal 658.

4.2 He next submits that nothing prevented the Club from calling, holding or conducting the proposed EGM. The Board had issued a notice, fixed the date, time and place and stated the business proposed for consideration. There was no rival Board, no dispute concerning quorum, no competing claim to chairmanship and no deadlock which made the ordinary corporate machinery unworkable. In this regard he relies upon *Jahangir Alam Khan v RJSC*, reported in 55 DLR 495, *Ghyasuddin Ahmed v Faruque*, reported in 38 DLR (AD) 296 and *In re Ruttonjee & Co. Ltd.*, reported in AIR 1969 Cal 550, and submits that the expression "impracticable" concerns a genuine practical impediment in calling, holding or conducting the meeting and not dissatisfaction with the business which the members may consider at that meeting. The respondents specifically rely on *Ruttonjee* for the proposition that impracticability must be judged on a reasonable and commonsense basis and requires circumstances creating serious or continuing difficulty in the conduct of the meeting.

4.3 Mr. Khan further submits that the Company Court exercises statutory jurisdiction and cannot assume a general, plenary or residuary jurisdiction merely because a dispute concerns a company. In this regard he relies upon *Abdul Muhit and others v Social Investment Bank Limited and others*, reported in 54 DLR 306, affirmed in 61 DLR (AD) 82, and *Engr. Md. Anwar Hossen v Chittagong Club Ltd.*, reported in 18 ALR 345, in support of the proposition that the Court must find statutory authority to determine the particular *lis* placed before it. The learned advocate accordingly submits that section 85(3) cannot be converted into a jurisdiction for granting a perpetual injunction against a future meeting.

4.4 As regards the nature of the agenda, Mr. Khan draws the Court's attention to Article 69(b) of the Articles of Association. According to the respondents, that Article requires prior sanction of a General Meeting where expenditure on any one project exceeds Tk.15,00,000/-. Since the proposed project involves expenditure of Tk.30 crore, the Board was required to place the matter before the members. He submits that Article 69(b) nowhere requires the general body to accord such sanction by a special resolution.

4.5 The respondents also dispute the petitioners' objection concerning service. They contend that they sent the notices through a professional courier service which records dispatch, movement and delivery and that such method sufficiently establishes actual service. They further rely upon Article 86 of the Articles of Association and submit that the Article does not expressly use the words "registered post". According to the learned advocate Article 86 permits the Club to give a notice personally or by sending it by post to the registered address of a member and provides for deemed service when the Club sends the notice by post.

5. I have heard the learned Advocates appearing for the respective parties at length and have examined the application, the affidavit-in-opposition and the materials on record.

5.1 The controversy raises three distinct questions. First, whether the relief claimed by the petitioners can be granted in an application under section 85(3) of the Companies Act, 1994? Secondly, although maintainability stands at the threshold, what is the legal character of the objection regarding the twenty one day notice and the mode of its service, since both sides have fully argued that issue? Thirdly, whether this Court should pronounce upon the legality or propriety of the proposed business before the general body itself considers that business?

Maintainability under section 85(3)

6. Section 85(3) deals with a particular situation. It proceeds upon the existence of impracticability in calling a meeting in the manner in which meetings may ordinarily be called, or in conducting such meeting in the manner prescribed by the Articles or the Act. When such impracticability arises, the section authorises the Court to order the meeting to be called, held and conducted in such manner as it thinks fit and to give such ancillary or consequential directions as it considers expedient.

6.1 The statutory language identifies both the condition which activates the jurisdiction and the object for which the Court may exercise it. The condition is 'impracticability'. The object is to ensure that a meeting which cannot conveniently or effectively proceed through the ordinary machinery of the company may nevertheless be called, held and conducted through directions of the Court.

6.2 Thus, the jurisdiction under section 85(3) does not arise merely because some members dispute the validity of a proposed resolution, question the wisdom of the proposed business or apprehend that the majority may pass a resolution which they consider undesirable or unlawful. The Court must first find and identify some practical impediment affecting the calling, holding or conducting of the meeting itself.

6.3 The decisions cited by the respondents support this construction. The respondents rely upon *Anil Kumar Poddar v Pilani Investment & Industries Corporation Ltd.* [2011] 164 Comp Cas 291 (CLB) for the proposition that the corresponding statutory jurisdiction operates as an enabling mechanism for a meeting which cannot otherwise proceed. They rely upon *Md. Mujibur Rahman*

Chowdhury v Registrar of Joint Stock Companies and another, 15 ALR 96 for the limited and exceptional character of intervention where corporate machinery becomes unworkable. They also rely upon *In re Ruttonjee & Co. Ltd.*, AIR 1969 Cal 550 to emphasise that impracticability refers to circumstances creating serious practical difficulty in holding or conducting a meeting rather than an objection to what the meeting may decide.

6.4 This approach accords with the ordinary function of section 85(3). A deadlock between equally divided directors, persistent refusal to attend so that quorum cannot be formed, rival claims to management, uncertainty as to who may lawfully chair a meeting or some comparable breakdown in the company's internal machinery may make resort to section 85(3) necessary. In such circumstances the Court intervenes not to replace corporate democracy but to restore its operation.

6.5 The facts before this Court disclose no such situation. No one says that the existing Board cannot issue a notice. No one disputes the authority of the persons presently managing the Club to convene a General Meeting or Extraordinary General Meeting. No dispute concerning quorum has been shown. No competing group claims an exclusive right to preside over or conduct the proposed meeting. Nothing in the record shows that the members cannot assemble and deliberate in accordance with the Articles.

6.6 The petitioners' case proceeds on an entirely different footing. They contend that the respondents placed before the members an agenda which, according to them, should not presently be considered and that the notice issued for that purpose was invalid and served through an impermissible mode. Those objections may raise questions of law; but the case, as framed, does not establish any impracticability in calling, holding or conducting a meeting within the meaning of section 85(3).

6.7 In this respect *Bengal and Assam Investors Ltd. v J.K. Eastern Industries Private Ltd.*, reported in AIR 1956 Cal 658, provides useful guidance. There the applicant apprehended that the chairman, who was himself interested in the subject under consideration, might conduct the meeting unfairly. The Calcutta High Court declined to treat such apprehension as sufficient impracticability and observed, in substance that, if the chairman subsequently acted illegally the aggrieved party would have an appropriate remedy. The Court cautioned against a construction which would open the door to indiscriminate judicial intervention in corporate meetings.

In the present case the respondents have relied upon that decision to contend that an apprehension as to the possible outcome of the proposed EGM cannot be equated with an inability to hold the meeting.

6.8 I find considerable force in that submission. The petitioners do not ask this Court to formulate a manner in which an otherwise impracticable meeting may take place. They ask this Court to do the reverse. Their principal prayer requires the Court to direct the Club to cease from convening, holding or conducting an EGM upon the subject in question or upon any similar agenda.

6.9 The statutory power and the relief sought therefore move in opposite directions. Section 85(3) enables the Court to bring about a meeting notwithstanding impracticability. The substantive prayer seeks to prevent the Club from calling or holding a meeting upon a particular subject.

6.10 I am also mindful of the principle concerning the limits of the jurisdiction of the Company Court. In *Abdul Muhit and others v Social Investment Bank Limited and others*, reported in 54 DLR (2002) 306 the Court considered the statutory foundation necessary for adjudication by the Company Court, and held that the company court has a special company jurisdiction and that jurisdiction has to be found from specific provisions of the Act. The said proposition also received approval by the Hon'ble Appellate Division and the judgment has been reported in 61 DLR (AD) 82.

6.11 Rule 8 supplements the jurisdiction otherwise vested in the Company Court and enables the Court to make such orders as may be necessary for the ends of justice. It does not, however, create an independent substantive jurisdiction where none is conferred by the Act. Consequently, rule 8 cannot transform section 85(3), whose statutory object is to facilitate a meeting rendered impracticable by some impediment, into a proceeding for obtaining a continuing injunction prohibiting the company from convening a meeting upon a particular agenda. To use rule 8 in that manner would not supplement section 85(3); it would alter its very character.

6.12 The decision of this Court in *Engr. Md. Anwar Hossen v Chittagong Club Ltd.*, 18 ALR 345, also bears relevance to the broader question of judicial intervention in the affairs of a club incorporated as a company. That decision examined the jurisdiction invoked in relation to a decision taken by the Chittagong Club. The issue in that case was whether the suspension of Engr. Md. Anwar Hossen's membership by Chittagong Club Ltd. was legal and whether company court had jurisdiction under Section 43 of the Companies Act, 1994, to rectify the Members' Register. In the said judgment it has been found that Section 43 did not apply as the petitioner's name was not omitted from the register, and the suspension did not equate to omission. The court dismissed the application on grounds of maintainability, suggesting the petitioner to seek remedy in a civil court.

6.13 The same principle finds support in the settled doctrine of judicial restraint in the domestic affairs of a company. The following passage from *Descon Ltd. v Biman Behari Sen (No. 2)*, (2011) 162 Comp Cas 631 (Cal): MANU/WB/0231/2011, is useful. It was observed that-

> *31.* ***Ordinarily an outsider, which includes the court****, is not permitted to interfere with the affairs of a company. It has shareholders who constitute the general body. This general body elects the board of directors to administer the affairs of the company. They are called the insiders. The board is authorised to take most day to day decisions for running of the company. Certain decisions can be taken only by this general body of shareholders in a meeting or acting together without such meeting in some circumstances. Such decision taken by the required majority binds the shareholders as well as the company. Certain decisions of the board of directors are also subject to their ratification. The board of directors are also empowered to take decisions binding the company. The body of shareholders and the board of directors act in their respective fields but the overall and ultimate control is exercised by the general body of shareholders.*

(Bold supplied by me)

6.14 The principle does not confer immunity upon a company from judicial scrutiny. Nor does it allow a majority to disregard the Act or the Articles. It merely recognises the proper institutional order: the Board administers the company; the members exercise the powers reserved to the general body; and the Court intervenes when the statute or recognised principles of company law justify such intervention. The Court does not ordinarily substitute itself for the general body before the members have had an opportunity to deliberate.

6.15 The decision in *Cricket Club of India Ltd. v Madhav L. Apte*, [1975] 45 Comp Cas 574 (Bom): MANU/MH/0009/1974, is particularly relevant in relation to a proposed resolution. There the executive committee questioned the legal validity of an amendment which the requisitionists wanted to place before an extraordinary general meeting. The Court ultimately formed the view that the proposed amendment would be invalid in law; nevertheless, since the requisition satisfied the procedural and numerical requirements of the applicable provision, the Court held that the executive committee remained bound to call the meeting. The Court expressly refrained from prescribing the course which the requisitionists or chairman should thereafter adopt at the meeting.

6.16 Those decisions demonstrate an important distinction. The legality of a resolution and the right of the members to meet and deliberate upon it are separate questions. The Court should ordinarily be slow to prevent a company meeting merely because an objection has been raised as to the legality of a resolution that may be passed at such meeting.

6.17 I therefore find that the present application, in the form in which it has been brought and having regard particularly to the substantive relief claimed, does not come within section 85(3) of the Companies Act, 1994.

The objection regarding statutory notice

7. The above finding on maintainability is sufficient to dispose of the substantive relief sought in this application. However, both sides have addressed the Court at length on the requirement of twenty-one days' notice and the mode of service of such notice under section 85 of the Companies Act, 1994, and have

invited the Court to address these questions. Since the issues concern the statutory requirements governing a general meeting and may arise if the Club proposes to convene a fresh meeting, it is appropriate to record the legal position emerging from the provisions relied upon and the submissions made before this Court. The following observations are therefore made without treating the present proceeding as one for declaring the impugned notice invalid or for granting the prohibitory relief sought by the petitioners.

7.1 Section 85(1)(a) prescribes twenty-one days' notice for the meeting in question. The proviso then expressly allows a meeting to be called by shorter notice only upon fulfillment of the statutory requirement of written consent. In the case of an annual general meeting, such consent must be given by all the members entitled to attend and vote at the meeting. In the case of any other meeting, the consent must be given by members representing not less than ninety-five per cent of such part of the paid-up share capital of the company as gives a right to vote at the meeting or, where the company has no share capital, not less than ninety-five per cent of the total voting power exercisable at the meeting.

This statutory arrangement is significant. The legislature did not simply prescribe a general standard of "reasonable notice". It selected a definite period and, in the same provision, created a specific exception by which the company may lawfully abridge that period.

7.2 Where the company invokes the exception, it may proceed upon shorter notice subject to compliance with the statutory requirement of consent. Where it does not invoke that exception, it must comply with the ordinary period which the substantive provision prescribes. Any other construction would substantially deprive the proviso relating to shorter notice of its purpose.

7.3 The requirement of notice performs a substantive corporate function. It gives a member time to understand the proposed business, evaluate its consequence, consult others where necessary, decide whether to attend, decide whether to oppose or support the proposal and make the arrangements necessary for meaningful participation in the general meeting.

7.4 In *Re Hector Whaling Ltd.*, (1937) 7 Comp Cas 22, it was held in substance that a notice dated and posted on 8th May for a meeting on 30th May failed to satisfy the requirement of twenty-one clear days, and the Court treated the meeting as invalid. Likewise, in *NVR Nagappa Chettiar v Madras Race Club*, (1949) 19 Comp Cas 175, the court stressed the importance of the prescribed notice period and treated compliance with the statutory requirement governing a general meeting as mandatory in the circumstances before that Court. This decision was followed in *Kuldip Singh vs. Paragaon Utility Financiers P Ltd*, (1988) 64 Comp Cas 19(P&H).

7.5 It is true that section 85(1)(a) of the Companies Act, 1994 does not employ the expression “clear days”. The corresponding Indian legislation has subsequently adopted that expression. However, it would be unsafe simply to import the Indian statutory wording into our legislation. The legislative development in India may provide useful historical context, but it cannot determine the meaning of our statute. The matter must be resolved from the scheme and language of our own Act.

7.6 Regulation 50 of Schedule I provides the applicable method of computation, and, as the parties themselves have proceeded, the day on which the notice is served or deemed to be served is excluded while the day for which notice is given is included.

The important expression is therefore not merely ‘issued’, but “served or deemed to be served”. A document may bear the date 06.06.2026 and yet be served on 07.06.2026, 08.06.2026 or thereafter. The date appearing at the head of the notice cannot by itself establish commencement of the statutory period.

7.7 This distinction assumes particular importance here. The respondents contend that the Club issued the notice on 06.06.2026 and thereafter dispatched it to its members through a courier service. Even assuming that every courier article was ultimately delivered, the respondents cannot treat the date printed upon the notice automatically as the date of service.

7.8 If the Club intended the notice to operate as the full statutory notice under section 85(1)(a), rather than a shorter notice under the proviso, the members had to receive the benefit of the full statutory period calculated from service or deemed service in the manner recognised by law. The question whether this requirement should be described as “mandatory” or “directory” must also be answered by examining the statutory purpose and scheme rather than by relying mechanically upon the word “may” in section 85(1)(a).

7.9 Mahmudul Islam, in his *Interpretation of Statutes and Documents*, while discussing “Mandatory and Directory Provisions” in Chapter IX, explains the principles governing the determination of whether a statutory requirement is mandatory or directory. According to the learned author, where a procedural requirement is intended to protect persons who may be affected by the exercise of a statutory power, the Court ordinarily attaches considerable importance to that safeguard and treats compliance with it as mandatory. The determination ultimately depends upon the object of the provision, the interest it seeks to protect, the scheme of the statute and the consequences that would follow if compliance were treated as optional. These principles also recognise that different requirements within the same statutory scheme may attract different consequences. Thus, a provision may require strict compliance with its essential elements while permitting substantial compliance in respect of matters that are merely procedural or formal. In this context, the following decisions referred to by the learned author are of particular significance.

In the case of Howard vs. Bodington, 1877 2 P.D. 203 Lord Penzance observed as follows:

> *I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory.*

In the case of *Abdul Jabbar Fakir vs. Registrar of Co-operative Societies*, reported in 1986 BLD 145 it was observed at paragraph no. 14 as follows:

> *14. The principle to be applied in considering whether the provision of a statute is mandatory or directory one is that the Court must look to the subject-matter of the provision, consider the importance of the provision that has been disregarded and the relation of that provision to the general object intended to be secured by the act, and upon a review of the provision of the statute.*

7.10 In my view, the entitlement to the prescribed period itself, where the meeting is not being convened by the shorter-notice procedure, cannot be treated as merely directory. The statute gives the members twenty-one days and then expressly tells the company how it may lawfully shorten that entitlement. A construction which allows the company unilaterally to shorten the period, while still describing the notice as a notice under the ordinary part of section 85(1)(a), would make the statutory shorter-notice mechanism largely redundant.

This does not mean that every accidental failure of receipt by an individual member necessarily invalidates a meeting. Section 85(1)(b), together with the relevant provision of Schedule I, separately protects proceedings against an accidental omission to give notice to, or accidental non-receipt by, a member. The statute itself therefore distinguishes between an accidental failure affecting an individual member and a deliberate or systemic curtailment of the statutory notice period.

7.11 The saving provision cannot be used to convert a notice deliberately framed or served for less than the prescribed period into a valid twenty one day notice. The accidental omission clause deals with accident; it does not authorise the company to substitute a shorter period for the statutory period without obtaining the consent required by the proviso.

7.12 However, before concluding this part of the discussion, I consider it appropriate to refer to one further decision from the Indian jurisdiction, which, in my view, may provide useful guidance in resolving similar disputes in future. The decision is *Maharaja Exports and Another v. Apparels Export Promotion Council*, reported in MANU/DE/0213/1985 : [1986] 60 Comp Cas 353 (Delhi). The decision draws an important distinction between the statutory service of a notice and its actual receipt by a member. Where the statute provides for service by post, the notice is deemed to have been served upon expiry of 48 hours from the time of posting**.** The purpose of this legal fiction is to introduce certainty into the computation of the prescribed notice period and to avoid making the validity of a general meeting dependent upon the uncertain time actually taken for postal delivery. Accordingly, once the notice is duly posted to the address furnished by the member, the statutory period is to be reckoned from the deemed date of service, namely, upon expiry of 48 hours after posting, and not from the date on which the notice is actually received. The Court further held that actual receipt of the notice is not indispensable to the validity of the meeting. Section 172(3) of the Companies Act, 1956 expressly provided that an accidental omission to give notice to, or the non-receipt of notice by, any member would not invalidate the proceedings of the meeting. Thus, where the company establishes that the notice was duly dispatched to the member at the address furnished by him or her, mere delayed receipt or even non-receipt, in the absence of any deliberate omission or mala fide design, would not by itself invalidate the meeting. Reading together, these provisions establish that the validity of notice is governed primarily by due dispatch and the statutory rule of deemed service, rather than by proof of actual physical receipt by every individual member.

Service through courier

8. Article 86(1) of the Articles of Association of the Club permits notice to be given to a member either ‘personally’ or ‘by sending it by post’ to his registered address. Article 86(2) then explains when service by post shall be deemed effective. Section 27 of the General Clauses Act, 1897 also assumes importance where an enactment authorises or requires service by post. It creates the statutory presumption upon proper addressing, prepayment and posting by

"registered post", unless a contrary intention appears. The petitioners have specifically relied upon that provision.

8.1 The respondents seek to equate a professionally managed courier service with registered post because a courier maintains records of dispatch, tracking and delivery. I am unable to accept that proposition as a matter of statutory construction.

8.2 A method of communication may be efficient, reliable and capable of proof without thereby becoming the method which the statute or Articles prescribe. "Courier" and "post" do not become legally interchangeable merely because both perform the practical function of carrying a document from one address to another. Where a company relies upon service 'by post', it must comply with the legal requirements which attach to that method. Where it relies upon 'personal service', the evidence must establish personal delivery in a manner which can properly answer that description. A bulk dispatch to addresses through a private courier cannot be treated simultaneously as "post" or as "personal service" merely because a courier company records the movement of the envelopes.

8.3 In *Ansar Khan v Finecore Cables Pvt. Ltd.*, (2007) 140 Comp Cas 76 (CLB), the Indian Company Law Board held, that dispatch of a notice by courier is not in consonance with section 53 of the 1956 Act and consequently affected the validity of the meeting.

8.4 I therefore find merit in the petitioners' legal submission to this limited extent that where the Act and the Articles prescribe service personally or by post, the Club cannot claim compliance with the statutory mode of service merely by showing that it entrusted the notice to a private courier and that the courier maintains tracking records.

8.5 Consequently, if respondent No.2 intends to call a meeting upon the ordinary notice contemplated by section 85(1)(a), it must ensure both a lawful mode of service and the full statutory period calculated from such service or deemed service. If it wishes to proceed on shorter notice, it must resort to the proviso and obtain the consent which the statute requires.

Proposed agenda and section 87

9. The petitioners rely upon the historical character of the Club's Main Building and the pending proposal concerning its possible declaration as a protected antiquity. The respondents, however, rely upon the communication issued by the Ministry of Cultural Affairs and contend that no declaration presently gives the Main Building the legal status of a protected antiquity.

9.1 From Annexure- D to the main petition it appears that the concerned authority informed the club that, owing to several past changes and additions, a substantial part of the original architectural or archaeological character of the structure had already been altered and that, at that stage, there was no scope for inclusion of the building in the list of protected antiquities. The communication nevertheless stated that the question might be considered if the conditions mentioned therein were fulfilled.

9.2 I do not consider it appropriate in this Company Matter to determine whether the Main Building should or should not be declared a protected antiquity. The competent statutory authority has to decide that question in accordance with the law applicable to antiquities. Nor should this Court assume that an EGM, if lawfully convened, will necessarily approve the proposal. An agenda only places a proposal before the members. The members may approve it; they may reject it; they may modify it if the governing law permits; or they may decline to proceed with it. At this stage, any judicial pronouncement upon the wisdom, desirability or commercial propriety of the proposed construction would precede the corporate decision which has not yet been taken.

9.3 The observation in *Descon Ltd. v Biman Behari Sen (No. 2)* again assumes relevance here. The ultimate control of matters reserved to the shareholders rests with the general body, and the Court ordinarily refrains from taking over that function unless the exercise of corporate power infringes the law or falls within a recognised ground for judicial intervention.

The decision of *Cricket Club of India Ltd. v Madhav L. Apte* goes even further in illustrating the distinction. There the Court considered the proposed amendment legally invalid, yet it did not treat that conclusion as dispensing with the statutory obligation to call the requisitioned meeting when the requisition otherwise satisfied the statutory requirements.

9.4 Therefore the distinction between a proposal placed before a meeting and a completed corporate act cannot be ignored.

9.5 A further question has been raised regarding the nature of the proposed meeting. The petitioners submit that the notice does not make it clear whether the proposed resolution is intended to be placed as a special resolution. The respondents, on the other hand, rely upon Article 69(b) of the Articles of Association of the Club. That Article requires the sanction of a General Meeting before the Club incurs expenditure exceeding Tk.15,00,000/- on any one project. Nothing in the materials placed before this Court, however, indicates that Article 69(b) requires such sanction to be accorded by a special resolution.

Conclusion

10. The position which emerges may now be summarised.

First, section 85(3) addresses impracticability in calling, holding or conducting a company meeting. It authorises the Court to remove that impracticability and facilitate the meeting through appropriate directions. The present petitioners do not seek such relief and have demonstrated no such impracticability.

Secondly, the principal prayer asks this Court to prohibit respondent No.2 from convening or holding an EGM upon the specified agenda or upon any similar agenda. Such relief does not correspond with the nature and object of section 85(3). Rule 8 of the Companies Rules, 2009 cannot be employed to transform that facilitative statutory jurisdiction into a continuing jurisdiction to restrain the corporate body from considering a particular subject.

Thirdly, the objection regarding notice nevertheless raises an important question of statutory compliance. Where a company intends to proceed upon the ordinary twenty- one day notice under section 85(1)(a), and does not obtain the consent required for shorter notice, the members are entitled to the full statutory period calculated from service or deemed service in accordance with law. The date written upon the notice does not by itself determine the date from which that period runs.

Fourthly, ordinary dispatch through a private courier service cannot, merely because the courier maintains tracking and delivery records, be treated as synonymous with the prescribed mode of service by post. If the Club relies upon personal service, it must establish personal service; if it relies upon service by post, it must comply with the legal requirements governing that mode.

Fifthly, these observations regarding notice cannot cure the fundamental defect in the maintainability of this application under section 85(3).

Sixthly, this Court finds no basis at this stage to pronounce upon the merits or desirability of the proposed construction or renovation. The general body has not yet taken any decision. The competent authority has also not finally determined the question concerning antiquity or heritage status upon which the petitioners rely. Subject to compliance with law, the members must first be allowed to deliberate upon matters which the Articles place within the competence of the general body.

Finally, Article 69(b) requires sanction of a General Meeting for the expenditure in question, but nothing placed before this Court establishes that the Article requires such sanction by a special resolution. The objection founded solely upon section 87 therefore does not sustain itself.

Before parting with the matter, it is hereby clarified that dismissal of this application does not amount to judicial approval of the impugned notice dated 06.06.2026. Since the application is not maintainable under section 85(3), this Court refrains from making any binding declaration regarding the validity of that notice. Nevertheless, if the Club proposes to convene a fresh meeting upon the same or any other agenda, it would be expected to comply strictly with section 85 of the Companies Act, 1994, the applicable provisions of Schedule I and its Articles of Association, particularly as regards the prescribed period and recognised mode of service.

At the same time, no perpetual restraint can be imposed in this proceeding against respondent No.2 from placing the proposed subject before its members. If the members subsequently adopt any resolution contrary to law, or if the competent statutory authority makes any order legally restricting the proposed work, any aggrieved person may pursue such remedy as may then be available in law.

11. In view of the discussion made above, I find that the instant Company Matter, as framed under section 85(3) of the Companies Act, 1994, is not maintainable.

Accordingly, the instant Company Matter is dismissed. The interim order passed earlier in this matter is hereby recalled and vacated.

There shall be no order as to costs.

(Sikder Mahmudur Razi, J:)