

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

Present:

Mr. Justice Khizir Ahmed Choudhury

Company Matter No. 86 of 2023

IN THE MATTER OF :

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

AND

IN THE MATTER OF :

Md. Khorshed Alam Mozumder, Managing
Director, Capital Agency Limited

..... Petitioner

-Versus-

Capital Agency Limited and another

.... Respondents

Mr. Jashimuddin Ahmed with

Mr. Mohammad Shariful Islam, Advocates

.....For the Petitioner

Heard and judgment on 20.08.2023.

Khizir Ahmed Choudhury,J:

This application under Section 43 of the Companies Act, 1994 (briefly, the Companies Act) has been filed by the petitioner with an expectation to have a declaration from this Court declaring that the (Second) Amendment of Companies Act, 2020 (wherein personal appearance was made mandatory for confirming authenticity of shares transfer instrument) shall not be binding upon the petitioner and, also, to have a direction upon the respondent No.2-RJSC to allow the petitioner to execute the instrument of transfer (Form 117) executed/transferred in

between 2010 to 2015 transferring 4500 shares of Tk. 100/- each of Capital Agency Limited before the said amendment and, thereby, to rectify the Share Register of the respondent No.1-company accordingly along with a direction upon the respondent No.2-RJSC to amend/change the record maintained by the aforesaid state functionary.

In the petition it is averred that the petitioner is the shareholder and Managing Director of the respondent No. 1-company, namely, Capital Agency Limited. The respondent No. 1 is a private company limited by shares incorporated under the Companies Act, 1994 under Registration No. C-10064 dated 26.6.1982 (hereinafter referred to as the 'Company'), respondent No. 2 is Registrar of Joint Stock Companies & Firms. The main object of the company is to carry on businesses of Manpower recruiting agency description of which are given elaborately in Clause-III of the Memorandum of Association of the Company.

The authorized capital of the company is Tk. 50,00,000/- divided into 5,000 ordinary shares of Tk. 100/- each. The company was incorporated by observing all formalities thereto.

The respondent No. 1-Company duly filed Schedule-X (summary of share capital and list of share holder) with the respondent No. 2 in relation to the 1st Annual General Meeting (AGM), according to the annual summary of the 1st AGM.

It is stated that in between the years 2010 to 2015 total 4500 shares of Tk. 100/- each of Capital Agency Limited were transferred. All

formalities relating to transfer of Shares have been completed within that period. These shares are as follows:-

Date of transfer	No. of shares to be transferred	Distinctive Number		Name of the Transferor	Name of transferee	Nominal Value
		From	To			
05.02.2010	625 Shares	751	1375	Mr. Md. Shahed Ali	Mr. Mohammad Zaki	62500/-
05.02.2010	375 Shares	1376	1750	Mr. Md. Yasin Ali	Mr. Nowshed Ali	37,500/-
05.02.2010	375 Shares	2126	2500	Mr. Minhaj Karim	Mr. Mohammad Zaki	37,500/-
05.03.2011	375 Shares	1376	1750	Mr. Nowshad Ali	Mr. Mohammad Zaki	37,500/-
30.10.2013	1375 Shares	0001 751	750 1375	Mr. Mohammad Zaki	Mrs. Mahfuza Zaki	1,37,500/-
30.10.2013	375 Shares	1376	1750	Mr. Mohammad Zaki	Mr. Shahid Imam	37,500/-
25.08.2015	1,000 Shares	0001	1000	Mrs. Mahfuza Zaki	Mr. Mohammad Zaki	1,00,000/-

Mr. Jashimuddin Ahmed, the learned Counsel appearing for the petitioner submits that as per the (Second) Amendment of Companies Act, 2020 personal appearance was made mandatory for confirming authenticity of shares transfers instruments but before the said amendment, in between the years 2010 to 2015 shares-in-question of the respondent No. 1-Company were transferred but without taking into the consideration of the aforesaid fact, the respondent No.2-RJSC is pressing upon the petitioner to remain present in person before it at the time of execution the aforesaid shares transfers instruments and, therefore, the petitioner has been compelled to file this petition before this Court under Section 43 of the Companies Act, 1994 with a prayer for rectification of share register of the respondent No. 1-Company without the personal appearance of the transferor of shares-in-question.

After hearing the learned Advocate for the petitioner and perusing the substantive application along with its annexures, it appears to this Court that provisions of (Second) Amendment of Companies Act, 2020 is not applicable for the petitioner as the shares-in-question of the respondent No. 1-Company were transferred in between the years 2010 to 2015 which is before the amendment in the year 2020.

In view of the fact that, the shares-in-question of the respondent No. 1-Company were transferred before the amendment in the year 2020, the (Second) Amendment of Companies Act, 2020 (wherein personal appearance was made mandatory for confirming authenticity of shares transfer instrument) is liable to be declared to have been lost its effect and not binding upon the petitioner.

In the result, the application is allowed.

The deed of instruments of transfer of shares-in-question, namely, Form 117 are declared to have been executed duly and the (Second) Amendment of Companies Act, 2020 (wherein personal appearance was made mandatory for confirming authenticity of shares transfer instrument) is declared not binding upon the petitioner.

However, the respondent no.1-company shall rectify its Share-Registrar, showing total 4500 shares of Tk. 100/- each transferred in the manner as prescribed in paragraph No. 5 of the substantive application and, thereby, take necessary steps to notify the RJSC for amendment/change of the record maintained by the aforesaid state

functionary accordingly without the personal appearance of the transferor of the aforesaid 4500 shares of Tk. 100/- each.

The petitioner company is directed to approach the RJSC within 15 days from the date of drawing up of this Order.

The Registrar of Joint Stock Companies and Firms shall do the needful accordingly.

The petitioner is directed to take all steps as per provision of the companies Act, 1994. The petitioner intends to donate Taka 40,000/ which is to be given as cash to Shikhor Chandra Singho , a MLSS of District Judge Court, Sunamgonj for his mother and him self's treatment and furnishing receipt of the payment, the order may be drawn up if so advised.

The cost of this Application shall be borne out of the funds of the Company.