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

Present:
Mr. Justice Md. Toufiq Inam.

COMPANY MATTER NO. 475 OF 2023.

IN THE MATTER OF:

An application under Section 233 of the Companies Act, 1994.

AND

IN THE MATTER OF:

Md. Shafiqul Islam and others.
------ Petitioners.
-VERSUS-
Nigom Builders Limited and others.
----- Respondents.

Mr. A.K.M. Badruddoza, Senior Advocate
----- For the Petitioners.

Mr. Md. Masud Alam, Advocate
----- For the Respondent Nos. 2 and 3.

Judgment Delivered On 28.06.2026.

Md. Toufiq Inam, J.

This is an application under section 233 of the Companies Act, 1994, wherein the petitioners have prayed, inter alia, for a direction upon the respondents to allow them to participate in the regular affairs and management of respondent No. 1 company and for a declaration that the Board Resolution dated 14.12.2022, as well as the resolutions adopted at the Board Meeting held on 27.05.2023 whereby respondent Nos. 2, 3, 4 and 5 purportedly revoked the unanimous resolution dated 12.12.2017 and authorized the operation of the company's bank account solely under the joint signatures of respondent Nos. 2 and 3, thereby excluding petitioner No. 1, whose signature had previously been mandatory, are illegal, void, without lawful authority and of no legal effect.

The petitioners contend that respondent No. 2 convened a meeting of the Board of Directors on 14.12.2022 by issuing a notice dated 07.12.2022 without serving any notice upon the petitioners. Pursuant thereto, a Board Meeting was allegedly held on 14.12.2022, in which respondent Nos. 2, 3 and 5 purportedly participated. At the said meeting, Resolution No. NBL/DHK/134965/1009/0010 was adopted, whereby the earlier resolution dated 12.12.2017 governing the operation of the company's bank account was revoked and it was resolved that the existing bank account of the company would thereafter be operated under the joint signatures of any two among petitioner No. 1, respondent No. 2 and respondent No. 3.

According to the petitioners, the said resolution is ex facie illegal, fraudulent and a product of manipulation. It is asserted that respondent No. 5 was not physically present at the meeting and that respondent No. 3 purported to represent him on the strength of a Power of Attorney. The petitioners point out that the alleged Power of Attorney was executed on 28.01.2023, notarized on 06.03.2023 and attested by respondent No. 2 on 07.03.2023, all of which occurred subsequent to the alleged Board Meeting held on 14.12.2022. It is, therefore, contended that both the Board Resolution and the purported Power of Attorney were subsequently fabricated with a view to altering the signatory authority of the company's bank account and enabling respondent Nos. 2 and 3 to assume exclusive control over the company's funds.

The petitioners further contend that the Board Resolution dated 14.12.2022 is void, having been adopted without notice to all the directors, without a valid quorum and in violation of the Articles of Association of the company. According to them, the impugned resolution unlawfully displaced the unanimous resolution dated 12.12.2017, which had been adopted by all six directors in conformity with Articles 30 and 35 of the Articles of Association.The petitioners further state that, realizing the inherent infirmities in the Board Resolution dated 14.12.2022, the respondents convened another Board Meeting on 27.05.2023. According to the petitioners, that meeting was equally unlawful, as it was convened by respondent No. 2 pursuant to the requisition of petitioner No. 1 but without serving due notice upon him. Although Agenda No. 5(Kha) related to the appointment and management of the office of the Managing Director, the respondents ultimately converted the matter into a purported special resolution removing petitioner No. 1 from the office of Managing Director on allegations of incapacity, non-cooperation, absence from Board Meetings, conflict of interest, attempted misappropriation of company funds amounting to Tk.16,96,307/-, acts prejudicial to the discipline of the company and activities allegedly detrimental to its reputation and financial interests.

It is the petitioners' specific case that a Managing Director cannot lawfully be removed through a mere meeting of the Board of Directors. According to them, such removal can only be effected by an Extraordinary General Meeting convened in accordance with law after strict compliance with the mandatory statutory requirements relating to notice and voting. They contend that a special resolution requires not less than twenty-one clear days' notice and approval by at least three-fourths of the members entitled to vote. In the present case, however, the meeting was convened by notice dated 18.05.2023 and held on 27.05.2023, thereby providing only nine days' notice. Consequently, the petitioners contend that the purported special resolution dated 27.05.2023 is void and without any legal effect.

The petitioners further state that the resolution itself records that the meeting was convened pursuant to the requisition submitted by petitioner No. 1 on 22.02.2023 for the purpose of addressing the urgent affairs of the company. Nevertheless, according to the petitioners, the respondents took advantage of that meeting to alter the existing arrangement relating to the operation of the company's bank account and to exclude petitioner No. 1 from the management and financial affairs of the company. It is further alleged that the meeting was conducted in violation of sections 85 and 87 of the Companies Act, 1994, rendering the resolutions adopted therein wholly unlawful.The meeting held on 27.05.2023, respondent Nos. 2, 3, 4 and 5 purportedly resolved to revoke the unanimous resolution dated 12.12.2017 and authorized the operation of the company's bank account solely under the joint signatures of respondent Nos. 2 and 3, thereby excluding petitioner No. 1, whose signature had previously been mandatory.

Subsequently, by a supplementary affidavit affirmed on 10.06.2026, the petitioners sought an additional direction upon the respondent company and its directors to strictly implement the unanimous resolution dated 12.12.2017, whereby the company's bank account was to be operated under the joint signature of petitioner No. 1, Md. Shafiqul Islam, Managing Director, together with either respondent No. 2, Md. Lutful Kabir Sarkar, Chairman, or respondent No. 3, Md. Alamgir Haider, Director.

Mr. A.K.M. Badruddoza, the learned Senior Advocate appearing on behalf of the petitioners, submits that the unanimous resolution dated 12.12.2017, having been adopted by all six directors and acted upon for a considerable period, could not lawfully be superseded by the impugned Board Resolutions dated 14.12.2022 and 27.05.2023. He submits that the resolution dated 14.12.2022 was adopted without notice to all the directors, without a valid quorum and on the basis of a Power of Attorney which admittedly came into existence after the alleged meeting. Consequently, according to the learned Senior Advocate, the entire proceeding is coram non judice and without lawful authority. He further submits that the subsequent resolution dated 27.05.2023, being founded upon an invalid earlier resolution, is equally void. It is further argued that a decision adopted by the shareholders in a duly constituted general meeting cannot be nullified by a mere resolution of the Board of Directors and that the conduct of the respondents constitutes oppression within the meaning of section 233 of the Companies Act, 1994.He further submits that the respondent No. 2 and 3 have embezzling and misappropriating the company's funds that are act prejudicial to their rights as members of the company.

Conversely, Mr. Md. Masud Alam, the learned Advocate appearing for the respondent Nos. 2 and 3, submits that the impugned resolutions were adopted strictly within the powers vested in the

Board of Directors under the Articles of Association. Referring particularly to Article 36 thereof, he submits that matters relating to the operation of the company's bank accounts fall within the sphere of day-to-day management entrusted exclusively to the Board of Directors and do not require approval by the shareholders in a general meeting. He therefore contends that the Board was fully competent to modify or replace the earlier arrangement concerning the operation of the company's bank account and that no case of oppression or illegality has been made out warranting interference under section 233 of the Companies Act, 1994.

Mr. Alam further submits that the additional relief sought through the supplementary affidavit is wholly misconceived and not maintainable in law. According to him, a supplementary affidavit is intended only to place subsequent facts or developments before the Court and cannot be used as a substitute for amendment of pleadings or as a vehicle for introducing a new cause of action or substantive relief. He submits that the original application was confined to challenging the validity of the Board Resolutions dated 14.12.2022 and to the petitioners' alleged exclusion from the affairs of the company. By the supplementary affidavit, however, the petitioners have sought a substantive direction requiring the respondent company to operate its bank account strictly in accordance with the resolution dated 12.12.2017. Such relief, according to the learned Advocate, could only have been introduced by way of amendment upon obtaining leave of the Court and not through a supplementary affidavit. He therefore submits that the additional prayer is beyond the scope of the original proceeding and is liable to be rejected.

Turning now to the principal contention advanced on behalf of the petitioners that the unanimous resolution adopted on 12.12.2017 by all six directors could not subsequently be altered by the Board of Directors through the resolutions dated 14.12.2022 and 27.05.2023, this Court is unable to subscribe to such proposition.

A plain reading of the Articles of Association demonstrates that the management and control of the affairs of the company are vested in the Board of Directors. More significantly, Article 36 expressly empowers the Board to regulate and administer the banking affairs of the company, including the operation of its bank accounts and the determination of the authorized signatories thereto. The petitioners have failed to draw the attention of this Court to any provision either of the Companies Act, 1994 or of the Articles of Association which reserves the power to determine or alter the operation of the company's bank accounts exclusively to the shareholders in a General Meeting.

Even assuming that the unanimous resolution dated 12.12.2017 governed the operation of the company's bank account, such resolution was, in substance, an administrative arrangement concerning the internal management of the company. Decisions of this nature fall squarely within the continuing managerial authority of the Board of Directors and, unless restricted by statute or the Articles of Association, remain amenable to modification, variation or replacement by a subsequent resolution of the Board passed in accordance with the Articles. Consequently, the mere existence of an earlier unanimous resolution of the general meeting does not, by itself, invalidate a subsequent resolution adopted by the Board in exercise of its managerial powers.

This Court further finds that although the petitioners have challenged both the resolutions dated 14.12.2022 and 27.05.2023, even if it is assumed, for the sake of argument, that certain procedural irregularities attended the meeting held on 14.12.2022, the materials on record disclose that a subsequent meeting of the Board was held on 27.05.2023, in which four directors participated, and fresh resolutions were adopted regarding the operation of the company's bank account. The petitioners have not been able to demonstrate that the resolutions adopted at the said meeting were actuated by any collateral purpose or designed to secure any personal benefit for the respondents at the expense of the company.

It is equally well settled that section 233 of the Companies Act, 1994 is not intended to provide a remedy against every disputed decision of the Board of Directors. The jurisdiction of this Court under the said provision is attracted only where the affairs of the company are conducted in a manner oppressive to any member or members, or prejudicial to the interests of the company itself. This Court does not sit in appeal over every managerial, commercial or administrative decision of the Board. Unless the impugned conduct is shown to be burdensome, harsh or wrongful, lacking in probity, or calculated to unfairly prejudice the proprietary or participatory rights of the shareholders, judicial intervention under section 233 is not warranted.

In the present case, the petitioners have failed to establish that the alteration in the bank signatory arrangement has resulted in any impairment of their proprietary rights as shareholders. At its highest, the dispute discloses a disagreement amongst the directors regarding the control and administration of the company's banking operations. Such disagreement, being essentially an issue of internal management, does not, in the absence of any element of oppression, lack of probity or prejudice to the company, constitute a case warranting interference under section 233 of the Companies Act, 1994.

In view of the discussions and findings made hereinbefore, this Court is of the opinion that the petitioners have failed to establish any case of oppression or prejudice within the meaning of section 233 of the Companies Act, 1994 warranting interference by this Court. The disputes raised by the parties primarily relate to the internal management of the company and the operation of its bank accounts, which, in the facts and circumstances of the present case, do not justify the exercise of jurisdiction under the said provision.

Nevertheless, considering the serious allegations and counter-allegations made by the parties regarding the financial affairs of the company and bearing in mind that the paramount consideration is the interest of the company itself, this Court considers it appropriate to issue the following directions to ensure transparency, accountability and proper corporate governance:

i) The Board of Directors of respondent No. 1 company shall, within sixty (60) days from the date of receipt of this judgment, convene a duly constituted meeting of the Board upon notice to all the directors in accordance with the Companies Act, 1994 and the Articles of Association, for the purpose of appointing an independent Chartered Accountant or a reputed firm of Chartered Accountantsto conduct a comprehensive audit of the accounts of the company.

ii) The audit shall cover the financial affairs of the company from the date of its incorporation up to the financial year immediately preceding the commencement of the audit and shall, inter alia, examine all receipts, expenditures, bank transactions, books of accounts, statutory records, financial statements, supporting vouchers and all transactions conducted through the company's bank accounts maintained with any scheduled bank.

iii) All directors, shareholders, officers and employees of the company shall extend full cooperation to the auditors by producing all books of accounts, bank statements, vouchers, invoices, financial records and any other documents or information that may reasonably be required for completion of the audit. The concerned banks maintaining the accounts of the company shall also extend necessary cooperation, if requested by the auditors.

iv) Upon completion of the audit, the auditors shall prepare a detailed report setting out the true financial position of the company, identifying, if any, irregularity, unauthorized withdrawal, diversion or misapplication of the company's funds, non-compliance with statutory requirements, or any other financial impropriety, together with appropriate observations and recommendations. A copy of the audit report shall be placed before the Board of Directors and thereafter circulated to all the shareholders of the company.

v) It is made clear that if the audit report discloses any act of misappropriation, breach of fiduciary duty, diversion of corporate assets or any other financial irregularity committed by any director, officer or person connected with the affairs of the company, it shall be open to the company or any person aggrieved to take such legal proceedings as may be available under the law, and the findings of this judgment shall not preclude or prejudice any such proceeding.

vi) The parties are further directed to conduct the affairs of the company strictly in accordance with the Companies Act, 1994 and the Articles of Association, to ensure that all future meetings of the Board and the shareholders are convened upon due notice to all concerned, and to act in a manner that promotes transparency, mutual confidence and the best interests of the company rather than individual interests.

vii) The interim order granted earlier stands vacated.

With the above observations and directions, this application is disposed of.

(Justice Md. Toufiq Inam)

Ashraf/ABO.