

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

COMPANY MATTER NO. 727 OF 2023

IN THE MATTER OF:

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

- AND -

IN THE MATTER OF:

Barrister Nasir Uddin Ahmed Ashim, son of late Shamsuddin Ahmed of Address: House No. 23/A, Road No. 1, Dhanmondi Residential Area, Post Office-Newmarket-1205, Police Station-Dhanmondi, Dhaka

----- Petitioner.

- Versus -

Premier Leasing & Financial Limited represented by its Managing Director, of Address: Happy Rahman Plaza (5th Floor), Banglamotor Crossing, 25-27 Kazi Nazrul Islam Avenue, Dhaka-1000.

..... Respondents.

Mr. Nasir Uddin Ashim, In-person with
Mr. Shaleh Akram Somrat, Advocate.

... For the Petitioner.

Mr. Moloy Kumar Roy, Adv.

...For the respondent No. 1.

Heard on: 20.08.2024 & 29.08.2024

And

Judgment on: The 20th January, 2025

Present:
Mr. Justice Mamnoon Rahman

This is an application under Section 43 of the Companies Act, 1994 for rectification of the share register of the respondent No. 1 company, namely “Premier Leasing & Financial Limited” hereinafter referred to as the company by removing the name of the petitioner in the share register as holder of 24,69,447 numbers of ordinary shares.

It appears that after filing of the instant application this court vide order dated 4th December, 2023 admitted the application with a direction to issue usual notices as well as publication of the notices in two daily Newspapers as directed in the said order. Pursuant to the said order the petitioner filed affidavit-in-compliance which was duly accepted by this court on 12.03.2024. Subsequently, on the prayer of the learned Advocate the matter was fixed for hearing and heard at length.

Mr. Moloy Kumar Roy the learned Advocate filed power on behalf of the respondent No. 1 company, however, did not file any affidavit-in-opposition/counter affidavit.

The short facts relevant for the disposal of the instant application, is that, the petitioner who is a law abiding citizen and resident of Bangladesh is an ordinary share holder of the company in question to the extent of 9,17,500/- number of ordinary shares by way of purchase in the year 2019. Subsequently, on 01.09.2008 the wife of the petitioner who is respondent No. 7 was appointed as director of the company in question. After becoming the director of the company in question the respondent No. 7 transferred 24,69,447 number of shares of the company in favour of the petitioner by way of gift. The said transfer was placed before the 263th Board Meeting of the company in question and the said company on the Board Meeting held on 27.06.2019 approved the transfer as mentioned hereinabove.

Subsequently, after acquiring the said shares the petitioner became the director of the same company on 29.07.2019.

In the meantime, the respondent No. 7 also retired/resigned from the post of the director and subsequent to the said transaction the company submitted the relevant documents including the transfer documents with the Registrar of Joint Stock Companies and Firms and the said authority, namely respondent No. 3 issued certified copies of Form 12 and other documents. Subsequently, the respondent No. 7 filed writ petition before the Hon'ble High Court Division of the Supreme Court of Bangladesh, wherein it appears that the aforesaid transfer of the shares in favour of the petitioner by the respondent No. 7 as well as appointment of the petitioner as director is not lawful because of the non-compliance of provisions of section 27Ka of the Banking Companies Act, 1991. After disposal of the same the petitioner took necessary steps to return the shares and exclude the name of the petitioner as director and pursuant to that on 10.11.2022 the petitioner sent representation to respondent No. 2 as because of the inclusion of the name of the petitioner in the Credit Information Bureau List as well as other concerned authorities.

The further case of the petitioner, is that, the respondent No. 1 company is a borrower from as many as 26 financial institutions in Bangladesh and the said credit facilities were availed by the company long before the aforesaid transfer of shares in favour of the petitioner

as well as appointment of the petitioner as director of the company. Thereafter, on the approach of the petitioner the respondent No. 1 in its 263th Meeting of the Board of Director held on 31.07.2023 took decision to delete the name of the petitioner from the Board of Director as well as cancel the transfer of shares and pursuant to that on 17.08.2023 the respondent No. 1 company forwarded letter to the respondent No. 5 to take necessary steps to that effect. But despite all efforts the respondents failed to take any necessary steps for returning the shares in question as well as deleting the name of the petitioner as director of the company in question. Finding no other alternative the present petitioner moved before this court and filed the instant application under section 43 of the Companies Act, 1994.

Mr. Shaleh Akram Somrat, the learned counsel appearing on behalf of the petitioner placed the application, provisions of law and submits that in the present circumstances it appears that the alleged transfer as well as appointment of director is barred by law as much as the same cannot be effective because of the non-compliance of the provision as laid down in section 27Ka of the Banking Companies Act, 1991 and as such the petitioner is entitled to get an order from this court directing the respondent No. 5 to rectify the share register as well as to amend and issue a fresh certified copies of Form 12 as well as other returns deleting the name of the petitioner as director of the company in question. The learned counsel also placed the provision as

laid down in section 43 of the Companies Act, 1994 as well as the provision of section 27Ka of the Banking Companies Act, 1991. By referring the provision as laid down in the Banking Companies Act, 1991 he submits that being a special law and because of the non-obstantive clause as incorporated in the particular provision, it is incumbent upon any person or authority or company to take prior approval of the lenders before effecting transfer of shares/appointment/resignation of director. The learned counsel submits that in the present case in hand the company is a borrower with at least with 26 financial institutions of the country and the credit facilities were availed by the said company is still continuing and in such circumstances any transfer of shares by the directors or resignation of any director or appointment of any director cannot be enforceable except with the clear consent of the lenders as stipulated in section 27Ka of the Banking Companies Act, 1991. By placing the chronological facts, he submits that there is no doubt or dispute regarding holding of 9,17,500/- ordinary shares of the petitioner by way of purchase and being an ordinary share holder but there is a clear dispute regarding the transfer of 24,69,447 shares in the name of the petitioner by his wife the respondent No. 7 who was also the director of the company in question. He further submits that subsequent appointment of the petitioner as director is also barred but the provision of section 27Ka of the Banking Companies Act, 1991.

He further submits that the petitioner drew attention about such facts with the company who in its 263th Board Meeting dated 31.07.2023 decided to delete the name of the petitioner as director of the company as much as also rectify the transfer of 24,69,447 shares transferred by respondent No. 7 in favour of the petitioner. The learned counsel further submits that in such circumstances this court exercising the power conferred under section 43(1)(A) of the Companies Act, 1994 can direct the respondent No. 4 to rectify the share register as well as to take necessary steps regarding deleting the name of the petitioner as director which is consequent to such transfer.

Mr. Moloy Kumar, the learned counsel for the respondent No. 1 company submits that he has no objection if the application is being allowed as the company already decided the same in the 263th Board Meeting of the company is question.

I have perused the application under section 43 of the Companies Act, 1994, grounds taken thereon, necessary papers and documents annexed herewith, materials on records, provisions of law and heard the learned counsels for the contesting parties.

On perusal of the same, it transpires that after following all the provisions and procedures the present petitioner invoked the jurisdiction of this court as given under section 43 of the Companies Act, 1994. It also transpires that admittedly the petitioner is an ordinary share holder by holding 9,17,500 ordinary shares by way of

purchase but it transpires that subsequently the respondent No. 7 who is also a director and share holder of the company as much as the wife of the petitioner gifted 24,69,447 number of shares in favour of the petitioner on 16.07.2019. It also further transpires that the said transfer was approved by the Board of Director of the company in its 213th meeting held on 27.06.2019. It transpires that subsequently the petitioner was inducted as director of the company on 29.07.2019. while the respondent No. 7 resigned as director of the company on 29.07.2019. It also transpires that after such transaction the company submitted relevant papers and documents for registration and endorsement with the respondent No. 3 and the respondent No. 3 issued necessary certified copies to that effect. Subsequently, it has been detected that the said transfer as well as appointment of the petitioner as director of the company is not lawful as because of the legal restriction by the provisions of the Banking Companies Act, 1991. Section 27Ka of Banking Companies Act, 1991 as amended in the year 1997 which runs as follows;

আপাততঃ বলবৎ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, ঋণদাতা ব্যাংক বা আর্থিক প্রতিষ্ঠানের পরিচালক পর্ষদ বা, ক্ষেত্রমত, উর্ধ্বতন কর্তৃপক্ষের অনুমোদন ব্যতীত, কোন দেনাদার কোম্পানী বা প্রতিষ্ঠানের কোন পরিচালক বা পরিচালনা কর্তৃপক্ষের কোন সদস্যের পদত্যাগ কার্যকর হইবে না এবং কোন পরিচালক তাহার শেয়ার হস্তান্তর বা বিক্রয় করিতে পারিবেন না।

So, on perusal of the aforesaid provisions of law, it transpires

that no resignation of any director or transfer of any share by such director, in any way cannot be done without the approval of the lenders, namely the loan granting financial institutions. So, on meticulous perusal of the aforesaid provision of law containing non-obstantive clause it is crystal clear that when a company availed credit facilities from any lenders the director of the company has no right to resign or transfer any share(s) in any way without the written approval of the said lenders company.

In the present case in hand, it transpires that the company in question availed credit facilities from as many as 26 financial institutions which is a continuing one and during pendency of the credit facilities the respondent No. 7 who was a director at that time transferred 24,69,447 number of shares in favour of the petitioner on 16.07.2019 duly approved in the Board of Directors Meeting dated 27.06.2019 as gift. It also transpires that the respondent No. 7 resigned from the post of the director and the petitioner was appointed as director as he is holding more than 2% shares in the company in question as determined by the Bangladesh Security and Exchange Commission Guideline and Regulation for being director of a public limited company. On meticulous perusal of the papers and documents, it transpires that the transfers, resignation as well as appointment were done during pendency of the credit facilities which is hit by the provisions of section 27Ka of the Banking Companies Act, 1991.

Section 43(1)(Ka) of the Companies Act, 1994 runs as follows;

”৪৩- সদস্য বহি সংশোধনের জন্য আদালতের ক্ষমতা:

(১) যদি-

(ক) পর্যাপ্ত কারণ ব্যতিরেকে কোন ব্যক্তির নাম কোন কোম্পানির সদস্য-বহিতে লিপিবদ্ধ করা হয় কিংবা উহা হইতে বাদ দেওয়া হয়, অথবা...

তাহা হইলে তদ্বারা সংক্রান্ত ব্যক্তি বা উক্ত কোম্পানির কোন সদস্য কিংবা উক্ত কোম্পানি ঐ সদস্য-বহি সংশোধনের জন্য আদালতের নিকট আবেদন করিতে পারিবেন।”

So, it transpires that this court is empowered to rectify a share register if the name of any person is entered or omitted from the registrar of the members without sufficient cause. Non-compliance of any legal provision(s) or given effect in violation of any law especially regarding a law with *non-obstantive* clause construed the word without sufficient cause strictly.

In the present case in hand, it is crystal clear that the transfer of the aforesaid shares by respondent No. 7 and her resignation as well as subsequent appointment of petitioner pursuant to the transfer of the said shares are not lawful in any manner and hit by the provisions of section 27Ka of the Banking Companies Act, 1991. In the absence of any written approval by the lenders such transfer or appointment or resignation is a nullity and as such I am of the view that the petitioner is entitled to get an order for rectifying the shares as per section 43 of

the Companies Act, 1994.

Hence, it is ordered that the respondent No. 3 is directed to rectify the share register by transferring/restoring 24,69,447 number of shares in the name of the respondent No. 7 and also issued a fresh certified copy of Form 12 deleting the name of the petitioner as director of the company within 30(thirty) days from the date of receipt of the instant judgment and order.

In the result, the instant application under section 43 of the Companies Act, 1994 is allowed.

The office is directed to communicate the judgment and order to the concerned authorities at once.

(Mamnoon Rahman, J:)

Emdad.B.O.