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

Present:

**Mr. Justice Md. Toufiq Inam.**

**COMPANY MATTER NO. 287 OF 2024.**

IN THE MATTER OF:
An application under Section 43 and Section 81(2) read with section 396 of the Companies Act, 1994 .

And

IN THE MATTER OF**:**

Ali Haider Ratan and another,

----- Petitioners.

-Versus -

Khudeja Bhumukhi Farm Ltd., and others.

----- Respondents.

Mr. Mohammad Hossain, Senior Advocate with
Mr. Md. Mamonor Rashid, Advocate

----- For the Petitioners.

Mr. Fida M. Kamal, Senior Advocate with
Mr. Golam Ahmed, Advocate

----- For the Respondent No. 3

**The 25th June, 2026.**

**Md. Toufiq Inam, J.**

This is an application under sections 43 and 81(2) read with section 396 of the Companies Act, 1994 seeking rectification of the register of members of respondent No. 1 Company, namely Khudeja Bohumukhi Farm Ltd., recognition of the petitioners as shareholders and consequential directions relating to the management and affairs of the Company.

**The case of the petitioners, in brief, is that** respondent No. 1, Khudeja Bohumukhi Farm Ltd., was incorporated on 07.10.2004 with an authorized and issued share capital of 10,000 ordinary shares. Initially, respondent Nos. 2 and 3, who were then husband and wife, each held 5,000 shares and served as directors of the Company. Respondent No. 3 subsequently executed a Power of Attorney on 19.10.2010 authorizing respondent No. 2 to act on her behalf in relation to the Company's affairs, including her shareholding.

According to the petitioners, respondent No. 2 transferred 1,250 shares to respondent No. 4, who became a director on 17.01.2021. Thereafter, the parties entered into negotiations for the acquisition of the entire shareholding and business of the Company, including its principal asset, Meghaloy Tea Estate. Pursuant thereto, a Business/Share Purchase Agreement dated 01.01.2022 was executed whereby the respondents agreed to sell the entire issued share capital of the Company to the petitioners for a consideration of Tk. 32,00,00,000/-. The petitioners claim that part of the consideration was paid in advance and the balance was agreed to be paid in stages.

It is the petitioners' case that, in partial implementation of the agreement, respondent No. 4 transferred his 1,250 shares to petitioner No. 1 and resigned from the Board. They further assert that, by resolutions adopted at Board meetings held on 05.01.2022 and 08.01.2022, the transfer of the remaining 8,750 shares held by respondent Nos. 2 and 3 was approved, and respondent No. 2, both in his own capacity and as attorney of respondent No. 3, executed the requisite share transfer instruments, affidavits, declarations, resignation letters and other statutory documents in favour of petitioner No. 2.

The petitioners further state that the relevant statutory forms, including Form-117 and Form-XII, were submitted to the Registrar of Joint Stock Companies and Firms (RJSC), and respondent No. 4 appeared before the RJSC to verify the documents. However, respondent No. 2 subsequently withheld certain original documents and failed to cooperate in completing the remaining statutory formalities. Despite repeated requests and legal notices, the respondents allegedly refused to appear before the RJSC, while certain filings were not accepted due to the Company's failure to update its statutory records.

The petitioners contend that the respondents, having executed the agreement and the necessary transfer documents, deliberately frustrated completion of the transaction by withholding cooperation, thereby preventing the petitioners from being formally registered as shareholders and directors of the Company. On these allegations, the petitioners have filed the present application under sections 43 and 81(2) of the Companies Act, 1994 seeking rectification of the register of members, recognition of their shareholding and directorship, and consequential directions relating to the management of the Company.

**The case of respondent No. 3, in brief, is that** the alleged Business/Share Purchase Agreement dated 01.01.2022 is unlawful, unenforceable and incapable of conferring any legal right upon the petitioners. According to respondent No. 3, the principal asset of the Company, namely Meghaloy Tea Estate, is held under a governmental lease regulated by the Bangladesh Tea Board and the Government of Bangladesh, and no transfer of the tea estate, its management, possession or beneficial interest can lawfully be effected without prior governmental approval. As no such approval was obtained, the alleged transaction is said to be contrary to the terms of the lease, opposed to public policy and void in law. It is further contended that the proposed transfer of shares was merely a device to indirectly transfer control of the tea estate by circumventing the applicable legal restrictions.

Respondent No. 3 further contends that the alleged share transfers were effected in violation of Articles 8, 9 and 10 of the Articles of Association, which confer pre-emptive rights upon existing shareholders. It is asserted that respondent No. 2 transferred 1,250 shares to respondent No. 4 on 17.01.2021 without first offering those shares to respondent No. 3, who was then an existing shareholder holding 5,000 shares. Consequently, the said transfer was void ab initio, and the subsequent transfer of those shares by respondent No. 4 to petitioner No. 1 is also invalid. It is further stated that the validity of the transfer of the said 1,250 shares is presently the subject matter of Title Suit No. 1970 of 2022 pending before the competent Civil Court.

Respondent No. 3 also denies that respondent No. 2 had any authority to transfer the 5,000 shares standing in her name. She asserts that her marriage with respondent No. 2 was dissolved by divorce in 2013 and that respondent No. 2 thereafter fraudulently relied upon an outdated and disputed Power of Attorney to purportedly transfer her shares without her knowledge, consent or consideration. She disputes the execution and validity of the transfer instruments relied upon by the petitioners, contends that objections were duly lodged before the Registrar of Joint Stock Companies and Firms (RJSC), and maintains that the petitioners have acquired no lawful right, title or interest in the Company. Accordingly, it is prayed that the application under sections 43 and 81(2) of the Companies Act, 1994 be dismissed.

Mr. Mohammad Hossain, learned Senior Advocate appearing with Mr. Md. Mamonor Rashid, learned Advocate on behalf of the petitioners, submits that the respondents voluntarily entered into a comprehensive Business/Share Purchase Agreement dated 01.01.2022 for the transfer of the entire issued share capital of respondent No. 1 Company and its business undertaking, and that the petitioners paid substantial consideration in terms of the agreement. According to the learned Senior Advocate, the agreement was not a mere executory contract but was substantially acted upon by the parties. In implementation thereof, respondent No. 4 transferred his shares in favour of petitioner No. 1, resigned from the Board of Directors, and appeared before the Registrar of Joint Stock Companies and Firms (RJSC) to verify the statutory documents. He further submits that the Board of Directors, by resolutions dated 05.01.2022 and 08.01.2022, formally approved the transfer of shares and the consequential restructuring of the Board, thereby evidencing the Company's conscious decision to implement the transaction.

He further submits that respondent No. 2, both in his personal capacity and as the constituted attorney of respondent No. 3 under the registered Power of Attorney dated 19.10.2010, executed the requisite transfer deeds, affidavits, declarations, resignation letters, Forms-117, Form-XII and other statutory documents required for completion of the transfer process. The petitioners, acting upon those representations and documents, altered their position, paid substantial consideration, assumed control of the business, and acquired valuable equitable and contractual rights in the shares. Having voluntarily initiated and substantially implemented the transaction, the respondents, according to the learned Senior Advocate, are now estopped from repudiating the same merely because they subsequently changed their mind. He submits that the conduct of the respondents attracts the equitable principles of estoppel, acquiescence and approbation and reprobation, and that no party should be permitted to accept the benefits of a transaction while simultaneously repudiating its obligations.

Referring to section 43 of the Companies Act, 1994, learned Senior Advocate argues that this Court possesses wide and summary jurisdiction to rectify the register of members whenever the name of a person has been wrongfully omitted therefrom or where a company has unjustifiably refused or failed to register a valid transfer of shares. According to him, the present case falls squarely within the scope of the said provision because the omission of the petitioners' names from the register was not occasioned by any defect in the transfer itself but solely by the deliberate non-cooperation of the respondents, who withheld original documents, avoided appearance before the RJSC and frustrated completion of the statutory formalities after having executed all the necessary instruments. He submits that the respondents cannot be permitted to take advantage of their own wrongful conduct to defeat rights which had already accrued in favour of the petitioners.

Mr. Hossain further contends that the objections founded upon the lease conditions governing Meghaloy Tea Estate are wholly misconceived and legally untenable. According to him, respondent No. 1 is a company incorporated under the Companies Act and possesses a legal personality distinct from its shareholders. The assets of the Company, including the Tea Estate, belong to the Company itself and not to its shareholders. Consequently, a transfer of shares merely effects a change in the ownership of the Company's share capital and does not amount to a transfer, assignment or conveyance of the Company's assets or leasehold interest. Therefore, the restrictions contained in the lease governing Meghaloy Tea Estate cannot invalidate an otherwise lawful transfer of shares between shareholders. Learned Senior Advocate submits that the respondents are deliberately conflating two distinct legal concepts—transfer of corporate shares and transfer of company assets—in an attempt to avoid performance of their contractual obligations.

He further argues that the objections now raised by respondent No. 3 regarding the alleged invalidity of the Power of Attorney, violation of the Articles of Association and restrictions under the lease are nothing but afterthoughts. According to him, throughout the negotiation and implementation of the transaction the respondents never questioned the authority of respondent No. 2, never disputed the validity of the Power of Attorney, and themselves participated in the execution of the necessary corporate resolutions and statutory documents. Only after receiving substantial consideration and permitting the petitioners to act upon the agreement did they seek to resile from the transaction by raising technical objections. Learned Senior Advocate, therefore, submits that the respondents' conduct is mala fide, inequitable and intended solely to defeat the legitimate rights of the petitioners. He accordingly prays that the register of members be rectified under section 43 of the Companies Act, 1994 by recording the petitioners as shareholders and directors of respondent No. 1 Company and by granting the consequential reliefs prayed for in the application.

The application is contested by respondent No. 3, who has entered appearance and filed an affidavit-in-opposition denying the material assertions made in the petition.

Mr. Fida M. Kamal, learned Senior Advocate appearing with Mr. Golam Ahmed on behalf of respondent No. 3, submits that the present application is wholly misconceived and not maintainable, inasmuch as it involves numerous disputed and complicated questions of fact and law which cannot be adjudicated in the summary jurisdiction conferred by section 43 of the Companies Act, 1994. According to him, the petitioners seek to obtain, under the guise of rectification of the register of members, adjudication upon the validity of an alleged Business/Share Purchase Agreement, disputed share transfers, the legality of Board proceedings, the scope and subsistence of an alleged Power of Attorney, compliance with the Articles of Association and the effect of statutory restrictions governing Meghaloy Tea Estate. All these issues, he submits, require detailed examination of oral and documentary evidence and are matters properly triable by the competent Civil Court rather than in a summary proceeding for rectification.

He further submits that the principal object of the alleged transaction was to transfer effective control and management of Meghaloy Tea Estate, which constitutes the principal asset of respondent No. 1 Company. He contends that the tea estate is held under a governmental lease regulated by the Bangladesh Tea Board and the Government of Bangladesh, and that the applicable lease conditions expressly prohibit any transfer of the tea estate, its management, possession or beneficial interest without obtaining prior approval from the competent governmental authorities. Since no such approval was ever obtained, the alleged Business/Share Purchase Agreement is, according to him, contrary to the governing statutory and contractual framework and incapable of enforcement. He argues that the petitioners cannot circumvent those legal restrictions by adopting the device of transferring the shares of the Company instead of directly transferring the tea estate itself.

He next contends that the alleged transfer of shares was fundamentally defective and in clear violation of the Articles of Association of the Company. Referring to Articles 8, 9 and 10, he submits that the Articles confer pre-emptive rights upon the existing shareholders and mandate that any shareholder intending to transfer shares must first offer them to the remaining shareholders in the prescribed manner. According to him, respondent No. 2 transferred 1,250 shares to respondent No. 4 on 17.01.2021 without first offering those shares to respondent No. 3, who at the material time held 5,000 shares in the Company. Consequently, the transfer in favour of respondent No. 4 was void ab initio and incapable of creating any lawful title. It follows, he submits, that respondent No. 4 could not thereafter transfer a better title to petitioner No. 1 than he himself possessed. Learned Senior Advocate further points out that the validity of the transfer in favour of respondent No. 4 is already under challenge in Title Suit No. 1970 of 2022 pending before the competent Civil Court and, therefore, the rights now claimed by the petitioners are directly dependent upon the outcome of that suit.

He further submits that respondent No. 3 never consented to the transfer of the 5,000 shares standing in her name, never executed any transfer deed in favour of the petitioners and never received any part of the alleged consideration. According to him, the marital relationship between respondent Nos. 2 and 3 had already been dissolved by divorce in or about 2013, and respondent No. 2 thereafter ceased to have any authority to deal with respondent No. 3's proprietary interests. He submits that even assuming, without admitting, that a Power of Attorney had once been executed in favour of respondent No. 2, the same was subsequently revoked and, in any event, could not authorize the transfer of respondent No. 3's shares in the manner alleged by the petitioners. Consequently, the purported transfer of her shareholding is void and without legal effect.

He also submits that the petitioners have failed to produce any unimpeachable evidence demonstrating completion of the statutory requirements for registration of the alleged transfers. On the contrary, objections were duly lodged before the Registrar of Joint Stock Companies and Firms (RJSC), and the statutory authorities were informed of the disputes concerning the Company's shareholding and management. In such circumstances, he contends, the petitioners cannot invoke the summary jurisdiction of this Court to obtain declarations of title or to resolve disputed questions relating to ownership of shares.On the above grounds, learned Senior Advocate submits that the petitioners have failed to establish any existing legal right entitling them to rectification of the register of members under section.

Having given anxious consideration to the rival submissions advanced by the learned Senior Advocates appearing for the parties and upon careful examination of the pleadings and the documentary materials placed before this Court, it appears that the controversy raised in the present application may conveniently be examined under three broad heads, namely: (i) whether respondent No. 2 possessed lawful authority to act on behalf of respondent No. 3 in relation to her shareholding in respondent No. 1 Company; (ii) whether the petitioners have established a legally recognizable transfer of the shares standing in the names of respondent Nos. 2 and 4 so as to justify rectification of the register of members under section 43 of the Companies Act, 1994; and (iii) whether recognition of any such transfer of shares would, in law, amount to recognition of any proprietary, possessory or management interest in Meghaloy Tea Estate.

The first objection raised by respondent No. 3 relates to the authority of respondent No. 2 to represent her in the affairs of the Company. The materials on record disclose that respondent No. 3 admittedly executed a Power of Attorney before the Bangladesh Consulate in London on 19.10.2010 authorising respondent No. 2

to deal with matters relating to the Company, including her shareholding. Significantly, respondent No. 3 herself has produced before this Court a subsequent deed purporting to revoke the said Power of Attorney. In the ordinary course of law, a revocation necessarily presupposes the existence of a valid authority. Thus, the very reliance placed by respondent No. 3 upon the deed of revocation constitutes an admission that such authority had indeed been created.

More importantly, no convincing material has been produced before this Court demonstrating that the Power of Attorney stood revoked prior to the transactions forming the subject matter of the present proceeding. Neither have the petitioners been shown to have had notice of any earlier revocation. On the contrary, the contemporaneous corporate documents, including the Board proceedings and the transfer-related documents, consistently depict respondent No. 2 acting not only in his own capacity but also as the constituted attorney of respondent No. 3. Such conduct continued without any contemporaneous protest or objection from respondent No. 3. In these circumstances, this Court is unable to accept the submission that respondent No. 2 lacked authority altogether to represent respondent No. 3 in relation to the affairs of the Company.

The next question concerns the transfer of 1,250 shares by respondent No. 2 in favour of respondent No. 4 and the subsequent transfer of those shares by respondent No. 4 in favour of petitioner No. 1. Respondent No. 3 contends that the initial transfer violated the pre-emption provisions contained in Articles 8, 9 and 10 of the Articles of Association because the shares were not first offered to her, despite her being an existing shareholder. Consequently, according to her, respondent No. 4 acquired no valid title and could not pass any better title to the petitioners.

This Court finds that the aforesaid controversy is presently the subject matter of Title Suit No. 1970 of 2022 pending before the competent Civil Court. The legality of the transfer in favour of respondent No. 4, the interpretation of the Articles of Association, the alleged violation of pre-emptive rights and the consequential effect upon subsequent transfers are all issues directly involved in the said suit. These are matters requiring detailed examination of evidence and determination by the competent forum. It is a well-established principle that where substantially identical issues are already pending before another competent court, this Court, while exercising its summary jurisdiction under section 43 of the Companies Act, ought to refrain from recording findings which may embarrass or prejudice the adjudication in the pending civil proceeding. Judicial discipline and the need to avoid conflicting decisions demand such restraint. Accordingly, this Court consciously declines to pronounce upon the legality or otherwise of the transfer of the aforesaid 1,250 shares, leaving all questions relating thereto to be determined by the Civil Court in accordance with law.

The position with regard to the shares standing in the name of respondent No. 2, however, stands on an altogether different footing. The Business/Share Purchase Agreement dated 01.01.2022, read together with the Board resolutions dated 05.01.2022 and 08.01.2022, Forms-117, resignation letters and other contemporaneous corporate records, unmistakably demonstrates that respondent No. 2 voluntarily agreed to transfer his own shareholding consisting of 3,750 shares in favour of petitioner No. 2. The documentary evidence further shows that respondent No. 2 executed the requisite documents in furtherance of the agreed transaction. Significantly, respondent No. 2 has chosen not to contest these proceedings. He has neither appeared before this Court nor filed any affidavit denying execution of the documents or disputing his participation in the transaction. Such silence assumes considerable significance, particularly when serious allegations regarding execution of documents have been made against him. His conduct is wholly consistent with a concluded intention to divest himself of his own shareholding.

The claim relating to the 5,000 shares standing in the name of respondent No. 3, however, cannot be viewed in the same manner. Although this Court has held that respondent No. 2 possessed authority to act under the Power of Attorney at the relevant time, the existence of authority alone does not automatically establish a completed transfer of valuable proprietary rights. A valid transfer of shares, particularly where consideration is disputed, must be supported by satisfactory evidence demonstrating that the transfer was completed in accordance with the agreement and that the registered shareholder either received or became legally entitled to receive the agreed consideration.

In the present case, the materials placed before this Court do not satisfactorily establish payment, tender or lawful appropriation of the consideration attributable specifically to respondent No. 3's shareholding. The agreement refers to an aggregate consideration payable for the acquisition of the entire shareholding and business of the Company, but the materials before this Court do not clearly demonstrate how much consideration was allocated to respondent No. 3, whether such amount was paid or tendered to her, or whether respondent No. 2 was authorised to receive the same on her behalf. In view of the serious dispute raised by respondent No. 3 regarding receipt of consideration and her denial of having authorised the ultimate transfer, this Court is not persuaded that a completed and enforceable transfer of her shares has been established for the purpose of exercising the summary jurisdiction under section 43 of the Companies Act.

The Court also finds no substance in the contention that recognition of a transfer of shares necessarily amounts to recognition of any proprietary or possessory right in Meghaloy Tea Estate. The argument overlooks one of the most fundamental principles of company jurisprudence, namely, the separate legal personality of a company. Upon incorporation, a company becomes a legal person distinct from its shareholders. The assets of the company belong exclusively to the company itself and not to its members. A shareholder owns shares in the company but acquires no direct proprietary interest in the assets owned by the company. Consequently, a transfer of shares merely changes the ownership of the share capital and does not operate as a transfer of the company's immovable properties, leasehold interests or other assets.

It therefore follows that even if rectification of the register of members is ordered in respect of certain shares, such rectification cannot by itself confer upon the petitioners any ownership, possessory, leasehold or management rights in Meghaloy Tea

Estate contrary to the conditions of the governmental lease or the applicable regulatory framework. Questions relating to the leasehold rights of the Tea Estate, compliance with the conditions imposed by the Bangladesh Tea Board or the Government, and any approval required under the relevant lease agreements remain entirely unaffected by the present proceeding and shall continue to be governed by the applicable statutory and contractual provisions.

Upon an overall assessment of the evidence, this Court is therefore satisfied that the petitioners have established a lawful entitlement to rectification only in respect of the 3,750 shares admittedly owned by respondent No. 2. They have failed to establish, to the satisfaction of this Court, a completed and enforceable transfer in respect of the 5,000 shares standing in the name of respondent No. 3. Likewise, no determination can presently be made regarding the 1,250 shares formerly held by respondent No. 4 in view of the pendency of Title Suit No. 1970 of 2022. The relief sought by the petitioners must therefore be moulded accordingly.

**For the reasons stated above, the application is allowed in part.** Accordingly, the following orders are passed:

(a) Respondent No. 1 Company shall rectify its Register of Members by recording the transfer of the 3,750 shares standing in the name of respondent No. 2 in favour of petitioner No. 2 within 30 (thirty) days from receipt of this judgment.

(b) The prayer for rectification in respect of the 1,250 shares formerly standing in the name of respondent No. 4 is kept open, and the rights of the parties thereto shall abide by the final decision in Title Suit No. 1970 of 2022.

(c) The prayer for rectification in respect of the 5,000 shares standing in the name of respondent No. 3 is rejected, without prejudice to the petitioners' right to seek appropriate relief before the competent forum.

(d) It is declared that this judgment merely determines the entitlement to rectification of the register of members under section 43 of the Companies Act, 1994 and shall not be construed as transferring, assigning or recognising any proprietary, possessory, leasehold or management right in Meghaloy Tea Estate, which shall continue to remain the property of respondent No. 1 Company and shall remain subject to all applicable statutory provisions, lease conditions and directions of the competent authorities.

(e) The observations made herein are confined to the issues arising under sections 43 and 81(2) of the Companies Act, 1994 and shall not prejudice the adjudication of Title Suit No. 1970 of 2022 or any other proceeding between the parties.

There shall be no order as to costs.

**(Justice Md. Toufiq Inam)**

Ashraf/ABO.