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

Present:

Mr. Justice Md. Toufiq Inam

COMPANY MATTER NO. 368 OF 2024.

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF :

Mohammad Quyaum and another.

------ Petitioners.

-Versus-

National Drug Co. Limited and others.

------ Respondents.

Mr. Shah Muhammad Ezaz Rahman, with
Mr. Mustaque Ahmed Chowdhury, and
Mr. S.M. Shamim Hossain, Advocates

------ For the Petitioners.

Mr. Md. Yousuf Ali, with
Mr. Gobinda Biswas,
Mr. Md. Shyful Islam,
Ms. Tanima Rahman, and
Mr. Md. Faizullah, Advocates

------ For the Respondents.

Judgment Delivered On: 28.06.2026.

Md. Toufiq Inam, J:

This is an application under section 43 of the Companies Act, 1994 seeking rectification of the register of members of Respondent No. 1 Company, namely-***National Drug Co. Limited***, of 9/10, Tajmahal Road, Block-C, Mohammadpur, Dhaka-1207, Dhaka, Head office:

2133, West Agargaon North Shaymoli, Dhaka-1207; Factory address: Borobangal Dhamra, Dhaka.

Case of the Petitioners

The Petitioners contend that Respondent No. 2, in collusion with the other respondents, has unlawfully altered the shareholding structure and management of Respondent No. 1 Company with the object of depriving them of their lawful rights and interests in the company.

According to the Petitioners, the entire issued share capital comprising 11,300 shares was purchased by Petitioner No. 1 and Respondent No. 2 on 20.03.2021. They allege that Respondent No. 2 subsequently and wrongfully caused 1,000 shares, originally transferred by Md. Abdur Razzak in favour of Petitioner No. 1, to be recorded in his own name. It is their case that the duly executed instrument of transfer (Form-117), together with the subsequent admissions made by Respondent No. 2 before Janata Bank Limited and the Registrar of Joint Stock Companies and Firms (RJSC), conclusively establish that the said 1,000 shares belong to Petitioner No. 1.

On 10.12.2022 Respondent No. 2 illegally increased the paid-up capital of the company by allotting an additional 2,00,000 shares without issuing any notice to the Petitioners, without convening a lawful meeting of the Board of Directors, and without complying with the mandatory requirements of section 155 of the Companies Act, 1994. According to the Petitioners, they were neither offered the newly issued shares proportionately nor afforded an opportunity to exercise their pre-emptive rights. They further allege that the board resolutions, resignation letter and no-objection certificate relied upon by the Respondents are forged and fabricated documents containing forged signatures of the Petitioners.

The Petitioners further assert that the subsequent transfer of 2,11,890 shares in favour of Respondent Nos. 4-8 was effected in blatant violation of Article 12 of the Articles of Association of the company. According to them, no prior offer of the shares was ever made to them before the impugned transfers were approved, and the mandatory procedure prescribed in the Articles of Association was wholly disregarded. It is also their case that the alleged Board meeting dated 26.11.2023, at which the transfers were approved, was neither lawfully convened nor attended by them, and that no notice thereof was served upon Petitioner No. 2, who, according to the Petitioners, continued to be a director of the company.

The Petitioners therefore contend that the increase of the share capital, the allotment of the additional 2,00,000 shares, the transfer of 2,11,890 shares in favour of Respondent Nos. 4-8, and the recording of the disputed 1,000 shares in the name of Respondent No. 2 are illegal, void, without lawful authority, and liable to be set aside by rectification of the register of members. During the pendency of the present proceeding, while the legality of the allotment of the additional 2,00,000 shares and the transfer of 2,11,890 shares in favour of Respondent Nos. 4-8 remained sub judice before this Court, Respondent Nos. 4 and 5, together with one Md. Zinnath Hussain, transferred a further 1,10,600 shares in favour of Respondent No. 3 and two outsiders, namely Kazi Ahnaf Aquib and Md. Nazrul Islam. According to the Petitioners, these transfers were effected pursuant to a purported Board meeting held on 26.02.2025 allegedly convened by Respondent No. 2 and were subsequently recorded by the RJSC. They assert that the impugned transfers were made without any prior notice to them and without affording them the preferential right of purchase guaranteed under Article 12 of the Articles of Association. It is their specific case that no offer whatsoever was made to them before the transfers were approved and registered.

The Petitioners further allege that the aforesaid transfers were effected in clear violation of Article 12 of the Articles of Association and section 155 of the Companies Act, 1994. According to them, since the validity of the shares held by Respondent Nos. 4-8 was already under challenge in the present proceeding, the subsequent transfers during the pendency of the case constituted a calculated attempt to alter the shareholding structure of the company and frustrate the adjudication of the issues before this Court. They contend that Respondent Nos. 4 and 5, instead of contesting the claim for rectification on its merits, transferred away their entire shareholdings in collusion with Respondent No. 2 with a view to overreaching the process of the Court. Accordingly, the Petitioners pray for cancellation of the transfers of 62,600 shares by Respondent No. 4 in favour of Kazi Ahnaf Aquib, 25,040 shares by Respondent No. 5 in favour of Md. Nazrul Islam, 20,960 shares by Respondent No. 5 in favour of Respondent No. 3, and 2,000 shares by Md. Zinnath Hussain in favour of Kazi Ahnaf Aquib, together with consequential rectification of the register of members.

By the main application and the supplementary affidavits filed therein, the Petitioners have prayed for, amongst others, the following reliefs:

(a) A declaration that the increase of the share capital of Respondent No. 1 Company by way of allotment of 2,00,000 shares on 10.12.2022 (as evidenced by Annexure-X15 to the Petitioners' Supplementary Affidavit dated 06.02.2025) and the transfer of a total of 2,11,890 shares in favour of Respondent Nos. 4-8 (as evidenced by Annexure-X16 to the Petitioners' Supplementary Affidavit dated 06.02.2025) are illegal, void and of no legal effect, and a further declaration that Respondent Nos. 4-8 are not entitled to any shares in Respondent No. 1 Company;

(b) An order for rectification of the share register of Respondent No. 1 Company by cancelling the transfer of 2,11,890 shares in favour of Respondent Nos. 4-8, as evidenced by Annexure-X16, by deleting the names of Respondent Nos. 4-8 from the share register of Respondent No. 1 Company, and by restoring the shareholding position as it existed prior to the further allotment of shares made on 10.12.2022;

(c) An order declaring that Petitioner No. 1 is the lawful owner of the 1,000 shares transferred by Mr. Abdur Razzak on 20.03.2021, together with an order for rectification of the share register of Respondent No. 1 Company by deleting the name of Respondent No. 2 as the holder of the said 1,000 shares transferred by Mr. Abdur Razzak on 20.03.2021 and recording the name of Petitioner No. 1 in respect thereof; and

(d) An order for rectification of the share register of Respondent No. 1 Company by cancelling the transfer of 62,600 shares by Respondent No. 4 in favour of Kazi Ahnaf Aquib, 25,040 shares by Respondent No. 5 in favour of Md. Nazrul Islam, 20,960 shares by Respondent No. 5 in favour of Respondent No. 3, and 2,000 shares by Md. Zinnat Hussain in favour of Kazi Ahnaf Aquib (as evidenced by Annexure-Q series to the Petitioners' Supplementary Affidavit dated 24.04.2025), and by restoring the shareholding position as it existed prior to the further allotment of shares made on 10.12.2022.

Case of the Respondents

The Respondents deny the allegations of illegality, oppression, and mismanagement, and contend that every action taken in relation to the affairs of the company was lawful and in conformity with the Companies Act, 1994 and the Articles of Association.

In respect of the disputed 1,000 shares, Respondent No. 2 asserts that the shares were in fact transferred to him by Md. Abdur Razzak and that the appearance of the name of Petitioner No. 1 as transferee in the instrument of transfer was the result of an inadvertent mistake. In support of this contention, Respondent No. 2 relies upon an affidavit sworn by the transferor, a board resolution of the previous management, a share transfer certificate issued by the previous Managing Director, Schedule-X issued by the RJSC, and other contemporaneous company records.

The Respondents further contend that the decision to increase the share capital and allot an additional 2,00,000 shares was duly approved by the Board of Directors on 10.12.2022 and was subsequently confirmed at the Extraordinary General Meeting held on 08.01.2023. According to them, all existing shareholders were offered shares in accordance with law, and Petitioner No. 2 voluntarily resigned from the Board and furnished a no-objection certificate in respect of the allotment. They therefore maintain that the allotment was validly made and is not open to challenge.

With regard to the transfer of 2,11,890 shares in favour of Respondent Nos. 4-8, the Respondents contend that the transfers were effected with the knowledge of the Petitioners after the latter had declined to purchase the shares. It is further contended that the transfers were duly approved at the Board meeting held on 26.11.2023 and that the Petitioners, not being directors at the relevant time, were not entitled to notice of the said meeting. The Respondents further contend that the Petitioners had sufficient opportunity to raise objections before the RJSC but failed to do so.The Respondents accordingly pray for dismissal of the application and for affirmation of the existing shareholding structure and entries in the register of members.

Submissions of the Parties

Mr. Shah Muhammad Ezaz Rahman, the learned Advocate appearing on behalf of the Petitioners, submits that the Petitioners are registered members of Respondent No. 1 Company and, as such, are entitled to exercise the statutory and contractual rights conferred upon them under the Companies Act, 1994 and the Articles of Association of the company.

Firstly, he submits that where a company proposes to increase its share capital, the newly issued shares must, in terms of section 155(1) of the Companies Act, 1994, be offered to the existing members in proportion to their respective shareholdings. According to him, the allotment of an additional 2,00,000 shares on 10.12.2022 was made without issuing any offer to the Petitioners and without affording them an opportunity to exercise their statutory pre-emptive rights. He contends that the allotment was therefore made in direct contravention of the mandatory provisions of section 155 of the Companies Act, 1994 and is liable to be declared illegal, void and of no legal effect.

Secondly, placing reliance upon Article 12 of the Articles of Association, Mr. Rahman submits that no member is entitled to transfer his shares to an outsider so long as an existing member is willing to purchase the same at a fair value to be determined by the Board of Directors. According to him, Article 12 creates a contractual right of pre-emption in favour of the existing members and casts a mandatory obligation upon a member intending to transfer shares to first offer those shares to the existing members after due notice. Only where the existing members decline or fail to purchase the shares can they be transferred to outsiders. He submits that neither prior to the transfer of 2,11,890 shares in favour of Respondent Nos. 4-8 nor before the subsequent transfer of 1,10,600 shares in favour of Respondent No. 3 and other outsiders were the Petitioners notified of the proposed transfers or afforded any opportunity to exercise their preferential rights under Article 12. Consequently, the impugned transfers, having been effected in breach of the Articles of Association, are liable to be cancelled by rectification of the register of members.

Thirdly, the learned Advocate submits that Respondent No. 2 has repeatedly acknowledged that the disputed 1,000 shares originally transferred by Md. Abdur Razzak belong to Petitioner No. 1. In this regard, he refers to the supplementary affidavit dated 17.03.2025 filed by Respondent No. 2 before this Court, wherein the genuineness of Form-117 was expressly admitted. Although Respondent No. 2 attempted to explain that the name of the transferee, namely Md. Abdul Quiyum, had been mistakenly inserted in place of Md. Khorshed Alam, he nevertheless accepted the authenticity and due execution of the transfer instrument. Mr. Rahman submits that once the genuineness of Form-117 is admitted, the legal consequence flowing therefrom cannot be avoided merely by alleging an error in the name of the transferee.

He further submits that, even assuming the explanation offered by Respondent No. 2 to be correct, the transfer instrument nevertheless confers valid title upon the person named therein as transferee. In view of section 38 of the Companies Act, the identity of the person who paid the consideration is immaterial so long as the transfer was duly executed and accepted. Consequently, there existed no "sufficient cause" within the meaning of section 43 of the Companies Act for entering the name of Respondent No. 2 in the register of members in respect of the disputed 1,000 shares.

He further points out that after transferring 2,450 shares to different individuals, Respondent No. 2 executed an affidavit dated 03.10.2022 and filed the same before the RJSC, wherein he unequivocally declared that he was the owner of only 4,650 shares. According to him, this declaration necessarily excludes the disputed 1,000 shares from Respondent No. 2's ownership and amounts to a clear admission relinquishing any claim thereto, thereby affirming the title of Petitioner No. 1. The affidavit dated 03.10.2022 constitutes primary evidence within the meaning of section 62 of the Evidence Act, 1872. The statements contained therein, being admissions made by Respondent No. 2 himself, are substantive evidence against him. Placing reliance upon section 58 of the Evidence Act, he argues that admitted facts require no further proof and that Respondent No. 2 cannot subsequently resile from his own unequivocal admission regarding the extent of his shareholding. He further submits that the said admission is corroborated by several contemporaneous documents, particularly the communications addressed by Respondent No. 2 to Janata Bank Limited, wherein he acknowledged that Petitioner No. 1 held 59% of the company's shares while he himself held only 41%. These admissions, when read together with the duly executed Form-117 showing Petitioner No. 1 as the transferee of the disputed 1,000 shares, conclusively establish the Petitioner's title to the said shares.

On the aforesaid grounds, Mr. Rahman submits that the increase of the share capital, the allotment of the additional 2,00,000 shares, the transfer of 2,11,890 shares in favour of Respondent Nos. 4-8, and the subsequent transfers effected during the pendency of the present proceeding are all illegal, void and without lawful authority. He accordingly prays that the impugned allotments and transfers be declared void, the consequential entries in the register of members be cancelled, and the register of members of Respondent No. 1 Company be rectified in accordance with law.

Conversely, Mr. Yusuf Ali, the learned Advocate appearing on behalf of the Respondents, submits that the present proceeding is wholly misconceived, inasmuch as the Petitioners' original grievance was not directed against the register of members but against their alleged removal from the management of the company. Referring to paragraphs 2, 3 and 4 of the substantive application, he contends that the Petitioners expressly acknowledged the legality of the acquisition and transfer of shares, the reconstitution of the Board of Directors and the allotment of shares made on 10.12.2022. According to him, the Petitioners themselves admitted that all such corporate actions had been undertaken in due course of law and, at the inception of the proceeding, raised no challenge whatsoever to the entries in the register of members.

Mr. Ali further submits that the Petitioners reaffirmed this position in their supplementary affidavit dated 29.08.2024, wherein they categorically stated that they had no grievance requiring rectification of the register of members and instead sought conversion of the present proceeding from one under section 43 to one under section 233 of the Companies Act, 1994. According to him, the dispute, as originally framed by the Petitioners themselves, related solely to their alleged exclusion from the Board of Directors and not to the validity of the company's shareholding structure.

He next submits that the challenge to the disputed 1,000 shares was introduced only through a subsequent supplementary affidavit dated 16.02.2025 as a clear afterthought. According to him, after Petitioner No. 1 transferred 4,750 shares on 22.08.2022, his shareholding was substantially reduced, whereas Respondent No. 2 continued to hold a comparatively larger number of shares. Consequently, when the company allotted an additional 2,00,000 shares on 10.12.2022, Respondent No. 2 received a proportionately larger allotment based upon his existing shareholding. Realising the commercial consequences of his own earlier transfers, Petitioner No. 1 subsequently sought to reopen the company's shareholding structure by questioning the transfer of the disputed 1,000 shares.

He further submits that the contemporaneous corporate records conclusively establish that Md. Abdur Razzak transferred 1,200 shares to Petitioner No. 1 and 1,000 shares to Respondent No. 2 on 20.03.2021. In support of this contention, he relies upon the Board Resolution dated 20.03.2021, the Annual Return (Schedule-X) dated 30.03.2022, the certificate of transfer of shares issued under section 39 of the Companies Act, 1994, and the affidavit sworn by Md. Abdur Razzak. According to him, all these contemporaneous documents consistently record the disputed 1,000 shares in the name of Respondent No. 2.

He also submits that the Form-117 relied upon by the Petitioners bears apparent signs of interpolation and alteration. According to him, the Petitioners' name has been inserted in place of Respondent No. 2 while other particulars corresponding to Respondent No. 2 have been retained, rendering the document inherently unreliable. He argues that the impugned Form-117 is inconsistent with all contemporaneous corporate records and, therefore, cannot prevail over the documentary evidence maintained by the company and the transferor.

Lastly, he submits that the Petitioners are barred by the principles of acquiescence, waiver and estoppel. He contends that the Petitioners themselves had earlier filed an application seeking conversion of the present proceeding from one under section 43 to one under section 233 of the Companies Act, 1994, expressly stating that their names had not been omitted from the register of members and that their real grievance related to their alleged expulsion from the Board of Directors. He further submits that the Petitioners actively participated in the transfer of shares, the reconstitution of the Board, the increase of the share capital and the allotment of additional shares, and accepted the resultant shareholding structure without objection. Having acted upon and acquiesced in those corporate arrangements for a considerable period, they cannot now be permitted to challenge the very state of affairs which they themselves accepted and facilitated. In support of his submissions, the learned Advocate places reliance upon the decision in *Tabassum Kaiser Vs. Partex Cables Limited and others*, reported in 30 BLC (AD) 276, and contends that the present proceeding constitutes a belated, inconsistent and legally untenable attempt to reopen matters which stand concluded by the Petitioners' own conduct and admissions.

In reply, Mr. Shah Muhammad Ezaz Rahman, the learned Advocate for the Petitioners, submits that the Respondents' objection regarding the absence of specific prayers in the original application is wholly misconceived. According to him, the omission to incorporate all the necessary reliefs in the original application under section 43 of the Companies Act, 1994 occurred due to an inadvertent error on the part of the draftsman and cannot defeat the Petitioners' substantive rights. He further submits that the application seeking conversion of the proceeding into one under section 233 of the Companies Act was ultimately not pressed, as the Petitioners elected to pursue the remedies available under section 43 by incorporating the requisite reliefs through supplementary affidavits. A litigant, he argues, ought not to suffer for the mistake of his counsel where the real controversy between the parties is otherwise apparent from the pleadings and the materials on record.

He further submits that, upon discovering the omission, the Petitioners promptly filed two supplementary affidavits seeking the necessary consequential reliefs relating to rectification of the register of members, cancellation of the impugned allotments and transfers, and declaration of title in respect of the disputed shares. According to him, these supplementary affidavits neither introduced a new cause of action nor altered the foundational facts on which the proceeding was instituted. Rather, they merely incorporated consequential reliefs founded upon the existing pleadings as well as subsequent events and documents brought on record during the pendency of the proceeding, which were necessary to enable this Court to effectively and completely adjudicate upon the disputes between the parties.

Preliminary Objection as to Maintainability

Before entering into the merits of the controversy, it is necessary to deal with the preliminary objection raised by the respondents regarding the maintainability of the present proceeding under section 43 of the Companies Act, 1994.

The principal contention of the respondents is that the Petitioners are precluded from questioning the entries in the register of members because they had earlier filed an application seeking conversion of the present proceeding into one under section 233 of the Companies Act, 1994. According to the respondents, the Petitioners therein acknowledged that their names had not been omitted from the register of members and that their grievance was confined to their alleged removal from the management and Board of Directors of the company. It is therefore argued that the Petitioners, having taken such a position, are now estopped from challenging the allotment and transfer of shares and from seeking rectification of the register under section 43.This Court is unable to accept the aforesaid contention.

It is a settled principle that the true nature of a proceeding is to be gathered not from an isolated statement contained in an interlocutory application but from the pleadings as a whole, the reliefs ultimately claimed and the substance of the dispute between the parties. Courts are concerned with the real controversy disclosed by the record and not merely with the particular form in which a party may have initially framed his relief. Procedural law is intended to facilitate the administration of justice and not to obstruct it by placing undue emphasis on technicalities.

The application seeking conversion of the proceeding from section 43 to section 233 was merely an interlocutory procedural step. Such an application neither determined the rights of the parties nor altered the foundational cause of action disclosed in the original petition. More importantly, the said application was admittedly not pressed. Consequently, the proceeding has at all material times remained one under section 43 of the Companies Act, 1994. A procedural application which was ultimately abandoned cannot be elevated to the status of a binding admission so as to extinguish substantive statutory rights.

Even otherwise, the observations contained in the conversion application cannot reasonably be construed as an unequivocal admission affirming the legality of the impugned share allotments or transfers. Those statements were made in the context of invoking an alternative statutory remedy and cannot be read divorced from the pleadings as a whole. The Petitioners never abandoned their challenge to the legality of the corporate actions affecting their proprietary rights as shareholders. On the contrary, the subsequent supplementary affidavits merely particularised the consequential reliefs flowing from the very same factual foundation, namely, that the impugned allotments and transfers had unlawfully altered the shareholding structure of the company.

It is equally well-settled that admissions relied upon to defeat a substantive claim must be clear, unambiguous and unequivocal. A statement capable of more than one interpretation or made in the course of seeking an alternative procedural remedy cannot operate as a conclusive admission. Much less can it constitute a waiver of valuable proprietary rights. Waiver, in law, is the intentional and conscious relinquishment of a known right. Such intention must be clear and unmistakable. Nothing on record demonstrates that the Petitioners consciously abandoned their statutory right to seek rectification of the register of members or accepted the legality of the impugned transactions.

The respondents have further invoked the doctrines of acquiescence and estoppel. These contentions are equally devoid of substance. Acquiescence necessarily presupposes full knowledge of the relevant facts together with conduct indicating voluntary acceptance of the impugned transaction. Mere participation in the affairs of the company, or the taking of procedural steps during litigation, cannot amount to acquiescence where the very legality of the underlying corporate actions is disputed. Likewise, estoppel is an equitable doctrine intended to prevent injustice; it cannot be invoked to perpetuate an illegality or to validate corporate actions undertaken in contravention of mandatory statutory provisions.

This principle assumes particular significance in company law. The register of members is not merely an internal corporate record; it is the statutory evidence of membership and proprietary rights in a company. The jurisdiction conferred upon this Court by section 43 exists to ensure that the register faithfully reflects the true legal position. If the Court ultimately finds that entries have been made in consequence of an illegal allotment, an invalid transfer or a breach of the Articles of Association, it is under a statutory duty to direct rectification. Such jurisdiction cannot be defeated by procedural objections or by invoking equitable doctrines to preserve an unlawful state of affairs. Indeed, it is a settled principle that there can be no estoppel against a statute. Where the law requires a particular procedure to be followed before shares are allotted or transferred, non-compliance cannot be cured by acquiescence, waiver or estoppel.

Nor does the filing of supplementary affidavits alter the nature of the proceeding. The additional prayers introduced thereby are merely consequential to the original relief and arise from the same nucleus of operative facts. No new or inconsistent cause of action has been introduced. The controversy has throughout centred upon the legality of the corporate actions whereby the Petitioners allege that their proprietary rights as shareholders have been unlawfully diluted and displaced. The supplementary affidavits merely enabled the Court to grant complete and effective relief upon the facts already pleaded and the subsequent events brought on record during the pendency of the proceeding.

This approach is also consistent with the settled principle that the Court, particularly while exercising equitable company jurisdiction, should determine the real dispute between the parties rather than permit substantial justice to be defeated by defects in the form of pleadings. Once the relevant facts are before the Court and both parties have had full opportunity to contest them, procedural imperfections should not stand in the way of complete adjudication.

Accordingly, this Court holds that the respondents' preliminary objection is devoid of merit. The present proceeding is maintainable under section 43 of the Companies Act, 1994, and the Petitioners are not precluded, either by waiver, acquiescence or estoppel, from challenging the legality of the impugned allotments and transfers or from seeking rectification of the register of members.

Title regarding the Disputed 1,000 Shares

The issue concerns the competing claims over 1,000 shares originally held by Md. Abdur Razzak. Both parties claim title through the same transferor and rely upon different sets of documentary evidence. The Court is therefore required to determine which set of documents carries greater evidentiary value in law.

It is an undisputed principle of company law that the register of members is not itself the source of title. Rather, it is evidence of membership. The title to shares flows from a valid transfer executed in accordance with law, while the register merely records the legal consequence of such transfer. Consequently, where the correctness of an entry in the register is itself under challenge under section 43 of the Companies Act, the Court must look behind the register and ascertain whether the entry truly reflects the legal ownership of the shares.

The Petitioners have placed primary reliance upon the original instrument of transfer (Form-117) executed by the transferor. Crucially, the execution of this instrument has not been denied by the contesting Respondents. Respondent No. 2, in his supplementary affidavit, has admitted the genuineness and due execution of Form-117, but has set up a plea of mistake, contending that the name of Petitioner No. 1 was inserted as transferee inadvertently.Such an explanation, however, is inherently weak. Once the execution of the transfer instrument is admitted, the burden lies heavily upon the party alleging mistake to establish the same by cogent and convincing evidence. A mere assertion unsupported by contemporaneous documentary proof cannot displace the legal effect of a duly executed transfer instrument.

The respondents have failed to produce any transfer instrument showing that the disputed 1,000 shares were transferred in favour of Respondent No. 2. Instead, they rely upon subsequent corporate records, namely the Board Resolution, Schedule-X, a transfer certificate and an affidavit allegedly executed by the transferor. These documents undoubtedly carry evidentiary value; nevertheless, they are derivative in nature, having been prepared after the transfer itself. None of them constitutes the operative instrument by which title passed. Consequently, they cannot prevail over the original transfer deed unless the latter is shown to be forged, fabricated or otherwise invalid. No such finding can be arrived at on the materials before this Court.

The conduct of Respondent No. 2 after the acquisition of the company also assumes considerable significance. The materials on record disclose that he repeatedly represented before Janata Bank Limited that Petitioner No. 1 held approximately 59% of the company's shares while he himself held only 41%. Likewise, the affidavit submitted before the RJSC on 03.10.2022 records his own shareholding as 4,650 shares. Had Respondent No. 2 truly acquired the disputed 1,000 shares, such declarations would have been factually incorrect. These statements constitute admissions within the meaning of the Evidence Act and are substantive evidence against their maker. Admissions voluntarily made against one's own proprietary interest possess high evidentiary value and ordinarily require no independent corroboration unless satisfactorily explained. No convincing explanation has been offered by the respondents.

The respondents have further argued that the consideration for the disputed shares was paid by Respondent No. 2. Even if such contention were accepted, it does not advance their case. The Companies Act does not recognise payment of consideration as the determining factor of legal ownership. Once the transferor voluntarily executes the instrument in favour of a named transferee and the transfer is accepted, title vests in the transferee. The source of the purchase money may give rise to independent civil rights inter se the parties, but it does not alter the legal consequence of the transfer itself.

Consequently, this Court holds that Petitioner No. 1 has established clear title to the disputed 1,000 shares. The entry in the register of members recording these shares in the name of Respondent No. 2 is found to be without sufficient cause and must be rectified.

On the Allotment of 2,00,000 Shares and Subsequent Transfers

Turning to the next issues, the Petitioners have prayed for declarations that the further allotment of 2,00,000 shares made on 10.12.2022 and the subsequent transfers of 2,11,890 shares to Respondent Nos. 4–8 are illegal, void and liable to be cancelled. They have further sought cancellation of the subsequent transfers of 1,10,600 shares effected during the pendency of this proceeding. The Petitioners contend that the impugned allotment and transfers were made in gross violation of their statutory pre-emptive rights under section 155 of the Companies Act, 1994, as well as the pre-emption mechanism embodied in Article 12 of the Articles of Association.

Notwithstanding the apparent force of these allegations, this branch of the case is confronted with a fundamental procedural impediment. The materials on record disclose that, during the pendency of this proceeding, substantial portions of the impugned shares were further transferred to third parties, namely Kazi Ahnaf

Aquib and Md. Nazrul Islam, who are now the registered holders of those shares in the Register of Members maintained by the Company and reflected in the records of the RJSC.

It is a settled principle of law that no order adversely affecting a person's proprietary rights may be passed without affording that person an opportunity of being heard. In a proceeding under section 43 of the Companies Act, 1994, every person whose name presently stands in the Register of Members in respect of the disputed shares is a necessary party. Although the Petitioners filed supplementary affidavits referring to the subsequent transfers in favour of Kazi Ahnaf Aquib and Md. Nazrul Islam, they failed to implead them as party-respondents. Any declaration setting aside the allotment of the 2,00,000 shares or cancelling the subsequent transfers would necessarily affect the vested rights of those persons in their absence, which this Court cannot countenance.

Moreover, the challenge to the allotment and the subsequent transfers involves seriously disputed questions of fact, including allegations of forged resignation letters, the validity of Board meetings and resolutions, and the legality of subsequent corporate actions. Such issues cannot be effectively or conclusively determined in a summary proceeding under section 43 of the Companies Act, 1994, particularly in the absence of all persons claiming title to the disputed shares.

This, however, does not affect the limited relief arising from the transfer of the disputed 1,000 (one thousand) shares by Mr. Abdur Razzak to Petitioner No. 1 on 20.03.2021. Having held that the said transfer was valid and effective, it necessarily follows that

Petitioner No. 1 became entitled, from that date, to all statutory pre-emptive rights attached to those shares. Accordingly, Petitioner No. 1 is entitled to subscribe to such additional shares, if any, as were offered or allotted in proportion to the said 1,000 shares pursuant to section 155 of the Companies Act, 1994, on the same terms and at the same issue price as were applicable at the relevant time. Upon payment of the applicable subscription price within such reasonable period as may be specified by Respondent No. 1 Company, the Company shall allot such additional shares to Petitioner No. 1, make the necessary entries in its Register of Members and other statutory records, and Petitioner No. 1 shall thereafter be entitled to all dividends, bonus shares, stock dividends and other lawful accretions attached thereto. This relief is confined exclusively to the disputed 1,000 shares and the additional shares, if any, accruing thereto, and does not affect the existing independent shareholding of Petitioner No. 1, which is not the subject matter of this proceeding.

Accordingly, save to the limited extent indicated above, the challenge to the increase of the Company's capital, the allotment of 2,00,000 shares made on 10.12.2022, and the subsequent transfers thereof must fail on the ground of non-joinder of necessary parties.

Result of the Application

In the result, **the application is allowed in part.**It is hereby ordered that:

(1) Petitioner No. 1 is declared to be the lawful owner of the 1,000 (one thousand) shares originally transferred in his favour by Mr. Abdur Razzak on 20.03.2021. Consequently, Respondent No. 1 Company is directed

to rectify its Register of Members within 30 (thirty) days from the date of receipt of a certified copy of this judgment by deleting the name of Respondent No. 2 in respect of the said 1,000 (one thousand) shares, together with all bonus shares, stock dividends and other accretions, if any, attached to or arising from the said 1000 shares, and by recording the name of Petitioner No. 1 as the lawful holder thereof.

(2) Petitioner No. 1 shall be entitled to subscribe to such additional shares, if any, as were offered or allotted to Respondent No.2 in proportion to the said 1,000 (one thousand) shares, on the same terms and at the same issue price as were applicable at the relevant time. Upon payment by Petitioner No. 1 of the applicable subscription price within such reasonable period as may be specified by Respondent No. 1 Company, the Company shall allot such additional shares to Petitioner No. 1, record the necessary entries in its Register of Members and other statutory records, and Petitioner No. 1 shall thereafter be entitled to all dividends, bonus shares, stock dividends and other lawful accretions, if any, attached thereto.

(3) Save to the extent of the relief granted in clause 2 above in respect of the additional shares, if any, accruing to the above 1,000 (one thousand) shares, the prayers seeking cancellation of the allotment of 2,00,000 (two lakh) shares made on 10.12.2022**,** together with the subsequent transfers thereof,

including those effected during the pendency of this proceeding, are refused. Such reliefs cannot be granted in the absence of all the persons in whose names the disputed shares presently stand recorded, they being necessary parties for an effective adjudication under section 43 of the Companies Act, 1994.

(4) Respondent No. 1 Company shall, within 30 (thirty) days of carrying out the aforesaid rectification and consequential entries, file all necessary statutory returns and compliance documents with the Registrar of Joint Stock Companies and Firms (RJSC) reflecting such rectification.

(5) There shall be no order as to costs.

Office is directed to communicate this judgment upon the Respondent No. 1 forthwith.

(Justice Md. Toufiq Inam)

Ashraf/ABO.