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

Present:
Mr. Justice Md. Toufiq Inam.

COMPANY MATTER NO. 459 OF 2024.

IN THE MATTER OF:
An application under section 43 of the Companies Act, 1994.

AND

IN THE MATTER OF:

United Enterprises and Company Limited (UECL).
------ Petitioner.

-VERSUS-

Registrar of Joint Stock Companies & Firms (RJSC) and others.
----- Respondents.

Mr. Shah Mohammad Ezaz Rahman, Advocate with
Mr. Kamal Hossain Meahzi, Advocate
----- For the Petitioner.

Mr. Monjur Elahi Porag, Advocate
----- For the Respondent No. 2.

Mr. M. Mohiuddin Yousuf, Advocate with
Mr. Abul Bashar Tutul, Advocate
----- For the respondent No. 6.

Judgment Delivered On 02.08.2026.

Md. Toufiq Inam, J.

This is an application under section 43 of the Companies Act, 1994 seeking rectification of the Register of Members of the respondent No. 2, Shahjalal Islami Bank PLC, by substituting the name of the petitioner in place of the respondent No. 3 in respect of the disputed shares.

The petitioner's case, in brief, is that the petitioner, United Enterprises & Company Limited (UECL), a concern of the United Group, entered into two Share Purchase Agreements dated 27.12.2017 and 17.01.2018 with the respondent No. 3, Sajjatuz Jumma, whereby the latter agreed to sell, and the petitioner agreed to purchase, his entire shareholding in the respondent No. 2 Bank for a total consideration of Tk. 50,89,09,603. The petitioner asserts that the entire consideration was duly paid, partly by directly discharging the respondent No. 3's liabilities with various banks and financial institutions in accordance with his instructions. It is further contended that bonus shares subsequently accrued on the original shareholding were transferred to the petitioner by Supplementary Agreements dated 08.12.2019. The petitioner also relies upon an Affidavit, a Power of Attorney, both dated 08.12.2019, and a Letter of Undertaking dated 09.02.2022, whereby the respondent No. 3 acknowledged receipt of the full consideration, confirmed the transfer of the shares, declared that no amount remained outstanding, and authorised the petitioner to complete all formalities for effecting the transfer. The petitioner further contends that the respondent No. 3 made the requisite disclosures under Regulation 34(1) of the Dhaka Stock Exchange (Listing) Regulations, 2015, copies of which were forwarded to the respondent No. 2 Bank for necessary action.

The grievance of the petitioner is that, despite the completed transaction and the repeated acknowledgements of the respondent No. 3, the respondent No. 2 has failed to rectify its Register of Members by recording the petitioner's name. The petitioner further alleges that the respondent No. 3, in collusion with the respondent No. 6, subsequently initiated proceedings under the Negotiable Instruments Act, 1881 to create encumbrances over the same shares, although no attachment or sale had then taken place. Having failed to secure rectification despite serving a notice dated 24.03.2024, the petitioner has filed the present petition.

The case of the respondent No. 2, in brief, is that it was legally incapable of registering the alleged transfer owing to statutory prohibitions. It is contended that while serving as a Director of the Bank, the respondent No. 3 had obtained substantial credit facilities from various banks and financial institutions and had defaulted in repayment, whereupon Bangladesh Bank issued a notice under section 17(1) of the Bank Companies Act, 1991. According to the respondent No. 2, section 17(7) of the said Act imposes a statutory embargo on the transfer of the shares held by the respondent No. 3, thereby precluding the Bank from recognising or registering any transfer thereof. It is further contended that the petitioner itself instituted Money Suit No. 80 of 2023 before the learned Joint District Judge, 1st Court, Dhaka, seeking recovery of Tk. 200 crore against, inter alia, the respondent Nos. 2 and 3, and that the averments contained in the plaint disclose the very circumstances which prevented the Bank from approving the transfer. The respondent No. 3 is also said to have admitted therein that he had received the notice issued under section 17(1) of the Bank Companies Act, 1991. The respondent No. 2 additionally contends that Rule 4(2) of the Bangladesh Securities and Exchange Commission Rules, 1995 constitutes a further legal impediment to the proposed transfer. It is, therefore, maintained that the Bank acted strictly in accordance with law in refusing to register the transfer.

The case of the respondent No. 6, in brief, is that the respondent No. 3, towards repayment of his outstanding liability, issued three cheques in his favour for an aggregate amount of Tk. 36,00,00,000/-. Upon dishonour of those cheques, the respondent No. 6 instituted three cases under section 138 of the Negotiable Instruments Act, 1881, resulting in the conviction and sentencing of the respondent No. 3 and the imposition of fines equivalent to the cheque amounts. In execution of those judgments, the learned Joint Sessions Judge, 1st Court, Jhenaidah, by orders dated 14.10.2020, issued Warrants of Levy under section 386 of the Code of Criminal Procedure directing attachment and sale of the respondent No. 3's shares, which were to be executed as decrees under the Code of Civil Procedure. Pursuant thereto, Money Execution Case Nos. 2, 3 and 4 of 2021 were instituted before the learned District Judge, Dhaka. The respondent No. 6 further contends that applications under Order XXI Rules 46 and 72(2) of the Code of Civil Procedure were allowed, resulting in orders directing sale and transfer of the requisite number of shares in satisfaction of the decretal dues. Accordingly, it is contended that title to the shares covered by those execution orders no longer vests in the respondent No. 3 and, therefore, cannot be rectified in favour of the petitioner.

The respondent No. 6 further contends that by instituting Money Suit No. 80 of 2023 for recovery of the consideration allegedly paid under the Share Purchase Agreements together with compensation, the petitioner has elected to pursue monetary relief and thereby abandoned its claim to the shares. It is also contended that the petitioner unsuccessfully challenged the attachment of the shares by filing Miscellaneous Case Nos. 25, 26 and 27 of 2023 under Order XXI Rule 58 of the Code of Civil Procedure, all of which were dismissed by the learned Joint District Judge, 1st Court, Dhaka, by orders dated 24.07.2024 rejecting the petitioner's claim of title founded upon the Share Purchase Agreements and the Supplementary Agreements. On these premises, the respondent No. 6 submits that the present petition is barred by the principles of *res judicata* and *sub judice*, is otherwise not maintainable, and has been instituted solely to obstruct the lawful execution proceedings and to deprive the respondent No. 6 of the benefit of the orders directing transfer of the shares in his favour

Mr. Shah Mohammad Ezaz Rahman, the learned Advocate appearing for the petitioner, submits that the respondent No. 3 lawfully sold and transferred the shares in question to the petitioner under two Share Purchase Agreements dated 27.12.2017 and 17.01.2018 upon receipt of the entire consideration of Tk. 50,89,09,603/-. He submits that the respondent No. 3 subsequently reaffirmed the completed transfer by executing the Supplementary Agreements and Affidavit dated 08.12.2019, the Power of Attorney of the same date and the Letter of Undertaking dated 09.02.2022, whereby he acknowledged receipt of the entire consideration, confirmed that no amount remained due and authorised the petitioner to complete all transfer formalities. According to him, these documents conclusively establish that the respondent No. 3 had divested himself of all right, title and interest in the shares.

On maintainability, he relies upon the decision reported in 44 DLR 48, particularly paragraphs 27 and 28, and submits that an application under section 43 of the Companies Act, 1994 is maintainable notwithstanding that the company is not a party to the underlying Share Purchase Agreements. He contends that the jurisdiction under section 43 extends to determining whether the applicant has lawfully acquired the shares and whether its name has been wrongfully omitted from the Register of Members.

He further submits that the respondent No. 3 has never disputed the execution of the Share Purchase Agreements, receipt of the entire consideration or the transfer of the shares. According to him, the only obstacle to registration is the refusal of the respondent No. 2 Bank, which has sought to justify its inaction by relying upon section 17 of the Bank Companies Act, 1991. He argues that although section 17(7) restricts the transfer of shares held by a defaulting director, the embargo cannot operate indefinitely. Referring to section 17(5), he submits that the statute simultaneously casts a mandatory obligation upon the creditor banks and financial institutions to realise the outstanding dues. The legislative object, therefore, is to facilitate recovery and not to impose a perpetual restraint on the transfer of shares. According to him, an indefinite embargo without any effective recovery mechanism would frustrate both the purpose of the statute and the proprietary rights of the parties.

Mr. Rahman further submits that, following the transfer, the respondent No. 3 duly complied with Regulation 34(1) of the Dhaka Stock Exchange (Listing) Regulations, 2015 by making the requisite disclosures, whereupon the petitioner, by its letter dated 01.01.2020, furnished the relevant documents and requested the respondent No. 2 Bank to register the transfer. Despite repeated requests, including a legal notice dated 24.03.2024, the respondent No. 2-Company failed to rectify the Register of Members, thereby compelling the petitioner to invoke section 43 of the Companies Act, 1994.He next submits that the subsequent criminal proceedings under the Negotiable Instruments Act, 1881 and the execution proceedings initiated thereunder cannot defeat the petitioner's pre-existing title acquired under the Share Purchase Agreements. According to him, upon receipt of the full consideration and execution of the transfer documents, the respondent No. 3 ceased to have any beneficial or proprietary interest in the shares.

Lastly, he submits that the present proceeding is confined to rectification of the Register of Members under section 43 of the Companies Act, 1994. Once the Court is satisfied that the petitioner has lawfully acquired title to the shares and that its name has been wrongfully omitted from the register, it is under a statutory obligation to direct rectification. He further contends that if the embargo under section 17(7) of the Bank Companies Act, 1991 was operative so as to prohibit registration of the petitioner's transfer, the same embargo ought equally to have precluded the transfer of the very same shares in favour of the respondent No. 6 through the execution proceedings. According to him, the respondent No. 2 cannot selectively invoke the statutory prohibition against the petitioner while recognising or facilitating the transfer in favour of the respondent No. 6.

Per contra, Mr. Monjur Elahi Porag, the learned Advocate appearing for the respondent No. 2 Bank, submits that the Bank was legally precluded from approving or registering the alleged transfer of shares in favour of the petitioner. He contends that the respondent No. 3, while serving as a directorof the respondent No. 2 Bank, had obtained substantial credit facilities from various banks and financial institutions and subsequently defaulted in repayment thereof. Consequently, Bangladesh Bank issued a notice under section 17(1) of the Bank Companies Act, 1991, whereupon the statutory embargo under section 17(7) came into operation, prohibiting any transfer of the respondent No. 3's shares. Accordingly, the respondent No. 2 was under a statutory obligation to refuse registration of the alleged transfer.

He further submits that the petitioner itself instituted Money Suit No. 80 of 2023 before the learned Joint District Judge, 1st Court, Dhaka, seeking recovery of Tk. 200 crore against, inter alia, the respondent

Nos. 2 and 3. According to him, the averments made therein expressly acknowledge both the issuance of the notice under section 17(1) and the circumstances preventing registration of the transfer. Having taken such a position in the said suit, the petitioner is precluded from advancing a contrary case in the present proceeding. He also contends that, apart from the prohibition contained in the Bank Companies Act, 1991, the proposed transfer is independently barred by Rule 4(2) of the Bangladesh Securities and Exchange Commission Rules, 1995. He, therefore, submits that the respondent No. 2 has acted strictly in accordance with the governing statutory framework and that the petition is liable to be dismissed.

Mr. M. Mohiuddin Yousuf, the learned Advocate appearing for the respondent No. 6, submits that the respondent No. 3, in discharge of his outstanding liabilities, issued three cheques aggregating Tk. 36,00,00,000/- in favour of the respondent No. 6. Upon dishonour of the cheques, three separate proceedings under section 138 of the Negotiable Instruments Act, 1881 were instituted, resulting in the conviction and sentencing of the respondent No. 3. Pursuant thereto, the learned Joint Sessions Judge, 1st Court, Jhenaidah, by orders dated 14.10.2020, issued Warrants of Levy under section 386 of the Code of Criminal Procedure directing attachment and sale of the respondent No. 3's shares. The warrants were thereafter executed through Money Execution Case Nos. 2, 3 and 4 of 2021 before the learned District Judge, Dhaka.

He submits that, in the execution proceedings, applications filed under Order XXI Rules 46 and 72(2) of the Code of Civil Procedure were allowed, resulting in orders directing attachment, sale and transfer of the requisite number of shares in favour of the respondent No. 6.

Consequently, the respondent No. 3 ceased to have any subsisting right, title or interest in those shares, and the petitioner cannot seek rectification of the Register of Members in respect thereof. He further submits that the petitioner's own conduct is inconsistent with its present claim. By instituting Money Suit No. 80 of 2023 seeking recovery of the consideration allegedly paid under the Share Purchase Agreements together with compensation, the petitioner treated the transaction as incapable of completion and elected to pursue a monetary remedy. Having done so, it cannot simultaneously seek rectification of the Register of Members on the basis of the same transaction.

He further points out that the petitioner had challenged the attachment of the shares by filing Miscellaneous Case Nos. 25, 26 and 27 of 2023 under Order XXI Rule 58 of the Code of Civil Procedure, asserting title on the basis of the Share Purchase Agreements and the Supplementary Agreements. Those applications were dismissed by the learned Joint District Judge, 1st Court, Dhaka, by orders dated 24.07.2024. Having failed to establish its claim before the executing Court, the petitioner is not entitled to re-agitate the same issue in the present proceeding under section 43 of the Companies Act, 1994. Accordingly, he submits that the petition is devoid of merit and liable to be dismissed.

The principal question requiring determination is whether the petitioner, having entered into Share Purchase Agreements with the respondent No. 3 and having allegedly paid the entire consideration thereunder, has acquired a legal right enforceable under section 43 of the Companies Act, 1994 to compel the respondent No. 2 Bank to register the transfer of the disputed shares in its favour. The answer to this question necessarily depends upon the true scope of the jurisdiction conferred by section 43, the legal effect of the contractual arrangements relied upon by the petitioner and, above all, the impact of the statutory restrictions imposed by the Bank Companies Act, 1991 upon the transfer of shares held by a defaulting director of a banking company.

At the outset, it is necessary to appreciate the nature of the jurisdiction exercised by this Court under section 43 of the Companies Act, 1994. The section empowers the Court to direct rectification of the Register of Members where the name of any person has been entered in or omitted from the register without sufficient cause or where default has been made in entering the name of a person who is entitled to be registered as a member. The jurisdiction is undoubtedly broad and remedial in character. Nevertheless, it is not an original jurisdiction for adjudicating every dispute relating to title to shares nor is it intended to serve as a substitute for an ordinary civil suit seeking declaration or specific performance. The object of the provision is to ensure that the statutory register maintained by a company faithfully reflects the legal position existing under the applicable law. Consequently, before an order of rectification can be made, the applicant must demonstrate not merely an equitable or contractual claim to the shares but a legal entitlement to be entered in the Register of Members.

In the present case, there is little controversy regarding the execution of the Share Purchase Agreements dated 27.12.2017 and 17.01.2018. It is equally undisputed that the respondent No. 3 subsequently executed Supplementary Agreements, an Affidavit, a Power of Attorney and a Letter of Undertaking acknowledging receipt of the entire consideration, confirming the sale of the shares and authorising the petitioner to complete all formalities relating to the transfer. Significantly, the respondent No. 3 has not disputed the authenticity or execution of any of these documents. On the contrary, the documents consistently indicate that, as between the petitioner and the respondent No. 3, the parties intended to effect an absolute transfer of the beneficial interest in the shares. The petitioner has, therefore, succeeded in establishing the existence of a concluded contractual arrangement inter se.

The existence of a valid contract, however, does not by itself conclude the controversy. It is a settled principle of company law that a Share Purchase Agreement operates primarily in the realm of contract. It regulates the reciprocal rights and obligations of the transferor and the transferee. A company is ordinarily not a party to such agreement unless it has expressly undertaken corresponding obligations. Accordingly, a contract for sale of shares may create enforceable contractual and equitable rights between the contracting parties, but it does not automatically compel the company to recognise the transferee as a member. Membership in a company is a statutory status governed not only by the agreement of the parties but also by the Companies Act, the Articles of Association and every other law applicable to the company concerned.

This distinction assumes particular importance in relation to banking companies. Unlike ordinary commercial corporations, banking companies function under a specialised regulatory framework enacted to protect depositors, preserve financial stability and maintain public confidence in the banking system. Parliament has, therefore, imposed statutory restrictions upon the transfer of shares held by persons occupying positions of responsibility within banking institutions. Such restrictions are not intended merely to regulate private commercial dealings but to secure broader public interests. Consequently, while parties may by contract agree to transfer shares, the legal effectiveness of such transfer remains subject to compliance with the statutory requirements governing banking companies.

The petitioner has strenuously contended that once the respondent No. 3 received the entire consideration and unequivocally admitted the transfer, no further impediment survived to prevent registration of the shares. Learned Advocate for the petitioner submits that the respondent No. 2 performs merely a ministerial function in recording the transfer and possesses no independent authority to disregard the admitted intention of the contracting parties. According to him, refusal to register the transfer, despite repeated acknowledgements by the transferor, constitutes a wrongful omission within the meaning of section 43 of the Companies Act.

The submission, though attractive at first sight, overlooks the true character of the Register of Members maintained by a company. The register is not merely a private record maintained for the convenience of shareholders. It is a statutory register required to be maintained in accordance with law and carries legal consequences affecting voting rights, dividends, corporate governance and the rights of third parties dealing with the company. A company is, therefore, under a statutory obligation to ensure that every entry made in the register conforms not only to the wishes of the contracting parties but also to the governing statutory provisions. Where the law imposes restrictions upon registration of transfers in specified circumstances, the company is bound to respect those restrictions irrespective of the consensus reached between the transferor and the transferee.

The central defence of the respondent No. 2 rests upon section 17(7) of the Bank Companies Act, 1991. According to the respondent, the respondent No. 3, while serving as a Director of the Bank, defaulted in repayment of substantial credit facilities obtained from various banks and financial institutions, whereupon Bangladesh Bank issued a notice under section 17(1) of the Act. It is contended that, by operation of section 17(7), a statutory embargo came into existence restraining transfer of the shares held by the respondent No. 3 and, consequently, the respondent No. 2 became legally incapable of recognising or registering the transfer sought by the petitioner. The petitioner, on the other hand, submits that the embargo under section 17(7) cannot be interpreted as an indefinite prohibition and must be read in conjunction with section 17(5), which obliges the creditor banks to recover the outstanding liabilities. According to the petitioner, failure of the creditor banks to pursue recovery with due diligence cannot perpetuate the statutory restriction indefinitely.

This Court is unable to accept such construction. Sections 17(5) and 17(7) operate in distinct fields, though they are directed towards a common legislative objective. Section 17(5) imposes an obligation upon the creditor institutions to take steps for recovery of the outstanding liabilities. Section 17(7), on the other hand, restricts the right of the defaulting director to deal with his shareholding during the subsistence of the statutory disability. The former regulates the conduct of the creditors, while the latter regulates the legal consequences flowing from the default of the director. The operation of one provision is not made dependent upon the performance of the other. To hold that the statutory embargo automatically lapses because recovery proceedings were not pursued with sufficient expedition would amount to introducing into the statute a qualification which Parliament has consciously omitted. Courts are not at liberty to rewrite legislation under the guise of interpretation.

Furthermore, the Bank Companies Act, 1991 is a special enactment governing banking companies. It is a well-established principle of statutory interpretation that where a general statute and a special statute operate in the same field, both must be construed harmoniously so as to give effect to the legislative intention underlying each enactment. The jurisdiction conferred by section 43 of the Companies Act cannot, therefore, be exercised in a manner that nullifies or circumvents an express statutory restriction contained in the Bank Companies Act. If the respondent No. 2 was, by reason of section 17(7), legally precluded from registering the transfer, its omission to enter the petitioner's name in the Register of Members cannot be characterised as an omission "without sufficient cause" within the meaning of section 43.

The petitioner has next contended that the respondent No. 2 cannot legitimately invoke section 17(7) of the Bank Companies Act, 1991 against the petitioner while at the same time recognising the transfer of the very same shares pursuant to the execution proceedings initiated by the respondent No. 6. According to the petitioner, the respondent No. 2 has adopted inconsistent standards in applying the statutory embargo and is, therefore, estopped from relying upon it in the present proceeding.

The submission, though appealing, does not withstand closer scrutiny. The petitioner claims title under a voluntary commercial transaction embodied in the Share Purchase Agreements. The respondent No. 6, on the other hand, asserts rights flowing from judicial orders passed by competent Courts in execution of criminal judgments under the Negotiable Instruments Act, 1881. The two claims arise from entirely different legal sources. Whether the executing Court correctly appreciated the effect of section 17 of the Bank Companies Act while passing the execution orders is not a question falling for determination in the present proceeding. Those orders have neither been challenged before this Court nor are they the subject matter of appellate or revisional scrutiny in this application under section 43 of the Companies Act.

Even assuming, for the sake of argument, that the execution proceedings were conducted in disregard of the statutory restriction contained in section 17(7), such circumstance cannot constitute a legal foundation for directing the respondent No. 2 to recognise another transfer which it considers to be prohibited by law. It is a settled principle that Article 27 of the Constitution does not envisage equality in illegality. A statutory authority cannot be compelled to repeat an error merely because a similar error may have occurred in another proceeding. The legality of the petitioner's claim must, therefore, be examined independently on its own merits and in the light of the governing statutory provisions.

The respondent No. 6 has further argued that the petitioner is precluded from maintaining the present petition by reason of the dismissal of Miscellaneous Case Nos. 25, 26 and 27 of 2023 instituted under Order XXI Rule 58 of the Code of Civil Procedure. According to the respondent No. 6, the petitioner's claim of title founded upon the Share Purchase Agreements has already been rejected by the executing Court and, consequently, the present petition is barred by the principles of *res judicata*.This Court is unable to accept the submission in its broad form. Proceedings under Order XXI Rule 58 of the Code of Civil Procedure are intended to determine objections to attachment in execution. The inquiry contemplated therein is confined to deciding whether the attached property is liable to attachment and whether the objector has established a sufficient interest to resist execution. The jurisdiction exercised under section 43 of the Companies Act, on the other hand, is of a distinct character. The Company Court is concerned with the legality of the entries in the Register of Members and whether the company has wrongfully refused to register a person entitled to be recognised as a member. The cause of action, the relief sought and the statutory foundation of the two proceedings are fundamentally different. It cannot, therefore, be said that the dismissal of the miscellaneous cases operates as a complete bar to the present petition.

Nevertheless, the earlier proceedings are not wholly irrelevant. They demonstrate that the petitioner's alleged title to the shares has been the subject of serious judicial controversy. The petitioner's claim is neither admitted by all concerned nor free from competing claims asserted before competent forums. While this circumstance does not by itself defeat the maintainability of the present petition, it reinforces the principle that proceedings under section 43 are not intended to resolve intricate disputes relating to title where the applicant's entitlement itself remains seriously contested.

The respondent No. 6 has also relied upon the institution of Money Suit No. 80 of 2023 by the petitioner seeking recovery of Tk. 200 crore together with compensation arising out of the same Share Purchase Agreements. It is contended that by electing to pursue recovery of the consideration, the petitioner has abandoned its claim to the shares and is now estopped from seeking rectification of the Register of Members.The doctrine of election is founded upon the principle that a person cannot simultaneously affirm and disaffirm the same transaction or pursue two remedies which are fundamentally inconsistent with one another. However, the mere institution of a money suit does not invariably amount to abandonment of proprietary rights. Much depends upon the nature of the pleadings, the relief claimed and the stage at which the proceedings stand. Unless the plaintiff has unequivocally elected to treat the contract as rescinded or has obtained a decree inconsistent with continued assertion of ownership, the institution of a money suit alone does not necessarily extinguish every other remedy available in law.

In the present case, although the institution of Money Suit No. 80 of 2023 does not, by itself, render the present petition incompetent, it is nevertheless a relevant circumstance in assessing the overall conduct of the petitioner. The pleadings in the money suit reveal that the petitioner itself recognised the existence of substantial disputes concerning the transaction and sought recovery of the consideration allegedly paid. This circumstance weakens the petitioner's submission that its entitlement to registration had become absolute and indisputable long before institution of the present proceedings.

The petitioner has repeatedly emphasised that the respondent No. 3 has never disputed either the execution of the Share Purchase Agreements or the receipt of the entire consideration. Learned Advocate submits that once the transferor himself acknowledges the transaction and authorises completion of the transfer, no useful purpose is served by refusing rectification.This argument overlooks the distinction between contractual consensus and statutory recognition. The admission of the transferor undoubtedly strengthens the petitioner's contractual claim against him. However, the statutory duty of the respondent No. 2 is owed not merely to the contracting parties but to the legal framework regulating banking companies. A company's obligation to maintain an accurate Register of Members cannot be displaced by admissions or concessions made by individual shareholders. Where Parliament has prohibited or restricted registration in specified circumstances, the company must give effect to the statute irrespective of the wishes of the transferor or transferee.

The petitioner has also relied upon equitable considerations, contending that the respondent No. 3 has received the entire consideration while simultaneously retaining legal title to the shares. It is argued that refusal of rectification would permit the respondent No. 3 to unjustly enrich himself at the expense of the petitioner.The submission undoubtedly invokes considerations of fairness. Nevertheless, it is a settled principle that equity follows the law and cannot override an express statutory prohibition. Where Parliament has imposed restrictions upon transfer of shares in a banking company in furtherance of public policy, equitable considerations arising out of private contractual arrangements must necessarily yield to the statutory command. The Court cannot employ equitable jurisdiction to compel performance of an act which another statute expressly prohibits. If the petitioner has suffered loss by reason of the respondent No. 3's inability to complete the transfer, its remedy lies in enforcing its contractual rights against the transferor before the appropriate forum, but not by directing the respondent No. 2 to act contrary to law.

Accordingly, neither the execution proceedings initiated by the respondent No. 6, nor the dismissal of the petitioner's objections under Order XXI Rule 58 of the Code of Civil Procedure, nor the institution of Money Suit No. 80 of 2023, either individually or collectively, furnish any legal basis for directing rectification of the Register of Members under section 43 of the Companies Act. Equally, none of those proceedings can enlarge the statutory jurisdiction of this Court so as to authorise registration of a transfer which is otherwise incapable of legal recognition under the governing statutory framework.

The petitioner has consistently argued that the execution of the Share Purchase Agreements, coupled with payment of the entire consideration and the respondent No. 3's unequivocal acknowledgements, completely divested the respondent No. 3 of every right, title and interest in the disputed shares. According to the petitioner, the respondent No. 2 thereafter had no discretion but to recognise the transfer and enter the petitioner's name in the Register of Members. This submission requires examination of the legal distinction between ownership arising from contract and membership of a company.

A share undoubtedly constitutes movable property capable of being transferred. Nevertheless, a share also represents a bundle of statutory rights and obligations existing between the company and its members. The transfer of the beneficial interest in a share and the acquisition of membership are not necessarily simultaneous events. As between the transferor and the transferee, a valid contract for sale may create enforceable contractual and equitable rights immediately upon execution of the agreement and payment of the agreed consideration. However, the statutory incidents of membership, including the right to vote, to participate in general meetings, to receive dividends as a member and to exercise other corporate rights, arise only upon lawful registration of the transfer in accordance with the governing law.

The distinction is well recognised in company law. Until registration, the transferee may possess valuable equitable rights against the transferor, but the company is entitled, and indeed obliged, to recognise only the person whose name stands entered in the Register of Members, unless and until the transfer is lawfully registered. It follows that a purchaser cannot invoke section 43 merely by establishing the existence of a concluded contract. The decisive inquiry is whether, in law, the company was under a corresponding obligation to register the transfer at the material time.

In the present case, the petitioner has undoubtedly established that the respondent No. 3 intended to transfer his entire beneficial interest in the shares. The documentary evidence relied upon by the petitioner leaves little room for doubt that, as between the contracting parties, the transaction was intended to be final and binding. However, that finding does not conclude the matter. The Court must still determine whether the respondent No. 2 could lawfully recognise the transfer in the face of the statutory restrictions imposed by the Bank Companies Act, 1991.

The expression "without sufficient cause" occurring in section 43 of the Companies Act assumes central importance. The legislature has not authorised the Court to direct rectification whenever a transfer has taken place between private parties. The jurisdiction arises only where the company's refusal to register the transfer is unjustified in law. Conversely, where the refusal is founded upon an express statutory prohibition or upon a legal disability imposed by another enactment, the omission cannot be characterised as wrongful merely because the purchaser has paid valuable consideration.

The petitioner urged this Court to hold that the respondent No. 2 deliberately delayed taking a decision on the transfer and thereafter sought refuge behind the statutory embargo. Even if this contention is accepted at its highest, it does not materially advance the petitioner's case. Delay or administrative inaction cannot create a legal right where the statute does not recognise one. The legality of the company's conduct must be judged with reference to the law applicable when the Court is called upon to direct rectification. If, on that date, the company remained subject to an operative statutory prohibition, the Court cannot direct registration merely because the company may have acted more expeditiously at an earlier stage.

The petitioner has also argued that the statutory embargo under section 17(7) of the Bank Companies Act should not be construed so as to defeat genuine commercial transactions entered into before issuance of the notice by Bangladesh Bank. It is submitted that the Share Purchase Agreements preceded the subsequent enforcement proceedings and that the petitioner was a bona fide purchaser for value. While the submission carries considerable equitable force, it cannot prevail against the language employed by the legislature. Section 17 does not carve out an exception in favour of purchasers claiming under prior agreements nor does it authorise the Court to validate such transactions on equitable considerations. Where Parliament has chosen not to engraft any exception, it would not be permissible for the Court to introduce one through judicial interpretation.

The Court is equally unable to accept the submission that the respondent No. 2 merely performs a ministerial function in recording transfers. Registration of shares is undoubtedly an administrative act, but it is not mechanical. A company is under a statutory obligation to satisfy itself that the proposed transfer is capable of legal recognition under the applicable law. This duty assumes greater significance in the case of banking companies, whose ownership and management are subject to continuous regulatory supervision by Bangladesh Bank. If the respondent No. 2 had registered the transfer in disregard of an operative statutory restriction, it would itself have acted contrary to law.

To accept the petitioner's construction would, in effect, enable every transferee claiming under a private agreement to invoke the jurisdiction of the Company Court and thereby circumvent statutory restrictions imposed upon the transfer of shares held by defaulting directors of banking companies. Such an interpretation would substantially dilute the supervisory powers entrusted to Bangladesh Bank and frustrate the legislative policy underlying section 17. Courts must avoid an interpretation that defeats the object of the statute or permits statutory safeguards enacted in the public interest to be circumvented through private contractual arrangements.

The Court is also mindful that the consequences of refusing rectification may appear harsh to the petitioner, who asserts that it has paid the entire consideration without obtaining legal title to the shares. However, hardship in an individual case cannot furnish a ground for disregarding an express statutory prohibition. Where competing considerations of private equity and public policy arise, the latter must prevail if that is the clear legislative mandate. The jurisdiction under section 43 is a statutory jurisdiction and must be exercised within the limits prescribed by law. It cannot be converted into an equitable jurisdiction to perfect transactions which the governing statute does not permit to be recognised.

Accordingly, this Court is of the considered view that, although the petitioner may have acquired enforceable contractual and equitable rights against the respondent No. 3 by virtue of the Share Purchase

Agreements and the subsequent acknowledgements, those rights did not mature into a legal entitlement to be entered in the Register of Members so long as the respondent No. 2 was precluded by the Bank Companies Act from recognising the transfer. In such circumstances, the refusal of the respondent No. 2 to register the transfer cannot be characterised as an omission "without sufficient cause" or a wrongful omission within the meaning of section 43 of the Companies Act.

The inevitable consequence is that the essential condition for exercise of the jurisdiction under section 43 remains unfulfilled. The petitioner has succeeded in establishing a concluded contractual transaction between itself and the respondent No. 3, but it has failed to establish that the respondent No. 2 acted unlawfully in refusing to register the transfer. In the absence of such finding, no order directing rectification of the Register of Members can lawfully be made.

The petitioner has lastly contended that since the respondent No. 3 has never disputed either the execution of the Share Purchase Agreements or the receipt of the entire consideration, no competing claim survives between the contracting parties and, therefore, this Court ought to exercise its equitable jurisdiction in favour of the petitioner. It is submitted that refusal to recognise the transfer would unjustly enrich the respondent No. 3 while depriving the petitioner of the benefit of the transaction for which substantial consideration has already been paid.

The Court is unable to subscribe to the aforesaid submission. The present proceeding is not one for enforcement of contractual obligations between the petitioner and the respondent No. 3. Nor is this Court exercising jurisdiction to determine whether the respondent No. 3 has committed a breach of the Share Purchase Agreements or whether the petitioner is entitled to damages, restitution or specific performance. Those are matters falling within the domain of the appropriate civil forum. The jurisdiction under section 43 of the Companies Act is considerably narrower. The Court is concerned only with the legality of the entries in the Register of Members and with determining whether the company's refusal to register a transfer is contrary to law. Once it is found that the company was restrained by an operative statutory prohibition from recognising the transfer, the contractual equities existing between the parties cease to be determinative.

The Court is equally unable to accept the submission that the respondent No. 2 ought to have adopted a liberal approach because the transaction was genuine and supported by valuable consideration. The genuineness of the transaction is not the decisive criterion under section 43. A transfer may be entirely genuine and yet incapable of legal recognition if its registration is prohibited by statute. Conversely, a company cannot lawfully refuse registration of an otherwise valid transfer merely because it entertains doubts regarding the commercial wisdom of the transaction. The decisive question is always whether the refusal is supported by law. In the present case, the respondent No. 2 has consistently maintained that it was prevented by the provisions of the Bank Companies Act, 1991 from recognising the transfer. For the reasons already discussed, this Court finds that such defence cannot be characterised as lacking legal foundation.

The Court also finds it necessary to emphasise that the Register of Members maintained by a banking company has a significance extending beyond the interests of the immediate contracting parties. The ownership structure of a banking company is a matter of regulatory concern, affecting corporate governance, prudential supervision and the protection of depositors. It is for this reason that Parliament has subjected banking companies to a special statutory regime distinct from that applicable to ordinary commercial companies. Any interpretation of section 43 which authorises the Company Court to direct registration of transfers in disregard of the restrictions imposed under the Bank Companies Act would substantially erode the effectiveness of that regulatory framework. Such a construction would be inconsistent with the legislative intent and cannot be accepted.

This Court is, therefore, of the considered view that the Companies Act, 1994 and the Bank Companies Act, 1991 must be read harmoniously. Section 43 undoubtedly provides a valuable remedy against wrongful entries or omissions in the Register of Members. However, the provision cannot be construed as empowering the Court to compel a banking company to perform an act which another statute expressly prohibits. The jurisdiction of rectification is corrective in nature; it is not a source of substantive rights overriding statutory restrictions imposed by special legislation.

The Court also considers it appropriate to clarify the legal position arising from the Share Purchase Agreements. Those agreements, together with the Supplementary Agreements and the subsequent acknowledgements executed by the respondent No. 3, may well have created enforceable contractual and equitable rights in favour of the petitioner. Nothing contained in this judgment should be construed as expressing any opinion upon the enforceability of those contractual rights or upon the remedies, if any, available to the petitioner against the respondent No. 3 in accordance with law. Those questions neither arise for determination in the present proceeding nor can they be adjudicated within the limited jurisdiction conferred by section 43 of the Companies Act.

Similarly, this Court refrains from expressing any opinion regarding the legality or otherwise of the execution proceedings initiated by the respondent No. 6 or the consequential orders passed by the executing Court. Those proceedings originate from an independent source of jurisdiction and are not directly under challenge in the present application. Any observation on their merits would be unnecessary for the disposal of this petition and may prejudice proceedings pending before other competent forums. The present decision is confined solely to determining whether the petitioner has established a legal entitlement to rectification of the Register of Members under section 43.

Upon an overall consideration of the pleadings, the documents on record and the submissions advanced on behalf of the parties, this Court is satisfied that the petitioner has established the existence of a concluded contractual transaction between itself and the respondent No. 3. Nevertheless, the petitioner has failed to establish that the respondent No. 2 was under a legal obligation to recognise that transaction by entering the petitioner's name in the Register of Members. On the contrary, the respondent No. 2 has shown that its refusal was founded upon an operative statutory restriction governing the transfer of shares in a banking company. In such circumstances, the omission complained of cannot be described as having been made "without sufficient cause" or as being otherwise wrongful within the meaning of section 43 of the Companies Act, 1994.

In conclusion, this Court holds that a Share Purchase Agreement, however valid and complete as between the transferor and the transferee, creates contractual and equitable rights inter se but does not, by itself, confer upon the transferee an enforceable statutory right to be recognised as a member of the company. Where registration of the transfer is rendered legally impermissible by an operative statutory prohibition contained in the Bank Companies Act, 1991, no order of rectification can be made under section 43 of the Companies Act compelling the company to recognise such transfer. The jurisdiction of the Company Court cannot be exercised to override or dilute restrictions imposed by a special statute enacted in the public interest.

Accordingly, the petitioner has failed to make out a case for rectification of the Register of Members under section 43 of the Companies Act, 1994.

The application is, therefore, **dismissed**.

There shall, however, be no order as to costs.

(Justice Md. Toufiq Inam)

Ashraf/ABO.