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

Present:

Mr. Justice Md. Toufiq Inam.

COMPANY MATTER NO. 595 OF 2024.
(Arising out of an application under section 43 of the Companies Act, 1994.)

AND

IN THE MATTER OF:

Taslima Sultana and others.
------ Petitioners.
-Versus-
Nasir Quality Glass Industries Ltd.and others.
----- Respondents.

with

COMPANY MATTER NO. 889 OF 2024.

(Arising out of an application under section 43 of the Companies Act, 1994.)

Nasim Biswas and another.
------ Petitioners.
-Versus-

Nasir Quality Glass Industries Ltd. and others.
----- Respondents.

Mr. Kamal Ul Alam, Senior Advocate with
Mr. Ehsan A Siddique, Senior Advocate
Mr. Ishraq Siddique, Senior Advocate
Mr. Chowdhury Ishrak Ahmed Siddiky, Senior Advocate
Mr. Nasir Uddin Ahmed Ashim, Advocate
Mrs. Shahanaj Akther,
Mr. Syed Mohammad Raihanuddin,
Mr. Muhammad Nazibur Rahman,
Mr. Kazi Muhammad Eleyas,
Mr. Saifullah Al Muzaheed,
Mr. Mahbubur Rahman,
Mr. Muhammad Al Mamun, and
Mr. Abdul Hoq, Advocates
----- For the Petitioners.

Mr. Zainul Abedin, Senior Advocate with
Mr. A.M. Mahbub Uddin, Senior Advocate
Mr. Ahsanul Karim, Senior Advocate
Mr. Mustafizur Rahman Khan, Senior Advocate
Mr. Syed Mamun Mahbub, Senior Advocate
Mr. M.G. Mahmud Shaheen,
Mr. Kabir Iqbal Hossain,
Mr. Anisul Hassan,
Mr. Syeed Anbrar,
Mr. Anwar Hossen,
Mr. Md. Monir Hssain, and
Mr. Shjel Chaudhury, Advocates
----- For the Respondents.

Judgment Delivered On 31.08.2026.

Md. Toufiq Inam, J.

These two connected applications, being Company Matter Nos. 595 of 2024 and 889 of 2024, have been filed under section 43 of the Companies Act, 1994 by the legal heirs of late Mohammad Nasiruddin Biswas, seeking rectification of the Register of Members of respondent No.1-Company, Nasir Quality Glass Industries Ltd. The applications concern the alleged transfer of 4,90,000 ordinary shares formerly held by late Mohammad Nasiruddin Biswas and 4,998 shares held by respondent No.2, Md. Faruk Hossain, in favour of respondent No.3.

Late Mohammad Nasiruddin Biswas was the Chairman and Managing Director of respondent No.1-Company. Respondent No.2, Md. Faruk Hossain, held the remaining 5,000 shares and was a Director of the Company. Late Mohammad Nasiruddin Biswas died on 12.09.2022, leaving behind the petitioners in Company Matter Nos. 889 of 2024 and 595 of 2024 and respondent No.3 as his legal heirs. The petitioners allege that the disputed shares were shown as having been transferred in favour of respondent No.3 in collusion with respondent

No.2. Following the death of late Mohammad Nasiruddin Biswas, a dispute arose among his legal heirs concerning the ownership of the 490,000 shares which, according to the petitioners, continued to stand registered in the name of the deceased at the time of his death. The central controversy in these applications is whether those shares were validly and completely transferred by the deceased during his lifetime to respondent No.3 on 21.11.2020, as asserted by the respondents, or whether the alleged transfer instruments were subsequently fabricated, ante-dated, or otherwise brought into existence to create an appearance of a transfer that had not, in fact, been completed during the lifetime of the deceased, as alleged by the petitioners.

The case of the petitioners in both applications is, in substance, the same. Late Mohammad Nasiruddin Biswas remained the lawful and registered owner of 495,000 shares in respondent No. 1-Company until his death on 12.09.2022, as no valid transfer of the disputed 490,000 shares was completed during his lifetime. Consequently, upon his death, the shares formed part of his estate and devolved upon his lawful heirs in accordance with the applicable law of succession. The Company was therefore bound to recognise such devolution and rectify its Register of Members accordingly.

Following the death of Mohammad Nasiruddin Biswas, respondent No. 2 became the sole surviving director. Instead of taking lawful steps for transmission of the deceased's shares to his legal heirs and for reconstituting the Board, respondent No. 2, in collusion with respondent No. 3, fabricated and ante-dated corporate records to create an appearance that Mohammad Nasiruddin Biswas had transferred 490,000 shares, and respondent No. 2 had transferred 4,998 shares, to respondent No. 3 on 21.11.2020. The alleged transfer instruments, including Form 117, notarial affidavits, Board resolutions and statutory filings, were not executed during the lifetime of Mohammad Nasiruddin Biswas but were subsequently manufactured and ante-dated to confer majority control of the Company upon respondent No. 3 and to exclude the deceased's other legal heirs. They maintain that the documents are false, fabricated and ante-dated, and that no bona fide sale or transfer of the disputed shares took place on 21.11.2020. The respondent No. 3 initially sought registration of the alleged transfers before the RJSC, which refused to record them. Respondent No. 3 thereafter challenged the refusal in Writ Petition No. 13295 of 2023. Although the Rule issued therein was made absolute, the petitioners challenged the judgment before the Appellate Division by filing Civil Petition for Leave to Appeal No. 2003 of 2024, which remains pending. Relying upon the disputed documents, respondent No. 3 first portrayed herself as a Director and subsequently as the Managing Director and Chairman of the Company. According to them, such positions were purportedly conferred at an alleged Board meeting held on 15.09.2022, which was neither validly convened nor attended by the requisite quorum under the Articles of Association and was based upon manufactured minutes. On the basis of the foregoing allegations, the petitioners contend that respondent No. 3 has unlawfully exercised control over the affairs and assets of the Company without lawful authority. They accordingly seek rectification of the Register of Members by deleting respondent No. 3's name in respect of the disputed shares and entering therein the names of the lawful heirs of late Mohammad Nasiruddin Biswas according to their respective legal entitlements.

The respondents categorically deny the allegations of fraud, fabrication, collusion and ante-dating. Their case is that the disputed transfers were genuine, bona fide and fully completed during the lifetime of late Mohammad Nasiruddin Biswas on 21.11.2020. According to the respondents, Mohammad Nasiruddin Biswas voluntarily transferred 490,000 shares to respondent No. 3 upon receipt of the full consideration, while respondent No. 2 simultaneously transferred 4,998 of his shares to respondent No. 3. They maintain that the requisite transfer instruments, affidavits, Board resolutions and corporate filings were duly executed in connection with the transaction and that respondent No. 3 was thereafter validly appointed as a Director of the Company. They mainly rely upon the Income Tax Returns filed by late Mohammad Nasiruddin Biswas and respondent No. 3 for the Assessment Year 2021–2022. They contend that the deceased disclosed the disposal of the shares in his return, while respondent No. 3 disclosed their acquisition together with the consideration allegedly paid. According to the respondents, these contemporaneous statutory declarations, made nearly two years before the transferor's death, materially corroborate the existence of a genuine share transaction.

As to the delay in submitting the statutory forms to the RJSC and the subsequent payment of additional stamp duty, the respondents contend that these are matters of procedural or regulatory compliance and do not invalidate an otherwise completed and valid transfer between the parties. They further deny that the signatures or thumb impressions of late Mohammad Nasiruddin Biswas appearing on the transfer documents are forged. They point out that, although the petitioners initially sought forensic examination of the signatures, they subsequently did not pursue that application, whereas the respondents expressed their willingness to have the documents subjected to scientific examination. They therefore contend that the petitioners have failed to produce cogent evidence of forgery and have relied instead upon inferences drawn from subsequent events. Since the disputed shares had ceased to belong to late Mohammad Nasiruddin Biswas during his lifetime, they did not form part of his estate upon his death and no right of succession accrued to the petitioners in respect thereof. They accordingly submit that there is no lawful basis for rectification of the Register of Members and pray for dismissal of the applications under section 43 of the Companies Act, 1994.

Submissions on behalf of the Petitioners

Mr. Kamal Ul Alam, learned Senior Advocate appearing for the petitioners in Company Matter No.595 of 2024, and Mr. Ehsan A. Siddique, learned Senior Advocate appearing for the petitioners in Company Matter No.889 of 2024, submit that the disputed transfers are founded upon fabricated and ante-dated documents and were brought into existence after the death of late Mohammad Nasiruddin Biswas with the object of depriving his legal heirs of his controlling shareholding. According to them, the impugned entries in the Register of Members are therefore without lawful basis and liable to rectification under section 43 of the Companies Act, 1994.

They submit that the chronology surrounding the alleged transfers casts serious doubt upon their genuineness. Respondent No.1-Company was incorporated on 22.10.2020, while the alleged transfers took place on 21.11.2020. Forms 117, IX and XII, although dated 21.11.2020, were lodged with the RJSC only on 09.10.2022, after the death of late Mohammad Nasiruddin Biswas. The transfer documents and affidavits were also subsequently stamped, with the relevant additional stamp papers having been generated in 2022. According to the petitioners, these circumstances, taken together, are inconsistent with genuine execution of the documents on 21.11.2020.

It is further submitted that the affidavits and transfer documents contain assertions that the requisite stamp duty had already been paid, whereas the documentary evidence concerning the stamp papers indicates that the relevant stamped pages came into existence subsequently. They contend that this chronological inconsistency, particularly where the alleged transferor had died before the subsequent stamping, materially undermines the authenticity of the documents. Reliance is placed upon section 17 of the Stamp Act, 1899 and section 38 of the Companies Act, 1994, as well as the decisions cited before the Court, including *Ahsan Karim Jinnah v. Meghna Insurance Company Limited and others*, reported in 52 DLR (HCD) 160.

The petitioners further challenge the corporate proceedings said to have accompanied the alleged transfers. They refer to Article 29 of the Articles of Association and submit that late Mohammad Nasiruddin Biswas, being the Chairman, was not the person shown as presiding over the Board meeting dated 21.11.2020. They also question the simultaneous acquisition of shares and appointment of respondent No.3 as a director, the alleged non-compliance with the requirements relating to her appointment, and the subsequent Board proceedings dated 15.09.2022 by which respondent No.3 is said to have assumed further corporate offices.

They submit that the Income Tax Returns relied upon by the respondents cannot themselves confer title to shares or cure non-compliance with the mandatory requirements governing a share transfer. According to them, the tax records may at best constitute collateral material and cannot displace the statutory requirements under the Companies Act. They further submit that the cumulative effect of the delayed stamping, delayed filing, inconsistencies in the corporate records and the circumstances surrounding the subsequent assumption of control demonstrates that the alleged transfers were created retrospectively.

Finally, it is submitted that, upon the death of late Mohammad Nasiruddin Biswas, the shares which remained vested in him devolved upon his legal heirs by operation of law. Since, according to the petitioners, no valid inter vivos transfer had occurred during his lifetime, respondent No.3 acquired no lawful title to the disputed shares. The petitioners accordingly pray for rectification of the Register of Members and for consequential relief in respect of the impugned corporate proceedings and entries.

<u>Submissions on behalf of respondent Nos.1 and 3</u>

Mr. Zainul Abedin, Mr. A.M. Mahbub Uddin, Mr. Ahsanul Karim, Mr. Mustafizur Rahman Khan and Mr. Syed Mamun Mahbub, learned Senior Advocates appearing for respondent Nos.1 and 3, submit that the applications are founded upon suspicion and subsequent events rather than cogent evidence disproving a transaction which was completed during the lifetime of late Mohammad Nasiruddin Biswas. According to them, the deceased voluntarily transferred 4,90,000 shares to respondent No.3 upon receipt of consideration and respondent No.2 simultaneously transferred 4,998 shares to her.

Particular reliance is placed upon the Income Tax Returns of the transferor and respondent No.3 for the Assessment Year 2021–2022.

Learned Senior Advocates submit that the transferor disclosed the disposal of the shares and respondent No.3 disclosed the corresponding acquisition during the lifetime of the transferor and before the present dispute arose. They contend that, although the tax returns do not themselves constitute instruments of transfer, the corresponding statutory disclosures provide significant independent corroboration of the transaction.

The respondents deny that the signatures or thumb impressions appearing on the disputed documents are forged. They submit that the petitioners have not produced evidence establishing such forgery and, although forensic examination was initially sought, the petitioners did not ultimately pursue that course. They contend that the allegation of fabrication therefore rests principally upon the subsequent stamping and filing of the documents.

On the question of stamping, learned Senior Advocate submits that the relevant affidavits had already been executed and that the additional stamp papers were subsequently affixed to meet the increased stamp-duty requirement. It is contended that the subsequent payment of additional stamp duty does not, by itself, establish that the underlying transaction was subsequently created. Reliance is placed upon the authorities cited on behalf of the respondents, including 43 DLR (HCD) 329 and 3 BLC (AD) 114, and the respondents distinguish the decision reported in 52 DLR (HCD) 160 on its facts.

As to the Board meeting dated 21.11.2020, learned Senior Advocate submits that late Mohammad Nasiruddin Biswas was present, participated in the meeting and signed the relevant documents. The fact that respondent No.2 presided over the meeting, according to the respondents, cannot establish fabrication of the transfer, particularly where the transferor himself was present and raised no objection. The respondents further submit that the subsequent corporate proceedings, including the meeting dated 15.09.2022, cannot retrospectively invalidate a transfer which had already been completed during the lifetime of the transferor.

The respondents finally submit that once the shares had been transferred during the lifetime of late Mohammad Nasiruddin Biswas, they ceased to form part of his estate and could not thereafter devolve upon his heirs by succession. They accordingly contend that the entries in the Register of Members are not without sufficient cause and that no case for rectification under section 43 has been made out.

Submissions on behalf of respondent No.2

Mr. Anisul Hasan, learned Advocate appearing for respondent No.2, adopts the case supporting the genuineness of the disputed transfers and additionally submits that the applications are not maintainable for non-compliance with Rule 22 of the Companies Rules, 2009. According to him, the prescribed prior notice was not served before institution of the proceedings and the requirement is distinct from the general procedural provisions contained in the Rules.He further submits that respondent No.2, being a surviving participant in the alleged transaction, is in a position to give evidence concerning its execution and the surrounding circumstances. He contends that the death of late Mohammad Nasiruddin Biswas cannot, by itself, justify rejection of the transaction when other documentary and oral evidence remains available to establish its genuineness. He accordingly prays for dismissal of the applications.

Having heard the learned Advocates for the respective parties, considered their submissions and perused the materials placed before this court, it now proceeds to consider the issues arising for determination in the present applications. For clarity and convenience, the issues and findings of this court thereon are discussed under the following heads:

<u>Preliminary objection under Rule 22</u>

Respondent No.2 has raised a preliminary objection that the applications are not maintainable for want of prior notice under Rule 22 of the Companies Rules, 2009. The requirement of prior notice is intended to give the company an opportunity to examine the grievance and, where appropriate, to correct its register without compelling the aggrieved person to approach the Court. It is therefore a requirement which ought ordinarily to be observed.

The question, however, is whether non-compliance with Rule 22, in the circumstances of the present case, takes away the jurisdiction conferred upon this Court by section 43. Rule 22 is procedural in character and contains no express provision making prior notice a condition precedent to the exercise of the statutory jurisdiction under section 43. Importantly, respondent No.1-Company has been impleaded, has entered appearance, has filed its affidavit-in-opposition and has fully contested the applications on their merits. The purpose of the prior notice has therefore substantially been served during the proceedings.In such circumstances, dismissal of the applications solely for want of prior notice would serve no substantive purpose and would convert a procedural requirement into a jurisdictional bar which the statute itself does not prescribe. The preliminary objection is accordingly rejected.

Nature and scope of section 43

Section 43 empowers the Court to rectify the Register of Members where a person's name has been entered or omitted without sufficient cause, or where there has been default or unnecessary delay in entering the fact of a person having ceased to be a member. The jurisdiction is not confined to a mechanical examination of the register. Where the entitlement to an entry depends upon an underlying transfer, the Court is entitled to examine whether that transfer was in fact made and whether the person claiming registration had the requisite basis for such entry.

At the same time, section 43 does not dispense with the statutory requirements governing the transfer and registration of shares. Section 38(3) expressly provides that it is not lawful for a company to register a transfer unless the proper instrument of transfer, duly stamped and executed by the transferor and transferee, has been delivered to the company along with the scrip. The existence of a genuine transfer and compliance with the statutory requirements for registration are therefore related but distinct questions.

The Court must consequently determine, first, whether late Mohammad Nasiruddin Biswas actually executed the disputed transfer in favour of respondent No.3 during his lifetime and, secondly, whether the subsequent registration of that transfer was made in accordance with section 38. A finding that the underlying transaction was genuine does not, by itself, amount to a finding that every statutory formality attending its registration was duly complied with.

Burden of proof

The petitioners seek to displace an existing entry in the Register of Members and, more fundamentally, allege that the documents relied upon by respondent No.3 were fabricated or ante-dated after the death of late Mohammad Nasiruddin Biswas. The initial burden of establishing the factual basis for such rectification therefore lies upon the petitioners. The standard is the preponderance of probabilities.The Court is not required to eliminate every possible doubt or to demand proof to the standard applicable in a criminal proceeding. The question is whether, upon consideration of the entire evidence, the petitioners have shown that their version is more probable than the respondents' case that the transfer was actually effected during the lifetime of the deceased. Suspicious circumstances are relevant, but they must ultimately be weighed against the evidence supporting the transaction.

Execution of transfer documents during the transferors' lifetime

The petitioners contend that Form 117 and its connected instruments were manufactured after the death of late Mohammad Nasiruddin Biswas and backdated to 21.11.2020. The respondents rely on the executed transfer forms, share certificates, and board minutes to assert that the transaction was completed on that date. The Court must assess these instruments in light of the surrounding documentary trail and the conduct of the parties.

Significantly, the petitioners have not established, by clear and cogent evidence, that the signatures or thumb impressions appearing on the disputed transfer instruments are forged. Although forensic examination was initially sought, the petitioners chose not to pursue that application. Consequently, the record contains no scientific or expert evidence impeaching the authenticity of the signatures or thumb impressions. No adverse inference is drawn solely from the petitioners' failure to pursue the forensic examination. Nevertheless, in the absence of such evidence, the allegation of fabrication rests essentially on the alleged anomalies relating to stamping and statutory filings, which, considered in the light of the other evidence on record, are insufficient to establish that the transfer instruments were fabricated or forged.

Evidentiary significance of income tax returns

The most compelling corroborative evidence supporting the respondents' case lies in the Income Tax Returns filed by late Mohammad Nasiruddin Biswas and Respondent No. 3 for the Assessment Year 2021–2022. These statutory declarations were filed with the tax authorities during the lifetime of the deceased and well before the present ownership dispute emerged.

In these returns, the deceased explicitly disclosed the disposal of 4,90,000 shares, while Respondent No. 3 disclosed their acquisition and the consideration paid. While an Income Tax Return is not a title deed or an instrument of transfer under Section 38 of the Companies Act, its evidentiary value is substantial. It represents an official declaration made under penalty of perjury. When a transferor voluntarily declares to revenue authorities during his lifetime that he has disposed of his shares in favour of the Respondent No. 3, such declarations serve as strong corroborative evidence that an *inter vivos* transaction was intended and executed.

The timing of these tax filings is decisive. Because they were executed prior to the death of the transferor and before any dispute over corporate control arose, there is no basis to suggest they were fabricated to defeat the petitioners' succession claims. Thus, while tax returns cannot cure non-compliance with mandatory company law procedures, they provide crucial corroborative proof that the underlying agreement to transfer shares existed during the transferor's lifetime.

Board meeting dated 21.11.2020

The petitioners have challenged the Board meeting dated 21.11.2020 on the ground that respondent No.2 presided over the meeting although late Mohammad Nasiruddin Biswas was the Chairman under Article 29 of the Articles of Association. The objection is a relevant one because the respondents rely upon the Board proceedings as part of the documentary chain supporting the transfer.

The materials on record, however, indicate that late Mohammad Nasiruddin Biswas was present at the meeting and that the relevant minutes and attendance records bear his signature. The respondents' explanation is that, although he was Chairman, he permitted respondent No.2 to preside over the meeting. In the absence of reliable evidence establishing that the signatures appearing on those records were not genuine, the irregularity alleged regarding the chairing of the meeting cannot, by itself, establish that the entire proceeding was fabricated.

The Court must maintain the distinction between an irregularity in the conduct of a Board meeting and proof that the transferor never executed the transfer. The former may have consequences for the internal validity of a corporate proceeding, but it does not automatically establish the latter. On the evidence before the Court, the circumstances surrounding the meeting dated 21.11.2020 are insufficient to establish that the transfer documents were subsequently fabricated.

Acquisition of shares and appointment of respondent No.3

The petitioners have also relied upon the fact that respondent No.3 acquired the disputed shares and was appointed as a director at or about the same time. The coincidence is relied upon as suggesting that the alleged share transfer was devised to create a corporate position for respondent No.3.That circumstance may properly be taken into account, but the coincidence itself does not establish fabrication. There is nothing inherently inconsistent in a substantial acquisition of shares being followed by participation in the management of a company. In the absence of further evidence showing that the acquisition was fictitious, the simultaneous occurrence of the two events does not materially displace the documentary and other evidence supporting the respondents' case.

Subsequent Board meeting dated 15.09.2022

The petitioners have further relied upon the Board meeting dated 15.09.2022 and subsequent corporate acts undertaken after the death of late Mohammad Nasiruddin Biswas. The validity of that meeting and the authority of the persons who participated in it may raise separate questions concerning the subsequent management of the Company.Those questions, however, cannot retrospectively determine whether the transfer had been executed nearly two years earlier. If the transfer of 21.11.2020 was genuine, subsequent corporate acts cannot invalidate it merely because they were themselves disputed. Conversely, if the earlier transfer had never occurred, a later Board resolution could not create it retrospectively. The two matters must therefore be kept legally distinct.

Insertion of section 38(3A) in Act 1994

The insertion of section 38(3A), which came into force on 26.11.2020, is also relevant. The provision introduced an additional requirement concerning confirmation of the transferor's identity and authenticity of the transfer documents. The respondents' case is that the transfer was completed on 21.11.2020, five days before the amendment came into force.

The amended provision cannot ordinarily be applied retrospectively to a transaction which had already been completed before its commencement. The question whether section 38(3A) applies therefore depends upon the anterior factual question as to when the transfer was actually executed. If the petitioners had established that the documents were ante-dated and were in fact executed after 26.11.2020, the respondents could not avoid the amended provision merely by relying upon the date appearing on the documents.

For the reasons already stated, however, the petitioners have not established that the date 21.11.2020 was fabricated or that the transfer documents were executed only after the death of late Mohammad Nasiruddin Biswas. The Court therefore accepts, on the balance of probabilities, that the underlying transfer was effected on 21.11.2020. Section 38(3A), consequently, cannot be applied retrospectively to that transaction.

Effect of non-compliance with section 38(3)

The above finding does not conclude the separate question of compliance with section 38(3). That provision expressly prohibits a company from registering a transfer unless the proper instrument of transfer, duly stamped and executed by the transferor and transferee, has been delivered to the company along with the scrip. The statutory requirement is therefore mandatory in relation to the act of registration.The evidence before the Court indicates that the documents were not duly stamped until 12.10.2022. If the Company had already registered the transfer on 21.11.2020 without a duly stamped instrument having been delivered to it, such registration would not be in conformity with section 38(3). The Court cannot treat that statutory requirement as a mere technicality.

That finding, however, must be distinguished from the question whether the underlying transfer itself was genuine. Section 38(3) regulates the company's compliance in registering a transfer of shares. Non-compliance with that provision may attract the statutory consequence prescribed by the Act, but it does not, by itself, establish that the underlying transaction between the transferor and transferee was fabricated or non-existent.Where a genuine transfer of shares has taken place, the rights of the transferee in respect of the shares must be considered separately from any procedural irregularity in the company's registration of that transfer. Registration is the statutory mechanism by which the company recognises the transferee as a member and gives effect to the transfer in its register; an irregularity in that process cannot, without more, be treated as proof that no genuine transfer took place or that the transferee acquired no rights whatsoever in the shares.The consequence of non-compliance with section 38(3) must therefore be determined in accordance with the statutory scheme governing such default. It cannot, independently, be relied upon to convert a defect in registration into proof that the underlying transfer was fabricated, ante-dated or otherwise non-existent.

It is also important not to invoke the penalty contained in section 38(5) on the basis of the present default. Section 38(5) applies where a company refuses to register a transfer and thereafter defaults in giving the notice of refusal required by section 38(4). It does not prescribe a daily fine merely because a company has registered a transfer without compliance with section 38(3). Accordingly, no penalty under section 38(5) can properly be imposed on the basis of the facts found in the present proceedings.

Cumulative assessment

The Court has considered the evidence cumulatively. The subsequent stamping of the transfer documents, the delayed filing before the Registrar, the alleged irregularity in the Board meeting, the subsequent corporate conduct and the timing of the amendment to section 38(3A) are all circumstances requiring consideration. None has been disregarded.At the same time, the Court cannot lose sight of the corresponding evidence. The transfer documents bear the signatures and thumb impressions which have not been shown by reliable evidence to be forged; the deceased and respondent No.3 made corresponding disclosures in their Income Tax Returns during the lifetime of the deceased; the corporate records contain material consistent with the respondents' version; and there is no sufficiently cogent evidence establishing that the documents were created only after the death of the transferor.

On the totality of the evidence, the petitioners have therefore failed to establish, on the balance of probabilities, that the disputed transfer of 4,90,000 shares was fabricated or ante-dated. This Court accordingly finds that the underlying transfer in favour of respondent No.3 was effected on 21.11.2020 during the lifetime of late Mohammad Nasiruddin Biswas, and that respondent No.3 thereby acquired the rights and interest arising from that transfer.This finding is confined to the genuineness and date of the underlying transfer. It does not amount to an approval or validation of the Company’s non-compliance with the mandatory requirements of section 38(3) of the Companies Act, 1994. The delayed stamping, registration and statutory filings remain matters of statutory compliance and are to be regularised in accordance with law. Such non-compliance, however, does not by itself establish that the underlying transfer was fictitious or that the name of respondent No.3 was entered in the Register of Members without sufficient cause within the meaning of section 43 of the Act.

The 4,998 shares of respondent No.2

The position regarding the 4,998 shares transferred by respondent No.2 stands on a separate footing. Those shares belonged to respondent No.2 and not to late Mohammad Nasiruddin Biswas. The petitioners' status as heirs of the deceased therefore does not, by itself, confer upon them any succession right in respect of those shares.In order to obtain rectification concerning the 4,998 shares, the petitioners were required to establish an independent legal basis for challenging respondent No.2's transfer to respondent No.3. No such independent right or legal basis has been established in these proceedings. The challenge concerning those shares must accordingly fail independently of the findings relating to the 4,90,000 shares.

Conclusion

For the reasons stated above, this Court finds that the petitioners have failed to establish that the disputed transfers were fabricated or ante-dated after the death of late Mohammad Nasiruddin Biswas. The evidence, considered as a whole, supports the conclusion that the transfer of 4,90,000 shares was effected on 21.11.2020 during his lifetime.

The subsequent stamping and filing of the transfer documents disclose non-compliance with the statutory requirements governing registration, if the transfer was in fact registered before the duly stamped instrument was delivered. Such non-compliance, however, is distinct from the anterior question of the genuineness of the transfer and does not, on the facts of the present case, furnish sufficient ground for rectification under section 43.Consequently, the petitioners have failed to establish that the entries recording respondent No.3 as holder of the disputed shares were made without sufficient cause within the meaning of section 43 of the Companies Act, 1994. The applications therefore fail.

Result

In view of the findings recorded above, the applications under section 43 of the Companies Act, 1994, being Company Matter Nos. 595 of 2024 and 889 of 2024, are dismissed.

The petitioners have failed to establish that the transfer of 4,90,000 shares by late Mohammad Nasiruddin Biswas in favour of respondent No.3 was fabricated, ante-dated or otherwise non-existent. On a balance of probabilities, this Court has found that the transfer was effected on 21.11.2020 during the lifetime of the deceased.

In respect of the 4,998 shares transferred by respondent No.2 in favour of respondent No.3, the petitioners have failed to establish any independent legal basis entitling them to challenge the said transfer or to seek rectification of the Register of Members.

However, the Company's registration of the transfer of disputed shares in favour of respondent No.3 on that date was not in full compliance with the provisions of section 38 of the Companies Act, 1994. The Company shall accordingly regularise its statutory records and the Register of Members, reflecting respondent No.3 as the lawful holder of the disputed shares, upon compliance with all applicable statutory requirements, including stamping, payment of requisite fees and completion of necessary statutory filings. The Company shall thereafter make the necessary filings with the RJSC in accordance with law, so that the statutory records maintained by the RJSC reflect the transfer in favour of respondent No.3 from the date permitted by law, without treating the earlier non-compliant registration as having been retrospectively validated.

There shall be no order as to costs.

(Justice Md. Toufiq Inam)

Ashraf/ABO.