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

WRIT PETITION NO. 2165 OF 2025

In the matter of:

An Application under Article 102 of the Constitution of the People's Republic of Bangladesh.

And

In the matter of:

Showkat Aziz and others.

… Petitioners

-Versus-

Bangladesh Bank represented by its Governor, Bangladesh Bank Bhavan, Motijheel Commercial Area, Dhaka and others.

… Respondents

Mr. Kazi Akhter Hossain, with
Mr. Tasbir Sharif, and
Mr. Zahangir Alam, Advocates
…For the petitioners

Mr. Md. Shofiqul Islam, Advocate
…. For the respondent No. 1

Mr. Md. Abu Nasar, Advocate
…. For the respondent No. 4

Mr. Md. Osman Gani Bhuiyan, Advocate
…. For the respondent No. 5

Heard on: 29.07.2026, 12.08.2026, 19.08.2026
Judgment on: 09.09.2026

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Rezaul Karim

Rezaul Karim, J.

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued on 05.03.2025 in the following terms:

> "Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned inclusion, reporting, circulation and publication of the names of the petitioners in the Credit Information Bureau (CIB) report of Bangladesh Bank by the respondent Nos. 1-3, treating them as classified defaulter borrowers as interested/sister concerns of the respondent No. 6 in connection with its loan liabilities availed from the respondent Nos. 4 and 5 banks, in violation of section 5(GaGa) read with section 27KaKa of the Bank Company Act, 1991, and thereby creating impediment in availing credit facilities by the petitioners from scheduled banks and financial institutions, shall not be declared to have been made without lawful authority and to be of no legal effect, and/or such other or further order or orders be passed as to this Court may seem fit and proper."

On the date of issuance of the Rule, this Court also stayed the operation of publication of the names of the petitioners in the CIB report of Bangladesh Bank in connection with the credit facilities availed the respondent No. 6 from the respondent Nos. 4 and 5 for a period of 3 (three) months and the said order of stay was thereafter extended from time to time.

The factual aspect as figured in the writ petition in brief is that the petitioner No. 1 is an industrialist and the Chairman and Managing Director of Amber Group, of which the petitioner Nos. 2 to 13 are business conglomerates. The respondent No. 1 is the Bangladesh Bank and the respondent Nos. 2 and 3 are the General Manager and Director of its Credit Information Bureau (CIB), respondent No. 6, Partex Foundry Limited, is the borrower; while the respondent No. 4, Jamuna Bank PLC, and the respondent No. 5, Social Islami Bank PLC, are the

lending banks. It is the further case of the petitioners is that, the petitioner No. 1 is the fourth son of late M. A. Hashem, the founder of Partex Group. By a Memorandum of Understanding dated 01.01.2006, M. A. Hashem distributed the businesses of the Group among his five sons and accordingly respective number of shares were transferred. The petitioner No. 1 thereby became the controlling shareholder and Managing Director of the companies allotted to him and raised his own business under the name of Amber Group, while his brother, Rubel Aziz, carried on the business under the name of Partex Group.

The respondent No. 6 was incorporated under the Companies Act, 1994, bearing Registration No. C-77106/09 dated 17.05.2009, the petitioner No. 1 being one of the subscribers to its Memorandum and Articles of Association. By a resolution dated 22.07.2009, its Board of Directors accepted his resignation from the directorship and approved the transfer of all his 8,000 shares to Rubel Aziz. On the same day he executed Form-117 and sworn in an affidavit relinquishing all his rights in those shares (Annexures- ‘D’, ‘D-1’ and ‘D-2’ to the writ petition). In an Extraordinary General Meeting held on 16.08.2009, the Articles of Association were amended by substituting Article 36 (Annexure-‘E’). These documents, according to the petitioners, establish beyond any reasonable doubt that he had parted with both his shares and his directorship. His father, also a director of the respondent No. 6, died on 24.12.2020; upon notice of the same date, the Board, in its meeting held on 31.12.2020, appointed Mrs. Syeda Shaireen Aziz as a director (Annexures-‘F’ and ‘F-1’).

It is the further case of the petitioners that the respondent No. 6 availed the credit facilities from the respondent Nos. 4 and 5 long after the petitioner No. 1 had severed his connection with it. In compliance with section 27Ka of the Bank Company Act, 1991 (Act No. XIV of 1991) (ব্যাংক-কোম্পানী আইন, ১৯৯১), (the Act, 1991) the respondent No. 6 sought, by separate letters, the no objection of the lending banks to the reconstitution of its Board and to the release of the personal guarantee of the outgoing director; the name of the petitioner No. 1 finds no place in those letters (Annexure-'G' series).

By letter dated 15.01.2025, the petitioners requested the respondent Nos. 4 and 5 not to report their names to the CIB as concerns interested (স্বার্থ সংশ্লিষ্ট প্রতিষ্ঠান) in respondent No. 6, but to no avail (Annexure-'H'). Then came the letter dated 02.02.2025 of Mercantile Bank PLC, Main Branch, which is not a party to this Rule, declining banking services to the petitioner No. 10 on the ground that it had been "identified as defaulter (BL Liability) in the name of one or more sister concern(s) of the Group" (Annexure-'I').

The petitioners contend that all documents of transfer and resignation were lodged with the Registrar of Joint Stock Companies and Firms (RJSC), which has not, however, updated its record, by reason, so they allege, of the outstanding loans of the respondent Nos. 4 and 5. They contend that they are neither shareholders, directors, mortgagors nor guarantors of the respondent No. 6 and, being separate legal entities, cannot be made to answer for its debts. The CIB report being

confidential, no bank has furnished them a copy; yet their names, stand reported as interested or sister concerns of the respondent No. 6, impeding their access to credit from banks and financial institutions. Hence, the writ petition and the present Rule.

By their first supplementary affidavit, the petitioners add that the resignation and transfer were effected in the distribution and reorganization of Partex Group under the Memorandum of Understanding dated 01.01.2006, and that, after his father's death in 2020, the petitioner No. 1 became the owner of 500 shares of the respondent No. 6 and transferred them to Mrs. Syeda Shaireen Aziz by executing Form-117 (Annexures-'K', 'K-1' and 'K-2'), the documents having been filed with the RJSC on payment of the requisite fees, though its record remains unaltered. By their second supplementary affidavit, they annexed Sanction Advice No. SIBL/Moha/INV/2012/1472 dated 19.11.2012, whereby the respondent No. 5 sanctioned credit facilities to the respondent No. 6 (Annexure-'O'), which, they contend, records only two directors, namely M. A. Hashem and Rubel Aziz; and they state that the respondent No. 6 availed no loan during the brief period when the petitioner No. 1 was its shareholder and director.

The respondent No. 4 has contested the Rule by filing an affidavit-in-opposition. It has been stated that the petitioner Nos. 3 and 8 are its borrowers, with the petitioner No. 1 as their Managing Director; and they availed several facilities in 2016, rescheduled and renewed on their applications from time to time, lastly on 30.06.2025 and 22.12.2025; but

when the writ petition was filed some of those facilities were overdue but had not reached the stage of CIB reporting, and classified during the pendency of the Rule, though they could not be reported in view of the stay. It has further been stated that the petitioner Nos. 1, 3 and 8 are defaulters within the meaning of section 5(GaGa) of the Act, 1991, that the writ petition was filed as a preventive measure by suppressing material facts concerning those facilities, and that, by Article 41(1) of the Bangladesh Bank Order, 1972, no suit or other legal proceeding lies against Bangladesh Bank or its officers, so that the CIB report cannot be challenged.

The respondent No. 5 also contested the Rule by filing an affidavit-in-opposition and a supplementary affidavit, offering no comment in respect of paragraphs 3 to 17 to the writ petition claiming those to be matters of record. Its case is that the facilities provided to the petitioners became overdue and, after several reminders, it informed by letter dated 28.06.2026 that the account had been classified as Bad and Loss (BL), calling for adjustment of the overdue amount of Tk. 2150.10 lac, the outstanding liability standing at Tk. 2325.64 lac on 29.07.2026. It has also stated that, from 05.03.2025 to 30.07.2026, Tk. 456.00 lac was deposited in the loan account “by the petitioners”; where the petitioner No. 1 transferred his shares without the consent of the lending bank as required by Section 27Ka of the Act, 1991, rendering the transfer ineffective; and that the RJSC did not approve the transfer and Form-XII of the company has not been updated. In its supplementary

affidavit it has also asserted that the respondent No. 6 was incorporated on 07.05.2009 with three shareholder-directors, the petitioner No. 1 being a majority shareholder holding 8,000 shares, and annexes the Form-XII dated 07.05.2009 and the latest Form-XII, Issue No. 621105, dated 16.08.2026 (Annexures-‘V’ and ‘VI’). It claims further that, though the loan was taken by a private limited company, all its shareholders and directors belonged to the family of the petitioner No. 1, who in fact enjoyed the benefit of the loan, and unless he is treated as a borrower and defaulter, the very purpose of section 27KaKa of the Act, 1991 would be frustrated; where referring the list of defaulter borrowers to Bangladesh Bank is a statutory duty of every bank; having no right of the petitioners under any law or the Constitution to challenge their inclusion in the CIB report of Bangladesh Bank.

Mr. Md. Shofiqul Islam, the learned Advocate of the respondent No. 1 appeared by filing a Wokalatnama. The learned counsel appearing for the respondent No. 1, Bangladesh Bank, also opposes the Rule. He adopts the submissions made on behalf of the respondent Nos. 4 and 5 and contends that under section 27KaKa(1) of the Bank Company Act, 1991 every bank is bound to send the list of its defaulter borrowers to Bangladesh Bank, and under sub-section (2) Bangladesh Bank is bound to circulate that list to all banks and financial institutions. According to him, Bangladesh Bank only maintains the CIB on the basis of the information supplied by the lending banks, and it has done nothing beyond discharging that statutory duty. He next contends that CIB

reporting is a regulatory function and a matter of policy of Bangladesh Bank, and that anything done by it in good faith in this regard is protected by Article 41(1) of the Bangladesh Bank Order, 1972. He, therefore, prays for discharging the Rule.

Mr. Kazi Akhter Hossain, learned Advocate for the petitioners, upon taking us through the writ petition, the supplementary affidavits and the annexure, submits that the petitioners are neither borrowers, guarantors, corporate guarantors, mortgagors, directors nor shareholders of the respondent No. 6; where the petitioner No. 1 transferred all his shares and resigned in 2009, long before the facilities were availed, and had no role in sanctioning or availing loan and the petitioner Nos. 2 to 13 are separate legal entities having no connection with the respondent No. 6. He further contends that, under section 5(GaGa) of the Act, 1991, only a borrower, guarantor, director of the borrowing company or a shareholder satisfying the statutory threshold can be treated as a defaulter so the inclusion of the petitioners' names as interested or sister concerns is without lawful authority. He adds that the action is arbitrary, mala fide and violative to Articles 27, 31, 40 and 42 of the Constitution. In controverting to what has been appeared in the affidavits-in-opposition, that the petitioner Nos. 3 and 8 though availed credit facilities from the respondent No. 4, but those facilities are not the subject matter of this Rule, and prays that the Rule be made absolute.

Per contra, Mr. Md. Abu Nasar, learned Advocate for the respondent No. 4, taking us through the affidavit-in-opposition, contends

that the petitioners suppressed the material fact that the petitioner Nos. 3 and 8 are its borrowers with the petitioner No. 1 as their Managing Director, that those facilities have since been classified, and that the petitioner Nos. 1, 3 and 8 are defaulters within the meaning of Section 5(GaGa) of the Act, 1991 so the writ petition was filed merely to forestall CIB reporting; where Article 41(1) of the Bangladesh Bank Order, 1972 put a clear bar from taking any legal proceeding in respect of the CIB report. He thus prays the Rule be discharged.

Mr. Md. Osman Gani Bhuiyan, learned Advocate for the respondent No. 5, likewise opposes the Rule. Referring to the affidavit-in-opposition and the supplementary affidavit, he contends that the transfer of share by the petitioner No. 1 without the consent of the lending bank offends Section 27Ka of the Act, 1991, and is ineffective, so he continues to be a majority shareholder as reflected in Form-XII; He thus submits that the shareholders and directors of the respondent No. 6 belong to his family and he in fact enjoyed the benefit of the loan; where CIB reporting is a statutory duty and a matter of policy involving no legal right of the petitioners to challenge their inclusion in the CIB report the petitioners suppressed material facts. He argues further that and prays that the Rule be discharged. Though the respondent No. 5 has filed affidavit-in-opposition asserting that the point-in-issue has already been decided by the High Court Division and the Appellate Division, yet no such decision has been placed by him before us.

Having heard the learned Advocates for the contending parties, and having perused the writ petition, the supplementary affidavits, the affidavits-in-opposition and the annexure, we proceed to determine the Rule. It is, however, necessary at the very outset to mark its boundaries. The Rule involves to examine reporting of the names of the petitioners as interested concerns of the respondent No. 6 in connection with the loans availed by them from the respondent Nos. 4 and 5 and we would like to keep dwell on our discussion within that compass.

Under the facts and circumstances, three questions fall for decision: **firstly**, whether the writ petition is maintainable; **secondly**, whether the resignation and transfer of shares of the petitioner No. 1 in 2009 rendered ineffective by section 27Ka of the Act, 1991; and **thirdly**, whether any of the petitioners fell within the explanation to clause (GaGa) of section 5 of the said Act in relation to the respondent No. 6, either when the loans were availed or when they became overdue and were reported.

We take up first point-in-issue is regard to maintainability of the writ petition. The respondent No. 4 relies upon Article 41(1) of the Bangladesh Bank Order, 1972, which provides:

> "41. (1) No suit or other legal proceedings shall lie against the Bank or any of its Officer for anything which is in good faith done or intended to be done in pursuance of Article 36 or Article 37 or Article 38 or Article 39 or Article 40 or in pursuance of the provisions of Chapter IV."

Upon true construction of the wordings of the above provision of law, four features of this provision thereby deserve notice. First, its shelter extends only to Bangladesh Bank and its officers; **it affords no protection to a lending bank**, however the objection in the instant case has been raised by the respondent No. 4, itself a lending bank, while Bangladesh Bank has neither filed any affidavit nor raised any objection. Secondly, **the protection is neither absolute nor unconditional**: it speaks "in good faith done or intended to be done" In pursuance of the specified provisions, and cannot be read as conferring immunity upon an act itself alleged to have been done beyond the boundaries of law. Thirdly, the petitioners seek no damages or compensation from Bangladesh Bank or its officers; they seek a declaration that the reporting of their names in the CIB has been made simply going beyond the authority conferred by section 5(GaGa) read with section 27KaKa of the Act, 1991. Fourthly, the application has been filed under Article 102 of the Constitution and Bangladesh Bank, a statutory public authority which maintains the CIB and circulates the list of the defaulter borrowers in exercise of statutory powers, and Article 102(2)(a)(ii) empowers this Court, in an appropriate case, to declare such an act to be without lawful authority and be of no legal effect.

The adjudication, therefore, is not whether Bangladesh Bank acted wisely or unwisely, nor whether the reporting was administratively expedient, but whether the inclusion of the Petitioners' names was within the "Four Corners" as authorized by the statutory provisions

governing the CIB. **An act cannot derive legal sanction from the mere fact that it was undertaken in the discharge of an administrative function when it exceeds the limits of statutory authority. An inclusion unsupported by the governing provisions cannot be characterised as one made "in pursuance of" Chapter IV for the purposes of Article 41(1). We therefore hold that Article 41(1) does not operate as a bar to the maintainability of the present writ petition.**

Both the respondent Nos. 4 and 5 have alleged that the petitioners suppressed material facts. It is true that the writ petition does not disclose the facilities availed by the petitioner Nos. 3 and 8 from the respondent No. 4, and that the learned Advocate for the petitioners did not dispute their existence at the hearing. But the Rule issued is not related those facilities, it called in question reporting of the petitioners' names in the CIB in connection with the loans of the respondent No. 6. The respondent No. 4 itself states that, when the writ petition was filed, those facilities were overdue but had not reached the stage of CIB reporting, classified only during the pendency of the Rule; so no reportable default which could be said to have been concealed. The stay, too, was confined to the reporting of the petitioners' names in the CIB in connection with the loans of the respondent No. 6, and on its plain reading did not restrain the reporting of any facility availed by the petitioner Nos. 3 and 8 in their own names. So those facilities would have no bearing on whether the petitioners are interested concerns

(স্বার্থসংশ্লিষ্ট প্রতিষ্ঠান) of the respondent No. 6. On the other hand the respondent No. 5 contends that CIB reporting is a matter of policy involving no legal right of the petitioners. We cannot accede to that contention. The petitioners have assailed no policy of Bangladesh Bank rather their only grievance is that their names have been reported as defaulters beyond the limits of the statutory provision of law. Under section 27KaKa(3) of the Act, 1991, no bank company or financial institution may extend any credit facility to a defaulter borrower, subject to the statutory provision, such reporting carries a direct legal consequence and the petitioners are thus persons aggrieved. Whether the reporting of the names of the petitioners in the CIB of Bangladesh Bank corresponds Section 5(GaGa) read with section 27KaKa of the Act, 1991 is, certainly a question of law which this Court may examine under Article 102 of the Constitution.

Though no such objection is taken in the affidavits-in-opposition, we have also considered whether the petitioners had an equally efficacious alternative remedy. The only one that suggests itself is rectification of the register of members under section 43 of the Companies Act, 1994. That remedy touches the register of members of a company; it cannot direct Bangladesh Bank to correct the CIB report, nor determine whether a person is a defaulter borrower under the Bank Company Act, 1991. The grievance of the petitioners, moreover, is not against any entry made by the respondent No. 6 in its register of members but against the reporting of their names as defaulters; and their

request of 15.01.2025 to the respondent Nos. 4 and 5 met, according to them, with no relief. Nor is the proviso to section 27KaKa(3) of the Act, 1991, to which a remedy against such wrongful reporting can well be entertained by this Court.

Nor does the Rule call for adjudication of any disputed question of fact. The contesting respondents do not dispute the execution of the documents on which the petitioners rely; they contend only that those documents are ineffective in law. A bare assertion that the petitioner No. 1 retained an interest in the respondent No. 6 cannot be considered any disputed question of fact that require any evidence, and we thus hold the writ petition is maintainable.

We now come to the core point of the controversy. It is thus expedient to reproduce clause (GaGa) of section 5 and sub-sections (1) to (3) of section 27KaKa of the Act, 1991. Clause (GaGa) reads as under:

> ৫। (গগ) "খেলাপী ঋণ গ্রহীতা" অর্থ কোন দেনাদার ব্যক্তি বা প্রতিষ্ঠান বা কোম্পানী যাহার নিজের বা স্বার্থ সংশ্লিষ্ট প্রতিষ্ঠানের অনুকূলে প্রদত্ত অগ্রীম, ঋণ বা অন্য কোন আর্থিক সুবিধা বা উহার অংশ বা উহার উপর অর্জিত সুদ বা উহার মুনাফা বাংলাদেশ ব্যাংক কর্তৃক জারীকৃত সংজ্ঞা অনুযায়ী মেয়াদোত্তীর্ণ হওয়ার ৬ (ছয়) মাস অতিবাহিত হইয়াছে;
> ব্যাখ্যা।- এই দফার উদ্দেশ্য পূরণকল্পে কোন ব্যক্তি বা, ক্ষেত্রমত, প্রতিষ্ঠান বা কোম্পানী অন্য কোন প্রতিষ্ঠানের পরিচালক না হইলে অথবা উক্ত প্রতিষ্ঠানে তাহার বা উহার শেয়ারের অংশ ২০% এর অধিক না হইলে অথবা উক্ত প্রতিষ্ঠানের ঋণের জামিনদাতা না হইলে, উক্ত প্রতিষ্ঠান তাহার বা উহার স্বার্থ সংশ্লিষ্ট প্রতিষ্ঠান বলিয়া গণ্য হইবে না;

Sub-sections (1) to (3) of section 27KaKa, also reads as under:

> "২৭কক । (১) প্রত্যেক ব্যাংক-কোম্পানী বা আর্থিক প্রতিষ্ঠান, Bangladesh Bank Order, 1972 (P.O No. 127 of 1972) এর article 43 ও 44 এর বিধান অনুসারে, সময় সময়, উহার খেলাপী ঋণ গ্রহীতাদের তালিকা বাংলাদেশ ব্যাংকে প্রেরণ করিবে,
> (২) বাংলাদেশ ব্যাংক উপ-ধারা (১) এর অধীন প্রাপ্ত তালিকা, Bangladesh Bank Order, 1972 (PO No. 127 of 1972) এর article 45 এর বিধান অনুসারে দেশের সকল ব্যাংক-কোম্পানী ও আর্থিক প্রতিষ্ঠানে প্রেরণ করিবে,
> (৩) কোন খেলাপী ঋণ গ্রহীতার অনুকূলে কোন ব্যাংক-কোম্পানী বা আর্থিক প্রতিষ্ঠান কোনরূপ ঋণ সুবিধা প্রদান করিবে না:
> তবে শর্ত থাকে যে, ধারা ৫ এর দফ (গগ) এর বিধান অনুসারে পরস্পর স্বার্থ সংশ্লিষ্ট গ্রুপভুক্ত কোন খেলাপী ব্যক্তি বা ক্ষেত্রমত, প্রতিষ্ঠান বা কোম্পানী যদি ইচ্ছাকৃত খেলাপী ঋণ গ্রহীতা না হয় অথবা বাংলাদেশ ব্যাংকের নিকট যদি ইহা প্রতীয়মান হয় যে, উক্ত ব্যক্তি বা প্রতিষ্ঠান বা কোম্পানী কর্তৃক ঋণ পরিশোধে ব্যর্থ হইবার ক্ষেত্রে যুক্তিসঙ্গত কারণ রহিয়াছে,

তাহা হইলে উক্ত ব্যক্তি বা প্রতিষ্ঠান বা কোম্পানী খেলাপী হইবার কারণে ঐ গ্রুপভুক্ত অন্য কোন প্রতিষ্ঠান বা কোম্পানী খেলাপী বলিয়া গণ্য হইবে না, এবং এইরূপ প্রতিষ্ঠান বা কোম্পানীকে বাংলাদেশ ব্যাংকের পূর্বানুমোদন সাপেক্ষে তৎকর্তৃক জারীকৃত নির্দেশনা অনুযায়ী ঋণ সুবিধা প্রদান করা যাইবে।"

On a plain reading of clause (GaGa), a person becomes a defaulter borrower when an advance, loan or other financial facility granted to him, or to an institution in which he is interested, has remained overdue for six months according to the said definition. The Explanation then supplies the measure of "interest". It lays down three statutory tests: the person must be a director of that institution, or must hold more than 20% of its shares, or must be a guarantor of its loan; and if none is satisfied, the institution "shall not be regarded" (গণ্য হইবেনা) as one in which the person is interested. Couched in negative and mandatory terms, the Explanation speaks with a clarity that leaves no room for doubt: where none of the three conditions is satisfied, the institution cannot in law be regarded as one in which the person is interested, and the prescription admits of no enlargement by implication, administrative practice or considerations extraneous to the conditions expressly embodied in it.

Section 27KaKa(1) of the Act, 1991 denotes that every bank-company or financial institution will send to Bangladesh Bank the list of its defaulter borrowers, and sub-section (2) when Bangladesh Bank will circulate the list it receives. It follows that a bank may report a person as a defaulter in respect of a loan granted by another institution only if that person falls within a category expressly recognised under clause (GaGa) and its Explanation. In the absence of such statutory authority, neither a

bank nor Bangladesh Bank may extend, by administrative practice, the scope of the statutory definition of a defaulter borrower.

In the instant case, the petitioners have relied on the Board resolution dated 22.07.2009, Form-117 and the affidavit in support of the transfer of shares dated 07.05.2009 and the amendment of the Articles of Association on 16.08.2009, all annexed to the writ petition. Neither contesting respondent has specifically denied them, though both describe the relevant paragraphs as matters of fact and record. We do not treat that description, or the silence of the respondent Nos. 1 to 3 and 6, as an admission. What is significant is that the respondent No. 5 does not dispute that the petitioner No. 1 executed those documents; its case is that they are ineffective in law under section 27Ka of the Act, 1991, a question of law to which we shall presently turn.

It is admitted fact, the respondent No. 5 sanctioned loan facilities to Partex Plastic Limited and Partex Foundry Limited on 19.11.2012, more than three years after the petitioner No. 1 had left the company, and its own Sanction Advice (Annexure-‘O’ to the second supplementary affidavit) shows that the respondent No. 6 then had only two directors, M. A. Hashem and Rubel Aziz. The respondent No. 5 has not disputed this document, though it issues from its own hands, nor suggested that the petitioner No. 1 was a director when the facilities were sanctioned.

Further, the petitioners have stated in paragraph 11 to the writ petition that the facilities were availed long after the petitioner No. 1 had

transferred his shares and resigned. The respondent No. 4 does not assert that it lent any money to the respondent No. 6 before July, 2009, and does not claim that the petitioner No. 1 had any role in the sanction of those facilities.

Neither the respondent No. 4 nor the respondent No. 5 claims that any petitioner is a guarantor or mortgagor of the loans of the respondent No. 6, neither has produced any document showing that any petitioner stood as guarantor.

Now we turn to the contention of the respondent No. 5 that the transfer of shares in 2009 is ineffective for want of the consent of the lending bank under section 27Ka of the Act, 1991. Section 27Ka reads as follows:

> "আপাততঃ বলবৎ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, ঋণদাতা ব্যাংক বা আর্থিক প্রতিষ্ঠানের ঋণ বা বিনিয়োগ অনুমোদনকারী কর্তৃপক্ষের একস্তর ঊর্ধ্বতন কর্তৃপক্ষের অনুমোদন ব্যতীত কোন দেনাদার কোম্পানীর কোন পরিচালকের পদত্যাগ কার্যকর হইবে না এবং কোন পরিচালক তাহার শেয়ার হস্তান্তর বা বিক্রয় করিতে পারিবেন না।"

Neither contesting respondent has suggested that the section, in any of its forms, applied to anyone other than a director of a debtor company, or required the approval of anyone other than the lending bank or financial institution. In Anwar Karim and others vs. Bangladesh Bank and others, 52 DLR (HCD) 1, this Division likewise construed the provision, as it then stood, as a restriction upon a director of a borrower company, who could neither transfer his shares nor resign from the directorship without the consent of the Board of Directors of the creditor bank.

So, the restriction, therefore, attaches to a director of a debtor company (দেনাদার কোম্পানী), and the approval it contemplates is that of the lender (ঋণদাতা ব্যাংক বা আর্থিক প্রতিষ্ঠান).

Clause (Chha) of section 5 of the Act, 1991 defines a debtor (দেনাদার) as a person, company or institution which receives a loan, advance or other financial facility, and includes a guarantor; a company becomes the debtor of a bank when it receives a facility from that bank. Where there is no lending bank to which the company is indebted, there is no creditor whose approval can be sought. In the absence of any creditor whose approval could have been obtained at the relevant time, Section 27Ka of the Act, 1991, can only be invoked where the company was a debtor of a bank or financial institution at the material time. The provision cannot be applied retrospectively to invalidate a resignation or transfer that had taken place before the company incurred any liability to a bank or financial institution, merely on the ground that the company subsequently became a borrower. The applicability of the provision must, therefore, be determined with reference to the status of the company and the existence of the relevant banking liability at the time of the impugned resignation or transfer.

The respondent No. 6 was incorporated in May, 2009, and the petitioner No. 1 resigned and transferred his shares on 22.07.2009, some two months thereafter. No material document has ever been shown by the respondent to prove that on that date the respondent No. 6 was indebted to any bank or financial institution; the respondent No. 5 does

not even assert it, its own facilities having been sanctioned in 2012, and the respondent No. 4 does not claim to have lent any money before the petitioner No. 1 departed. **So from the above it is clear that Section 27Ka had no manner of application to the resignation and transfer of shares of the petitioner No. 1, and the contention of the respondent No. 5 thus fails.**

Even where it assumed that section 27Ka of the Act, 1991 applied and was breached, the result would be no different. In Anwar Karim case (supra), the borrower company had taken loan in 1988 and the loan was classified in 1989; the petitioners therein acquired shares and became directors in 1991, and in 1995 transferred their shares and resigned without the consent of the lending bank; their names were thereafter included in the CIB report in respect of the old loan. This Division held that such inclusion was beyond the contemplation of law, observing that:

> "It is not the intention of aforesaid provision to classify a director who was not instrumental in taking the loan and responsible for mismanagement of the affairs of the company to classify him as the defaulting borrower."

This Division further held:

> "Though transfer of shares and resignation of the petitioner Nos. 1 and 2 from the directorship of the respondent No. 5 borrower company are not valid for their failure to obtain consent of the Board of Directors of the creditor bank under the provisions of section 27Ka of the said Act in the facts and circumstances of the case and reasons stated above inclusion of their [names] in the

CIB report in our view is without lawful authority and of no legal effect."

Though facts are not identical with the case in hand but the petitioners joined after the loan was taken and their exit was found invalid under section 27Ka; here, the petitioner No. 1 left before any loan was taken and no breach of section 27Ka is established.

The respondent No. 5 next contends that the petitioner No. 1 remains a majority shareholder holding 8,000 shares and that the RJSC did not approve the transfer, its sole foundation being the Form-XII filed with the RJSC, which has not been updated since 2009. Two provisions of the Companies Act, 1994 bear upon this. Under section 38(3), it is the company which registers a transfer of shares upon presentation of a duly stamped instrument of transfer executed by transferor and transferee, and no provision has been shown which, in 2009, required the Registrar's approval for the transfer of shares of a private company.

Further, under section 115(2) of the Companies Act, 1994, it is the company which must send to the Registrar, within fourteen days, notice of any change among its directors; and Form-XII is the return of the particulars of directors, not the register of members. Form-XII, therefore, records only what has been filed with the Registrar; it does not, by itself, undo the acts of the company which the contesting respondents have not denied, namely the Board resolution accepting the resignation and approving the transfer, the execution of Form-117 and the amendment of the Articles. If the company failed to file the return, or the Registrar

failed to act upon it, that failure cannot, in the circumstances of this case, be visited upon one who had left the company.

The learned Advocate for the petitioners contend that the RJSC has not updated its record because of the outstanding loans of the respondent Nos. 4 and 5; that is merely their assertion, nothing on record establishes the reason, and we make no finding upon it nor do we decide any question of title to the shares or of registration of their transfer under the Companies Act, 1994; those questions are not before us, and our finding is confined to the purpose of clause (GaGa) of section 5 of the Bank Company Act, 1991. We do not say that a bank may never rely upon the record of the RJSC; our conclusion rests not upon that record alone but upon the undisputed documents of the company and the Sanction Advice of the lending bank itself.

The question, then, is whether one who left the company in 2009 may be treated as interested in it, in respect of loans taken years afterwards, merely because the Registrar's record was never mended. On the facts before us the statutory definition does not permit that consequence. The lending bank itself recorded in its Sanction Advice in 2012 that the company had only two directors, and the petitioner No. 1 was not one of them. The 8,000 shares mentioned by the respondent No. 5 are the shares transferred in 2009; the total share capital of the respondent No. 6 is not on record, and what percentage they represented cannot be said. But even if the petitioner No. 1 held more than 20% before July, 2009, that would not decide the matter. What is material is

whether he held such interest when the loans were taken, or when they became overdue and were reported; on this record, he did not. As for the 500 shares, the petitioners themselves disclosed that they acquired them on his father's death in 2020 and transferred them to Mrs. Syeda Shaireen Aziz; the date of transfer has not been found on record, but none of the respondents claimed that on that basis he became a director or held more than 20% of the shares. Those shares do not bring him within any of the three tests of explanation.

The respondent No. 5 further urges that the shareholders and directors of the respondent No. 6 belong to the family of the petitioner No. 1, who in fact enjoyed the benefit of the loan. It is true that the transferee, Rubel Aziz, is his brother, and that a brother is a member of the family within the meaning of clause (JhaJha) of section 5 of the Bank Company Act, 1991. However, the explanation to clause (GaGa) does not employ any such expression. Where the Legislature intended to attach legal consequences to a relationship of kinship, it expressly provided for the same, as is evident from clause (KaKaKaKa) of section 5 of the Bank Company Act, 1991, which, in defining a 'wilful defaulter', expressly refers to loans taken in favour of a member of the family of the defaulter. No such expression, however, appears in the Explanation to clause (GaGa). It is, therefore, evident that the Legislature did not intend to extend the scope of the said provision by importing the concept of family relationship where no such reference has been expressly made.

We find support of our such view in the decision made in the case of Homeland Footwear Ltd. and another vs. Bangladesh Bank and others, reported in Bangladesh Law Reference (BLR) 2020 (HD) 262, where one of us is party to the said judgment (Md. Mozibur Rahman Miah, J.). Where the petitioner No. 2 took over the management of a company under a court-sanctioned arrangement, on condition that the previous liabilities would be borne by the previous management; he became its Managing Director and held 51% of its shares, but the company took no fresh loan after he joined. This Division thus held that neither the company nor the petitioner No. 2 was a defaulter borrower within the meaning of sections 5(GaGa) and 27KaKa of the Act, 1991 in respect of the loans of the previous management, and that mere holding of 51% shares did not alter that result. The Appellate Division subsequently declined to interfere on that decision. Though it does not govern the fact of the present case, we just cite it as of analogy only, for broader perspective that whether a person is interested in a borrowing company must be determined by reference to his actual relationship with that company at the relevant time, and not by an historical or formal association divorced from the borrowing in question.

In the light of the foregoing, we basing on the materials on record hold that the petitioner No. 1 was not a director of the respondent No. 6, did not hold more than 20% of its shares and was not a guarantor of its loans, either when the respondent No. 6 availed the credit facilities from the respondent Nos. 4 and 5 or when those facilities became overdue and

were reported; consequently the respondent No. 6 was not an institution in which the petitioner No. 1 was interested within the meaning of clause (GaGa) of section 5 of the Bank Company Act, 1991 in respect of the loans in question.

In case of petitioner Nos. 2 to 13 none of them claims that any of these companies is a director, shareholder or guarantor of the respondent No. 6, nor has any material been produced to bring any of them within the tests of the Explanation. The CIB report is not before us because, under Article 46(3) of the Bangladesh Bank Order, 1972, no court can compel Bangladesh Bank or a bank company to produce it, and we thus make no opinion on it. But the Rule was issued on the footing that the petitioners had been reported as interested or sister concerns of the respondent No. 6, and neither contesting respondent suggests any other statutory basis for reporting them in connection with the loans of the respondent No. 6. The letter of Mercantile Bank PLC dated 02.02.2025 shows that the petitioner No. 10 has refused banking services because of the liabilities of one or more sister concerns of the group.

Overall, we find sufficient merit and substance in the submissions of the learned Advocate for the petitioners. The impugned reporting, insofar as it concerns the loans of the respondent No. 6 and the petitioners' alleged status as interested concerns thereof, is unsupported by the statutory conditions that govern such reporting and cannot be sustained in law.

Accordingly, the Rule is made absolute, however, without any order as to costs.

The inclusion, reporting, circulation and publication of the names of the petitioners in the Credit Information Bureau (CIB) report of Bangladesh Bank as interested or sister concerns of the respondent No. 6 in connection with the loan liabilities of the respondent No. 6 to the respondent Nos. 4 and 5 are hereby declared to have been made without lawful authority and to be of no legal effect.

The respondent Nos. 1 to 3 are directed to remove the names of the petitioners from the CIB report, insofar as they have been included in connection with the loan liabilities of the respondent No. 6 to the respondent Nos. 4 and 5, within 7 (seven) days from the date of receipt of a copy of this judgment, and not to include them again in connection with those loan liabilities except in accordance with law. The respondent Nos. 4 and 5 shall act in conformity with this judgment insofar as the reporting relates to the loans of the respondent No. 6.

It is made clear that this judgment shall not affect the right of the respondent Nos. 4 and 5, or of any other bank or financial institution, to report any of the petitioners to the CIB in respect of any credit facility other than the loans of the respondent No. 6 from the respondent Nos. 4 and 5, including the credit facilities availed by the petitioner Nos. 3 and 8 from the respondent No. 4, in accordance with law. Nor shall it Bangladesh Bank prevent the reporting of any of the petitioners in connection with the loans of the respondent No. 6 if, in future, that

petitioner becomes a director of the respondent No. 6, holds more than 20% of its shares, or becomes a guarantor of its loans, provided that the statutory requirements are otherwise satisfied. Nor shall it affect the right of the respondent Nos. 4 and 5 to recover their dues in accordance with law.

The order of stay granted at the time of issuance of the Rule, as extended from time to time, thus stands recalled and vacated.

Let a copy of this judgment and order be communicated to the respondents at once.

Md. Mozibur Rahman Miah, J.

I agree.

Mazhar, BO