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

Present:
Mr. Justice Md. Toufiq Inam

COMPANY MATTER NO.1885 OF 2025.

(Aring out of an application under section 233 of the Companies Act, 1994.)

with

COMPANY MATTER NO. 30 OF 2026.

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

-AND-

IN THE MATTER OF:

Fazila Khatun and others.
------ Petitioners.
(In both matters)

-Versus-

Bangla Eastern Industries Limited and others.
------ Respondents.
(In both matters)

Mr. Mustafizur Rahman Khan, Senior Advocate with
Mr. Mohammad Harun-Ur-Rashid, and
Mr. M.A. Awal, Advocate
------ For the Petitioners.
(In both matters)

Mr. Mizan Sayeed, Senior Advocate with
Ms. Anita Ghazi Rahman, Senior Advocate,
Mr. Mohammed Rezaul Hoque,
Mr. Shahjahan Monir,
Mrs. Sharmin Fatema Naser,
Ms. Sameera Mahmud and
Mr. Joydeepta Dev Chudhoury, Advocates.
------ For the Respondent Nos.1 & 2.
(In both matters)

Mr. Md. Mongil Hossain, Advocate.
------ For the Respondent No.3.

Mr. Md.Mamunur Rashid Chowdhury, Advocate.
------ For the Respondent No.5.

Md.Anamul Hossain, Advocate.
------ For the Respondent Nos. 6 & 7.
Mr. Md. Modersher Ali Khan (Dipu), Advocate.
------- For the Respondent No.8.

Judgment Delivered On: 15.09.2026.

Md. Toufiq Inam, J:

These two connected proceedings concern the shareholding and affairs of respondent No.1 Company, namely, *Bangla Eastern Industries Limited*. Company Matter No.1885 of 2025 has been filed under section 233 of the Companies Act, 1994in respect of oppression and mismanagement, while Company Matter No.30 of 2026 has been instituted under section 43 of the said Act, by the same set of petitioners, seeking, inter alia, rectification of the Register of Members in respect of certain subsequent allotments of shares.

The case of the petitioners, in substance, is that the Respondent No.1, a private limited company incorporated in 1964, is presently not carrying on any substantial business. Its principal asset, comprising approximately 2.18 acres of land at Uttara, Dhaka, was acquired by the Government in LA Case No.03.15.18/2023-2024, against which compensation of Tk.122 crore was paid to the Company. The petitioners were existing shareholders of the respondent-company holding 1,250 shares and that, by the impugned allotment of 14,098 additional shares, their proportionate shareholding was substantially diluted. According to them, the said allotment was made without following the statutory requirements governing further allotment of shares and without any valid and lawful corporate basis. They further contend that the corporate records relied upon by the respondents do not satisfactorily establish a valid offer of the shares to the existing shareholders or their lawful refusal to subscribe thereto. On such premises, the petitioners seek appropriate relief under sections 233 and 43 of the Companies Act, 1994, including rectification of the Register of Members.

The case of the respondents, on the other hand, is that the impugned 14,098 shares were duly created and allotted pursuant to valid decisions of the Company and were duly reflected in the statutory records and returns filed with the Registrar. Their case is that the existing shareholders were given an opportunity to subscribe to the further shares but the petitioners did not avail themselves of that opportunity, whereupon the shares were allotted to the other shareholders in accordance with their entitlement. The respondents accordingly contend that the allotment was lawful, the consequential entries in the Register of Members were properly made, and the proceedings, particularly the proceeding under section 233, are not maintainable.

Mr. Mustafizur Rahman Khan, learned Advocate appearing for the petitioners, submits that the petitioners instituted Company Matter No.1885 of 2025 under section 233 of the Companies Act, 1994, alleging, inter alia, oppression and minority protection. They later also instituted the Company Matter No.30 of 2026 under section 43 of the Companies Act, challenging unlawful dilution of their shareholding as well as the allotment of 14,098 new shares. He submits that, according to the Company's Schedule X up to 2019, the petitioners collectively held 1,250 shares, representing approximately 21% of the then issued shares. The Company is admittedly inactive and its principal asset, approximately 2.18 acres of land at Uttara, Dhaka, was acquired by the Government for compensation of Tk.122 crore, which has since been paid to the Company. According to the petitioners, respondent No.2, together with his full sisters, has sought to appropriate or deal with the said fund to their prejudice by relying upon an allotment which diluted the petitioners' shareholding.

He further submits that the impugned allotment itself is seriously disputed and that the materials on record disclose several circumstances requiring examination as to its legality and bona fides. He points out that the Company was inactive and already had substantial funds, while the additional 14,098 shares were allotted at face value for Tk.14,09,800/- without any apparent commercial justification. He submits that the allotment had the effect of substantially reducing the petitioners' proportionate interest in the Company and, consequently, in the compensation proceeds.

He further draws attention to the two materially different versions of the minutes of the alleged EGM dated 14.03.2022. According to him, the copy of the minutes earlier supplied by the Company to the petitioners did not contain any resolution relating to the further allotment, whereas the subsequently produced version relied upon by the respondents contains such a resolution. He submits that the alleged notice dated 13.03.2022 also did not disclose any clear agenda concerning the increase of capital or further allotment and that the meeting was allegedly convened upon only one day's notice. These circumstances, according to the petitioners, cast serious doubt upon the reliability of the corporate record.

Mr. Khan further submits that the respondents' reliance upon the alleged participation or refusal of the petitioners to subscribe to the further shares is disputed. He contends that the statutory requirements governing further allotment were not established and that the respondents have failed to satisfactorily demonstrate that the petitioners and the other existing shareholders were duly offered their respective entitlement in accordance with law. He submits that the subsequent statutory returns cannot, by themselves, validate an allotment whose underlying corporate basis is disputed.

He submits that, without prejudice to the petitioners' case under section 233, they have also instituted Company Matter No.30 of 2026 under section 43 seeking rectification of the Register of Members in respect of the disputed allotment. Reliance is placed upon section 233(3)(a) of the Act, *Mosharraf Hossain v. Saad Securities Ltd.*, 19 BLC 920, the discussion on "fraud on minority" in Dr. M. Zahir's *Company and Securities Laws*, and *Kader Textiles (Pvt.) Ltd. v. Md. Lehajuddin Miah and others*, 58 DLR (AD) 238, in support of the propositions that the Court may grant appropriate protective relief and mould relief according to the circumstances of the case. Finally, he submits that substantial amounts have already been withdrawn from the Company's account and that appropriate protective orders are therefore necessary to preserve the compensation fund and protect the petitioners' proportionate interest therein.

Per contra, Mr. Mizan Sayeed and Mrs. Anita Ghazi Rahman, learned Senior Advocates appearing for the respondents, submit that the proceedings are liable to fail both on maintainability and on merits. Their principal submission is that, on the date of institution of Company Matter No.1885 of 2025, the petitioners held only 1,250 out of the Company's 20,000 shares, representing 6.25%, and therefore did not satisfy the statutory threshold prescribed by section 195(a), read with section 233, of the Act. They contend that the petitioners cannot rely upon the earlier Schedule X showing approximately 21% while disregarding the subsequent allotment and the statutory records reflecting the increased issued share capital.

They further submit that the petitioners were aware of, and had been given opportunity to participate in, the relevant corporate proceedings and to subscribe to the further shares, but failed or declined to do so. They contend that the impugned allotment was duly authorised by the Company, subsequently reflected in the statutory returns, and cannot be characterised as unlawful merely because the petitioners' shareholding was thereby diluted. They also submit that the petitioners' conduct, including their alleged receipt of compensation proceeds and their delay in challenging the allotment, attracts the principles of acquiescence and waiver.

On the merits, the respondents submit that the Company's decision to raise additional capital was a matter of commercial and corporate judgment and that the subsequent receipt of Tk.122 crore as compensation cannot retrospectively render the earlier allotment improper. They dispute the allegation concerning the two versions of the minutes and maintain that the version relied upon by them represents the authentic corporate record. They further contend that the statutory scheme permits further shares to be offered to existing members and, where the relevant conditions are satisfied, to other persons, and that the petitioners' failure or refusal to subscribe did not invalidate the subsequent allotment.

They further submit that the conduct of the petitioners, viewed as a whole, demonstrates clear and conscious acquiescence in the affairs and transactions of the respondent-company which are now sought to be questioned in these proceedings. According to them, the petitioners were not strangers or passive shareholders who were kept in the dark regarding the affairs of the company. Rather, they participated in the meetings of the company from time to time and were present at the relevant meetings concerning its affairs. They signed the minutes of such meetings without recording any objection or reservation and continued to do so year after year, particularly during the period from 2020 to 2025.

It is further submitted that the petitioners were fully aware of the company's affairs and the transactions relating to its assets and shareholding. Despite such knowledge, they did not raise any objection to the matters which they now seek to challenge. On the contrary, they participated in the corporate process, accepted the decisions reflected in the minutes and acted upon the same. More importantly, when compensation was received in respect of the company's property, the petitioners accepted their respective shares of such compensation in full and without protest or reservation. Having accepted the monetary benefit arising from the transaction, they cannot subsequently seek to invalidate or reopen the very transaction from which they have already derived and retained a benefit.

They contend that such conduct is not merely a case of delay or inaction. It constitutes positive conduct demonstrating knowledge of the relevant facts, participation in the affairs of the company, acceptance of the consequences thereof and receipt of the benefits arising from the transactions in question. The petitioners, having knowingly acted upon the situation and having accepted its benefits, cannot subsequently approbate and reprobate by challenging the same state of affairs when it becomes convenient for them to do so. The principle of acquiescence, according to the respondents, operates precisely in such circumstances, particularly where the conduct of a party has led the other side to proceed on the footing that the transaction or state of affairs is accepted.In support of their submission, relies is placed upon the decision in *Tahassum Kaiser v.*

Partex Cables, reported in 30 BLC (AD) 276, particularly paragraph 19.

The respondents finally submit that the petitioners have failed to establish any case of oppression or mismanagement within the meaning of section 233 and that the dispute is essentially one concerning the respective economic interests of different groups of shareholders. They accordingly pray for dismissal of Company Matter No.1885 of 2025, vacation of the interim order, and dismissal of the subsequent proceeding under section 43 as well. The separate affidavits filed on behalf of respondent Nos.3 to 8 adopt, in substance, the submissions advanced on behalf of respondent Nos.1 and 2.

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>Maintainability of the proceeding under section 233</u>

Having considered the respective submissions and the materials, this Court is of the view that the objection as to the maintainability of Company Matter No.1885 of 2025 requires to be considered first. Section 233 of the Companies Act, 1994 is expressly subject to the qualification prescribed in section 195 of the Act. Under section 195(a), the requisite qualification is one-tenth of the issued share capital. The requirement is therefore not merely procedural or incidental to the merits of the grievance; it is a statutory condition for invoking the jurisdiction under section 233.

The present proceeding was instituted on 20.10.2025. On that date, according to the register of members and the statutory returns then standing in the records of the Registrar of Joint Stock Companies and Firms, the issued share capital of the company was shown as 20,000 shares, while the petitioners collectively stood registered as holders of 1,250 shares. Their registered shareholding was thus 6.25%, which was below the minimum statutory qualification of one-tenth, or 10%, prescribed by section 195(a), read with section 233 of the Act. Accordingly, irrespective of the nature or seriousness of the allegations made in the petition, the statutory qualification for maintaining the proceeding under section 233 was not satisfied on the date of its institution.

Section 233 provides a special statutory remedy in respect of oppression and mismanagement. The right to invoke that remedy, however, is confined by the legislature to a member or debenture holder satisfying the qualification prescribed in section 195. Compliance with that qualification is, therefore, a condition precedent to the maintainability of an application under section 233.

This court is not persuaded by the submission of the petitioners that, because the subsequent allotment of shares is challenged in the connected proceeding under section 43, the petitioners should, for the purpose of section 233, be treated as continuing to hold their earlier percentage of shares on the date of institution or the dilution itself is an oppressive act. The validity of the impugned allotment, the authority for making it, compliance with the statutory requirements governing the issue of further shares, and the validity of the consequential entries in the register are matters falling for determination in the proceeding under section 43. The Court cannot, for the purpose of satisfying the statutory threshold under section 233, proceed on the assumption that the very allotment whose validity is under challenge was invalid. Such an approach would pre-judge the issue which is to be determined upon the evidence in the rectification proceeding.

This court, therefore, holds that, as the petitioners collectively held only 6.25% of the issued share capital as recorded on 20.10.2025, and thereby failed to satisfy the minimum requirement of one-tenth under section 195(a), Company Matter No.1885 of 2025, instituted under section 233, is not maintainable.

This conclusion, however, does not dispose of the connected proceeding under section 43. The two proceedings rest upon distinct statutory provisions and involve different questions for determination. Failure to satisfy the qualification prescribed for invoking section 233 does not validate or immunise the impugned allotment from scrutiny under section 43. Nor does the fact that the disputed allotment increased the issued share capital, thereby reducing the petitioners' percentage below the statutory threshold under section 195, deprive this Court of jurisdiction to examine, in the proceeding under section 43, whether the allotment itself was lawfully and validly made.

Scope of the enquiry under section 43

The jurisdiction under section 43 is materially wider in character. Where a person's name has been entered in, or omitted from, the register of members without sufficient cause, the Court is empowered to direct rectification of the register, and, in determining such application, may decide any question relating to the title of any person to be entered in or omitted from the register and any other question which it is necessary or expedient to decide for the purpose of rectification. The present proceeding, therefore, requires us to examine not merely whether the impugned allotment was subsequently reflected in the statutory returns filed before the Registrar, but whether there was, in the first place, a genuine, lawful and sufficiently authorised corporate act pursuant to which the additional 14,098 shares came to be allotted and entered in the register.

The respondents have placed considerable reliance upon the Form XV and the subsequent Schedule X filed with the Registrar and contend that, once the allotment had been duly recorded in the statutory returns, the petitioners cannot question the resulting shareholding merely because they are dissatisfied with the consequences thereof. This court is unable to accept the submission in that broad form. Filing of returns with the Registrar is evidence of what the company reported to the Registrar; it is not, by itself, conclusive proof of the validity of the underlying corporate transaction where the very foundation of that transaction is specifically challenged. The question before us is not whether the company reported 20,000 shares, but whether the additional shares forming part of that figure were validly created and allotted.

Alleged necessity for raising further capital

The respondents seek to justify the impugned allotment as a legitimate exercise of the company's power to raise further capital. Their case is that the petitioners were given an opportunity to subscribe for the additional shares but declined to do so, and that the subsequent allotment was accordingly made pursuant to the resolutions relied upon by them. The justification for the allotment, however, has to be examined in the context of the company's financial position and the circumstances prevailing at the relevant time. The company was substantially inactive, its principal asset was the Uttara land acquired by the Government, and it had funds of approximately Tk.2 crore or more. At the same time, it was entitled to receive, and ultimately received, compensation of approximately Tk.122 crore for the acquisition of that principal asset. Against this background, the issue of 14,098 additional shares at face value, increasing the issued share capital from 5,902 shares to 20,000 shares, required an identifiable and proximate corporate necessity.

This Court is conscious that, in exercising jurisdiction under section 43 of the Companies Act, 1994, it does not substitute its own commercial judgment for that of the directors. The Court is not concerned with whether, in hindsight, the decision to raise further capital was commercially wise or necessary. The relevant question is whether the particular allotment is supported by a credible corporate purpose and whether the explanation offered for it is consistent with the surrounding circumstances and the contemporaneous documentary record.In the present case, the respondents have produced no convincing material identifying any specific corporate requirement which necessitated the creation of 14,098 additional shares at that particular time. There is no satisfactory explanation as to why the company required additional capital of Tk.14,09,800, for what purpose it was required, or why such capital had to be raised immediately before the company became entitled to receive substantial compensation. This omission assumes significance having regard to the company's existing funds, its substantially inactive status and the impending receipt of approximately Tk.122 crore.

The timing and effect of the allotment are of still greater significance. Prior to the impugned allotment, the petitioners collectively held shares representing approximately 21% of the issued share capital. Upon the allotment of 14,098 additional shares, their holding was reduced to approximately 6.25%, that is, to less than one-third of their former proportionate interest. The dilution was thus not incidental to the transaction; it was its immediate and substantial consequence. The consequence becomes particularly material because the dilution occurred immediately before the company was to receive approximately Tk.122 crore as compensation for its principal asset. The petitioners, who before the allotment were entitled to approximately 21% of the economic interest in the company and consequently in the compensation proceeds, were thereby reduced to an entitlement of approximately 6.25%. Correspondingly, the allottees acquired a substantially enlarged proportionate interest in the very proceeds which were about to become payable to the company.

Viewed in that context, the transaction cannot be examined merely as an increase in the nominal share capital. Its practical effect was to substantially diminish the petitioners' existing entitlement to the forthcoming compensation proceeds and to enlarge, to a corresponding extent, the economic interest of the persons receiving the additional shares. In the absence of convincing evidence of any genuine corporate requirement for the additional capital, the timing and structure of the allotment strongly indicate that the purported capital raising operated as a means of substantially reducing the petitioners' entitlement and enabling the allottees to appropriate a corresponding greater share of the substantial compensation proceeds.

The issue, therefore, is not whether the company possessed the legal power to issue further shares. Nor is it whether further capital could, in principle, have been raised. The material question is whether the respondents have established a bona fide and proximate corporate necessity for the particular allotment of 14,098 shares, in that manner and at that particular juncture. On the materials before this Court, no such necessity has been satisfactorily demonstrated. The asserted justification of raising further capital, considered against the company’s financial position, the absence of any identified requirement for such capital, the timing of the allotment and the extent of the resulting dilution, does not provide a credible explanation for the transaction.

Two versions of the EGM minutes of 14.03.2022

The matter is further complicated, and in our view materially so, by the existence of two different versions of the minutes of the meeting dated 14.03.2022. The version of the minutes which was supplied by the company to the petitioners does not contain the resolution relating to the impugned further allotment of shares. Subsequently, however, the respondents produced another version of the minutes of the very same meeting which contains a resolution concerning the allotment.

This is not a minor discrepancy in the corporate record. The resolution said to be contained in the subsequently produced version is relied upon as one of the foundational corporate acts supporting the impugned allotment and, consequently, the substantial alteration of the petitioners' shareholding. It was therefore incumbent upon the respondents to provide a cogent and satisfactory explanation as to why two materially different versions of the minutes of the same meeting exist, why the version supplied by the company to the petitioners did not contain the alleged allotment resolution, and in what circumstances the additional resolution came to be incorporated in the other version subsequently relied upon before the Court.

This court does not consider it necessary, for the purpose of the present proceeding, to record any finding of criminal forgery or fabrication. Such a finding would require a different standard and evidentiary foundation. The question before us is narrower, namely, whether the respondents have satisfactorily established the lawful corporate basis for the impugned allotment. In our view, the existence of these two materially different versions of the minutes, coupled with the absence of a satisfactory explanation for the discrepancy, creates a serious doubt as to whether the resolution relied upon by the respondents was in fact part of the duly maintained corporate record at the relevant time. Where the validity of an entry in the register itself is under challenge, such a material uncertainty in the foundational corporate document cannot simply be disregarded.

Alleged consent or refusal of the existing shareholders

The respondents contend that the petitioners and certain other shareholders were present at the relevant meetings and expressed their unwillingness to subscribe to the further shares, whereupon the shares were allotted to those shareholders who agreed to take them. Even assuming, for the sake of argument, that the petitioners were present at any such meeting and expressed unwillingness to subscribe, that circumstance cannot, without more, establish compliance with section 155.

Section 155 prescribes a particular statutory mechanism in relation to further shares. The existing members are first to be afforded the opportunity to subscribe to the further shares in proportion, as nearly as circumstances admit, to their existing paid-up shareholding. The offer is required to be made by notice specifying the number of shares offered and allowing not less than fifteen days for acceptance. The statutory scheme therefore contemplates an identifiable offer made to an identifiable existing member, specifying that member's entitlement and affording a corresponding statutory opportunity to accept or decline the offer. Only thereafter can the unaccepted shares be dealt with in the manner contemplated by law.

The distinction between an opportunity afforded by statute and an alleged expression of unwillingness at a meeting is fundamental. A shareholder's presence at a meeting does not, by itself, establish that a statutory offer was made to that shareholder. Nor does a general statement that shareholders do not wish to purchase further shares identify the number of shares which were offered to each shareholder or establish that the shareholder was given the statutory period within which to make an election.

Consequently, consent or refusal to subscribe cannot be inferred merely from attendance at a meeting, silence, non-participation, or a general expression of unwillingness to purchase further shares. Before an alleged refusal can have the legal consequence relied upon by the respondents, it must first be established that there was a specific statutory offer capable of being accepted or refused. The respondents, being the parties relying upon such alleged refusal to justify the subsequent allotment, bear the burden of establishing that statutory sequence.

The same principle applies to the prescribed period for acceptance. Section 155 requires not less than fifteen days to be allowed for acceptance. The Court cannot assume that this statutory period was observed merely because a resolution records that the shareholders were asked to purchase the shares. Equally, the Court cannot presume that the statutory period was waived merely because those attending a meeting allegedly agreed that no further notice would be necessary. Any departure from the statutory mechanism must be established by clear and legally sufficient evidence; it cannot be supplied by judicial assumption.

The documentary record presents considerable difficulty in this regard. It appears from the Schedules X dated 31.12.2020 and 10.07.2025, as well as from the impugned EGM resolution dated 14.03.2022 and the alleged Board Resolution dated 30.09.2025, that there were twelve shareholders of the company at the relevant time, AKM Sadeque having died. Significantly, however, the list of shareholders appearing in the alleged EGM resolution contains only ten names. The respondents have not satisfactorily explained the absence of Abdul Awal Munshi and Abul Hashem from the process reflected in the alleged resolutions.

This omission assumes particular importance because the respondents' case rests upon the proposition that the existing shareholders were first afforded an opportunity to subscribe to the additional shares. If that was indeed the course adopted by the company, it was incumbent upon the respondents to demonstrate what and how the offer was made to each existing shareholder, including Abdul Awal Munshi and Abul Hashem. There is no satisfactory material demonstrating that these two shareholders were offered their proportionate entitlement, that they declined the offer, or that their entitlements were otherwise lawfully dealt with.

The chronology concerning the alleged EGM dated 14.03.2022 creates a further difficulty. The alleged notice is dated 13.03.2022, while the meeting is said to have been held on 14.03.2022, only one day later. The alleged resolution records that “everyone is requested to purchase the shares from new allotment” and that no further notice under the relevant provisions of the Companies Act would be issued to any shareholder, which was allegedly agreed to by all attendees. Such a general statement cannot be treated as compliance with the specific statutory requirement of section 155. The statutory requirement is directed towards an identifiable offer specifying the number of shares offered and allowing the prescribed period for acceptance. A general request made at a meeting, particularly where the meeting itself follows only one day after the alleged notice, is not equivalent to the statutory offer contemplated by section 155.

The respondents have not demonstrated that a proper statutory offer had already been made to the concerned shareholders before the alleged meeting, nor have they produced satisfactory evidence that the concerned shareholders, after receiving such offer, unequivocally declined it before the expiry of the statutory period. In the absence of such evidence, the Court cannot supply the missing statutory steps by inference. The assertion that the attendees agreed that no further notice would be necessary cannot, by itself, substitute for the statutory requirement.

The subsequent EGM process does not satisfactorily cure these defects. Following the notice dated 16.03.2024, an EGM was allegedly held on 21.03.2024. Again, the list of shareholders appearing in the alleged resolution contains only ten names. The resolution records that the petitioners were informed that they would not purchase the new shares and that the remaining seven shareholders agreed to purchase them. Thereafter, by the EGM resolution dated 27.03.2025, the further shares were allotted to those seven shareholders.

The identity of those allottees is also a relevant surrounding circumstance. They comprise the Managing Director himself and his mother and sisters. That circumstance does not, standing alone, establish that the allotment was unlawful. Nor does section 155 necessarily prohibit the allotment of genuinely unaccepted shares to existing members who are willing to subscribe to them. Its significance lies in the fact that, where the ultimate allottees are closely connected with the controlling shareholder and the allotment substantially dilutes the existing shareholding, the respondents must be able to demonstrate with reasonable clarity that the statutory opportunity was first afforded to all existing members and that the shares ultimately allotted were in fact available for such further allotment.

The respondents' case cannot, therefore, be accepted merely on the basis of an assertion that the petitioners were present and stated that they did not wish to purchase the further shares. Even if the petitioners had expressly stated that they did not wish to subscribe, such statement could have legal significance only in relation to the shares actually offered to them pursuant to section 155. It could not dispense with the statutory rights of the other existing shareholders, nor could it retrospectively validate a process in which the Court is unable to identify the statutory offer made to all members and the manner in which their respective entitlements were dealt with.

There is another important distinction. The Court is not holding that the petitioners' alleged refusal must necessarily be false. The question is narrower. The respondents rely upon that alleged refusal as a justification for the subsequent allotment. They must, therefore, establish not merely the fact of an alleged refusal but the legal circumstances in which that refusal occurred. A refusal has legal significance under section 155 only where it follows a valid statutory offer. The Court cannot first assume the existence of the statutory offer, then infer the petitioners' refusal, and finally treat that inferred refusal as the basis upon which the statutory offer may be regarded as having been exhausted. That would reverse the statutory sequence contemplated by the provision.

The same reasoning applies to the alleged waiver of notice or of the fifteen-day period. The Court cannot assume that a shareholder, merely by attending a meeting or joining in a general resolution, intended to surrender a statutory right unless the evidence clearly establishes that position. More importantly, even if an individual shareholder had unequivocally waived his or her own opportunity, such waiver could not automatically operate to extinguish the corresponding statutory rights of the remaining shareholders. The respondents have not established such individual and specific treatment of the existing members.

Chronology of payment of compensation

The subsequent financial transactions constitute a further significant circumstance. The materials before this Court, particularly the bank statements, indicate that amounts attributable to the compensation proceeds were paid to the respondents between 28.08.2025 and 31.08.2025, more than one month before the Board resolution dated 04.10.2025, which, according to the respondents, formally determined or recorded the distribution of the compensation proceeds amongst the shareholders on the basis of the newly allotted shares. In contrast, the petitioners were given certain payments on 05.10.2025, immediately following the said resolution.

This chronology is wholly inconsistent with the respondents' explanation. If the resolution dated 04.10.2025 constituted the corporate decision determining the shareholders' respective entitlement to the compensation proceeds on the basis of the altered shareholding, there is no satisfactory explanation why the respondents had already received such proceeds more than a month earlier.

The sequence of events gives rise to a serious and legitimate inference that the distribution had already been acted upon in favour of the respondents while the petitioners were kept in the dark, and that the subsequent resolution dated 04.10.2025 was brought forward as a formal corporate act to give an appearance of regularity and legitimacy to what had already been done. In other words, the resolution appears, prima facie, to have been a staged corporate formality following the financial implementation, rather than the decision pursuant to which that implementation was made.

Such a course of conduct is particularly significant in the present case. The petitioners' shareholding had first been substantially diluted through the impugned allotment and, before any formal resolution recording the distribution on the basis of that altered shareholding, the respondents had already received payments attributable to the compensation proceeds. The subsequent resolution therefore appears to have been designed to provide a corporate façade for the distribution already made, while leaving the petitioners unaware of the manner in which their substantially reduced entitlement had been acted upon.

The Court does not rest its conclusion on this circumstance alone, nor does the chronology, by itself, establish unlawful diversion or misappropriation of the company's funds. Its significance lies in the sequence in which the events occurred. The financial benefit appears to have been secured by the respondents first, while the formal corporate justification came later. When this circumstance is considered together with the disputed Board minutes and the questionable evidence regarding the consideration and circumstances of the impugned allotment, it materially reinforces the conclusion that the transaction requires close scrutiny and that the subsequent resolution cannot, by itself, cure the defects surrounding the allotment.

Alleged waiver, acquiescence, approbation and reprobation and want of clean hands

The respondents have placed considerable reliance upon the conduct of the petitioners in participating in the affairs of the company, signing minutes of meetings and receiving their respective shares of the compensation, and contend that such conduct amounts to waiver and acquiescence and disentitles the petitioners from challenging the subsequent allotment. It is submitted that a party who has accepted the benefits arising from a transaction cannot subsequently approbate and reprobate by questioning the very transaction from which such benefit was derived.

This Court is unable to accept such a broad proposition. Waiver or acquiescence must be founded upon knowledge of the material facts and conduct which is clear and unequivocally inconsistent with the right subsequently asserted. Likewise, the principle against approbation and reprobation applies where a party, with knowledge of the relevant facts, has consciously accepted a transaction or position and thereafter seeks to assert a position inconsistent with such acceptance. Mere participation in the general affairs of a company, or receipt of a payment, cannot by itself establish such conscious acceptance of a particular corporate transaction.

In the present case, the petitioners specifically contend that they were unaware of the impugned allotment and that even the minutes supplied to them by the company did not contain the alleged resolution relating to such allotment. The validity and genuineness of the relevant corporate records are themselves in issue. In such circumstances, receipt of compensation, particularly where the petitioners had an existing shareholding in the company, cannot, without more, be treated as proof that they knew of and accepted the subsequent dilution of their shareholding. Acceptance of the amount received does not necessarily amount to acceptance of the legal basis upon which the amount was calculated. Nor can the petitioners' participation in earlier meetings reasonably be treated as clear proof of their knowledge of every subsequent corporate act.

The same consideration substantially answers the objection founded upon approbation and reprobation. The Court cannot infer, merely from the petitioners' participation in the company's affairs or receipt of compensation, that they consciously accepted the particular allotment now challenged. Where the very existence, validity or genuineness of the corporate act is disputed, the alleged acceptance must be established by cogent material and cannot be presumed from circumstances which are equally consistent with the petitioners' case of want of knowledge.

As regards the objection of want of clean hands, the respondents have alleged that the petitioners suppressed material facts, particularly the updated shareholding position. The principle undoubtedly requires a party seeking equitable or discretionary relief to make a full and fair disclosure of material facts and not to mislead the Court by deliberate suppression or misstatement. In the present case, however, the principal documents relating to the impugned allotment, the disputed minutes, the subsequent financial transactions and the distribution of compensation have been placed before the Court. The relevant corporate records were substantially within the custody and control of the company, and this Court has also called for and considered the records of the RJSC. The mere fact that the parties place different interpretations upon those records, or that the petitioners may not have satisfactorily explained every aspect of the subsequent shareholding position, does not by itself establish deliberate suppression of a material fact.

There is, however, a material distinction in relation to the proceeding under section 233. The petitioners' reliance upon their earlier 21% shareholding, without satisfactorily addressing the subsequent statutory returns, is relevant to the statutory qualification prescribed by section 195 and, for the reasons already recorded, is sufficient to affect the maintainability of that proceeding. That finding is based upon the statutory requirement governing section 233 and should not be confused with, or elevated into, a general finding that the petitioners acted with unclean hands or consciously waived their rights.

Accordingly, this Court finds no sufficient basis to hold that the petitioners, by receipt of compensation, participation in the company's affairs or their conduct otherwise, knowingly waived their right to challenge the impugned allotment, acquiesced in the same, or are barred by the principle of approbation and reprobation. Nor is there sufficient material to hold that they deliberately suppressed a material fact so as to disentitle them to relief under section 43. The objection on these grounds is, therefore, rejected, without prejudice to the separate finding regarding the maintainability of the proceeding under section 233.

Cumulative assessment

The circumstances must ultimately be considered cumulatively. The company was substantially inactive; it already possessed funds of approximately Tk.2 crore or more; its principal asset had been acquired by the Government; compensation of approximately Tk.122 crore was expected and subsequently received; and, immediately before that substantial compensation became available, the issued share capital was increased from 5,902 shares to 20,000 shares by the creation of 14,098 additional shares. The respondents have not placed before the Court convincing material demonstrating the actual corporate necessity for such substantial additional capital at that particular time.

More importantly, the statutory foundation relied upon for the subsequent allotment has not been satisfactorily established. The record discloses twelve shareholders at the relevant time, whereas only ten names appear in the alleged resolutions. The position of Abdul Awal Munshi and Abul Hashem remains unexplained. There is no satisfactory evidence identifying when and how such offer was made, the statutory period allowed for acceptance, or the manner in which the alleged unaccepted shares thereafter became available for allotment. The alleged EGM dated 14.03.2022 was preceded by only one day's notice, and the general statement that no further notice would be necessary cannot substitute for the statutory requirements of section 155.

These deficiencies become still more significant when considered against the ultimate destination of the additional shares. The shares were subsequently allotted predominantly to persons closely connected with the Managing Director, including his mother and sisters, with the consequence that the petitioners' aggregate proportionate interest was reduced to 75% (approximately) at a time when the company was to receive compensation of approximately Tk.122 crore. Again, the relationship of the allottees does not, by itself, render the allotment unlawful. It is the combination of that circumstance with the unexplained statutory process and the substantial dilution which requires the respondents' justification to be examined with particular care.

This Court therefore does not rest its conclusion upon the proposition that the petitioners did not consent, or that their alleged refusal was necessarily fabricated. Nor does the Court substitute its own commercial judgment for that of the company. The conclusion rests upon the respondents' failure to establish the statutory and factual sequence upon which they rely. The alleged refusal of the petitioners cannot be treated as a substitute for the statutory offer; the statutory offer cannot be presumed from attendance at a meeting; and the statutory notice period cannot be presumed to have been waived merely because the attendees allegedly agreed that no further notice would be issued.

The legal position which emerges is that, where an allotment of further shares is justified on the ground that existing shareholders declined to subscribe, the party relying upon that justification must establish that the existing shareholders were first afforded the statutory offer contemplated by section 155, specifying their respective entitlement and allowing not less than fifteen days for acceptance, and that the shares thereafter remained unaccepted or were otherwise lawfully available for further allotment. A shareholder's consent or refusal to subscribe cannot be inferred merely from attendance at a meeting, silence, non-participation or a general expression of unwillingness to purchase shares. Nor may the Court presume that the statutory period for acceptance was waived or dispensed with in the absence of clear and legally sufficient evidence. The existence of a statutory offer is a condition precedent to treating a shareholder's subsequent conduct as a refusal of that offer. Consequently, where the respondents fail to establish the offer, the entitlement, the prescribed opportunity for acceptance and the subsequent unequivocal refusal or other lawful disposition of the unaccepted shares, the subsequent allotment cannot be sustained merely on the assertion that the existing shareholders had declined to subscribe.

In the present case, the respondents have failed to establish that statutory sequence. The alleged consent or refusal of the petitioners, even if assumed for the sake of argument, therefore does not furnish a lawful foundation for the impugned allotment.This court therefore holds that the respondents have failed to establish sufficient lawful cause for entry of the names of the additional allottees in respect of the impugned 14,098 shares. The entries are consequently liable to rectification under section 43 of the Companies Act, 1994.

Conclusion

For the reasons stated above, Company Matter No.30 of 2026, filed under section 43 of the Companies Act, 1994, is allowed.

The impugned allotment of 14,098 shares, insofar as it resulted in the entry of the additional allottees in the Register of Members and the consequential dilution of the petitioners’ existing shareholding, is not sustainable. The Register of Members shall accordingly be rectified by restoring the shareholding position as it stood immediately prior to the impugned allotment.

The dismissal of Company Matter No.1885 of 2025, filed under section 233 of the Act, was on the question of maintainability as on the date of its institution. It shall not be construed as an adjudication upholding the validity of the impugned allotment. The present determination under section 43 is independent and concerns the sufficiency of the lawful basis for the disputed entries in the Register of Members.

So far as the compensation proceeds are concerned, amount received by the respondents in excess of the amount attributable to that respondents upon restoration of the pre-allotment shareholding shall be reimbursed to the Company within 15 (fifteen) days from the date of receipt of this judgment. The Company shall thereafter distribute the amount lawfully payable to the respective shareholders according to the restored shareholding position. Such distribution shall be completed within 30 (thirty) days thereafter.

The respondent Company shall take all consequential steps before the Registrar of Joint Stock Companies and Firms for correction and updating of the statutory records.

(Justice Md. Toufiq Inam)

Ashraf/ABO.