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

Present:
Mr. Justice Md. Toufiq Inam.

COMPANY MATTER NO. 1965 OF 2025.

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

AND

IN THE MATTER OF:

Mukta Rani Ghosh.
------ Petitioner.
-VERSUS-
Purobi Jewellers (Pvt.) Ltd. and others.
----- Respondents.

Mr. Aneek R. Haque, Senior Advocate with
Mr. Md. Monjur Nahid, and
Ms. Eshita Tasmin, Advocates
----- For the Petitioners.

Mr. Binoy Krishna Podder, Advocate
----- For the Respondent Nos. 1-3.

Judgment Delivered On 06.08.2026.

Md. Toufiq Inam, J

This is an application under section 43 of the Companies Act, 1994 seeking rectification of the register of members of respondent No. 1, Purobi Jewellers (Pvt.) Ltd.

The petitioner's case, in brief, is that she is the holder of 1,24,500 ordinary shares out of the total issued share capital of 2,03,700 shares and, prior to the impugned allotment, was the majority shareholder of respondent No. 1 Company. According to the petitioner, respondent Nos. 2 and 3 have been conducting the affairs of the company in a manner prejudicial to her interests by excluding her from the management, denying her access to the affairs of the company, withholding financial information and benefits, and operating the business contrary to law and the interests of the company.

The petitioner alleges that, notwithstanding the execution of a Settlement Agreement dated 22.06.2025 intended to resolve the disputes amongst the shareholders, respondent Nos. 2 and 3 failed to honour their obligations there under. Instead, they caused the company to issue 2,70,000 new ordinary shares of Tk.100 each, out of which 70,000 shares were allotted to respondent No. 2 and 2,00,000 shares were allotted to respondent No. 3 with the sole object of diluting the petitioner's majority shareholding and consolidating their control over the company.

The petitioner contends that the impugned allotment was made without convening any valid Board meeting, without serving proper notice upon the petitioner and without complying with the mandatory requirements of section 155 of the Companies Act, 1994. It is specifically alleged that the newly issued shares were never offered to the petitioner in proportion to her existing shareholding and that no notice offering such shares was ever served upon her. According to the petitioner, the respondents have thereby deprived her of the statutory pre-emptive right conferred by section 155 of the Act. It is further alleged that the impugned allotment has substantially diluted the petitioner's voting rights and proprietary interest in the company and has resulted in wrongful entries in the register of members, which are liable to be rectified by this Court in exercise of its jurisdiction under section 43 of the Companies Act, 1994.

Respondent Nos. 2 and 3 entered appearance by filing an affidavit-in-opposition denying the material allegations made in the application.

The respondents contend that the present application is not maintainable under section 43 of the Companies Act, 1994, as respondent Nos. 2 and 3 were already existing shareholders as well as the Managing Director and Chairman of respondent No. 1 Company, respectively. According to them, since the dispute does not involve any wrongful omission or insertion of the name of a person in the register of members, the application falls outside the scope of section 43.

The respondents further contend that the petitioner has raised numerous allegations relating to the management and affairs of the company, including allegations of misappropriation of gold stock, money laundering, operation of a foreign showroom, denial of access to the affairs of the company, withholding of dividends and continuation of respondent No. 2 as Managing Director beyond the statutory period. According to the respondents, such disputes cannot be adjudicated in proceedings under section 43 of the Companies Act, 1994 and the allegations are wholly false and misconceived.

It is further contended that the application is liable to be rejected for non-compliance with Rule 22 of the Companies Rules, 2009. According to the respondents, before invoking the jurisdiction of this Court under section 43, the petitioner was required to serve the statutory notice contemplated by the said Rule upon the company and the concerned parties. The legal notices relied upon by the petitioner, according to the respondents, do not satisfy the mandatory requirement of Rule 22.

The respondents further state that notices convening the meeting of the Board of Directors were duly issued and, in the meeting held on 17.03.2025, the Board unanimously resolved to increase the subscribed share capital by issuing 2,70,000 new ordinary shares of Tk.100 each, which remained within the authorised share capital of the company. According to them, the increase in capital was necessitated by the financial requirements of the company.

The respondents assert that, on 18.03.2025, notices were issued to all existing shareholders, including the petitioner, offering the newly issued shares in proportion to their existing shareholdings in compliance with section 155 of the Companies Act, 1994. It is their case that one Avijit Saha, an employee of the company, personally visited the petitioner's residence to serve the notice, but she refused to receive the same. Since the petitioner did not accept the offer within the prescribed period, respondent No. 3 purchased 2,00,000 shares and respondent No. 2 purchased the remaining 70,000 shares after paying the full consideration into the bank account of the company. The allotment was thereafter approved by the Board in its meeting held on 10.04.2025.

The respondents further contend that the petitioner has failed to establish her own title as a shareholder by producing any document evidencing payment of consideration for the shares claimed by her and, therefore, lacks the locus standi to maintain the present application. They further submit that the disputes raised by the petitioner relate to the internal management of the company and ought to be resolved in appropriate proceedings, including arbitration, rather than in an application under section 43 of the Companies Act, 1994.

Mr. Aneek R. Haque, the learned Advocate appearing for the petitioner, submits that the respondents have failed to produce any reliable evidence to establish compliance with section 155 of the Companies Act, 1994. Referring to the alleged offer notice dated 18.03.2025 and the resolutions relied upon by the respondents, he submits that there is no material whatsoever to show that any offer of the newly issued shares was ever made to the petitioner. According to him, no postal receipt, courier receipt, acknowledgment due card, dispatch register or any other contemporaneous document has been produced to prove either dispatch or service of the alleged notice. Even the respondents' assertion that an employee visited the petitioner's residence and that she refused to receive the notice is unsupported by any affidavit of the said employee or any independent evidence.

He submits that section 155 confers a valuable statutory pre-emptive right upon every existing shareholder before any further shares are allotted. Since the respondents have failed to establish that the petitioner was afforded the statutory opportunity to subscribe to the newly issued shares, the subsequent allotment in favour of respondent Nos. 2 and 3 is illegal and has unlawfully diluted the petitioner's majority shareholding and voting rights. He, therefore, submits that the impugned entries in the register of members are liable to be rectified under section 43 of the Companies Act, 1994.

Per contra, Mr. Binoy Krishna Podder, the learned Advocate appearing on behalf of respondent Nos. 2 and 3, submits that the application is wholly misconceived and not maintainable. He contends that the jurisdiction under section 43 of the Companies Act, 1994 is confined to rectification of the register of members in cases of wrongful inclusion or omission of names and cannot be invoked to challenge a lawful allotment of shares made in favour of existing shareholders. According to him, the company duly complied with section 155 of the Act by issuing notices to all existing shareholders, including the petitioner, who deliberately refused to receive the same. Upon expiry of the statutory period prescribed therein, respondent Nos. 2 and 3 validly subscribed to the unsubscribed shares by paying the requisite consideration to the company.

He further submits that the present application is not maintainable for non-compliance with Rule 22 of the Companies Rules, 2009, as the petitioner failed to serve the statutory notice upon the company before invoking the jurisdiction of this Court. According to him, the legal notices relied upon by the petitioner do not satisfy the requirement contemplated under the Rule. He also argues that the grievances raised by the petitioner relate to the internal affairs and management of the company, which fall outside the limited scope of section 43 and, if at all, must be agitated before the appropriate forum. He accordingly prays for rejection of the application.

Having heard the learned Advocates for the respective parties and perused the pleadings and materials on record, the principal questions that arise for determination are: (i) whether the allotment of 2,70,000 ordinary shares in favour of respondent Nos. 2 and 3 was effected in conformity with section 155 of the Companies Act, 1994; and (ii) if not, whether the consequential entries made in the register of members are liable to be rectified in exercise of the jurisdiction conferred by section 43 of the Act.

At the outset, this Court proposes to deal with the preliminary objection regarding the maintainability of the application on the ground of non-compliance with Rule 22 of the Companies Rules, 2009. This objection is devoid of substance. Section 43 of the Companies Act, 1994 creates a substantive statutory remedy empowering this Court to rectify the register of members where a person's name has, without sufficient cause, been entered in or omitted from the register, or where there has been default or unnecessary delay in recording membership. The section neither expressly nor by necessary implication makes prior service of notice upon the company a condition precedent to the institution or admission of an application there under.

Rule 22, being a piece of subordinate legislation framed under the Act, is intended to regulate the procedure governing applications under section 43. It cannot abridge, restrict or defeat the substantive jurisdiction conferred by the parent statute by introducing a jurisdictional pre-condition which the legislature itself has not enacted. The requirement of serving notice upon the company before filing an application is, therefore, directory and procedural in nature, intended to afford the company an opportunity to examine the grievance and, where appropriate, rectify the register without recourse to litigation. Non-compliance with such procedural requirement may justify an appropriate procedural direction by the Court, but it cannot extinguish or defeat the statutory right to invoke the jurisdiction under section 43.

The requirement of notice is founded upon the principles of natural justice. Before any order affecting the register of members is finally made, the company, being the statutory custodian of the register, must be afforded a reasonable opportunity of being heard. In the present case, the record reveals that after admission of the application, notice was duly served upon the company, which elected not to contest the proceeding. The object underlying Rule 22 has thus been substantially fulfilled, and no prejudice has been shown to have been occasioned by the alleged omission of prior notice.

Accordingly, this Court holds that Rule 22 of the Companies Rules, 2009 is directory and procedural; it does not operate as a jurisdictional bar to the institution or admission of an application under section 43 of the Companies Act, 1994. A procedural rule cannot curtail or nullify a substantive statutory remedy unless the parent statute expressly so provides. This preliminary objection is, therefore, rejected.

Next, it is necessary to deal with the another objection raised by the respondents regarding the maintainability of the present application.

The respondents contend that section 43 of the Companies Act, 1994 is attracted only where the name of a person has been wrongfully entered into or omitted from the register of members and that, since respondent Nos. 2 and 3 were admittedly existing shareholders prior to the impugned allotment, the challenge to the subsequent allotment of shares falls outside the ambit of the said provision.

This contention cannot be accepted. The jurisdiction conferred by section 43 is not confined merely to cases of initial inclusion or omission of a person's name in the register. The section extends to every case where an entry in the register is alleged to have been made without sufficient cause or in contravention of the Companies Act. Where the validity of an allotment of shares is challenged on the ground of non-compliance with a mandatory statutory provision, the consequential entry in the register necessarily becomes amenable to rectification under section 43. The decisive consideration is not whether the allottee was already a member of the company but whether the impugned entry derives its validity from a lawful allotment. An unlawful allotment cannot be insulated from judicial scrutiny merely because it is made in favour of an existing shareholder.

Before examining the merits of the present proceeding, it is necessary to take note of an earlier objection as to its maintainability. Respondent Nos. 2 and 3 had filed an application challenging the maintainability of the proceeding on the grounds that Article 67 of the Articles of Association contains an arbitration clause and that arbitral proceedings had already been initiated under section 227 of the Companies Act, 1994. Upon hearing the learned Advocates for the respective parties, this Court, by order dated 11.06.2026, rejected the said objection.

In the said order, this Court held that the jurisdiction conferred upon the Company Court under section 43 of the Companies Act, 1994 is a special statutory jurisdiction vested exclusively in the Court by the Act. Such jurisdiction cannot be excluded, curtailed or suspended by an arbitration agreement contained in the Articles of Association or by the unilateral commencement of arbitral proceedings. Although section 227 recognises the right of the parties to refer an arbitrable dispute to arbitration, it is essentially an enabling provision and does not divest the Company Court of the statutory jurisdiction expressly conferred upon it under section 43. An arbitral tribunal derives its jurisdiction from the agreement of the parties, whereas the power to rectify the register of members is a statutory power conferred by the Companies Act and is exercisable by the Company Court.

This court further held that the nature of the relief sought is the determinative consideration. Where the principal relief claimed is rectification of the register of members, being a statutory register maintained under the Companies Act, such relief falls within the jurisdiction of the Company Court under section 43. An arbitral tribunal has no authority to direct rectification of such statutory register, nor can an arbitral award bind the Registrar of Joint Stock Companies and Firms in respect of entries maintained pursuant to the Act. Accordingly, the existence of an arbitration agreement or the pendency of arbitral proceedings cannot oust, defeat or postpone the exercise of the statutory jurisdiction of the Company Court under section 43.

The foregoing, however, does not prevent the parties from amicably settling, or otherwise referring to arbitration, such disputes between them as are otherwise capable of being settled or arbitrated in accordance with law. The pendency or outcome of such proceedings, however, cannot confer upon an arbitral tribunal a jurisdiction which the statute has expressly vested in the Company Court.

The respondents have further argued that the petition contains allegations relating to misappropriation of company assets, money laundering, operation of foreign business, denial of participation in management, withholding of dividends and other matters concerning the internal affairs of the company. This submission is well-founded only to the extent that such allegations fall outside the limited jurisdiction exercisable under section 43. The jurisdiction under section 43 is confined to determining whether the impugned allotment of shares was made in accordance with law and whether the consequential entries in the register of members are liable to be rectified. This Court, therefore, expresses no opinion on the merits of the other allegations, leaving the parties at liberty to pursue such remedies as may be available before the appropriate forum.

This court is of the view that the jurisdiction under section 43 extends to examining the legality of an allotment where the validity of the consequential entry in the register depends upon the validity of the allotment itself; such jurisdiction is neither excluded by the fact that the allottees were existing shareholders nor by the existence of an arbitration agreement. The present adjudication is accordingly confined to determining whether the allotment of 2,70,000 ordinary shares was made in conformity with section 155 of the Companies Act, 1994 and whether the consequential entries in the register of members are liable to be rectified under section 43 of the Act

Turning now to the merits, section 155 of the Companies Act, 1994 embodies a statutory right of pre-emption in favour of existing shareholders upon an increase of subscribed capital. Its object is to protect existing shareholders against involuntary dilution of their proportionate proprietary and voting interests by requiring that newly issued shares be offered to them, in the first instance, in proportion to their existing shareholdings. The procedure prescribed by section 155 is, therefore, not an empty formality but a substantive statutory safeguard governing the manner in which additional shares may lawfully be allotted.

The statutory scheme contemplates two distinct stages. First, the proposed shares must be offered to the existing shareholders by notice specifying the number of shares offered and allowing the period prescribed by law within which the offer may be accepted. Secondly, only upon expiry of that period, or upon an earlier refusal of the offer, does the Board become entitled to dispose of the shares in the manner permitted by section 155. The Board's power to allot the unsubscribed shares thus arises only after the statutory right of pre-emption has first been duly afforded to the existing shareholders.

In the present case, the respondents rely upon a purported notice dated 18.03.2025 and contend that the petitioner was offered her proportionate entitlement but declined to accept the same. However, apart from producing a copy of the purported notice, no satisfactory evidence has been placed before this Court to establish that the notice fulfilled the mandatory requirements of section 155 or that it was ever communicated to the petitioner. In particular, the respondents have failed to establish, by cogent evidence, the number of shares offered to the petitioner, the period specified for acceptance as required by law, and the dispatch, tender or service of the notice. No postal receipt, courier receipt, acknowledgment due card, dispatch register or any other contemporaneous record evidencing issuance or attempted delivery of the notice has been produced.

The respondents have further asserted that one Avijit Saha, an employee of the company, personally visited the petitioner's residence to deliver the notice and that the petitioner refused to receive it. That assertion remains wholly unsubstantiated. Neither an affidavit of the said employee nor any contemporaneous document or independent evidence has been produced to establish either the tender of the notice or the alleged refusal by the petitioner to accept it. A bare assertion of refusal, unsupported by reliable evidence, cannot be treated as proof that the statutory opportunity contemplated by section 155 was in fact afforded to the petitioner.

The burden of establishing compliance with the mandatory requirements of section 155 rests squarely upon the respondents, who seek to sustain the validity of the impugned allotment. Where the validity of an allotment depends upon prior compliance with a statutory pre-emptive procedure, strict proof of such compliance is indispensable. The existence of a notice in the company's records does not, by itself, establish that the statutory offer was communicated to the shareholder. Equally, a Board resolution recording that notice was issued or that the statutory procedure was complied with cannot constitute proof of the underlying facts where the communication of the notice is itself disputed. Compliance with section 155 must be established by independent and satisfactory evidence demonstrating that the shareholder was afforded a real and effective opportunity to exercise the statutory pre-emptive right before the shares were allotted elsewhere.

The respondents have emphasised that the impugned allotment was made bona fide for the purpose of raising additional capital required for the business of the company. That consideration, even if accepted, does not answer the statutory question before this Court. The commercial necessity for raising capital and the legality of the means adopted for raising it are distinct matters. A genuine business necessity may justify an increase of capital, but it cannot dispense with compliance with the statutory conditions governing its allotment. Commercial expediency cannot override a mandatory statutory safeguard enacted for the protection of existing shareholders.

The respondents have also questioned the petitioner's status and entitlement as a shareholder. This contention is inconsistent with their own case. Throughout their pleadings and supporting documents, the petitioner has been treated as an existing shareholder; indeed, the very foundation of the respondents' defence is that the notice contemplated by section 155 was offered to her in that capacity. Having sought to justify the allotment on the footing that the petitioner's statutory entitlement was duly offered to her, the respondents cannot, in the same proceeding, deny her status as an existing shareholder merely for the purpose of defeating her locus standi to challenge that allotment.

The effect of the impugned allotment is undisputed: the petitioner's proportionate shareholding and voting interest have been substantially diluted, while those of respondent Nos. 2 and 3 have correspondingly increased. Such dilution could lawfully occur only after the petitioner's statutory right under section 155 had first been duly afforded to her. The respondents having failed to establish, by satisfactory evidence, that the requisite offer was communicated or tendered to the petitioner before the allotment, the statutory condition precedent to the exercise of the Board's power to dispose of the shares remained unfulfilled.

This court is of the considered view that an allotment of additional shares which results in dilution of an existing shareholder's proportionate interest cannot be sustained unless the company establishes compliance with the statutory right of pre-emption prescribed by section 155. The Board's authority to dispose of such shares arises only after the existing shareholders have first been afforded the statutory opportunity to subscribe. Where such compliance is not established, the allotment is contrary to section 155, and any consequential alteration of the register of members constitutes an entry made "without sufficient cause" within the meaning of section 43 of the Companies Act, 1994.

The respondents have further questioned the petitioner's status as a shareholder. This contention is wholly inconsistent with their own case. Throughout their pleadings and the documents relied upon by them, the petitioner has been treated as an existing shareholder. More importantly, the respondents themselves assert that a notice under section 155 was issued to the petitioner offering her the impugned shares in proportion to her existing shareholding. Such a plea necessarily proceeds on the footing that the petitioner was an existing member entitled to exercise the statutory pre-emptive right. Having relied upon section 155 to justify the allotment, the respondents are estopped from disputing the petitioner's status as a shareholder solely to challenge her locus standi.

For the foregoing reasons, this Court is satisfied that the respondents have failed to establish compliance with the mandatory requirements of section 155 of the Companies Act, 1994 before allotting the impugned 2,70,000 ordinary shares in favour of respondent Nos. 2 and 3. The consequential entries in the register of members, being founded upon an allotment made in contravention of the statute, constitute entries made without sufficient cause within the meaning of section 43 of the Companies Act, 1994 and are, therefore, liable to be rectified. The petitioner has accordingly established her entitlement to relief under section 43 of the Act.

In the result, the application succeeds.

The application is allowed.

It is hereby declared that the purported allotment of 2,70,000 (Two Lac Seventy Thousand) ordinary shares of Tk.100/- each, comprising 70,000 shares allotted in favour of respondent No. 2 and 2,00,000 shares allotted in favour of respondent No. 3, having been made in violation of the mandatory provisions of section 155 of the Companies Act, 1994, is illegal, unlawful and of no legal effect.

Accordingly, the entries made in the register of members of respondent No. 1 Company pursuant to the said allotment are hereby set aside and expunged.

The respondent No. 1 Company is directed to rectify its register of members by restoring the shareholding position as it stood immediately prior to the impugned allotment of 2,70,000 ordinary shares.

It shall, however, be open to respondent No. 1 Company, if it considers it necessary to increase its subscribed capital, to issue fresh shares strictly in accordance with section 155 of the Companies Act, 1994 and other applicable provisions of law.

The Registrar, Joint Stock Companies and Firms (RJSC), shall, upon production of a certified copy of this judgment and order together with the necessary statutory filings, give effect to this judgment by recording the rectified shareholding position of respondent No. 1 Company in accordance with law.

There shall be no order as to costs.

Communicate this judgment and order to the Registrar, Joint Stock Companies and Firms forthwith.

(Justice Md. Toufiq Inam)

Ashraf/ABO.