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

Present:
Mr. Justice Md. Toufiq Inam.

COMPANY MATTER NO. 440 OF 2026.

IN THE MATTER OF:

An application under Section 43 read with Section 3 of the Companies Act, 1994 and Rule 8 and 263 of the Companies Rules, 2009.

AND

IN THE MATTER OF:

Muiz Khan (Ronnie) alias Ronnie Abdul Muiez.
------ Petitioner.

-VERSUS-

The Registrar, Joint Stock Companies and Firms (RJSC) and others.
----- Respondents.

Mr. Md. Ashad Ullah, Senior Advocate with
Mrs. Jannatul Ferdoush Peya, Advocate
----- For the Petitioner.

Mr. Md. Ruhul Quddus Kazal, Senior Advocate, with
Mr. M. Saquibuzzaman, Senior Advocate
Mr. Mirza Ragib Hasnat, Advocates
----- For the Respondent Nos. 2, 4 and 7.

Judgment Delivered On 13.07.2026.

Md. Toufiq Inam, J.

This is an application under section 43 of the Companies Act, 1994 read with Rules 8 and 263 of the Companies Rules, 2009.

The petitioner's case, in brief, is that he was admitted as a permanent member of the Baridhara Cosmopolitan Club Limited (BCCL) in November 2026 and has since regularly enjoyed the facilities of the Club. He has duly paid all subscriptions and other charges without default. According to the petitioner, on 18.02.2026 he received a letter issued by the Secretary of BCCL requiring him to explain certain allegedly misleading information circulated by him in the Club's official WhatsApp group. The letter, however, did not specify any definite allegation or disclose any violation of law or of the Memorandum and Articles of Association. The petitioner submitted a detailed reply on 19.02.2026, which was received by the respondents on the same day, asserting, inter alia, that publication of the show-cause notice in a public messaging forum violated the Personal Data Protection Ordinance, 2015. No further action was thereafter taken on the said show-cause notice.

The petitioner further states that, by a fresh notice dated 21.02.2026, he was directed to appear before the Disciplinary Sub-Committee on 28.02.2026 regarding an alleged incident said to have occurred on 09.12.2025 in the office of the Club Secretary. According to him, the notice disclosed neither the particulars of the alleged incident nor was any prior show-cause notice served in respect thereof. He further points out that the original date of the notice, "19.02.2026", had been struck out and replaced with "21.02.2026" by initialling the correction. Pursuant to the notice, the petitioner appeared before the Disciplinary Sub-Committee and informed it that he had no knowledge of the alleged incident, as he was outside Bangladesh on 09.12.2025. In support of his assertion, he produced his passport showing that he was in India on the relevant date. According to the petitioner, the allegation was, therefore, wholly fabricated and factually impossible.

The petitioner further contends that, since no show-cause notice specifying the particulars of the alleged incident had been served upon him, he was denied a reasonable opportunity to defend himself. Consequently, the disciplinary proceedings were conducted in breach of the principles of natural justice, particularly the rule of *audi alteram partem*. Thereafter, by a letter dated 12.03.2026 issued by the Acting Secretary pursuant to a decision of the Board of Directors, the petitioner was informed that he had been suspended from the Club for one year together with certain additional restrictions, purportedly on the basis of the disciplinary meeting held on 28.02.2026. The petitioner challenges the impugned decision as illegal, arbitrary and without lawful authority, contending that it was passed without disclosing the allegations against him or affording him a fair opportunity of defence.

Mr. Md. Ashad Ullah, learned Senior Advocate appearing for the petitioner, submits that the expression "omitted" has not been defined either in the Companies Act, 1994, the Rules framed thereunder, or the General Clauses Act, 1897. Consequently, the expression "omitted" occurring in section 43 of the Companies Act, 1994 must receive a purposive construction so as to include both permanent and temporary omission of a member's name from the register. According to him, the phrase "omitted without sufficient cause" is wide enough to cover every situation where a member is wrongfully deprived of his membership rights, irrespective of whether such deprivation is described as temporary or permanent.

A suspension, though termed temporary, effectively removes a member from the enjoyment of all incidents of membership and, therefore, constitutes an omission within the meaning of section 43. Any contrary interpretation would enable companies to circumvent the jurisdiction of the Company Court by imposing prolonged or unlawful suspensions instead of formally deleting a member's name from the register.

He further submits that the first show-cause notice dated 18.02.2026 (Annexure-B) related exclusively to certain WhatsApp messages allegedly circulated by the petitioner concerning deleted members of the Club. The petitioner submitted a detailed explanation on 19.02.2026 (Annexure-C). However, instead of proceeding on the basis of the said notice, the respondents issued a fresh notice directing the petitioner to appear before the Disciplinary Sub-Committee on 28.02.2026 regarding an altogether different allegation, namely, an incident allegedly occurring on 09.12.2025 in the office of the Club Secretary (Annexure-D). It is contended that the petitioner was in Kolkata, India from 08.12.2025 until his return to Dhaka on 11.12.2025, as evidenced by his passport (Annexure-F). Accordingly, it was factually impossible for him to have been involved in any incident at the Club on 09.12.2025. Despite being informed of this undisputed fact before the Disciplinary Sub-Committee, the respondents proceeded against him without issuing any show-cause notice specifying the particulars of the alleged incident. The entire disciplinary proceeding, therefore, was actuated by mala fide and conducted in violation of the principles of natural justice. In this connection he relied upon the ecison reported in 33DLR (AD) 177 and 14 BLD(AD) 97.

He next submits that section 43 of the Companies Act, 1994 confers a broad and comprehensive jurisdiction upon the Company Court. Particular emphasis is placed on the concluding portion of sub-section (3), which authorises the Court to determine any question of law arising in relation to rectification of the register. It is argued that suspension directly affects the petitioner's legal status and title as a member. Since BCCL is a company limited by guarantee without share capital, membership itself constitutes the entirety of the petitioner's corporate rights. Those rights include participation in general meetings, voting, contesting elections, receiving notices, and exercising other incidents of membership. By depriving the petitioner of those rights for one year, the impugned order amounts to a constructive omission of his membership and, therefore, squarely attracts section 43.He further submits that, under section 3 of the Companies Act, the Government is empowered to confer jurisdiction upon a District Court to exercise jurisdiction under the Act. However, no such jurisdiction has been conferred upon the learned Court below. Consequently, this Court alone possesses the requisite jurisdiction to entertain the present application. In support of his submission, he has placed reliance upon the decision reported in 16 BLD (AD) 133, particularly paragraph 9.

Developing the same argument, learned Senior Advocate contends that although the petitioner's name may formally remain on the register (de jure), the suspension completely excludes him from the corporate life of the Club (de facto). In a company limited by guarantee, the register of members is not merely a list of names but a record of active legal status. Consequently, a suspension that disables a member from exercising all substantive rights is, in effect, a constructive omission from the register. He further points out that under Article 32(b) of the Articles of Association, the Board of Directors is elected annually by the members. The impugned suspension effectively prevents the petitioner from attending the Annual General Meeting, voting, or offering himself as a candidate. According to the learned Senior Advocate, the order was deliberately designed to exclude the petitioner from the electoral process, and the Company Court, being a court of equity, is entitled to look beyond the form of the order to its practical consequences.

It is further argued that the Board of Directors acted with mala fide intention by manufacturing a disciplinary proceeding solely to humiliate the petitioner, damage his reputation, and prevent him from participating in the affairs and elections of the Club. The issuance of vague notices, the conduct of the inquiry without furnishing particulars of the allegations, and the ultimate order of suspension were all components of a predetermined plan to victimize the petitioner. The impugned decision, therefore, is vitiated by mala fides and liable to be declared void.

He further submits that Article 30 of the Articles of Association authorises suspension for a period ranging from fifteen days to twelve months. However, the impugned order dated 12.03.2026 travels beyond the powers conferred by Article 30. In particular, clause (d) of the order requires the petitioner, even after completion of the suspension period, to furnish a written undertaking that he would refrain from introducing female guests to the Club for a further period of six months. Such a restriction is neither contemplated nor authorised by Article 30 and constitutes an exercise of power in excess of jurisdiction. The impugned order is, therefore, without lawful authority, tainted by mala fide and malice in law, and liable to be declared void *ab initio*.

It is also submitted that the petitioner has no knowledge of the alleged incident referred to in the notice dated 19.02.2026 (Annexure-E). The WhatsApp communications relied upon by the respondents were exchanged only within a members' group and did not constitute misconduct under the Articles of Association. Neither the notice nor the impugned order identifies with reasonable certainty the statements allegedly made by the petitioner or the conduct complained of. Although the disciplinary authority appears to have found the petitioner guilty in relation to a so-called "first instance", the nature, date, contents and circumstances of that allegation remain undisclosed. Likewise, while the impugned order refers to a "second instance" involving abusive language, it fails to specify when, where or against whom such language was allegedly used. The petitioner categorically denies using any abusive language or engaging in any misconduct. In the absence of definite particulars or supporting materials, the allegations remain vague, uncertain and incapable of effective rebuttal, thereby depriving the petitioner of a meaningful opportunity of defence in violation of the rule of *audi alteram partem*. The burden, therefore, rests upon respondent No. 2 to establish the allegations by cogent and credible evidence.

Finally, he submits that the impugned order is ex facie unsustainable, as it was passed in breach of Article 30 of the Articles of Association, does not specify the offence allegedly committed by the petitioner, discloses no reasons for the punishment imposed, and was preceded by no valid show-cause notice. The disciplinary proceeding having been conducted in violation of the Articles of Association and the settled principles of natural justice, the impugned order is without lawful authority and liable to be declared void.

Conversely, Mr. Md. Ruhul Quddus Kazal, learned Senior Advocate, appearing with Mr. M. Saquibuzzaman for respondent No. 2,4 and 7 at the very outset raises a preliminary objection as to the maintainability of the present application under section 43 of the Companies Act, 1994. He submits that the jurisdiction of the Company Court under section 43 is confined exclusively to matters relating to rectification of the register of members where the name of a person has been entered, omitted or removed without sufficient cause. In the present case, admittedly, the petitioner's name has neither been removed nor omitted from the register of members. He continues to remain a member of the Club, and the impugned decision merely imposes a suspension of his membership privileges for a period of one year. Such suspension neither terminates his membership nor affects the register of members and, therefore, does not attract section 43 of the Act. According to the learned Senior Advocate, the petitioner's attempt to equate suspension with omission from the register is contrary to both the language and the scheme of section 43 and amounts to an impermissible expansion of the statutory jurisdiction of the Company Court.

In support of his contention, he places reliance upon the decision of this Division reported in 40 BLD 251, wherein an application under section 43 challenging an order of suspension of club membership was held to be not maintainable on the ground that suspension does not amount to omission or removal of a member's name from the register. He submits that the ratio laid down in the said decision squarely governs the facts of the present case and is binding upon this Court.

He further submits that the Articles of Association of the Club provide a complete and efficacious appellate remedy against any disciplinary order. Clause 31 of the Articles expressly confers a right of appeal against an order of suspension. Availing himself of that remedy, the petitioner preferred an appeal on 11.04.2026, which remains pending before the competent appellate authority. Without awaiting disposal of the appeal within the period prescribed under the Articles of Association, the petitioner rushed to this Court by filing the present application on 30.04.2026. According to the learned Senior Advocate, having voluntarily invoked the internal appellate mechanism, the petitioner could not simultaneously invoke the extraordinary jurisdiction of the Company Court under section 43 without first exhausting the remedy provided under the Articles. The present application is, therefore, premature and liable to be rejected on that ground alone.

The first and foremost question that falls for determination is whether the present application under section 43 of the Companies Act, 1994 is maintainable against an order suspending the petitioner from exercising the rights and privileges of membership for a period of one year and also imposing some restrictions.

Section 43 confers jurisdiction upon the Company Court to rectify the register of members where the name of a person has been entered without sufficient cause, omitted without sufficient cause, or where default or unnecessary delay has occurred in entering the fact of a person having become or ceased to be a member. The jurisdiction is, therefore, a special statutory jurisdiction intended to ensure the correctness of the register of members and to protect the legal status of membership as reflected therein.

The petitioner, however, advances a broader construction of the expression "omitted". According to him, although his name continues to remain in the register, the impugned order has deprived him of every meaningful incident of membership, including the right to vote, attend general meetings, contest elections and enjoy the facilities of the Club. It is, therefore, argued that the suspension amounts to a "constructive omission" from membership and consequently falls within the ambit of section 43. The submission, though attractive at first blush, cannot be accepted.

The expression "omitted" occurring in section 43 cannot be read in isolation. It must be construed in the context of the entire provision. Every part of section 43 revolves around one central subject, namely, the **register of members**. The section empowers the Court to rectify the register where a person's name has been wrongly entered, omitted or where delay has occurred in recording the acquisition or cessation of membership. Thus, the omission contemplated by the section is an omission from the statutory register itself and not the temporary deprivation of certain rights flowing from membership.

Admittedly, the petitioner's name has not been removed from the register of members. Equally, there is no case that the respondents have refused to recognise him as a member or have recorded that he has ceased to be a member. The impugned order merely suspends the exercise of certain rights attached to his membership for a specified period. Whether such suspension is justified or otherwise is an entirely different matter. Nevertheless, suspension does not alter the petitioner's legal status as a member recorded in the register.

The Court is unable to accept the petitioner's contention that suspension amounts to a "constructive omission". The Companies Act 1994 does not employ such an expression, nor can the Court introduce a legal fiction which the legislature itself has not created. While a purposive interpretation is undoubtedly permissible, interpretation cannot travel to the extent of rewriting the statute or enlarging the scope of a special statutory remedy beyond its plain language.

The petitioner's argument that, in a company limited by guarantee, membership constitutes the sole corporate interest and, therefore, suspension is equivalent to deletion from the register, also does not persuade this Court. The nature of the company may determine the significance of membership, but it cannot alter the language employed in section 43. The jurisdiction of the Company Court depends not upon the gravity of the consequences suffered by a member but upon whether the dispute relates to rectification of the register of members.

Much emphasis has been placed upon sub-section (3) of section 43, particularly the provision empowering the Court to decide any question of law arising in the proceeding. In the opinion of this

Court, that provision is merely ancillary to the principal jurisdiction of rectification. Once the Court is validly seized of a rectification proceeding, it may determine all questions of law or title necessary or expedient for granting effective relief. The ancillary power cannot itself become an independent source of jurisdiction. To hold otherwise would render the carefully defined scope of section 43 wholly redundant and convert every dispute relating to membership into a rectification proceeding.

This Court is not unmindful of the hardship which the petitioner claims to have suffered as a consequence of the impugned order of suspension. Nevertheless, the jurisdiction of this Court under section 43 of the Companies Act, 1994 is a special, statutory, and limited one. The provision is confined to determining questions relating to the status of a person as a member of a company and the correctness of the register of members, namely, whether the name of any person has been entered, omitted, or retained therein without sufficient cause. It does not vest this Court with a general supervisory jurisdiction over every internal administrative or disciplinary action taken by a company or club, nor does it empower this Court to examine the legality, propriety, or validity of an order of suspension or the temporary deprivation of the rights, privileges, or incidents of membership, so long as the petitioner's name continues to remain on the register of members.

In other words, where the legal status of membership remains unaffected and no rectification of the register is required, the jurisdiction under section 43 is not attracted. Any grievance relating to the validity of disciplinary proceedings, including allegations of mala fides, arbitrariness, breach of the principles of natural justice, or non-compliance with the Articles of Association or the applicable rules governing the company or club, falls outside the limited ambit of section 43 and must be pursued before the competent Civil Court or other appropriate forum in accordance with law. The mere fact that this Court exercises company jurisdiction does not enlarge or extend the scope of section 43 beyond the limits expressly prescribed by the legislature. Accordingly, this Court cannot assume a jurisdiction which the statute itself has not conferred.

The petitioner has also invoked equitable considerations by contending that the suspension effectively prevents him from participating in the affairs and elections of the Club. This Court is not unmindful of the practical consequences of the impugned order. Nevertheless, hardship or inconvenience cannot confer jurisdiction where the statute has consciously withheld it. The existence or absence of jurisdiction must be determined by the provisions of the Act and not by the perceived injustice of a particular case.

There is yet another aspect of the matter. The Articles of Association provide an internal appellate mechanism against disciplinary orders. The petitioner himself invoked that remedy by preferring an appeal under Article 31 on 11.04.2026. The appeal was admittedly pending when the present application was instituted on 30.04.2026. Having voluntarily invoked the contractual appellate forum, the petitioner approached this Court before the appellate authority could render its decision. Although the existence of an alternative remedy does not by itself oust the jurisdiction of the Company Court, it is a relevant circumstance while considering whether the extraordinary statutory remedy under section 43 has been properly invoked.

The jurisdiction of the Company Court under section 43 of the Companies Act, 1994 is confined to rectification of the register of members where a person's name has been entered, omitted or removed without sufficient cause. A temporary suspension of a member, which neither removes nor omits his name from the register, does not amount to an omission within the meaning of section 43. Although such suspension may temporarily curtail the exercise of membership rights, it does not alter the member's legal status as reflected in the register. The ancillary power conferred by section 43(3) to decide questions of law or title is exercisable only in aid of a valid rectification proceeding and cannot enlarge the substantive jurisdiction under section 43.

Consequently, an application challenging the legality or propriety of a disciplinary order of suspension, without any corresponding alteration of the register of members, is not maintainable under section 43 of the Companies Act, 1994. Once the Court reaches that conclusion, it becomes unnecessary to enter into the merits of the disciplinary proceedings, including the allegations of mala fide, violation of natural justice or the validity of the suspension/ punishment imposed, all of which may appropriately be examined in a competent proceeding.

It appears from the record that the petitioner has already preferred an appeal under Article 31 of the Articles of Association against the impugned order of suspension, which is still pending before the competent appellate authority. Since the petitioner has availed himself of the statutory/contractual remedy provided under the Articles, the appellate authority is expected to decide the appeal independently, objectively and strictly in accordance with the Articles of Association and the principles of natural justice, without being influenced by any observation made in this judgment on the merits of the disciplinary proceedings.

However, the appellate authority of the Baridhara Cosmopolitan Club Limited (BCCL) is directed to hear and dispose of the petitioner's appeal in accordance with law and dispose of the same by a reasoned order within 30 (thirty) days from the date. Mr. M. Saquibuzzaman, learned Senior Advocate for the Respondent is directed to communicate this order to the appellate authority forthwith for information and necessary compliance.

Accordingly, the application is dismissed as being not maintainable. However, there shall be no order as to costs.

(Justice Md. Toufiq Inam)

Ashraf/ABO.