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

Present:
Mr. Justice Md. Toufiq Inam

COMPANY MATTER NO. 465 OF 2026.

IN THE MATTER OF:

An application under Section 233 of the Companies Act, 1994.

-And-

IN THE MATTER OF**:**

Mr. Abul Kalam Azad and another.
….Petitioners.

-Versus-

Neptune Land Development Ltd. and others.
.…Respondents.

Mr. Mohammad Hossain, Senior Advocate with
Mr. Mojibur Rahman, Advocate
……..For the Petitioners.
Mr. Mustafizur Rahman Khan, Senior Advocate with
Mr. Kazi Ershadul Alam, Advocate
….For the Respondent No.1.

Judgment delivered On: 13.07.2026.

Md. Toufiq Inam, J.

This is an application under section 233 of the Companies Act, 1994 filed by the petitioners seeking a declaration that the Board Resolutions passed by respondent No. 1 Company, *Neptune Land Development Ltd.*, on 17.12.2023 are void, cancellation of Form XII submitted by respondent No. 1 before respondent No. 5 on 23.01.2024.

At the time of its incorporation, respondent No. 1 Company had an authorised share capital of Tk. 10,00,00,000 divided into 10,00,000 equity shares of Tk. 100 each and a paid-up capital of Tk. 50,00,000 divided into 50,000 equity shares of Tk. 100 each. Subsequently, additional shares were allotted and certain shareholders transferred their respective shareholdings. Consequently, the shareholding pattern of the Company, as reflected in Schedule X dated 20.02.2023, stood revised.

According to the petitioners, United Enterprises & Co. Ltd. (UECL) holds 4,95,000 out of the total issued 5,50,000 shares of respondent No. 1 Company, representing 90% of its issued share capital. UECL is stated to be a constituent entity of the United Group and to have been managed and controlled by, inter alia, the present petitioners together with respondent Nos. 2 to 4 and/or their predecessors. It is further stated that, as reflected in Schedule X of UECL dated 31.12.2021, each petitioner holds 10,00,000 shares out of UECL's total issued share capital of 2,00,00,000 shares. Accordingly, the petitioners jointly hold 20,00,000 shares, representing 10% of the issued share capital of UECL.

The petitioners contend that, by virtue of their collective 10% shareholding in UECL, which itself owns 90% of the shares of respondent No. 1 Company, they are beneficially entitled to 49,500 shares in respondent No. 1 Company, being 10% of UECL's holding of 4,95,000 shares. They further claim that each of them independently holds 2,750 shares in respondent No. 1 Company in his own name. On that basis, they assert that their aggregate shareholding in respondent No. 1 Company is approximately 11%, thereby satisfying the qualifying requirement for maintaining an application under section 233 of the Companies Act, 1994.

It appears that, upon hearing the application on 06.05.2026, this Court admitted the application and passed an interim order directing the parties to maintain status quo in respect of the transfer, sale or encumbrance of the assets of respondent No. 1 Company, save and except the registration of apartments previously allotted, for a period of three months.

Mr. Mohammad Hossain, learned Senior Advocate appearing for the petitioners, submits that the petitioners have validly invoked the jurisdiction of this Court under section 233 of the Companies Act, 1994, as they collectively hold the requisite qualifying shareholding in respondent No. 1 Company. He contends that, in determining the petitioners' shareholding, the Court must take into account not only the shares standing in their individual names but also their proportionate beneficial interest in the shares held by United Enterprises & Co. Ltd. (UECL), which owns 90% of the issued share capital of respondent No. 1 Company.

He submits that UECL is a constituent entity of the United Group and has all along been managed and controlled by the petitioners together with respondent Nos. 2 to 4 and/or their predecessors. Since the petitioners jointly hold 10% of the issued share capital of UECL, they are beneficially entitled to 10% of UECL's shareholding in respondent No. 1 Company, equivalent to 49,500 shares. Together with the shares registered in their individual names, the petitioners jointly hold 11% of the issued share capital of respondent No. 1 Company and, therefore, satisfy the qualifying requirement prescribed under section 195 of the Act.

He further submits that the Board Meeting held on 17.12.2023 was convened and conducted in violation of the provisions of the Companies Act, 1994 and the Articles of Association of respondent No. 1 Company, rendering the resolutions adopted therein illegal, void and of no legal effect. According to the learned Senior Advocate, the appointment of respondent No. 5 as the nominated Director and Managing Director pursuant to the impugned resolutions was made without lawful authority and the subsequent filing of Form XII before the Registrar of Joint Stock Companies and Firms merely sought to give effect to an otherwise invalid decision of the Board.

He contends that the acts complained of constitute a deliberate attempt by the majority to exclude the petitioners from the management of the Company and to consolidate control in disregard of the statutory requirements and the Articles of Association. Such conduct, according to him, amounts to oppression of the minority shareholders and is prejudicial both to the interests of the petitioners and to the proper management of the Company, thereby attracting the jurisdiction of this Court under section 233 of the Companies Act, 1994.He lastly submits that unless the impugned Board resolutions and the consequential Form XII are declared void and their operation restrained, the petitioners will suffer irreparable loss and the affairs of the Company will continue to be conducted in an unlawful manner. He therefore prays that the application be allowed, the impugned Board resolutions and Form XII be declared void.

Per Contra, Mr. Mustafizur Rahman Khan, learned Senior Advocate appearing with Mr. Kazi Ershadul Alam for the respondent No.1, at the outset, by filing an application,raises a preliminary objection as to the maintainability of the application on the ground that the petitioners lack the statutory qualification required under section 233 of the Companies Act, 1994. He submits that the language of section 233 is explicit and admits of no exception. The expression "any member" refers to a member of the company against whom relief is sought, and the qualifying shareholding must be held by the applicant in his own name as a registered member of that particular company. According to him, the petitioners cannot derive locus standi merely by reason of their indirect interest through another corporate entity.

Elaborating his submission, Mr. Khan contends that sections 34 and 36 of the Companies Act, 1994 clearly demonstrate the legislative intent that membership of a company is determined solely by the register of members maintained by the company. Section 34 requires every company to maintain a register containing, inter alia, the names of its members, the number of shares held by each member, and the amount paid or deemed to have been paid thereon. Section 36 further requires the filing of the annual list of members and summary with the Registrar of Joint Stock Companies and Firms. Consequently, for the purpose of section 233, only those whose names appear in the register of members of the company can claim the status of a "member". Since the petitioners admittedly hold far less than the statutory minimum of one-tenth of the issued share capital in their own names as registered members of respondent No. 1 Company, they are disqualified from maintaining the present application. Accordingly, the application, together with the interim order passed therein, is liable to be dismissed and vacated with exemplary costs.

In support of his contention, Mr. Khan places reliance on the decision in *Vijay K. Srivastava vs. Sir J.P. Srivastava and Sons (Madhya Bharat) P. Ltd.*, (2000) 4 Comp LJ 163, wherein it was held that *"a holder of shares in a company cannot file a petition against a company in which his company is holding shares."* Relying on the aforesaid principle, he submits that a shareholder of one company cannot invoke the remedy available under section 233 against another company merely because the former company holds shares in the latter. An indirect or derivative economic interest cannot substitute the statutory requirement of direct registered membership. Since the petitioners admittedly do not possess the requisite shareholding in respondent No. 1 Company in their own names, they lack the necessary locus standi to invoke the jurisdiction under section 233 of the Companies Act, 1994.

Without prejudice to the aforesaid preliminary objection, he further submits that even assuming the application to be maintainable, the reliefs sought are wholly outside the scope and object of section 233 of the Companies Act, 1994. The provision is intended to protect minority shareholders against acts of oppression, prejudice and mismanagement affecting their proprietary rights as members. A plain reading of the petition, however, reveals that the petitioners have not alleged any act of oppression or unfair prejudice committed against them in their capacity as shareholders. Rather, the entire challenge is directed against the convening of a meeting of the Board of Directors and the appointment of respondent No. 5 as the nominated Director and Managing Director of the Company. These are matters falling exclusively within the domain of the Company's internal management and corporate governance and do not give rise to any cause of action under section 233.

He further submits that the petitioners have not pleaded any facts showing that the affairs of the Company are being conducted in a manner oppressive to minority shareholders or prejudicial to their interests as members. Nor have they alleged any misappropriation of corporate assets, diversion of funds, breach of fiduciary duty, or any other conduct recognised by law as constituting oppression or mismanagement. The application, therefore, is nothing more than an attempt to interfere with the internal administration and day-to-day management of the Company under the guise of a minority shareholders' action. Such an exercise, he submits, is wholly foreign to the jurisdiction conferred by section 233 and, therefore, the application is liable to be rejected in limine.

The first question that falls for determination by this court is whether the petitioners possess the requisite locus standi to invoke the jurisdiction of this Court under section 233 of the Companies Act, 1994.

Section 233 of the Companies Act, 1994 provides a special statutory remedy to protect a company against oppression and mismanagement. The remedy, however, is not available to every person claiming an economic or beneficial interest in the affairs of the company. The legislature has expressly confined the right to invoke the jurisdiction under section 233 to a member or debenture holder who satisfies the qualifying requirements prescribed in section 195 of the Act. Compliance with section 195 is, therefore, not a mere procedural formality but a condition precedent to the maintainability of an application under section 233.

Section 195(a) permits an application to be made only by not less than one-tenth of the total number of members or by members holding not less than one-tenth of the issued share capital of the company, provided that all calls and other sums due on their shares have been paid. The qualifying threshold is jurisdictional in nature. Unless the applicant establishes that he falls within the class of persons specified by the statute, the Court cannot assume jurisdiction under section 233.

The answer to the question as to who constitutes a "member" of a company is furnished by section 32 of the Companies Act, 1994. Under that provision, the subscribers to the memorandum become members upon incorporation, and every other person becomes a member only upon agreeing to become a member and having his name entered in the register of members. Membership is thus a statutory legal status and not merely an economic or beneficial interest. Accordingly, only the person whose name appears in the register of members is recognised by the company as its member and is entitled to exercise the statutory rights attaching to membership. A shareholder of a corporate shareholder does not, merely by virtue of such shareholding, become a member of another company in which that corporate entity holds shares. Any indirect or derivative economic interest through another shareholder, whether an individual or a body corporate, does not confer membership for the purposes of sections 195 and 233 of the Act.

This conclusion is entirely consistent with the scheme of the Companies Act. A company incorporated under the Act is a distinct juristic person, separate from its shareholders. Where one company holds shares in another company, the shareholder recognised in law is the corporate entity itself. Its shareholders, notwithstanding their proportionate interest in the company, acquire no legal or equitable interest in the assets or investments of that company, including the shares held by it in another company. Their rights are confined to those conferred by the Act and the company's constitution, such as the right to vote, receive dividends and participate in the surplus assets upon winding up. They cannot assert ownership of any specific asset belonging to the company or exercise rights vested exclusively in the company.

In the present case, it is undisputed that UECL is the registered holder of 4,95,000 shares constituting 90% of the issued share capital of respondent No. 1 Company. Those shares stand in the name of UECL alone. Although the petitioners are shareholders of UECL, they are not, by reason of that fact, members of respondent No. 1 Company in respect of those shares. If UECL, as the registered shareholder, considers itself aggrieved, it may, subject to the fulfilment of the statutory conditions, invoke the remedy provided under section 233 in its own name. Its shareholders, however, cannot appropriate UECL's statutory rights as their own or treat UECL's shareholding as constituting their individual shareholding in respondent No. 1 Company.

Accordingly, for the purpose of section 195(a), the qualifying shareholding must be determined exclusively by reference to the shares registered in the names of the applicants in respondent No. 1 Company. An indirect economic interest arising from shareholding in another corporate entity cannot be equated with membership of the respondent company and cannot be taken into account in computing the statutory threshold prescribed by section 195(a). Admittedly, the shares standing in the names of the petitioners fall far short of the statutory minimum.

Such an interpretation also accords with the legislative purpose underlying sections 195 and 233. While section 233 is intended to afford an effective remedy against oppression and mismanagement, section 195 ensures that the jurisdiction is invoked only by persons having the requisite legal stake in the company. To permit shareholders of a corporate shareholder to aggregate the latter's shareholding with their own would disregard the separate legal personality of incorporated companies and substantially enlarge the class of persons entitled to invoke section 233 beyond that contemplated by the legislature.

This Court, therefore, holds that for the purpose of maintaining an application under section 233 of the Companies Act, 1994, the qualifying requirement prescribed in section 195(a) must be satisfied by the applicants in their own capacity as registered members of the company. Shares standing in the name of a separate corporate entity cannot be treated as the shareholding of its individual shareholders. An indirect or derivative economic interest arising through shareholding in a corporate shareholder does not confer membership within the meaning of the Companies Act and cannot be reckoned towards the statutory threshold under section 195(a).

Since the petitioners admittedly do not possess the requisite qualifying shareholding in the Respondent No. 1 Company, they lack the locus standi to maintain the present application under section 233. **The application is, accordingly, dismissed as not maintainable.**

Notwithstanding the above conclusion, this Court considers it appropriate to observe that the dismissal of the application on the ground of maintainability should not be construed as judicial approval of the manner in which the affairs of respondent No. 1 Company have been conducted. The directors and those entrusted with the management of the Company remain subject to the statutory and fiduciary obligations imposed upon them by law, and are expected to discharge those obligations with utmost fidelity, transparency and in the best interests of the Company and all its stakeholders.

Before parting with the record, this Court considers it appropriate to observe that the Companies Act, 1994 is enacted to ensure transparency, accountability and fairness in the management of corporate affairs. The powers vested in the Board of Directors are fiduciary in nature and are required to be exercised bona fide, for proper purposes and in the best interests of the company. Equally, the affairs of a company must at all times be conducted in accordance with the provisions of the Act and its Memorandum and Articles of Association. The controlling majority cannot, merely by reason of its numerical strength, disregard the statutory rights of other shareholders or act in a manner inconsistent with the scheme of the Act.

Although the present application is not maintainable for want of the statutory qualification prescribed under section 233 of the Companies Act, 1994, the petitioners nevertheless continue to be shareholders of respondent No. 1 Company. Their failure to satisfy the threshold requirement for maintaining an action under section 233 does not denude them of the rights and protections available to shareholders under the Companies Act or under the general law. It is, therefore, expected that the Board of Directors shall ensure that the affairs of the Company are conducted strictly in accordance with the provisions of the Companies Act, 1994 and the Memorandum and Articles of Association. In particular, all meetings of the Board and shareholders, appointments to corporate offices, maintenance of statutory registers, filing of statutory returns and other corporate acts shall be undertaken in strict compliance with the law.

This Court further observes that corporate governance demands adherence not only to the letter of the law but also to the standards of fairness, transparency and accountability which underpin the statutory framework. Internal differences amongst shareholders or directors should not be permitted to impede the proper administration of the Company or prejudice the interests of the Company, its shareholders, creditors, employees and other stakeholders. Those entrusted with the management of the Company must, therefore, discharge their fiduciary responsibilities with fairness, impartiality and good faith, recognising that the powers vested in them are held in trust for the benefit of the Company as a whole and not for the advancement of sectional or majority interests.

No order as to cost.

(Justice Md. Toufiq Inam)

Ashraf/ABO.