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

Present:
Mr. Justice Md. Toufiq Inam

COMPANY MATTER NO. 607 OF 2026.

IN THE MATTER OF:

An application under Section 85(3) of the Companies Act, 1994, read with Rule 8 of the Companies Rules, 2009.

-And-

IN THE MATTER OF**:**

Prof. Dr. Abul Kashem.

….Petitioner.

-Versus-

Registrar of Joint Stock Companies and Firms and others.

.…Respondents.

Mr. Ahsanul Karim, Senior Advocate with
Mr. Md. Anisul Hassan,
Mr. Mohammad Syeed Abrar,
Mr. Hossain Mohammad Shahidul,
Mr. Md. Mosadek Billah,
Mr. Syful Islam, and
Mr. Md. Habibur Rahman, Advocates

……..For the Petitioner.

Mr. Mustafizur Rahman Khan, Senior Advocate with
Mr. Anita Ghazi Rahman, Senior Advocate and
Mr. Sameera Mahmud, Advocate

…..... For the Respondent No.2-4.

Judgment delivered On: 17.08.2026.

Md. Toufiq Inam, J.

1. This application has been filed under section 85(3) of the Companies Act, 1994 seeking, inter alia, an order restraining the

respondents from convening or holding an Extraordinary General Meeting ("EGM") of Respondent No.2, Dhaka Club Limited ("the Club"), pursuant to Notice No. 794/DC dated 16.05.2026, and for consequential reliefs in relation to the proposed amendments to Articles 33(b) and 35 of the Articles of Association of the Club ("the Articles").

Factual Background

2. Respondent No.2, Dhaka Club Limited, is a company limited by guarantee and is governed by its Memorandum and Articles of Association. It has approximately 3,600 members. Respondent No.3 is the incumbent President of the Club and Respondent Nos.4 and others are members of its Board of Directors.

3. By Notice No. 794/DC dated 16.05.2026, an EGM of the Club was convened for 06.06.2026 to consider, inter alia, proposed amendments to Articles 33(b) and 35. The petitioner, a member of the Club, challenges the notice and the proposed meeting principally on the grounds that the notice did not sufficiently disclose the proposed amendments, that the notice was not served in accordance with the prescribed mode under the Articles, and that the proposed amendment to Article 33(b) was actuated by mala fide considerations and conflict of interest.

4. The petitioner also relies upon the alleged non-implementation of an internal audit report and contends that the proposed amendment to Article 33(b), particularly its retrospective operation, is intended to benefit Respondent No.3 and certain members of the Board.

Submissions on behalf of the Petitioner

5. Mr. Ahsanul Karim, learned Senior Advocate appearing with Mr. Anisul Hasan for the petitioner, submits that Notice No. 794/DC dated 16.05.2026 is legally defective notwithstanding the petitioner’s actual receipt thereof. His principal contention is that a notice convening an EGM must sufficiently disclose the business proposed to be transacted so that the members may exercise an informed judgment. According to him, merely referring to Article numbers, without setting out the substance of the proposed amendments in the notice itself, is insufficient.

6. He further submits that Articles 86 and 87 prescribe the permissible modes of service and that delivery through a private courier does not satisfy either personal service or service by post contemplated by the Articles. The subsequent SMS dated 31.05.2026, according to him, reinforces the defect in the original notice.

7. On the merits of the proposed amendments, Mr. Karim submits that the amendment to Article 33(b), particularly its retrospective operation, is designed to confer an undue personal benefit upon Respondent No.3 and certain members of the Board. He also relies upon the alleged failure to implement an internal audit report as a further reason why the proposed amendment should not presently be placed before the General Body.

8. Finally, he submits that any amendment must strictly comply with Article 89, and that convening the proposed EGM violates Article 89 *ab initio*. Given Respondent No. 3's direct conflict of interest in presiding over a meeting concerning amendments that benefit him personally, the Court ought to appoint an independent

Chairman. In support, he relies on *Company Matter Nos. 174 & 178 of 2023*, where this Court stayed disputed EGM notices, and the Appellate Division (*Civil Petition for Leave to Appeal Nos. 1503 & 1504 of 2023*, order dated 15.06.2023) nominated Mr. Kamal-Ul-Alam, learned Senior Advocate, as independent Chairman.

Submissions on behalf of Respondent Nos. 2–4

9. Per contra, Mr. Mustafizur Rahman Khan, learned Senior Advocate, appearing with Ms. Anita Ghazi Rahman, learned Senior Advocate for Respondent Nos.2–4, opposes the application.Mr. Khan at the outset questions its maintainability under section 85(3) of the Companies Act, 1994. His submission is that, notwithstanding the form in which the application has been framed, the petitioner's real grievance is against the meeting notice and, more particularly, against the contents of the agenda circulated with the notice.

10. He submits that Section 85(3) of the Companies Act, 1994 is a facilitative and enabling provision designed to assist companies when it becomes "impracticable" to call, hold, or conduct a meeting under the Act or Articles. It does not confer general supervisory power upon the Court to prohibit or restrain an otherwise duly convened meeting. Citing *Dhaka Jute Mills Ltd. v. Satish Chandra Banik*, 19 DLR 735, he submits that the Court cannot supply a *casus omissus* or read prohibitory powers into Section 85(3) that the legislature did not enact.

11. Relying upon *Jahangir Alam Khan v. RJSC*, 55 DLR 495, and *Ghyasuddin Ahmed v. Faruqe*, 38 DLR (AD) 296, Mr. Khan

argues that "impracticable" denotes a practical inability to convene or conduct a meeting, which cannot be equated with a member’s disagreement with a proposed agenda. A dissenting member’s recourse is to participate, deliberate, and vote against the proposed resolutions at the EGM. Challenging an unpassed resolution is premature (*Abdul Mohit v. Social Investment Bank Ltd.*, 54 DLR 306, affirmed in 61 DLR (AD) 82; *Cricket Club of India Ltd. v. Madhav L. Apte*, [1975] 45 Comp Cas 574 (Bombay)).

12. On the question of notice, Mr. Khan submits that Notice No. 794/DC dated 16.05.2026 provided the requisite 21 clear days' notice for the EGM scheduled on 06.06.2026. The Petitioner’s own filings, annexing the notice and courier envelope, establish actual receipt. The SMS sent on 31.05.2026 was merely a supplementary reminder post-Eid to encourage participation, not a fresh or cure notice.

13. Regarding disclosure, he rejects the contention that full text amendments must appear verbatim in the body of the notice. The notice identified Articles 33(b) and 35, while an accompanying enclosure provided a side-by-side comparison of the existing and proposed provisions. Reading the notice and enclosure together satisfied the requirement of adequately informing members to make an informed decision.

14. Addressing allegations of *mala fides*, Mr. Khan submits that the amendment to Article 33(b) did not originate from Respondent No. 3, but from a formal request by over 80 members seeking relief from a fixed penalty of Tk. 2,00,000/-. The Board merely placed the matter before the General Body. The proposed

amendment seeks to replace the rigid penalty, extend payment timelines, modernise notice modes, and apply retrospectively to match the period relief was sought. Furthermore, the EGM adheres strictly to Article 89 by seeking to amend the Articles via special resolution.

15. Finally, Mr. Khan submits that an independent audit is irrelevant to amending Articles 33(b) and 35. As to appointing an independent Chairman, such ancillary relief under Section 85(3) can arise only after the jurisdictional threshold of "impracticability" is met. Relying on *United Commercial Bank Ltd. v. Jahangir Alam Khan*, 56 DLR (AD) 76, he submits that mere allegations of conflict of interest by a single member do not justify judicial appointment of a chairman. Accordingly, Respondent Nos. 2–4 pray for the dismissal of the application.

Points for Determination

16. Upon hearing the learned Advocates for the parties and considering the materials on record, the principal questions which arise for determination are: first, whether the application is maintainable under section 85(3); secondly, whether the notice dated 16.05.2026 sufficiently disclosed the business proposed to be transacted at the EGM; thirdly, whether the notice was validly served upon the members in accordance with the Act and the Articles; fourthly, whether the allegations of mala fides, conflict of interest and non-implementation of an internal audit report justify interference by this Court; and, finally, whether any question arises for appointment of an independent Chairman.

Maintainability under Section 85(3)

17. Section 85(3) provides that if, for any reason, it is impracticable to call a meeting of a company in any manner in which such meeting may be called, or to conduct the meeting in the manner prescribed by the Articles or the Act, the Court may, on its own motion or upon the application of a director or a member entitled to vote, order the meeting to be called, held and conducted in such manner as the Court thinks fit.

18. It is correct that this provision does not confer upon the Court an appellate jurisdiction over the wisdom, desirability or commercial expediency of a resolution proposed to be considered by the General Body. The Court does not sit in appeal over the collective judgment of the members. A mere disagreement with an agenda item cannot, by itself, be characterised as "impracticability" within the meaning of section 85(3).The present application, however, cannot be so characterised. The petitioner is not merely asking the Court to determine whether the proposed amendments to Articles 33(b) and 35 are desirable or beneficial. A substantial part of the challenge is directed against the legality of the process by which the EGM itself was sought to be convened, namely, the adequacy of the notice and the manner of its service.

19. Section 85(1)(b) expressly requires that notice of a company meeting, together with the statement of the business to be transacted at the meeting, be served on every member in the manner prescribed by Schedule I. Section 87(2), in the case of a special resolution, further requires not less than twenty-one days' notice specifying the intention to propose the resolution as a special resolution.Therefore, compliance with the statutory and

constitutional requirements relating to notice is not a matter extraneous to the calling and conduct of a meeting. It constitutes part of the process by which the meeting is lawfully convened.

20. In addition, Rule 8 of the Companies Rules, 2009 has been recognised by this Court as conferring an inherent jurisdiction in appropriate company matters, particularly where non-compliance with a statutory provision is brought to the notice of the Court. The jurisdiction under Rule 8, however, is not a general appellate jurisdiction over corporate affairs and must be exercised with restraint.In the present case, the petitioner alleges breach of the statutory requirements governing notice as well as breach of the Articles. The Court is therefore not being invited merely to adjudicate upon the wisdom of an agenda item. The objection goes to the legality of the meeting process itself. The application is accordingly maintainable.

Statutory Requirements Relating to Notice

21. Section 85(1)(a) requires, as a general rule, twenty-one days' notice in writing for a meeting other than an annual general meeting, subject to the statutory provision regarding shorter notice. Section 85(1)(b) requires that notice of the meeting, together with the statement of the business to be transacted, be served upon every member in the manner prescribed by Schedule I.

22. Section 87(2) provides that a resolution shall be a special resolution where it is passed by the requisite three-fourths majority at a general meeting of which not less than twenty-one

days' notice specifying the intention to propose the resolution as a special resolution has been duly given.

23. Section 20 of the Act further recognises the power of a company, subject to the Act and its memorandum, to alter its Articles by special resolution. Thus, the proposed amendment of Articles 33(b) and 35 is plainly a matter which may properly be placed before the General Body, provided that the statutory and constitutional requirements for convening the meeting and proposing the special resolution are duly observed.

Sufficiency of Disclosure in Notice No.794/DC

24. The notice dated 16.05.2026 stated:

> *"Notice is hereby given that an Extraordinary General Meeting (EGM) of Dhaka Club Limited will be held on Saturday, the 6th of June 2026 at 11.00 AM at the Main Lounge of the Club to consider and approve the following Agenda."*

The agenda was stated as follows:

> *"To consider and approve the proposed amendments of Articles 33(b) and 35 of the Articles of Association of the Dhaka Club Limited by passing special resolutions for the purpose (details enclosed)."*

25. The statutory requirement under section 85(1)(b) is that the notice contain the statement of the business to be transacted. It does not, in terms, require the entire proposed amendment to be reproduced verbatim in the body of the notice.The question, therefore, is whether the notice, read together with the accompanying

documents expressly referred to therein, sufficiently identified the business to be considered at the meeting.

26. In the present case, the notice specifically identified Articles 33(b) and 35 and expressly stated that the proposed amendments were to be considered by way of special resolutions. It further stated that details were enclosed. The accompanying comparative statement, according to the materials before the Court, set out the existing and proposed provisions.

27. A notice of a company meeting is not to be construed in isolation from documents expressly incorporated into it by reference. Where the notice clearly identifies the particular Articles proposed to be amended and the accompanying document sets out the proposed amendments, the members are placed in a position to know the precise subject matter upon which they are being asked to vote.The Court therefore finds that the challenge based solely upon the alleged failure to reproduce the entire proposed amendments in the body of the notice is not sustainable.The substantive adequacy of the disclosure, accordingly, is established.

Mode of Service of the Notice

28. The position regarding the mode of service stands on a different footing.Section 85(1)(b) expressly requires notice of a company meeting to be served in the manner prescribed by Schedule I. Regulation 113 of Schedule I provides that notice may be given to a member personally or by sending it by registered post to his registered address, subject to the circumstances specified therein.

29. While the notice was substantively sufficient in content, its transmission to the members suffered from a critical constitutional defect regarding the mode of service. Article 86(1) of the Articles of Association of Dhaka Club Limited regulates how notices must be served on its members: *"A notice may be served by the Club upon any member either personally or by sending it by post to him to his registered address..."* Article 86(2) provides the legal mechanics for deeming service complete when post is utilized: *"Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice..."*

30. Under Section 22 of the Companies Act, 1994, the Articles of Association constitute a statutory contract binding the company and its members. The modes of service prescribed in Article 86(1) are exhaustive: service must be effected either personally or by post.

31. The Respondents submitted that dispatching notice packages via a private commercial courier agency constituted "personal service." This argument misconstrues the legal nature of personal service. Personal service in company law requires direct physical delivery by an officer, agent, or employee acting directly on behalf of the company to the recipient member. When a company hands over thousands of sealed envelopes to an independent third-party commercial courier company, it engages an intermediary logistics provider. The courier's sub-agents or delivery staff are not company officers delivering notice personally; they are executing

a contract of carriage. Courier delivery cannot be conflated with personal delivery.

32. Equally untenable is the proposition that courier delivery is equivalent to "service by post." In statutory construction, "post" refers specifically to the statutory postal system operated under the authority of the State (e.g., the Post Office Act). The legal deeming presumption established under Article 86(2) and reflected in Section 27 of the General Clauses Act, 1897 attaches strictly to letters placed in the official postal network with postage prepaid. Courts cannot stretch clear contractual text to read private commercial courier services into the word "post." While modern commercial practice frequently uses courier networks for speed and tracking, corporate constitutions must be amended through proper general body resolutions if modern delivery methods are to be adopted. Until the Articles are formally altered, the company remains bound by its existing contractual provisions.

33. The Respondents emphasized that the Petitioner actually received the notice via courier, fully aware of the agenda, and suffered no prejudice. In corporate governance, strict compliance with statutory and constitutional notice mechanisms is mandatory, not directory. The valid convening of a General Body meeting depends upon uniform compliance with service rules across the entire membership, not merely upon whether a single challenging litigant obtained actual knowledge. Actual receipt by an individual member cannot validate an unauthorized mode of service that breaches the Articles of Association. Because Notice No. 794/DC was served upon the general membership primarily via private courier agencies, it violated Article 86(1) of the

Articles, rendering the dispatch legally defective.The defect is therefore not merely technical or individual. It concerns the legality of the process adopted for serving the membership generally.

Effect of Actual Receipt

34. The Respondents have strongly relied upon the fact that the petitioner admittedly received the notice and was fully aware of the proposed business.This submission cannot prevail in the circumstances of the present case. Actual knowledge and valid service are not necessarily synonymous. Where a company's Articles prescribe a particular mode of service, the company cannot ordinarily substitute a different mode merely because the intended recipient happens to have obtained actual knowledge.

35. The purpose of a prescribed mode of service is to establish a uniform and legally recognisable mechanism by which notice is communicated to all persons entitled to receive it. If actual receipt by one member or all members were treated as sufficient to validate an otherwise unauthorised mode of service, the constitutional requirement governing service would effectively become optional.The Court therefore holds that actual receipt of the notice by the petitioner does not cure the defect in the mode of service adopted by the Club.

Mala Fides and the Proposed Amendment

36. The petitioner has alleged that the proposed amendment to Article 33(b) is motivated by mala fides and is intended to confer retrospective benefit upon Respondent No.3 and certain members

of the Board.The materials before the Court, however, indicate that the proposal was preceded by a request from more than 80 members seeking reconsideration of the existing monetary penalty. The Board thereafter placed the matter before the General Body for consideration.

37. The mere fact that an incumbent office-bearer may fall within the class of persons potentially affected by an amendment does not, without more, establish mala fides. Nor does the fact that the proposed amendment may have retrospective effect necessarily render it beyond the competence of the General Body.The Court must distinguish between the legality of placing a proposal before the General Body and the merits of the proposal itself. Whether the proposed amendment is fair, appropriate, desirable or beneficial to the Club is a matter for the members acting through the General Body.No sufficient material has been placed before the Court to conclude, at this stage, that the proposed amendment is so plainly colourable or ultra vires that it cannot lawfully be placed before the General Body.The allegation of mala fides, therefore, does not independently furnish a ground for restraining consideration of the proposed amendment.

<u>Internal Audit Report</u>

38. The petitioner has also relied upon the alleged non-implementation of an internal audit report and submits that the Club should not proceed with constitutional amendments until the audit issue has been addressed.This contention cannot be accepted as a ground for restraining the proposed EGM.The internal audit issue and the proposed alteration of the Articles concern distinct matters. Unless the Articles themselves or the Act make

completion of such audit a condition precedent to consideration of an amendment to the Articles, the Court cannot create such a condition judicially.

39. The General Body is entitled to consider the proposed amendment, subject always to compliance with the Act and the Articles. The existence of an unresolved managerial or financial grievance does not, without a statutory or constitutional nexus, prevent the General Body from exercising its power to consider alteration of its Articles.

Appointment of An Independent Chairman

40. The petitioner has prayed for appointment of an independent Chairman on the ground that Respondent No.3 has a conflict of interest.The appointment of an independent Chairman is an exceptional judicial intervention in the internal affairs of a company. It should not become a routine substitute for the constitutional machinery established by the Articles.The authorities relied upon by the petitioner concerning appointment of an independent Chairman arose in circumstances requiring such exceptional intervention. The mere assertion of a conflict of interest by one member, without demonstrating a genuine inability of the constitutional Chairman to preside over the meeting fairly and in accordance with the Articles, does not justify the Court in displacing the person otherwise entitled to preside.

41. In the present case, no structural breakdown in the governance of the Club or any demonstrated circumstance rendering it impracticable for the meeting to be conducted under the ordinary

constitutional machinery has been established.The prayer for appointment of an independent Chairman is therefore refused.

Whether the Notice Can Operate as a Continuing Notice

42. A further question arises because the EGM fixed by Notice No.794/DC was scheduled to be held on 06.06.2026, but the meeting was restrained by the interim order of this Court and the date has since passed.This bench in the case of*AM Mahmudur Rahman v. Uttara Club Limited*, Company Matter No.1533 of 2025, held that where a duly convened meeting is interrupted by judicial intervention, lifting of the restraint may permit the corporate process to resume without recommencing the entire notice process.This principle, however, presupposes the existence of a validly convened meeting in the first place.

43. A judicial order staying a meeting does not retrospectively validate a notice which was defective when issued. The distinction is between a legally convened meeting whose proceedings are temporarily interrupted by an order of the Court and a meeting which was not validly convened in accordance with the statutory and constitutional requirements from the outset.In the present case, the notice was not validly served in accordance with the prescribed mode. The defect therefore existed before the interim order was passed. The subsequent restraint/stay did not create that defect, nor can the lifting of the restraint cure it. The meeting date fixed in the notice, namely 06.06.2026, has already passed. The Club cannot simply treat the old notice as a continuing notice and unilaterally substitute another date without issuing a fresh notice complying with the Act and the Articles.The principle of a “continuing notice” is therefore inapplicable to the present case.

Conclusion

44. Upon consideration of the materials on record, this Court finds that the petitioner has failed to establish any legal ground for interfering with the substantive business proposed to be placed before the General Body. The proposed amendments to Articles 33(b) and 35 are matters which fall within the competence of the General Body, and their wisdom or desirability is not for this Court to determine. The notice, when read together with the documents expressly enclosed with it, sufficiently disclosed the business proposed to be transacted. The allegations of mala fides, conflict of interest and non-implementation of the internal audit report do not, in the circumstances of the present case, render the proposed amendments ultra vires or incapable of being placed before the General Body.

45. The decisive defect, however, lies in the mode of service of Notice No.794/DC dated 16.05.2026. The notice was not served in accordance with the mode prescribed by Article 86 of the Articles of Association and the applicable statutory framework. Actual receipt by the petitioner cannot cure that defect.Consequently, the EGM fixed pursuant to the said notice cannot lawfully be held on the basis of that notice. Since the date fixed for the meeting has already expired, the notice cannot be revived or treated as a continuing notice.

Order and Directions

46. In view of the foregoing reasons, the objection to the maintainability of the application under section 85(3) of the

Companies Act, 1994 is rejected. Consequently, the Company Matter is disposed of with the following directions:

i) The petitioner’s challenge to the substantive adequacy of disclosure in Notice No.794/DC dated 16.05.2026 is rejected. It is held that Notice No.794/DC dated 16.05.2026 was not validly served in accordance with the mandatory requirements of Article 86 of the Articles of Association of Dhaka Club Limited and the applicable provisions of the Companies Act, 1994. Therefore, Notice No.794/DC dated 16.05.2026 cannot validly operate as the notice for convening the Extraordinary General Meeting of Respondent No.2.

ii) If Respondent No.2 desires to proceed with consideration of the proposed amendments to Articles 33(b) and 35, it shall issue a fresh notice of Extraordinary General Meeting, fixing a fresh date, time and venue and complying with the applicable provisions of the Companies Act, 1994, including the requirement of twenty-one days’ notice and the requirement to specify the intention to propose the resolutions as special resolutions, as applicable. The fresh notice shall be served strictly in accordance with the applicable statutory provisions and Article 86 of the Articles of Association of Respondent No.2.

iii) The prayer for appointment of an independent Chairman is refused.

iv) The merits, wisdom and desirability of the proposed amendments to Articles 33(b) and 35 are left entirely open for consideration by the General Body of Respondent No.2 in accordance with law.

v) The interim order previously passed by this Court stands vacated. There shall be no order as to costs.

(Justice Md. Toufiq Inam)

Ashraf/ABO.