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

Present:
Mr. Justice Md. Toufiq Inam.

COMPANY MATTER NO. 742 OF 2026.

IN THE MATTER OF:

An application under section 43 of the Companies Act, 1994.

AND

IN THE MATTER OF:

Nabila Mahmud and another.
------ Petitioners.
-Versus-
Hamid Spinning Mills Limited and others.
----- Respondents.
Mr. M. Shakhawat Hossain, Advocate
----- For the Petitioners.
Ms. Sinthea Siraj Rintu, Advocate
----- For the Respondent Nos. 1, 2 and 3.

Judgment Delivered On 03.08.2026.

Md. Toufiq Inam, J.

This is an application under section 43 of the Companies Act, 1994, instituted by petitioner Nos. 1 and 2 seeking rectification of the Register of Members of Respondent No. 1 Company. The petitioners each hold 750 (seven hundred and fifty) ordinary shares in the Respondent No. 1 Company and, at the relevant time, were also serving as Directors of the Company.

The case of the petitioners, in brief, is that Respondent Nos. 2 and 3 are parents of the petitioners and are also shareholders of the Respondent No.1 Company. It is stated that, in the course of their business relationship, the petitioners executed two sets of Instruments of Transfer of Shares in Form 117 together with supporting affidavits and a Board Resolution dated 14.03.2024 for the purpose of transferring their respective shareholdings in favour of Respondent Nos. 2 and 3. The said documents were thereafter submitted before the Registrar of Joint Stock Companies and Firms (RJSC), Respondent No. 4, for registration.

However, the Registrar did not register the proposed transfer and declined to give effect to the same on the ground that a No Objection Certificate (NOC) from the financing banks and other supporting documents were required before the transfer could be recognised and recorded.

Mr. M. Shakhawat Hossain, learned Advocate for the petitioners contends that the Respondent No. 1 Company had earlier availed various credit facilities from Trust Bank PLC and Bank Asia PLC for the importation of machinery. In connection therewith, the petitioners, in their capacity as Directors of the Company, had furnished personal guarantees in favour of the said banks in compliance with the applicable banking laws and regulations, and charges in respect of the loan facilities had also been duly registered with the RJSC. According to the petitioners, until the outstanding liabilities of the Company are fully discharged, the financing banks are unwilling to issue the requisite No Objection Certificates permitting the transfer of the shares. Consequently, although the transfer documents had been executed, the statutory requirements necessary for completion of the transfer could not be fulfilled. In such circumstances, the petitioners contend that the proposed transfer never attained legal finality and accordingly seek restoration of their names in the Register of Members as reflected in

Schedule X dated 29.12.2023 by invoking the jurisdiction of this Court under section 43 of the Companies Act, 1994.

Per contra, Ms. Sinthea Siraj Rintu, the learned Advocate appearing on behalf of Respondent Nos. 1, 2 and 3, upon filing an Affidavit-in-Opposition, submits that the petitioners had voluntarily and consciously agreed to transfer their entire shareholdings to Respondent Nos. 2 and 3. Pursuant thereto, the petitioners executed the necessary Instruments of Transfer in Form 117 together with supporting affidavits, and the Board approved the proposed transfers. Thereafter, Schedule X and the relevant Annual General Meeting resolutions for the calendar years 2024 and 2025 reflecting the transfer of the petitioners' shares in favour of Respondent Nos. 2 and 3 were prepared and submitted before the RJSC.

She, however, fairly submits that Respondent Nos. 2 and 3, in whose favour the transfers were proposed, do not object if the 'present application is allowed and their respective names are deleted from the Register of Members in respect of the 750 shares standing in the name of Respondent No. 2 and the 750 shares standing in the name of Respondent No. 3, which were proposed to be transferred by petitioner Nos. 1 and 2 respectively. She further submits that since the relevant Schedule X for the years 2024 and 2025 has already been filed before the RJSC incorporating the proposed transfers, appropriate consequential directions may also be issued directing the Company to rectify its Register of Members and requiring the RJSC to accept the corresponding corrections in the statutory filings, including Schedule X and other related corporate records for the relevant calendar years.

Having heard the learned Advocates for the respective parties, considered the pleadings, and examined the materials on record, this Court proceeds to consider the matter.

The facts giving rise to the present application are substantially undisputed. It appears that petitioner Nos. 1 and 2 had indeed executed Instruments of Transfer of Shares in Form 117 together with affidavits and a Board Resolution proposing the transfer of their respective shareholdings in favour of Respondent Nos. 2 and 3. It further appears that the proposed transfers were reflected in Schedule X and other corporate documents prepared for the years 2024 and 2025.

However, the materials on record also demonstrate that the proposed transfers were never registered by the Registrar of Joint Stock Companies and Firms. The Registrar declined to recognise the transfers in the absence of the requisite No Objection Certificate from the financing banks. The undisputed position is that the Company had outstanding secured credit facilities and the petitioners remained bound by their personal guarantees furnished in favour of the lending banks. Consequently, the statutory and regulatory requirements necessary for giving legal effect to the proposed transfers remained unfulfilled.

It is a settled principle that the execution of an instrument of transfer by itself does not automatically divest the transferor of his legal status as a member of the company. Until the transfer is duly recognised and entered in accordance with law and the Register of Members is validly rectified, the transferor continues to remain the legal member whose name appears in the register. In the present case, the proposed transfer admittedly never became effective because the Registrar declined to register the same for non-compliance with the applicable legal requirements.

More importantly, the proposed transferees themselves, namely Respondent Nos. 2 and 3, have unequivocally stated before this Court that they have no objection to restoration of the petitioners' names in respect of the disputed shares. Thus, no conflicting proprietary claim survives between the parties regarding the ownership of the said shares. The relief sought is, therefore, merely intended to restore the statutory records to reflect the legal position that existed prior to the unsuccessful attempt at transfer.

Section 43 of the Companies Act, 1994 empowers this Court to order rectification of the Register of Members whenever the name of a person has been entered in or omitted from the register without sufficient cause or where default or unnecessary delay has occurred in entering or omitting any person's name. The jurisdiction is intended to ensure that the statutory register correctly reflects the true legal ownership of the shares. In the facts of the present case, where the proposed transfer was never completed in accordance with law and all concerned parties consent to restoration of the previous position, this Court is satisfied that sufficient grounds exist for exercising its jurisdiction under section 43 of the Companies Act, 1994.

The application is, therefore, allowed.

The Respondent No. 1 Company is directed to rectify its Register of Members by deleting the entries relating to the proposed transfer of 750 (seven hundred and fifty) shares from petitioner No. 1 to Respondent No. 2 and 750 (seven hundred and fifty) shares from petitioner No. 2 to

Respondent No. 3, and by restoring the names of petitioner Nos. 1 and 2 respectively as the registered holders of the said shares.

It is hereby declared that the Instruments of Transfer of Shares in Form 117, being Annexures-C and C-1, together with the corresponding entries made or proposed to be made in the Register of Members in pursuance thereof, shall not have any legal effect and shall not be binding upon the Respondent No. 1 Company.

The Respondent No. 4, the Registrar of Joint Stock Companies and Firms, is directed to cancel Submission No. 2024102964 dated 20.10.2024 (Annexure-D) and, upon receipt of the rectified statutory filings from the Respondent No. 1 Company, to accept, register and process the same, including the corrected Schedule-X restoring the names of petitioner Nos. 1 and 2 as reflected in Schedule-X dated 29.12.2023, together with all consequential statutory returns and filings relating to the calander year 2024 and 2025, in accordance with law, within 60 (sixty) days from the date of receipt of this judgment and order.

As a condition for obtaining the equitable relief sought in the present proceedings, the petitioners shall, within 15 (fifteen) days from the date of this order, donate a total sum of Tk.1,00,000/- (Taka One Lakh only) by way of Pay Orders, out of which Tk.50,000/- (Taka Fifty Thousand only) shall be made in favour of each of the following:

(i) “পূর্ব চুড়াইন কেন্দ্রীয় জামে মসজিদ, চুড়াইন, নবাবগঞ্জ, ঢাকা (সোনালী ব্যাংক, একাউন্ট নং-5506100003956, চুড়াইন বাজার শাখা, নবাবগঞ্জ, ঢাকা)। and

(ii) “কাটগড়া বাওড় জা-ম মসজিদ (A/C- 2326702000433)”, Purapara, Moheshpur, Jhenaidah.

The petitioners shall thereafter file an affidavit of compliance before this Court within two weeks.

(Justice Md. Toufiq Inam)

Ashraf/ABO.