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

Present:

Mr. Justice Sikder Mahmudur Razi

Company Matter No. 1916 of 2025

IN THE MATTER OF:

An application under Sections 171 of the Companies Act, 1994.

-AND-

IN THE MATTER OF:

Modhumoti Bank PLC

…. Petitioner.

- Versus-

The Registrar, Joint Stock Companies and Firms.

....Respondent.

Mr. Mohammed Mutahar Hossain, Adv. with Md. Saimun Islam, Advocate

……For the petitioner.

No one appears

.......For the Respondent.

Heard & Judgment on: The 25th August, 2026

1. This is an application under section 171 of the Companies Act, 1994 seeking rectification of the register of mortgages maintained by the Registrar of Joint Stock Companies and Firms in respect of Certificate of Registration of Mortgage/Charge No. CTG-M669 dated 18.01.2018 by replacing the name of respondent No. 2, Mars Textiles Limited, with that of respondent No. 3, Mahmud Spinning Limited, as the mortgagor and for issuance of a fresh certificate upon such rectification.

2. The petitioner, Modhumoti Bank PLC, is a banking company carrying on banking business in Bangladesh. It appears from the statements made in the

petition that in the ordinary course of its business the petitioner sanctioned credit facilities amounting to Tk. 32,00,00,000/- (Taka thirty-two crore) in favour of respondent No. 2, Mars Textiles Limited, by Sanction Letter dated 28.05.2017. As collateral security for the said facilities, 179.50 decimals of land situated at Kaliakoir Pourashava, Gazipur, belonging to respondent No. 3, Mahmud Spinning Limited, was agreed to be mortgaged in favour of the petitioner. The Sanction Letter dated 28.05.2017 has been annexed to the application as Annexure-"A".

3. It further appears that respondent No. 3, Mahmud Spinning Limited, by a resolution adopted in its Board Meeting dated 20.12.2017, approved the mortgage of the said 179.50 decimals of land in favour of the petitioner as security for the credit facilities extended to respondent No. 2. The said Board Resolution has been annexed to the application as Annexure-"B".

4. Pursuant thereto, respondent No. 3 executed Registered Deed of Mortgage No. 12817 dated 28.12.2017 in favour of the petitioner and also executed Registered Irrevocable Power of Attorney No. 12818 dated 28.12.2017 in respect of the mortgaged properties. Those documents were annexed as Annexures-"C" and "C-1". The petitioner subsequently filed a supplementary affidavit placing a fresh copy of Registered Deed of Mortgage No. 12817 dated 28.12.2017 on record as Annexure-"F".

5. The particulars of the mortgage were thereafter placed before respondent No. 1, the Registrar of Joint Stock Companies and Firms, for registration in accordance with the Companies Act, 1994. Upon registration, respondent No. 1 issued Certificate of Registration of Mortgage/Charge No. CTG-M669 dated 18.01.2018 under section 165 of the Companies Act, 1994. A copy of the said certificate has been annexed to the application as Annexure-"D".

6. The grievance of the petitioner arises from the fact that although the mortgage was created by respondent No. 3, Mahmud Spinning Limited, over its own property, the Certificate of Registration of Mortgage/Charge inadvertently records the mortgagor as "MARS TEXTILES LIMITED changed from MARS TEXTILES MILLS LIMITED", i.e. respondent No. 2. According to the petitioner, respondent No. 2 is the borrower, whereas respondent No. 3 is the owner of the mortgaged property and the actual mortgagor. The error came to the notice of the petitioner subsequently during its internal audit/inspection.

7. It also appears from the affidavit-in-compliance that by order dated 30.10.2025 this Court directed the petitioner to publish notices of this proceeding in "The Daily Star" and "The Daily Kaler Kantho". In compliance with the said direction, notices were published in both newspapers on 20.11.2025. The original published notices have been annexed to the affidavit-in-compliance as Annexures-"X" and "X-1".

8. The learned Advocate appearing for the petitioner submits that the error appearing in the Certificate of Registration of Mortgage/Charge is purely accidental and inadvertent. He submits that the underlying transaction itself leaves no ambiguity as to the identity of the mortgagor. Respondent No. 2 was the borrower, whereas respondent No. 3, being the owner of the property, passed the necessary Board Resolution and thereafter executed the registered mortgage in favour of the petitioner. Therefore, according to him, the register and the certificate should correctly reflect respondent No. 3 as the mortgagor.

9. The learned Advocate further submits that section 171 of the Companies Act, 1994 empowers this Court to rectify an omission or misstatement relating to the registration of a mortgage or charge where the same has occurred accidentally or through inadvertence or other sufficient cause and where the

Court considers it just and equitable to grant such relief. He, therefore, prays that respondent No. 1 be directed to rectify the relevant register and issue a fresh Certificate of Registration of Mortgage/Charge accordingly.

10. I have heard the learned Advocate for the petitioner and perused the application, supplementary affidavit, affidavit-in-compliance and the documents annexed thereto.

11. The essential question for determination is whether the incorrect description of respondent No. 2 as the mortgagor in Certificate No. CTG-M669 dated 18.01.2018 is an accidental or inadvertent misstatement which may be rectified under section 171 of the Companies Act, 1994.

12. The documents placed before this Court makes the position sufficiently clear. The credit facilities were sanctioned in favour of respondent No. 2, Mars Textiles Limited, whereas the property offered as collateral security belonged to respondent No. 3, Mahmud Spinning Limited. Respondent No. 3 itself approved the creation of the mortgage by its Board Resolution dated 20.12.2017 and thereafter executed Registered Deed of Mortgage No. 12817 dated 28.12.2017 in favour of the petitioner. Thus, the distinction between the borrower and the mortgagor is apparent from the contemporaneous documents.

13. The Certificate of Registration of Mortgage/Charge, however, records respondent No. 2 as the mortgagor. Such description is inconsistent with the underlying registered instrument itself. There is nothing before this Court to suggest that respondent No. 2 ever created the mortgage over the property in question or that the mistake represents the true intention of the parties. Rather, the documentary materials consistently demonstrate that respondent No. 3 was the mortgagor.

14. Section 171 of the Companies Act, 1994 is intended, inter alia, to enable the Court to grant relief where an omission or misstatement relating to the registration of a mortgage or charge has arisen accidentally, through inadvertence or some other sufficient cause, subject to the Court being satisfied that it is just and equitable to grant such relief. The jurisdiction is discretionary and has to be exercised upon consideration of the nature of the mistake and its effect upon the rights of the parties and third persons.

15. In the instant matter, the petitioner does not seek to create a mortgage retrospectively or to substitute one security for another. The registered mortgage already exists. What is sought is correction of the particulars appearing in the statutory record so that the record accurately corresponds with the underlying registered transaction.

16. I also find no material suggesting that the proposed rectification would alter the substantive rights of any creditor or third party. On the contrary, rectification would make the statutory register correspond with the registered Deed of Mortgage and thereby correctly disclose the identity of the company which actually created the mortgage. The notices directed by this Court have also been duly published. No material has been placed before this Court demonstrating any competing claim or prejudice arising from the proposed correction.

17. In these circumstances, this Court is satisfied that the incorrect recording of respondent No. 2, Mars Textiles Limited, as the mortgagor instead of respondent No. 3, Mahmud Spinning Limited, was an accidental and inadvertent misstatement. The error is therefore one which falls within the remedial jurisdiction of this Court under section 171 of the Companies Act, 1994. It would

be just and equitable that the statutory record be corrected so as to reflect the actual transaction between the parties.

18. Accordingly, I find substance in this application. The application is, therefore, allowed.

19. Respondent No. 1, the Registrar of Joint Stock Companies and Firms, is hereby directed to rectify the relevant register of mortgages/charges in respect of Certificate of Registration of Mortgage/Charge No. **CTG-M669 dated 18.01.2018**, by replacing the name of respondent No. 2, **Mars Textiles Limited**, with the name of respondent No. 3, **Mahmud Spinning Limited**, as the mortgagor in respect of Registered Deed of Mortgage No. **12817 dated 28.12.2017**.

20. Upon such rectification, respondent No. 1 shall issue a fresh/corrected Certificate of Registration of Mortgage/Charge reflecting **Mahmud Spinning Limited** as the mortgagor, in accordance with law, within 02 (one) month from the date of receipt of this order.

21. It is made clear that the rectification directed by this Court is confined to correction of the aforesaid inadvertent misstatement in the statutory register and certificate and shall not, by itself, create, enlarge or otherwise affect any substantive right beyond what flows from the underlying registered mortgage and the applicable law.

22. The Registrar of Joint Stock Companies and Firms shall do the needful accordingly.

23. The petitioner intends to donate Taka 30,000/- (Thirty Thousand) which is to be given in the form of pay order in the name of "Putinna Para Jame

Masjid-Kutubia" A/C. No. 0905001000210, Sonali Bank Limited, Kutubdia Br. Cox's bazar and upon furnishing receipt of the payment, the order may be drawn up, if so, prayed for.

24. The cost of the application shall be borne by the petitioner company.

(Sikder Mahmudur Razi, J:)