

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

Present :

Mr. Justice Khizir Ahmed Choudhury

COMPANY MATTER NO. 197 OF 2013.

Toggi Real Estate and Construction Limited.

----- **Petitioner.**

-VERSUS-

Registrar, Joint Stock Companies & Firms.

----- **Respondent.**

Mr. A.K.M. Badrudduza with

Mr. Md. Zakir Hossain, Advocates

.....for the Petitioner.

Heard and Judgment on 10.08.2023

Khizir Ahmed Choudhury,J:

By filing this application under Section- 12 read with Section 13 of the Companies Act, 1994 the Petitioner Company expected an order confirming Special Resolution passed in the EGM held on 15.03.2023 altering the Object Clause-III to the MOA of the Petitioner Company by way of adding new Sub-clause No. 97.

The Case of the Petitioner Company in brief is that the Company was registered with RJSC bearing Reg. No. C-76605/09 dated 23.04.2009. The authorized Capital of the Company is Tk.10,00,00,000/- (Ten crore) divided into 10,00,000 Shares of Tk. 100/- each while the Paid up Capital is Tk.1,00,00,000/- divided into 1,00,000 Shares of

Tk.100/- each. That the Management and Shareholding of the Company at the time of Registration was as follows:

Sl No.	Name	No. of Shares	Position
01.	Mr.Safwan Sobhan	65000	Managing Director
02.	Mrs. Yeasha Sobhan	35000	Director

Subsequently Mr. Safwan Sobhan has been re-elected as Managing Director on 20.01.2012. Later on Mr. Safwan Sobhan resigned from Managing Directorship and Mrs. Yeasha Sobhan has been elected as Managing Director. That Mr. Safwan Sobhan have transferred his 100 Shares in favour of Mrs. Afroza Begum on 02.12.2019 and she was appointed as Director and Chairman and on the same day transferred 64900 shares in favour of Yeasha Sobhan. Thereafter Mrs. Afroza Begum have transferred her entire 100 Shares in favour of Mr. Safwan Sobhan on 06.10.2020 and resigned from the post of Chairman and Director. Yeasha Sobhan also transferred her 49900 shares in favour of Mr. Safwan Sobhan on 06.10.2020. On the same day Mrs. Yeasha Sobhan resigned from the post of Managing Director and Mr. Mr. Safwan Sobhan has been elected as Managing Director.

That the present Management and Shareholding stands as follows:

Sl No.	Name	No. of Shares	Position
01.	Mrs. Yeasha Sobhan	50000	Director
02.	Mr.Safwan Sobhan	50000	Managing Director

That the Company is regular in holding AGM up to the year 2022 as evident from Schedule-X dated 29.12.2022.

That in the object clause–III to the Memorandum of Association no power has been given upon the Company to Mortgage its property and asset as security for Loans of its sister Concern and 3rd party to secure the Loan to be availed from Bank or any other Financial Institution and also to give guarantees securing liabilities of such associated Company or 3rd party. Consequently the Company Secretary convened an EGM by notice dated 05.02.2023 to be held on 15.03.2023.

The EGM held on 15.03.2023 at the outset noticed that its members felt it necessary to match with business scenario of present days, developments of the corporate sector, requirements of the Financial Institution as well as to cope with compliance issues it is required for the Company by adding a new object clause of Memorandum of Association of this Company. Thereafter the meeting unanimously resolved that the object clause-III to Memorandum of Association of the Company be altered by incorporating new sub-Clause bearing No. 97 after existing clause No. 96 in the following manner.

“Clause No. 97. To Mortgage the property and assets of the Company as securities for loans and any credit facilities to be given to any associate Company or Companies or third party and also to give guarantee securing liabilities of such associate Company or Companies or any third party”

That the meeting authorized Company Secretary of the Company towards taking all necessary steps for inclusion of new sub clause in the object clause-III to the MOA as well as to file application before the Hon’ble High Court Division of the Supreme Court of Bangladesh under Section 12 read with Section-13 for

confirmation of the special resolution passed in the EGM held on 15.03.2023.

Mr. A.K.M. Badrudduza Learned Counsel assisted by Mr. Md. Zakir Hossain appearing for the petitioner submits that the proposed alteration of the object clause is necessary on the back drop of the fact that the Petitioner Company belongs to Boshundhara Group which is comprised of a good number of Companies and from time to time they requires to make inter Company transactions as well as inter Company undertaking and Mortgage for loan and liabilities of each other. In such context the proposed alteration is necessary for enabling the Company to stand as Mortgager and/ or guarantor for each other. He further submits that with the incorporation of proposed sub clause the Company shall be able to run its business more profitably and more economically and as such the proposed alteration requires to be confirmed by this Hon'ble Court. He next submits that the proposed alteration shall contribute towards the vertical and horizontal integration to the business and affairs of the Company and maximize the benefits of the Companies under the umbrella of Boshundhara Group and as such the proposed alteration requires to be confirmed by this Hon'ble Court.

Heard the learned Counsel and on perusal of the application it appeared that the Petitioner Company by notice dated 05.02.2023 (Annexure-D) called an EGM on 15.03.2023. It further appeared from the Minutes of EGM (Annexure-E) that all the two members of the Company were present in the EGM held on 15.03.2023 and incorporated a new Sub-clause being Sub-clause No.97 after the existing Sub-clause 96 of the object Clause-III of the MOA of the Petitioner Company. The

special resolution has been adapted lawfully in the EGM called by clear 21 days notice and the contents of the Sub-clause are found lawful and the said alteration appears to facilitate the Petitioner Company to run its business more profitably and more economically.

In such view of the matter this Court is inclined to allow the application. Therefore the application is allowed. The Special Resolution passed in the EGM held on 15.03.2023 altering the object Clause-III of the MOA of the Petitioner Company by way of adding new Clause No.97 (Annexure-E) is hereby confirmed.

The Registrar, Joint Stock Companies & Firms is hereby directed to register the amendment of the memorandum of association of the company within 60 days of the drawing up of the order.

The petitioner is directed to take all steps as per provision of the companies Act, 1994. The petitioner intends to donate Taka 50,000/- which is to be given for filling land of Akondo Bari Graveyard in the form of pay order in the name of “Md. Golam Sawroar, A/C No.1191260223714, Garib-E-Newaz Avenue Branch” who is looking after the graveyard and furnishing receipt of the payment, the order may be drawn up if so advised.

The cost of this Application shall be borne out of the funds of the Company.