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14.11.24

In the Supreme Court of Bangladesh
High Court Division
(Statutory Original Jurisdiction)

Present:

Mr. Justice Khizir Ahmed Choudhury

Company Matter No. 242 of 2022

Mainuddin Mahmud Chowdhury

..... *Petitioner*

-Versus-

Amanat Marine Works and others.

..... *Respondents*

Mr. A.K.M. Badrudduza with
Mr. Mohammad Solaiman with
Ms. Masuma Akhter and
Mr. Md. Ibrahim Hossain, Advocates

..... *For the Petitioner*

Mr. A.F. Hasan Arif with
Mr. Ashik Al-Jalil, Advocate

..... *For the Respondent No.2*

Mr. Shaikh Mohammad Zakir Hossain with
Mr. Faysal Mustafa with
Ms. Raziah Sultana and
Mr. Md. Anawarul Islam, Advocates

... *For the Respondent No.7.*

**Heard on 05.03.2023, 27.11.2023,
11.02.2024, 25.02.2024 and
judgment on 13.11.2024**

Khizir Ahmed Choudhury, J:

This is an application at the instance of the petitioner under section 43 of the Companies Act 1994 for rectification of the share register of Amanat Marin works limited, Respondent No.1 for rectification of the share register omitting 60+120 =180 shares purportedly transferred to him by respondent Nos. 3 and 4 and reinstating those shares in their names in the register.

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Assistant Bench Officer
Supreme Court of Bangladesh
High Court Division, Dhaka.



Facts stated by the petitioner in brief is that at the request of Respondent No. 2, managing director and father of the petitioner, Anayat Ullah Chowdhury one of the directors of Respondent No. 1 company transferred 60 shares each valued BDT 100 to the petitioner in August, 2015 and similarly Respondent No. 4, Ahmadal Islam Chowdhury, another director of Respondent No. 1 company transferred his 120 shares of denomination of 100 taka each in favour of the petitioner in 2015. Although both the transfers took place at the behest of Respondent No. 2 but the petitioner did not pay any consideration money for such share transfer and subsequently transfer of the said shares have been submitted to the RJSC having executed in form 117 on 11.8.2016 and 17.8 2016 respectively which have been verified by RJSC on 24.08.2016. Bangladesh Finance and Investment Corporation Ltd, in brief BD Finance, has provided Term Loan Facilities to Amanat Marine Works Ltd. of Tk. 21,50,000/- initially for 60 months which was enjoyed by the Company but not adjusted and the Company and its Directors defaulted to pay several installments of the said term loan in due time. As per the condition of the sanction letter dated 07.06.2014, company had submitted 60 post dated cheques of BDT 53,14,450/- each against 60 monthly installments and one undated cheque of BDT 31,88,67,000/- for total receivable amount to BD Finance. After the transfer of 60+120 shares of respondent Nos. 3 and 4 respectively in favor of the Petitioner in August, 2015, Respondent No. 2 as Managing Director of Respondent No. 1 company approached BD Finance to accord consent to the transfer

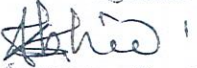
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of said shares in favour of the petitioner, but BD Finance refused to accord consent and issue No Objection Certificate in favour of the transferee of the shares and consequently such share transfer has not come into effect and resultantly it was incumbent upon the respondents to revert back the transfer of shares in favour of the transferor directors intimating the RJSC to this effect. But Respondent No. 2 did not take any step to this effect, rather the petitioner was unduly implicated in C.R cases filed against the cheques' amount. On 09.05.2022 petitioner filed an application having received by RJSC on 18.05.2022 approaching the BD Finance that he was not involved with the defaulted term loan of BD Finance and requested not to record the aforesaid transfer of shares in favour of the petitioner but the RJSC did not pay any heed thereto. By letter dated 07.07.2022 Petitioner requested the Respondent No. 2 to take necessary step for reversal of the transfer of 180 shares in favor of the transferors and to submit the same to RJSC within 15 days of receipt of the notice or else he shall be compelled to file an application before the Company Bench under Section 43 of the Companies Act, 1994 for rectification of the share register of Amanat Marine Works Ltd. for omitting his name therefrom but the respondent No. 2 did not take any step and as such the petitioner has been constrained to file the instant

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Upon the petitioner's application BD Finance was impleaded as respondent No. 7 and on being directed submitted an affidavit-in-compliance dated 01.02.2024 about the loan liabilities of respondent No.

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1 Company regarding sanctioned and disbursed loan of respondent No. 7 with the list of Directors of respondent No. 1 company being approved by the respondent No. 7. Thereafter Respondent No. 7 also filed an affidavit-in-opposition vide entry No. 1535 dated 03-03-2024. The petitioner in turn filed an affidavit in reply controverting the claim of Respondent No. 7.

By filing supplementary affidavit the petitioner stated that Amanat Marine Works Ltd has availed loan facilities from Agrani Bank Limited, Commercial Area Corporate Branch, Agrabad, Chattogram and for default towards repayment the said bank sent the name of the companies Directors in the CIB list of Bangladesh Bank and having asked by the petitioner, the Bank informed the petitioner that it does not recognize the petitioner as its business client or any types account holder and as such didn't send the name of the petitioner in the CIB list of Bangladesh Bank but contrarily Respondent No. 7 BD Finance sent the name of the petitioner to the CIB list and filed C.R cases under section 138 of the NI Act along with other Directors, though it did not accord NOC toward transfers of shares in favor of the petitioner.

Mr, A.K.M. Badruddoza, learned counsel for the petitioner at the outset submits that the petitioner has been inducted as shareholder at the instance of respondent No. 2 Mr Mahmudul Islam Chowdhury without receipt of any consideration money from petitioner who had no knowledge about the fact of taking loan from BD Finance and in the event of refusal of BD Finance to accord NOC towards transfer of shares

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of respondent Nos. 3 and 4 in favor of the petitioner, it was incumbent upon the respondent No. 2 as well as upon the company to revert the transfer of shares from the petitioner to the respondent Nos. 3 and 4 but the respondent Nos. 2, 3 and 4 did not take any step for such reversal of transfer of shares from the petitioners. He next submits that as per Section 27 Ka of the Bank Companies Act, 1991 (as amended in 2003) no transfer of shares and resignation of director of an indebted company shall come into effect without prior consent of the lender Bank and/or Financial institution and in the instant Case shares of Respondent Nos. 3 and 4 have been transferred in favor of the petitioner without the prior consent of BD Finance and as such the share register is liable to be rectified omitting therefrom the name of the Petitioner and restoring therein name of the respondent Nos. 3 and 4. Mr. A.K.M. Badruddoza argued that according to the borrowing history of the petitioner signed by the Managing Director and CEO of respondent No. 7, the petitioner is neither a borrower nor a client of respondent No. 7 but in Form-XII dated 26.07.2016 filed and accepted by RJSC, the petitioner was shown as Chairman of the respondent No. 1 Company and he has provided personal guarantee although Form-XII is not testimony of transfer of shares in favor of the petitioner and his holding the post of Chairman as much as prior to giving effect to the transfer of shares in favor of the petitioner, BD Finance was legally obliged to accord consent to the transfer of shares of Mr. Anayet Ullah Chowdhury and Md. Ahamadal Islam Chowdhury in favor of the petitioner. He further submits that

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Mamunur Rashid
Assistant Bench Officer
Sudhanta Court of Bangladesh
1st Court Division, Dhaka.

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though in the top it was written as borrowing history of Main Uddin Mahmud Chowdhury but the same actually contained the borrowing history of respondent No. 1 Company in which petitioner's induction as shareholder and director was not at all been consented by the respondent No. 7 and in the borrowing history dated 23.01.2024 for the Managing Director and CEO of BD Finance, intentionally did not mention the names of Mr. Anayet Ullah Chowdhury and Md. Ahmadul Islam Chowdhury as Directors whose shares have been purportedly transferred to the petitioner. Mr. Badruddoza in support of his submission referred 52 DLR (2000) 1, 70 DLR AD (2018) 163, 27 BLC (2022) 491 and 76 DLR (2024) 48.

Mr. AF Hasan Arif, learned counsel appearing for respondent No.2 submits that the instant application under section 43 of the Companies Act is not maintainable as the petitioner has not raised any objection regarding execution of form 117 by respondent No. 3-4 in his favour transferring their shares and form 117 was executed on 8th August 2015 with proper consideration, stamp duty, signature of the parties and witnesses. Learned counsel next submits that the petitioner submitted personal guarantee on 18.01.2017 regarding the revised sanction letter dated 29.12.2016, although the petitioner denied submission of personal guarantee but he took no step for examination of his signature by the hand writing expert. Learned counsel further submits that facts and circumstances of the instant case clearly involves question of disputed facts which cannot be decided without taking evidence and as such the

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instant application is not maintainable, rather those questions can be adjudicated in a properly constituted civil suit.

Mr. Shaikh Mohammad Zakir Hossain, learned counsel for the respondent No. 7 submits that the Form-XII issued on 13.08.2014 shows that there are 4(four) shareholders namely (i) Ahmadul Islam Chowdhury (ii) Hasan Mahmud (iii) Anayet Ullah Chowdhury and (iv) Mr. Mahmudul Islam Chowdhury of the Respondent No. 1 Company but it is evident from Annexure- 2 (c) of the affidavit of compliance (Form-XII dated 26.07.2016) that apart from the above 4 (four) Directors, the name of the present Petitioner Mr. Main Uddin Mahmud Chowdhury has been mentioned as a newly appointed Chairman and director of the company. He next submits that Mr. Main Uddin Mahmud Chowdhury has provided Personal Guarantee on 18.01.2017 for and on behalf of the Amanat Marine Works Limited as disclosed in clause 10(iv) (c) of the aforesaid sanction advice letter. Mr. Zakir Hossain argued that outstanding liability of the company stands BDT. 32.30 Crore as on 21.01.2024 and in order to recover the outstanding loan the respondent No. 7 company has initiated the process of filing Artha Rin Suit in addition to the cases filed under Section 138 and 140 of the Negotiable Instruments Act, 1881 against the directors of the Respondent No. 1 Company. He further submits that although the Bank has not accorded formal permission for resignation of the existing directors namely Ahmadul Islam Choudhury and Anayet Ullah Chowdhury regarding transfer of their shares but subsequent rescheduling of loan and

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Assistant Bench Officer
Supreme Court of Bangladesh
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submission of form XII by Respondent No. 1 Company evidenced that BD Finance has approved the resignation of said directors and transfer of their shares to the petitioner, so the petitioner now cannot deny acquisition of shares which is barred by principle of estoppel and acquiescence

Learned counsel in support of his contention referred 46 DLR AD (1994) 46 and 62 DLR AD (2010) 260.

Having heard the learned advocates and on perusal of the materials on record it appears that the petitioner has sought rectification of share register under section 43 of the Companies Act 1994 for omitting his name from the share register on the contention that due to request of his father he on good faith accepted the shares transferred by the respondent No. 3 and 4 with further assertion that he did not pay any consideration money for such transfer and did not attend Board Meetings of the respondent No.1 company as Director. He did not deny the transfer of such shares by Respondent Nos. 3 and 4 in his favour rather he asserted that out of earnest request of his father he put signature in form 117 but actually he is not a shareholder, Director and chairman of the respondent No.1 company. To repel such contention Respondent Nos. 2 - 4 did not take any step denying such assertion by filing affidavit in opposition or affirming any written instrument. Although Respondent No. 2 entered appearance and learned counsel made oral submission on his behalf denying the petitioner's contention but the assertion made by the petitioner in the substantive petition, supplementary affidavit as well

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as affidavit in reply has remained uncontroverted. Besides, Respondent Nos. 3 and 4 rather refrained from contesting the proceeding. Besides, on perusal of form 117 (Annexures B-B1) whereby shares have been transferred by Respondent Nos. 3 and 4, it appears that the date of execution of form 117 have been kept blank, simply year 2015 has been mentioned wherein number '5' is handwritten. It also appears that below the signature of transferor Respondent No. 3 (Annexure B) dated 11.08.2016 has been mentioned while in transferor's signature column of Respondent No. 4 (Annexure B1) dated 17.08.16 has been mentioned. So question arise why the transferors put signature after almost 1 year of transfer of shares by Respondent Nos. 3 and 4. Although it is asserted that shares have been transferred in the month of August, 2015, no resolutions of Board Meetings have been produced by the respondents for taking decisions of transferring shares by Respondent Nos. 3 and 4 to the petitioners. Had the Respondents Nos. 2-4 filed affidavit in opposition, then their assertion in this respect would have come before this court.

It also appears that in the 1st loan having sanctioned by respondent No.7, the petitioner was unrelated therewith which is admitted by both the parties but so far rescheduled loan is concern the petitioner has been shown as director and chairman of the respondent No.1 company by respondent No.7 relying upon form XII and respondent No.7 claimed that the petitioner executed personal guarantee for rescheduled loan having sanctioned in the year 2016. The petitioner denied execution of

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personal guarantee but the Respondents insisted that such denial is not suffice as the petitioner took no step for hand writing expert's opinion while it is asserted by the petitioner that original personal guarantee being kept with the Respondent No. 7, it was not practicable to take such step. On query, Mr. A.K.M. Badrudduza, learned advocate for the petitioner submits that in affidavit in reply the petitioner clearly stated that the purported original copy of the bank guarantee has been lying with the BD Finance and if BD Finance submits the said original document before the court then step can be taken for obtaining handwriting expert's opinion for examining veracity whether the petitioner put signatures in the personal guarantee.

On perusal of sanction letter dated 29th December 2016 rescheduling of term loan (Annexure 2a of affidavit of compliance by Respondent No. 7) it appears that Respondent No. 2 Mr. Mahmudul Islam Chowdhury has been shown as Managing Director of Respondent No. 1 Company. Annexure 2c, Form XII dated 26th July 2016 shows that Respondent Nos. 3 and 4 resigned from post of Chairman and Director respectively while petitioner as new chairman has been shown on 28th august 2015 but as earlier mentioned, share transfer of Respondent Nos. 2 and 3 has been effected on 26th July 2016. So how it is possible that before share transfer is effected, Respondent Nos. 3 and 4 resigned from Chairman and Directorship and the petitioner was appointed as new chairman. Besides, on perusal of a summary sent by BD Finance to Bangladesh Bank as appearing at page 26 of the supplementary affidavit



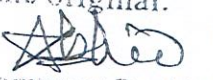
dated 09.07.2023 filed by the petitioner both Ahmadul Islam Chowdhury Respondent No. 4 and the petitioner Main Uddin Mahmud Chowdhury have been shown as chairman of the Respondent No. 1 Company while Respondent No. 3 Anayat Ullah Chowdhury has been shown as director. So all steps taken by Respondent No. 7 seems to be intransparent and fishy. So from that summary it is also apparent that Ahmadul Islam Chowdhury has been shown still as Chairman.

More importantly for resolving the disputes of this matter Section 27 Ka of the Banking Company Act 1991 is vitally important which is reproduced below for Brevity and convenience:

“২৭ ক. দেনাদার কোম্পানীর পরিচালকের উপর বিধি নিষেধ- আপাতত বলবত অন্য কোন আইনে যাহা কিছুই থাকুক না কেন ঋণদাতা ব্যাংক বা আর্থিক প্রতিষ্ঠানের পরিচালক পর্ষদের সম্মতি ব্যতীত কোন দেনাদার কোম্পানীর কোন পরিচালকের পদত্যাগ কার্যকর হইবে না এবং কোন পরিচালক তাহার শেয়ার হস্তান্তর বা বিক্রয় করিতে পারিবেন না।”

The language of section 27 ka of the bank company's Act 1991 is very much clear and unambiguous which clearly stipulates that without permission of the lender institution resignation of any director will not be effective and directors will not be entitled to transfer any of his or her shares. In **70 DLR AD 163** it is held that- *a borrower-company is to obtain prior permission from lending bank before transferring his share unless the company's loan liability had been accepted. Therefore, there is a clear bar upon a Director of borrower-company from transferring his share to another person without prior approval or consent of the creditor bank.*”

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In the case of **Shakhawat Hossain (Md) Vs. Rowshan Apparels Ltd. and others** reported in **27 BLC 491** the Company Bench dealt the case of similar nature wherein it is held that -

“From a plain reading of the above-quoted provisions of section 27A of the Banking Companies Act, it is vividly clear that it has got overriding effect on other laws of the land, and anyone with ordinary prudence is capable of conceiving its purport that there is a prohibition upon a shareholder of a company regarding transfer of his/her share if any Bank/Financial Institution has given loan to, or invested money in, the company and, likewise, the same restriction has also been imposed upon a Director of a company to quit directorship of the company i.e. until the concerned Bank/Financial Institution permits the shareholder and Director of the loanee-company to transfer his/her share/s or to resign from the post of the Director, there shall be no transfer of shares or resignation from the directorship of a company in the eye of a law. So, the law dictates in very clear terms that without being issued a No Objection Certificate (NOC) by the Bank/Financial Institution from which money has been taken by a company, no Director and/or shareholder of the said company shall be allowed to resign from the directorship and transfer his/her share/s.”

It is further held that -

“For the sake of completeness of the on-going examination of section 27A of the Banking Companies Act and section 43 of the Companies Act, I find it to be pertinent to jot down here that since the provisions of section 27A of the Banking Companies Act oust the provisions of other Acts of Parliament, therefore, the status of section 27A of the Banking Companies Act is superior to any provision of any other Act of Parliament, including the provisions



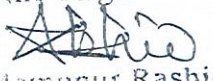
of section 43 of the Companies Act. However, since there exists no contradiction between the provisions of section 43 of the Companies Act and section 27A of the Banking Companies Act, the latter is to be considered as an additional provision to the former, but not in derogation thereto, as has been heralded by the Legislature through enactment of section 2 of the Banking Companies Act."

It is not the case of respondent No.7 that it issued no objection certificate for transfer of shares by the directors but its assertion is that on perusing form XII filed by the Respondent No. 1, BD Finance was appraised about the transfer of shares by the respondent Nos. 3 and 4 and subsequently it issued 2nd loan in the form of rescheduled loan showing the petitioner as chairman and director but such contention is not sustainable as the mandatory provision under section 27ka as mentioned above has not been complied with by respondent No.7 which invalidates the transfer in question.

From annexure-P, a certificate issued by Agrani Bank Limited it appears that the respondents Nos. 2-4 have been shown as directors of the respondent No.1 Company and it has sent their names to the CIB as loan defaulters. It further appears that the said Bank does not recognize the petitioner as shareholder and Chairman/ Director of the Respondent No. 1 Company.

Mr. Shaikh Mohammad Zakir Hossain learned counsel for the Respondent No. 7 by referring the principle enunciated in 46 DLR AD 64 and 62 DLR AD 260 lastly argued that since the petitioner has accepted transfer of shares by putting signature in form 117, whereby

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Respondent Nos. 3 and 4 have resigned as directors of Respondent NO. 1 Company, now he cannot turn round and decline to accept shares of Respondent No. 1 Company. On perusal of the decision reported in 46 DLR AD 46 it appears that the writ petitioner induced the writ Respondent to allow him to retire from service and in consequence he has been relieved from service but subsequently he reversed his stance and challenged the relieve order . But from the facts and circumstances it came to the fore that he insisted for retirement voluntarily and as such the honorable Appellate Division held that such stand is barred by the principle of estoppel and acquiescence . But in the instant case it is apparent that the procedures of share transfer has not been done transparently, rather it is carried on with opaque means without petitioner's own volition and hence the principle of estoppel and acquiescence cannot be applied here. In 62 DLR AD 260 wherein it is held that the writ petitioner himself on his own volition allowed single allotment dated 23.05.93 of the plot No. 281/C Mohakhali DOHS cancelling allotment in joint name and subsequently he challenged the said cancellation and as such his action was declared as barred by principle of estoppel and acquiescence but the instant case, as mentioned above, does not come within the said principle of estoppel and acquiescence as the shares have been allotted to the petitioner without his consent. Besides, estoppel, waiver and acquiescence cannot run against the statutory provision viz section 27 KA of the Bank Company Act 1991 which put a hurdle on share transfer without bank or financial

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institutions positive permission which is clearly absent here. Even there is no scope of share transfer by implication in the present case as argued by the learned counsel of the Respondent No. 7 because statutory provision is clear and unambiguous.

Section 43(3) of the Companies Act, 1994, stipulates that the court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register and here the petitioner sought omission of his name from share register as he categorically disowned shares having transferred in his name and from the facts and circumstances he has been able to prove his claim and more importantly mandatory provision of section 27 ka of the Bank Company Act 1991 has not been complied with.

In the above facts and circumstances I find substances in the application. Accordingly, the instant application is allowed. Respondents are directed to rectify share register of Respondent No. 1 Company omitting $60+120=180$ shares purportedly transferred to the petitioner by Respondent Nos. 3 and 4. The RJSC is also directed to rectify share its register accordingly omitting the name of the petitioner from the

Respondent No.1 Company.

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The petitioner is directed to take all steps as per provision of the companies Act, 1994. The petitioner intends to donate Taka 1,50,000.00 which is to be given in the form of pay order. Taka,1,00,000/- is to be given in the name of “Sharifnagar, Gohorpur & Rangap, A/C No.4117-165644300, AB Bank” Taka. 30,000/- is to be given to হাজি আব্দুল মালেক জামে মসজিদ in the name of “আঃ হাফেজ, মোঃ হানিফ, হিসাব নং-০২০০০১৮৫০৮২০০, অগ্রনী ব্যাংক” and remaining 20,000/- is to be given to “Dakkin Fingri Jame Mosjid, A/C No. 20501430204355417, Islami Bank Limited” and

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furnishing receipt of the payment, the order may be drawn up if so

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advised.

Khizir Ahmed Choudhury

Composed by: Saiful Islam
26.02.25

Read by: 26-2-25

Exd. by: 26.2.25

১.সই মহরী নকলের	
দরখাস্তের তারিখ	14.11.24
২. অনুলিপিৰ হিসাব	
নিবন্ধনের তারিখ	26.02.25
৩.কোর্ট ফি স্ট্যাম্প	
জমাদানের তারিখ	26.02.25
৪. নকল প্রস্তুত হওয়ার	
তারিখ	26.02.25
৫.নকল সরবরাহের	
তারিখ	27.02.25

কোর্ট ফি প্রতিলিপি
A 26.02.25
স্বাক্ষরিত
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