IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION)

Company Matter No. 264 of 2017

Decided On: 24.10.2019

Zeba Ahmed Khan
Vs.
Ardent Capita Ltd. and Ors.

Hon'ble Judges:
Md. Mozibur Rahman Miah, J.

Counsels:
For Appellant/Petitioner/Plaintiff: Asaduzzaman, Ragib Rauf Chowdhury and Nazirul Alam, Advocates

For Respondents/Defendant: Khan Muhammad Shameem Aziz, Advocates

Subject: Corporate Law

Catch Words

Mentioned IN

Acts/Rules/Orders:
Companies Act, 1994 - Section 105, Companies Act, 1994 - Section 107, Companies Act, 1994 - Section 107(a), Companies Act, 1994 - Section 108, Companies Act, 1994 - Section 110, Companies Act, 1994 - Section 125, Companies Act, 1994 - Section 126, Companies Act, 1994 - Section 130, Companies Act, 1994 - Section 155, Companies Act, 1994 - Section 155(1), Companies Act, 1994 - Section 155(2), Companies Act, 1994 - Section 155(a), Companies Act, 1994 - Section 155(b), Companies Act, 1994 - Section 22(1), Companies Act, 1994 - Section 397, Companies Act, 1994 - Section 43, Companies Act, 1994 - Section 43(1), Companies Act, 1994 - Section 59, Companies Act, 1994 - Section 81(1), Companies Act, 1994 - Section 85(3), Companies Act, 1994 - Section 89, Companies Act, 1994 - Section 91, Companies Act, 1994 - Section 91(b), Companies Act, 1994 - Section 98; Contract Act, 1872 - Section 197

Disposition:
Application Partly Allowed

JUDGMENT

Md. Mozibur Rahman Miah, J.

1. By order dated 06.12.2018 this matter has been referred by the Hon'ble Chief Justice of Bangladesh to dispose of the same. On a series of occasions, I have heard the learned counsels for the petitioner and the respondents and on conclusion, following Judgment is passed:

2. The petitioner filed this application under section 43 of the Companies Act, 1994 seeking the following reliefs:

A. Admit the instant application, fix a date for its hearing and direct for issuance and publication of usual notices;

B. Upon hearing, pass an order for:

(i) rectification of share register of respondent No. 1 Company so as to cancel the allotment dated 25.10.2015 to the respondent no. 3 Company;

(ii) striking out the name of respondent no. 3 as the holder of 98,000 ordinary shares of Tk. 100/- each, which are liable to be cancelled;

(iii) allotting to the petitioner ordinary shares at face value to the extent permitted by the available authorized share capital of the respondent no. 1 Company against her investment under the Loan Agreement dated 24.05.2010, with the balance being treated as a loan owed to her by respondent no. 1 Company, and(iv) striking out the names of the respondent nos. 4 and 5 as Directors of the respondent no. 1 Company.

C. Pending disposal of the application, direct the parties to maintain status-quo with respect to possession and position of the duplex formed by Flat Nos. A/401 (4th Floor) and A/501(5th Floor) in the building known as "The Balmoral", Plot No. 2, UN Road, Block-K, Baridhara, Dhaka.

C-1. pending disposal of the application, pass an order of injunction restraining the respondent no. 1 Company from further issuance of shares, stocks or debentures;

D. Award costs to the petitioners; and

E. Pass such other or further order or orders as may be deems fit and proper.

Though during the course of hearing, the learned Counsel for the petitioner submits that, he has instruction not to press prayer no. B(iii) made in the application.

Background:

3. The salient facts so figured in the application filed under section 43 of the Companies Act, 1994 are:

4. The petitioner is a share holder and director of respondent no. 1, company while respondent no. 1 is a private company limited by share and it was duly incorporated under Companies Act, 1994. On the contrary, the respondent no. 2 is a business man by profession and also a director of respondent no. 1, company. The respondent no. 3 is a private limited company incorporated under the relevant law of Bangladesh where respondent nos. 4-5 are share holders to it. The respondent no. 1, company has authorized share capital of taka 1,0000000/- (one crore) only divided into one lakh share of taka 100/- each of which 2000 fully paid up share held equally by the petitioner and respondent no. 2 that is, each of them held 1000 share. The petitioner and respondent no. 2 are the subscribing share holders of respondent no. 1, company and only signatories in the Memorandum and Articles of Association. At the time of incorporation, the petitioner and respondent no. 2 were the only directors of the board of directors of the company where petitioner is the managing director. Since incorporation, there has not been any changes in the composition of the board of directors. According to article 18 and 26 (page 27 and 28 of the petition) of the Articles of Association of the company, the quorum of a general meeting and that of the board of directors requires two directors in attendance that is, petitioner and respondent no. 2. Since incorporation, the company has not appointed any auditor nor prepared any annual balance sheets and profit and loss account or have the balance sheets or account audited by any audit firm. In view of such default, the petitioner earlier filed an application under section 81(1) read with section 85(3) of the Companies Act, 1994 before this Hon'ble court and that very petition was admitted on 13.10.2015 and the said matter was thus registered as Company Matter no. 228 of 2015. In the said company matter, the present-respondent nos. 1 and 2 had filed affidavit-in-opposition contending, inter alia that, respondent no. 2 was appointed managing director by the board of directors of respondent no. 1, company and that of respondent nos. 4 and 5 was appointed/selected as directors of respondent no. 1, as nominee of respondent no. 3, company in the meeting of the board of directors held on 25.10.2015. In the said meeting dated 25.10.2015, the company that is, respondent no. 1 allotted 98000 ordinary share of taka 100/- each to respondent no. 3. In that regard it has been stated by the petitioner that, the above composition of the board of directors and that of allotment of 98000 share have been taken place fraudulently and without any lawful authority.

5. It has further been contended that, the petitioner had paid taka 40,00,000/- to respondent no. 2, vide BRAC Bank's cheque to buy property for respondent no. 1, company. It has further been alleged that, on 18.10.2015 the petitioner received notice to the effect that, a meeting of the board of director of the company will be held on 25.10.2015 to transact various agendas including discussing of allotment of share but fact remains, at the material time, the company had only two directors and in her absence there could not be any quorum for transacting any business of the company let alone to pass any resolution thereon and hence, it is clear that, the returns which had been filed on 25.10.2015 are based on false statement and by filing such return offences have been committed under section 397 of the Companies Act.

6. It has further been contended that, the petitioner and respondent no. 2 got married on 20.09.2005 and on 20.07.2006 they were blessed with a daughter. In January, 2010 respondent no. 2 informed the petitioner that, respondent no. 3 company is in dire necessity of fund and its assets cannot be sold and he (Respondent No. 2) then asked the petitioner to invest in the respondent no. 3, company. In response to that, the petitioner expressed her reluctance in purchasing the share of respondent no. 3 company. Then respondent no. 2 suggested the petitioner that she could at least invest another company where both have shares. In such a situation, the petitioner agreed to invest take two crore to pay off the loan that respondent no. 1 took from respondent no. 3 on condition that, she would be allotted proportionate number of shares in respondent no. 1 company. Afterwards, the petitioner left for London on 24.05.2010 and prior to that, one Tahsina Azim, G.M. Finance of respondent no. 3 company requested the petitioner to pay the money as per discussion with respondent no. 2 and the petitioner then gave 4 cheques of taka 50,00,000/- (fifty lakh) each dated 17.05.2010, 19.05.2010, 03.06.2010 and 10.06.2010 respectively favouring respondent no. 3. After issuing the said cheques, Ms. Amin then informed the petitioner that, once she (petitioner) cleared 2 cheques, then Mr. Bazlur Rahman will prepare a loan agreement for the petitioner and respondent no. 2 for its signing. However, since August 2014, the relation between petitioner and respondent no. 2 got strained and petitioner began to live in a duplex formed by Flat No. A/401(4th floor) and A/501(5th floor) in the building known as "The Balmoral", located at plot no. 2, UN Road, Block-D, Baridhara, Dhaka owned by respondent no. 1, company. However, it was subsequently reveled that, the respondent no. 2 transferred Flat No. A/401 in favour of his daughter (born from another marriage) named, Mahira Hossain Khan by a deed dated 14.07.2015 without proper resolution or decision of respondent no. 1, company and since then, the respondent no. 2 has been trying to evict the petitioner from the said duplex leading her to obtain an order of status-quo from this court on 13.11.2015 in Company Matter no. 228 of 2015. It has also been mentioned in the petition that, this petitioner returned to Dhaka from London on 24.05.2010 when she got a copy of loan agreement dated 24.05.2010 finding it already signed by respondent no. 2. The petitioner then signed the said tripartite agreement and the original copy of the same was kept in a safe of the office of Mr. Bazlur Rahman who was then in charge of all the documents.

7. It has further been stated that, no proposal of allotment of 98000 share had ever been offered to her under the provision of section 155(1) of the Companies Act, 1994. Moreover, the name of the respondent no. 3 has been entered into the register of members of respondent no. 1, company as a share holder without sufficient cause in as much as, that shares had purportedly been allotted without a valid resolution of the board of directors.

8. It has further been stated that, the petitioner is entitled to a consequential relief of removing respondent nos. 4 and 5 as directors of respondent no. 1, company as they only represent respondent no. 3, company not the share holders of respondent no. 1, company. It has further been alleged that, the petitioner is also entitled to have ordinary share allotted in her name at a face value to the extent permitted by the available authorized share capital of respondent no. 1

company against her investment under the loan agreement dated 24.05.2010. Apart, from that, the petitioner also prayed for an ad-interim order directing the parties to maintain status-quo in regard to holding possession and position of the duplex formed by Flat No. A/401 (4th floor) and A/501(5th floor) in the building knows as "the Balmoral" located at Plot No. 2, UN Road, Block-K, Baridhara, Dhaka and restrain them (respondents) from transferring the same and to issue shares, stocks and debenture in respondent no. 1 company to anybody else. With such prayer the petitioner finally prays for allowing the application.

9. On the contrary, against the said application so filed by the petitioner, respondent no. 3 also filed an affidavit-in-opposition contending inter alia that, the application so filed under section 43 of the companies Act, is not maintainable and it is liable to be rejected in limine. It has further been stated that, the petitioner has not paid up her subscription against the share she held in the capital of respondent no. 1, company and the said fact has reflected in the Annual General Meeting that was held on 26-10-2017 in pursuance of the order passed by this court in Company Matter no. 228 of 2015 and as such the petitioner being holder of unpaid share is not entitled to any offer for further share under section 155(1)(a) of the Companies Act, 1994 and for obvious reason, the petitioner has no locus standi to challenge the allotment of 98000 share allotted to respondent no. 3, company by respondent no. 1. It has further been stated that, the petitioner filed the petition for rectification under section 43 of the Companies Act, 1994 on the ground of committing fraud in allotting such share but fraud must be proved beyond any reasonable doubt adding further that, there has been committed no fraud in allotting share in the name of respondent no. 3, and its name has been entered in the register of respondent no. 1, company because of allotting 98000 share vide a valid meeting of the board of directors dated 25-10-2015 and as such, the name of respondent No. 3 has rightly been entered in the register as a member of respondent no. 1 company in other words, the name of respondent no. 3 has been entered as a member of respondent no. 1, company with sufficient cause and there has been no ingredients of section 43 of the Companies Act 1994 to challenge the validity of such transfer. It has further been stated that, at the time of allotting share vide the meeting of the board of directors of respondent no. 1, company dated 25-10-2015, the said board was comprised of respondent no. 2, Mr. Mokarrom Hossain Khan, the petitioner, Ms. Jeba Ahmed Khan, and Mr. Meraj Hossain Khan, respondent no. 4 who was appointed as executive director by a board meeting of respondent no. 3 company on 09-10-2015 as well as an Additional Director by virtue of clause 5.2(1) of the renewal "Quasi Equity Loan Agreement" dated 01-07-2015 and out of the aforesaid three directors, admittedly Mr. Mokarrom Hossain Khan and Mr. Miraj Hossain Khan were present in the meeting of the board of directors of Respondent No. 1 dated 25-10-2015 and therefore, ,the allotment of 98000 share was made by validity constituted board of directors. It has also been stated that, the alleged Tri-party agreement dated 24-05-2010 as annexed as of annexure-F to the petition is a forged document as it was made allegedly showing respondent no. 2 as "lender/borrower" for self and on behalf of respondent no. 3 and that of the petitioner as "investor" which had not been witnessed by any witnesses rather the petitioner has forged the alleged agreement in connivance with her personal secretary, Mr. Md. Rezawan and for that, a criminal case has now been pending before the

Metropolitan Magistrate, Dhaka. It has next been stated that, an amount of Tk. 2,0000000/- (two crore) alleged to have paid by the petitioner to respondent no. 3 is in fact, a personal transaction of the petitioner with respondent no. 2 and 3 which has got no connection with respondent no. 1, company and hence, the petitioner has no right and locus standi to claim any allotment of share in respondent no. 1, company in her favour.

10. It has further been stated that, the paid up capital of respondent no. 1 company is taka 2,00000/- only divided into two thousand share of taka 100/- each held equally by the petitioner and respondent no. 2 however, out of the said share 1000 shares that was held by respondent no 2 was fully paid up but rest 1000 share held by the petitioner still remains un paid and that very facts has been reflected in the audit report of respondent no. 1, company, adopted in the Annual General Meeting of the company held on 26-10-2017. It has been stated that, the respondent no. 1, company is comprised of 4 directors and by operation of section 110 of the Companies Act, the tenure of the petitioner as managing directors in respondent no. 1 company expired on 05-10-2012 and the said tenure has not been extended in the meeting of board of directors dated 25-10-2015 rather this respondent no. 2 was appointed as new managing director of respondent no. 1, company. It has further been contended that, the Company Matter being no. 228 of 2015 filed by the petitioner was allowed by this Honb'le court vide judgment and order dated 17-08-2017 where by the Honb'le court was pleased to appoint an independent chairman to hold annual general meeting and accordingly the annual general meeting was held on 26-10-2017 under the chairmanship of an independent chairman, and in the said meeting, the audited account of respondent no. 1, company was accepted and approved by the share holders, including the petitioner. It has further been alleged that, a loan agreement was executed between respondent no. 3 and respondent no. 1 "vide Quasy Equity loan agreement" on 08-10-2008 where two residential property under the project named, "Capita balmura" and two commercial project namely "South Avenue tower" and "Moly Capita center" all developed by respondent no. 3 that is, 4 properties for an aggregate of taka 81,12,38000/- was transferred by respondent no. 3 to respondent no. 1 and by such "Quasi Equity-loan -Agreement" an amount of taka 81,12,38000/- was created as debt in the name of respondent no. 1, company by respondent no. 3. The said "Quasi Equity loan" was subsequently renewed vide renewal agreement dated 01-07-2015. Apart from that, the respondent no. 3 has also injected necessary funds in the capital of respondent no. 1, company as "share money deposit" in compliance with clause 4 of the renewal Quasi agreement dated 01-07-2015 on condition that, whenever required by respondent no. 3, share will be allotted by respondent no. 1, company to respondent No. 3 at face value against the "share money deposit". And Pursuant to clause 5.2(1) of the aforesaid renewal of quasi loan agreement, the respondent no. 3 acquired right to appoint an executive director who shall be an additional director to respondent no. 1 company. By virtue of such authority, on 09-10-2015, the board of directors of respondent no. 3 company in its meeting decided to request respondent no. 1, company to allot share against the "share money deposit" so injected by respondent no. 3 and appointed respondent no. 4 as an executive directed in exercise of authority conferred by clause 5.2(1) of the "Renewal Quasi-Equity loan agreement" and as such, by virtue of that clause, the

respondent no. 4 has been appointed as an additional director of respondent no. 1 company.

11. It has further been stated that, in accordance with the aforesaid decision dated 09-10-2015, of the board of Directors of respondent no. 3, it requested respondent no. 1 to file necessary return and to convene its a meeting of the board to allot share in favour of respondent no. 3 against the "share money deposit" so injected by them. Accordingly, in the meeting of the Board of Directors dated 25-10-2015 of the respondent no. 1 company, 98000 shares were allotted to respondent no. 3 and necessary return regarding allotment of share and appointment of respondent no. 4 as additional director of the respondent no. 1, company that is, Form XV and Form XII was filed by respondent no. 2 with the office of RJSC. It has further been stated that, the petitioner is a bankrupt so declared by the court of law in the United Kingdom and has no ostensible source of income in Bangladesh and as such the petition has failed to prove any source of money to buy the property. It has also been stated by this respondent that, allotment of 98,000 share to respondent no. 3 vide resolution of the Board of directors on 25-10-2015 was made in accordance with law by validity constituted board of directors of respondent no. 1, company and at the time of allotment of such share dated 25-10-2015, the board of directors of the respondent no. 1 company was comprised of Mr. Mokarrom Hossain Khan, Ms. Jeba Amina Khan and Mr. Meraj Hossain Khan.

12. It has also been stated that, in pursuance of section 98 of the companies Act, 1994 appointment of a directors shall be valid notwithstanding having defect might have ensued afterwards. So, all acts done by the meeting of the board of directors held 25-10-2015 was valid one.

13. It has been alleged that, the audited balance sheet of the respondent no. 1, company for the year ended on 30-06-2015 reflects that, on 30-06-2015 respondent no. 3 paid an amount of taka 98,78,829/- only to the respondent no. 1, company as "share money deposit" and out of the said "share money deposit" 98000 shares were allotted to respondent no. 3 and it is on the record that, respondent no. 1 company, received the said amount against the share allotted to respondent No. 3 on 25-10-2015 and the audited balance sheet has also approved in the annual general meeting held on 26-10-2017.

14. It has further been stated that, the name of respondent no. 3 has been entered in the register of member of respondent no. 1, company because of allotment of 98000 share on 25-10-2015 by validity constituted meeting of the board of directors of respondent no. 1 company. It has lastly been stated that, since the allotment of share made on 25-10-2015 is valid, the petitioner is not entitled to any consequential relief of removing respondent no. 4 and 5 as director of respondent no. 1 company as the petitioner has not paid subscription to the respondent no. 1 company, against the share allotted to her and the alleged agreement dated 24-05-2010 is forged one and as such, the petitioner is not entitled to any relief and therefore, the application so filed under section 43 is liable to be dismissed.

15. Per contra, respondent nos. 1, 2 and 4 also filed affidavit-in-opposition to contest the said

application. On going through the said affidavit-in-opposition I find that, the assertion so have been made by respondent no. 2 in its affidavit-in-opposition has mostly been adopted by this respondents. It has just been added that, out of the issued capital of 100000 share of respondent no. 1 company 2000 share was allotted to petitioner and respondent no. 2 out of which taka 1,00000/- was paid up by respondent no. 2 against his 1000 share but the petitioner did not pay against her 1000 share so it is clear that, the petitioner has not acquired any share of respondent no. 1 and as such it is clear that, the petitioner has willfully made statement as regards to invest fund for acquiring properties. It has further been alleged that, the existence of the alleged agreement dated 24-05-2010 is totally fictitious and motivated. It has further been alleged that, the petitioner was the executive director of respondent no. 3 during the period from 25-06-2010 and subsequently become the wife of respondent no. 2. The petitioner had various personal and commercial transaction, with respondent no. 2 and 3 when substantial amount of money of respondent no. 2 was transacted through bank account of the petitioner. It has further been alleged in the affidavit that, on 08-10-2008 the respondent no. 2 was not the managing director of respondent no. 3 rather the petitioner was an executive director of respondent no. 3. It has further been alleged that, respondent no. 3 entered into a Quasi Equity loan agreement on 08-10-2008 with respondent no. 1 and pursuant to the said loan agreement, respondent no. 3 agreed to transfer the properties namely, south avenue tower, Moly capita center, Capita balmory, 4th floor and 5th floor of Capita balmoral worth Tk. 81,12,38000/- and the aforesaid transaction was approved by the board of directors and share holders of respondent no. 1 company in their Extra ordinary meeting dated 08-10-2010 and the petitioner was severally authorized to sign necessary deeds, documents, agreements to that effect and by virtue of that the petitioner singed two deeds being deed no. 8036 dated 08-10-2008 and deed no. 7603 dated 26-08-2009 on behalf of respondent no. 1, company.

16. On the other hand, respondent no. 2 also signed 2 deeds being deed no. 3855 and 3856 both dated 05-04-2010 on behalf of respondent no. 1 company.

17. It is also stated that, the alleged assertion of the petitioner that, the transaction was not approved either in the board meeting or in the general meeting of respondent no. 1 cannot be sustained and is totally self contradictory one, because there was no necessity of such approval as the aforesaid deeds were signed by both the petitioner and respondent no. 2 on behalf of the respondent no. 1 company. The said allegation of the petitioner is also against the dictum of *"Qui Approved and none reprobat"* and as such the above submission does not lie and therefore, the petitioner cannot deny that the "Quasy Equity loan agreement signed by respondent no. 2 on behalf of respondent no. 1 is invalid rather it is binding documents to both.

18. It has lastly been contended that, the instant petition filed under section 43 of companies Act 1994 is mere a devise to grab the aforesaid properties transferred by respondent no. 3 to respondent no. 1, company as credit and in order to grab the properties, the petitioner in one hand asserted that, respondent no. 1 has validly acquired the properties and on the other hand, claimed that, the loan transaction is not valid. The petition has been filed with a malafide intention to hold

on possession of the properties of the company, and therefore, the application filed under section 43 is liable to be rejected.

Arguments for the petitioner:

19. Mr. A.K.M Asaduzzaman along with Mr. Ragib Rouf Chowdhury as well as Mr. Nazirul Alam, the learned counsels appearing for the petitioner upon taking me to the petition so field under section 43 of companies Act and other various document filed subsequent there to at the very outset submits that, it is admitted position that the respondent no. 1 company was incorporated on 06-06-2007 having share holders and directors being petitioner and respondent no. 2 and each of them acquired qualifying share to become a director holding 1000 share each upon paying taka 1,00000/- though it has been alleged by the respondents that, 98000 share of respondent no. 1 company was allotted to respondent no. 3 vide a meeting of the board of director dated 25-10-2015 by a fraudulent Quasi Equity loan agreement dated 08-10-2008 which was subsequently shown to have renewed on 01-07-2015. The Quasy Equity loan agreement was alleged to have executed between respondent no. 3 and respondent no. 1. It appears from Annexure-2, to the affidavit-in-opposition of respondent no. 2 that, it signed the renewal agreement as a director of respondent no. 1 company who was also the managing director of respondent no. 3 company though the said Quesi Equity loan agreement dated 08-10-2008 and its renewal dated 01-07-2015 was never signed, approved and sanctioned by the company itself. So it was a sham transaction between "respondent no. 2 and respondent no. 3 in which neither the petitioner nor the respondent no. 1 had any involvement. The learned Counsel further submits that, the agreement dated 08-10-2008 and its renewal dated 01-07-2015 were not done in accordance with Article of Association and that of the respective provision of companies Act, 1994 where respondent no. 2 had no authority to enter into any borrowing agreement on behalf of respondent no. 1, company. The learned Counsel further contends that, the respondent No. 2 was a director of respondent no. 1, company and also managing director of respondent no. 3, company at the respective time that is, on 08-10-2008 and 01-07-2015 when he did not have any authority to sign any agreement in general and that of any loan agreement in particular, on behalf of respondent no. 1 company and as per section 105, 107(a) of the Companies Act he cannot enter into any loan agreement and thus the alleged agreement dated 08-01-2008 and 01-07-2015 suffers from gross illegality. It has further been submitted that, as per article 13,28 sub rule 22,28 sub rule 3 read with article 31 sub rule 32 of Articles of Association which has been annexed as annexure A to the petition has authorized only the managing director that is, the petitioner not any other directors to sign any contract or agreement on behalf of the company and if such agreement is ever executed it must be approved by its board of director. Admittedly, the agreement dated 08-10-2008 and its renewal dated 01-07-2015 were not signed by the managing director that is, the petitioner and approved by any board resolution. The learned Counsel further contends that, under the provision of section 105, 107 clause A, section 108 clause H and section 130 of the companies Act 1994 has totally debarred a director of the company to sign such kinds of borrowing agreement and to allot share to anybody else. It has further been submitted by the learned Counsel for the petitioner that, on 26-10-2017 the petitioner for the first time came to learn about the agreement dated 10-08-2008

and its renewal dated 01-07-2015 and beforehand, the petitioner had no knowledge about the said agreement.

20. So far as it relates to the induction of respondent No. 4 and 5 in respondent no. 1 company, it has further been submitted that, on 09-10-2015 in the board meeting of respondent no. 3 (not in the board meeting of the respondent no. 1) the respondent no. 4 and 5 has been inducted in the board of respondent no. 1, company which is also illegal because both the companies that is, respondent no. 1 and respondent no. 3 are distinct and separate entity and as such no decision can be taken by one company about the composition of board of director of another company, herein respondent no. 1.

21. The learned Counsel goes on to submit that, the provision of induction of a director in the board has been provided in article 16 of the Articles of Association. But fact remains, no Annual General Meeting was held to induct any director in the respondent no. 1, company which is also admitted position and therefore, the board resolution dated 09-10-2015 of respondent no. 3 to induct respondent no. 4 in the board of respondent no. 1 is also totally misconceived, illegal and not sustainable.

22. It has also been contended by the learned Counsel for the petitioner that, the respondent no. 4 was inducted in the board of respondent no. 1 as a representative of respondent no. 3 on the strength of purported "Quasi Equity agreement" dated 10-08-2008 and its renewal dated 01-07-2015 as of executive director and additional director of respondent no. 1 which is totally invalid as there has been no position of Additional director or executive director in the board of respondent no. 1, company. Moreover, the aforesaid induction was made at the behest of respondent no. 2 in the board meeting of respondent no. 3 on 09-10-2015 when admittedly the petitioner was a share holder and managing director of respondent no. 1, company and therefore relying on section 98 and regulation 88 and 95 of schedule no. 1 of the Companies Act by the respondent no. 2 is fraudulent, malafide act which is prejudicial to the interest of the petitioner and was in contravention of section 91 read with regulation 84 of the first schedule of the companies Act, 1994 because such induction requires special resolution.

23. It has further been argued by the learned Counsel for the petitioner that, the allotment of 98000 share vide board resolution dated 25-10-2015 and appointment of respondent no. 4 as director in respondent no. 1, company were absolutely invalid because allotment of 98000 share were made on the basis of unauthorized, illegal, fraudulent and void instrument being "Quasi Equity loan" agreement dated 08-10-2008 and its renewal dated 01-07-2015 as the said allotment of share were not approved in the general meeting as enshrined in section 107 clause (a) of the companies Act 1994 when section 107 clause(a) provides that:

"the director of the company or of a subsidiary company of a public company shall not extent with the concept of the company concern in general meeting held on dispose of the under taking of the company".

24. So far as it relates to the appointment or respondent no. 4 and 5 in respondent no. 1 company vide board resolution dated 25-10-2015 is ex facie illegal and in contravention of article no. 16 of the Articles of Association of respondent no. 1, company read with section 91(b) and regulation 84 of the companies Act, 1994.

25. It has further been asserted by the learned Counsel for the petitioner that the resolution dated 25-10-2015 suffers from quorum-non-judice in as much as, Mr. Meraj Hossain Khan-respondent no. 4 was an illegal director on the date of taking such resolution in one hand and on the other hand, admittedly there are two share holders directors and the petitioner being one of the those two directors since was absent so only the respondent no. 2 was the remaining share holder hence the alleged resolution was taken in contravention of article 26 of Article of the Association of the company as there was no quorum to take resolution in the said meeting. It has also been asserted that, if for argument's sake, it is held that, the Quasi-Equity-Loan agreement dated 08-10-2008 and its renewal dated 01-07-2015 were done rightly even then, the allotment of 98000 share in favour of respondent no. 3 is barred under article 10 of the Articles of Association read with section 155 of the companies Act 1994 in as much as it has offended the right of preemption of the petitioner in having the said shares.

26. Furthermore, clause 5. 1 and clause 5.2 read with clause 4.3 of the renewal agreement dated 01-07-2015 has also not been complied with. So far as its relates to ceasing share of the petitioner in the company, the learned Counsel further contends that, the petitioner had filed her subscription of the paid up capital and it was never objected either by respondent no. 2 or respondent no. 1 at any point of time. However, for the first time this issue was raised by respondent no. 2 and 3 on the basis of purported audit report against which this petitioner raised objection/observation in the Annual General Meeting held on 26-10-2017. Even though in the said Company Matter no. 228 of 2015, the instant respondent no. 1 and 2 had not raised this issue even in their affidavit-in-opposition. However, against that very audit report this petitioner made some observation assailing the audit report. So it cannot be said that, the AGM accepted the audit report.

27. In this regard the learned Counsel by referring to the provision of rule 24 of the first schedule of the companies Act submits that, only for not paying subscription, the very share holding in respondent no. 1 company will not cease. The learned Counsel further contends that, even the respondents are barred to raise the issue of share holding of the petitioner in the respondent No. 1 company by virtue of doctrine of acquiescence, waiver an estoppel in as much as, the respondent no. 1 and 2 by admitting the petitioner as share holder director even notify her to be present in the AGM held on 26-10-2017 and furthermore, respondents considering her share holder and director notified her in the meeting dated 25-10-2015. Moreover, if the petitioners' share in the said share holding of Respondent No. 1 would have reduced in that case, the remedy for the aggrieved party then lies in section 59 of the Companies Act 1994.

28. The learned Counsel then submits that, the petitioner has never ceased her position to be a

managing director of the company by operation of section 110 of the companies Act on attaining 5 years, because this Honb'le court by an unreported decision passed in Company Matter no. 177 of 2012 settled that even after the expiry of 5 years, the position will remain valid if other share holder/director do not oppose the continuation. Therefore, the continuation of the petitioner as managing director has never ceased and the petitioner has still been enjoying the said privilege under the doctrine of waiver and acquiescence and estoppel.

29. The learned Counsel with reference to article 10 as well as section 155 of the companies Act submits that, the petitioner is entitled to have allotment of 98000 share in her name for the fact that, she had paid taka 20000000/- vide 4 cheques through which the company purchased 4 properties in the name of respondent no. 1, company. So far as it relates to the contention made by the respondents to the effect that, in compliance with annexure-2C, 4A and 4B, respondent no. 3 was appointed as "managing agent" of respondent no. 1 company and therefore it injected taka 98,78,800/- to respondent no. 1 company is untrue.

30. It has also been submitted that in the meeting dated 25-10-2015 there was no valid quorum as the petitioner remained absent in the meeting and as such the allotment of 98000 share through alleged board meeting against purported "share money deposit" is totally frivolous one.

31. In the end, the learned Counsel for the petitioner prays for allowing the application filed under section 43 of the companies Act by rectification of the register of the company on cancelling the allotment of 98000 share allotted to respondent no. 3 and to strike out the name of respondent no. 4 and 5 from the member of respondent no. 1 company.

32. In contrast, Mr. Morshad Ahmmed Khan, the learned Counsel appearing for the respondent no. 2 vehemently opposes the contention so have been taken by the learned Counsel for the petitioner and contends that, this petitioner was an employee of respondent No. 3 company and executive director of Capita Development Ltd (shortly, CDL) during 2005 to 2010. The learned Counsel at the very outset submits that, the intention of the legislator for incorporating section 43 in the Companies Act, is only for rectification of the share register. The case in hand, the petitioner has challenged the allotment of share which has got no basis because in the instant case, allotment of 98000 share was fully paid up share of taka 100 so approved in the board meeting of respondent no. 1 held on 25-10-2015 and the paid up share capital of respondent no. 1 now stands at taka 1,0000000/- (one crore) only out of which 99,000 share is now paid up so if the allotment is cancelled, the subscription of capital of respondent no. 1 will be reduced to taka 2,00000/- only and hence the instant proceeding is not maintainable under section 43 of the companies Act. The learned Counsel further contends that, to succeed with the prayer for rectification by striking out the name of CDL against 98000 share allotted to it, section 43(1)(a) of the companies Act requires the petitioner to prove that, the name of CDL has entered in the register without sufficient cause. But the register of the particulars of the member of respondent no. 1 company, the return of allotment- annexure-C annexed to the substantive petition shows that, the name of CDL has entered in the register as the member of respondent no. 1 company,

Ardent capita Ltd, (shortly ADL or Ardent) after allotment of 98000 share. It has further been contended that, the petitioner is the holder of 1000 share which is still unpaid and that has been reflected in the approved audited accounts of Ardent as on 30-06-2015 (annexure-6 to the affidavit-in-opposition of respondent no. 2) and as such, she is not entitled to any offer pursuant to clause (a) of section 155 of the companies Act 1994.

33. Moreover, making such offer to the petitioner under section 155(a) is completely ousted by section 155(2) of the companies Act.

34. It has further been submitted that, the petitioner has alleged that no meeting can be held without her presence because she was one of two directors of respondent no. 1 company, but from form XII of Ardent it shows that, on the date of the meeting dated on 25-10-2015, the board of director of respondent no. 1 company was comprised of 3 directors including the petitioner and in the meeting held on 25-10-2015 out of the said 3 directors, two directors were present when they formed necessary quorum and as such the share was allotted by a valid resolution of the board taken in the duly conveyed meeting.

35. It has further been submitted that, the minutes of the board meeting of CDL dated 09-10-2015 shows that, in exercise of power conferred upon it by Ardent through its resolution in the board and EGM dated 08-10-2008 and that of "Quasi-Equity loan agreement" dated 08-10-2008 and renewal thereof dated 07-10-2015 held between respondent no. 1 and respondent no. 3 CDL respondent no. 3 acting as a managing agent of respondent no. 1, company appointed respondent no. 4 as an executive director of respondent no. 1 company. By virtue of the aforesaid resolution, and agreement, respondent no. 4 became an additional director of respondent no. 1 company.

36. It has further been contended that, the appointment of respondent no. 4 as a director to the board of respondent no. 1 was done within the purview of section 125 read with section 22(1) of the companies Act 1994. The learned Counsel further submits that, on the request of respondent no. 3, respondent no. 1 sent an extract of minute of board meeting and EGM both dated 08-10-2008 duly signed by the respondent no. 2 and pursuant to section 89 of the companies Act, 1994 any minutes signed by the chairman, shall be treated as evidence of the proceedings.

37. It has further been contended that, the petitioner in her substantive petition admits that, respondent No. 1 was indebted with CDL in connection with the property but in her affidavit-in-reply dated 05-03-2019, she made sweeping denial about the aforesaid facts regarding the resolution dated 08-10-2008 Quasi-Equity loan agreement and its renewal. Though the said sweeping denial has got no substance in view of the provision of section 98 of the companies Act but the proviso of the said Act speaks otherwise. So far as regards to the allegation of allotting 98000 share to be held without receiving any cash consideration from respondent No. 3 company by the respondent no. 1, the learned Counsel further contends that, such allegation clearly contradicts the return of allotment filed by Ardent with Register of joint Stock Company and firms (shortly RJSC) (annexure-C1 to the petition filed by the petitioner). Moreover, in the approved

accounts of Ardent dated 30-06-2015 it is also found to have acknowledge receipt of taka 98,78,829/- as "share money deposit" as on 30-06-2015 by respondent no. 1(annexure-6 to the affidavit-in-opposition of respondent no. 2).

38. The learned Counsel goes on to submit that, the audited account as on 30-06-2015 was subsequently approved in the AGM of respondent no. 1 held on 26-10-2017 as per the direction of this court in Company Matter no. 228 of 2015 and in the said AGM, the petitioner attended where she made various observation with regard to numerous entries in the aforesaid accounts of 2015 but she did not make any objection about the receipt of the aforesaid "share money deposit" of taka 98,78,829/-. Further, the petitioner did not pursue her objection as regards to the audited report approved in the AGM dated 26-10-2017 and the said audited account are now closed account of Ardent and Ardent, has already filed the account to the RJSC on 08-01-2018 and in view of all the above circumstances, it is clear that, the name of respondent no. 3 has entered member of respondent no. 1 company with sufficient cause and as such, the name of respondent no. 3 cannot be struck out.

39. The learned Counsel further contends that, in pursuance of section 105 read with section 126 of the companies Act 1994 and as per article 25(2) of the Articles of Association of respondent no. 1 company, the petitioner as well as the respondent no. 2 were required to be authorized by board of respondent no. 1 company, to sign the deeds. The petitioner is denying the facts about the resolution of Board, EGM dated 08-10-2008 though the petitioner and respondent no. 2 were severally authorized to represent Ardent but the petitioner admits acquisition of the properties acquired by Ardent where the petitioner signed two deeds and respondent no. 2 also signed two deeds on behalf of Ardent and as such, since the petitioner could not produce any contrary resolution or any other loan arrangement/agreement, so it can safely construe that, the petitioner as well as respondent no. 2 were authorized by aforesaid deed dated 08-10-2008 because any contrary conclusion will invalidate the aforesaid 4 deeds for lack of authority.

40. In that posture, the learned Counsel further contends that, the common law principle *"qui approbate non reprobate"* will then come into play. Because, the petitioner cannot in one hand, admit the acquisition of the properties by Ardent through sell deeds and on the other hand, deny the "Quasi-Equity loan Agreement" and its renewal signed by respondent no. 2 .

41. So, in view of the said principle, the petitioner will have either to accept all deeds, agreements singed by respondent 2 or to deny all those deeds, agreements and document. It has further been submitted that, respondent no. 2 representing respondent no. 1 singed 2 deeds being deed no. 3855 and 3856 both dated 05-04-2010 for acquiring two residential apartments for respondent no. 1 and singed the "Quasi-Equity loan Agreement" and its subsequent renewal on behalf of Ardent. It is also admitted position that, the petitioner has still been occupying two apartments as the properties of respondent No. 1 but she denied the authority of respondent No. 2 to represent respondent no. 1 and as such pursuant to section 197 of the Contract Act, 1872 the petitioner's such acknowledgment of properties as the properties of Respondent No. 1 and her occupation of

the said properties as the properties of Ardent amplified the authority of respondent no. 2.

42. The learned Counsel warps up his submission contending that, it is well settled that the proceedings under section 43 of the companies Act is a summary proceeding but the sweeping denial of the petitioner with regard to the resolution dated 08-10-2008 and the Quasi-Equity loan agreement and its renewal raises the question of maintainability of the instant proceedings. Because, the said sweeping denial raises various complicated question of facts which cannot be determined without a full trial.

43. In that regard, that learned Counsel adds that it is well settled that, the court will not exercise its discretion while rectification of the share register, if any complicated question of fact is found to have involved. And in that regard, the learned Counsel has also referred decisions reported in 1985 BLD (AD)-230 43DLR (AD)- 34, and 43DLR (AD)-89 and finally prays for rejecting the application on the score that it is not maintainable.

44. On the flipside, Mr. Khan Mohammad Shamim Aziz, the learned Counsel appearing for the respondent no. 1, 2 and 4 has mostly adopted the submission so advanced by the learned Counsel for the respondent no. 2 and reiterates that, the respondent no. 1, company that is, Ardent capita Ltd was incorporated on 06-06-2007 with an authorized share capital of taka 1,0000000/- divided into 100000 ordinary share of taka 100 each and at the time of incorporation, the subscribers of Ardent capita was taka 2,00000/- divided in to 2000 share of taka 100 each which was only held by petitioner and respondent no. 2 in equal ratio that is, 1000 share each. On the contrary, the respondent no. 3 that is, Capita limited was incorporated as a private limited company on 20-02-2002. It has chiefly been submitted by the learned Counsel that, 1000 share was held by the petitioner in the subscribed capital which remained unpaid and respondent no. 3 that is, CDL injected an amount of taka 98,78,829 as on 30-06-2015 as "share money deposit" which has been reflected in the audited report of Ardent Capita for the year ended in June 30, 2015 (annexure-6 of the affidavit in opposition filed by the respondent no. 2.) The learned Counsel goes on to submit that, it is admitted position that, the AGM of respondent no. 1 was held on 26-10-2017 under the chairmanship of an independent chairman pursuant to the judgment and order dated 26- 08-2017 passed by this Honb'le court in Company Matter no. 228 of 2015 and audited report of Ardent Capita for the year of 2008 to 2016 were accepted and approved in the said Annual General Meeting of Ardent capita on 26-10-2017 even in presence of the petitioner (annexure-A and annexure-1A to the affidavit-in- opposition filed by respondent no. 2).

45. In the said meeting dated 26-10-2017, the petitioner submitted her observation/objection on the audit report for the year 2008 to 2016) ("Annexure-L to the supplementary affidavit filed by the petitioner dated 13-08-2018) though the petitioner did not raise any objection whatsoever as to the "share money deposit" amounting to taka 98,78,829/- as on 30-06-2015 injected by the Capita limited, respondent no. 3.

46. In such an arrangement, the board of director of respondent no. 3 on 09-10-2015 decided to

allot share of Ardent against the "share money deposit" and appointed respondent no. 4 as an executive director in exercise of power and authority conferred by clause 5.2(1) of the renewal agreement dated 01-07-2015 and as such, by virtue of said clause 5.2.(1) of the renewal agreement dated 01-07-2015, read with the resolution adopted in the meeting of board of director of Ardent held on 08-10-2008, the respondent no. 4 was appointed as an additional director of respondent no. 1 company.

47. And in accordance with the aforesaid resolution dated 09-10-2015 taken in the meeting of board of director of respondent no. 3, it requested respondent no. 1 to file necessary return and to convene a meeting of the board of Respondent No. 1 to allot share in favour of Capita limited respondent no. 3 against the "share money deposit" so injected by Respondent No. 3 and as per the said request, the respondent no. 1 filed form no. XII (particulars of director) dated 25-10-2015 reflecting the changes of the composition of the board of respondent no. 1 showing that, Miraj Hossain Khan was appointed as an additional director in the board of Ardent capita and therefore, since 09-10-2015 the board of Ardent that is respondent no. 1, was comprised of 3 directors that is, respondent no. 2, the petitioner and respondent no. 4.

48. It has further been asserted that, the respondent no. 3, that is Capita had injected an amount of taka 98,78,829/- only up to 30-06-2015 as "share money deposit" which has been reflected in the audited account of Ardent capita for the year ended in June 30, 2015. Moreover, it is admitted position that, in the AGM held on 26-10-2017, the audit reports of "Ardent capita (respondent no. 1) for the year 2008, to 2016 was accepted and approved in presence of the petitioner. And the petitioner submitted her observation in it though she did not raise any objection as to the 'share money deposit'' amounting to taka 98,78,829/- as on 30-06-2015 injected by respondent no. 3 which has been reflected in the supplementary affidavit filed by the petitioner and in view of the said facts, it is apparent that, the petitioner has alternatively admitted the "share money deposit" injected by Capita land that is, respondent no. 3 in Ardent capita (respondent no. 1).

49. It has further been argued by the learned Counsel for the respondents that, the meeting of the board of director of Ardent capita held on 25-10-2015 by two directors in attendance namely, respondent no. 2 and respondent no. 4 where it was resolved to allot 98000 share to capita land (respondent no. 3) and accordingly 98000 shares, were allotted to respondent no. 3 and necessary "return" regarding allotment of such share was filed by respondent no. 1 with the office of the RISC. Now this Hon'ble court may consider as regards to the propriety of Quasi-Equity loan Agreement dated 08-10-2008 (annexure-2(C) of affidavit in opposition filed by respondent no. 3 dated 18-02-2019 and its renewal agreement dated 01-07-2015 ("Annexure-2 of the affidavit-in-opposition of respondent no. 2 dated 04-03-2018) entered into between respondent no. 1 and respondent no. 3 as well as the validity of appointment of respondent no. 4 as member of respondent no. 1, company. Then the propriety of the meeting of the board of director of Ardent Capita, respondent no. 1 held on 25-10-2015 whether it was held in accordance with Articles of Association of respondent no. 1 and lastly whether the petitioner is legally entitled to any offer under section 155(1) (1)(a) of the companies Act, 1994.

50. To address the said assertion, the learned Counsel for the respondents contends that, the Quasi-Equity loan agreement dated 08-10-2008 and its renewal dated 01-07-2015 provides an arrangement between respondent no. 1 and respondent no. 3 through which, respondent no. 3 transferred 2 commercial office space at "South Avenue Tower" and "Moly Capita Center" as well as 2 residential apartments at "Capita Balmoral" worth taka 81,12,38000/- in total as a credit to respondent no. 1 and therefore, the said Arrangement was accomplished under Quasi-Equity loan Agreement and subsequent renewal thereof which is not any "borrowing arrangement" by respondent no. 1 from respondent no. 3. And as such, Article 13 of the Articles of Association of respondent no. 1 company which provides that, the managing director may from time to time with the approval of the board of director may borrow from different source does not apply here. The learned Counsel in that connection adds that, it was resolved in the meeting of the board of director of respondent no. 1, company dated 08-10-2008 that, the petitioner and the respondent no. 2 will be severally authorized to give effect of the terms and condition of Quasi-Equity loan agreement and to sign all necessary document, papers including the Quasi-Equity loan agreement and renewal thereof, and the acquiring of properties was thus approved by the share holders of respondent, no. 1 in the Extra-ordinary-General Meeting dated 08-10-2008.

51. Since the decision of the board of director of respondent no. 1 company was adopted in the (EGM) dated 08-10-2008 which was approved by share holders and thus execution of the Quasi-Equity loan agreement took effect from 08-10-2008 and its renewal dated 07-10-2015 then in pursuance of the said agreement, respondent no. 2 executed the deeds of sale in respect of Apartment, being A-401 of the 4th floor and A-50 in the 5th floor of the project named "Capita Balmoral" while the petitioner executed the deed of sales in respect of the office space in the project named "south avenue tower" and "Moly capita center" dated 08-10-2008 and 26-08-2009 for and on behalf of respondent no. 1 (annexure-1 series to the affidavit-in-opposition filed by respondent no. 1 and 4 dated 28-11-2018.)

52. The learned Counsel then candidly contends that, in view of the above, since the petitioner executed the deeds of sale in respect of the office space in the project named above, for and on behalf of respondent no. 1, she cannot deny the validity of Quasi-Equity loan agreement dated 08-10-2008 and its renewal dated 01-07-2015. In that connection, the learned Counsel further adds that, the Quasi-Equity loan Agreement dated 08-10-2008 and its renewal, dated 01-07-2015 were executed in accordance with the Article of Association of respondent no. 1 and as such, the same is legally valid and binding upon the respondent no. 1, company.

53. So far as it relates to the validity of the meeting of the board of director of respondent no. 1 company dated 25-10-2015, the learned Counsel further contends that, the respondent no. 1 company served notice of the said meeting upon the petitioner on 18-10-2015 to be held on 25-10-2015 to discuss among others, allotment of share and to take necessary resolution on that agenda as Agenda No. 5. The petitioner, duly received the copy of the notice on the same date of issuance but she did not attend the meeting on 25-10-2015. So the said notice of the meeting was

validity issued by respondent no. 2 as a chairman of the respondent no. 1 company, in compliance with article 1 of Articles of Association and regulation 88 of schedule 1 thereof and therefore, the meeting of the board of directors of "Ardent Capita" was held on 25-10-2015 in presence of 2 directors namely, the respondent no. 2, Mr. Mokarom Hossain Khan and Respondent No. 4 Meraj Hossain Khan representing "Capita land" and that very two directors form quorum of board meeting because respondent no. 4 was earlier appointed as an executive director by the board of directors of respondent no. 3 in its meeting dated 09-10-2015 by virtue of clause 5.2(a) of the renewal of Quasi-Equity loan agreement dated 01-07-2015 read with the resolution adopted in the meeting of the board of directors of respondent no. 1 dated 08-10-2008 when respondent no. 4, Meraj Hossain Khan became an Additional Director of Ardent capita that is, respondent no. 1.

54. So in view of the above arrangement, it can palpably construe that, the meeting of the board of director of respondent no. 1 was held on 25-10-2015 in accordance with the Articles of Association of respondent no. 1 the learned Counsel adds. It has finally been contended by the learned Counsel that, the petitioner is not legally entitled to any offer of share in Respondent No. 1 under clause (a) of section 155(1) of the Companies Act, 1994 saying that, 1000 share held by the petitioner in the subscribed capital of "Ardent capita" remained unpaid which has been reflected in the audited account of Ardent capita for the year ended in June 30, 2015 which was accepted and approved in the Annual General Meeting of respondent no. 1, on 26-10-2017 in presence of the petitioner. So since the petitioner being a holder of unpaid share (Affidavit-in-opposition filed by the respondent no. 2 dated 04-03-2018) so she is not entitled to any offer for further share under clause (a) of section 155(1) of the Companies Act, 1994.

55. The learned Counsel further submits that, the petitioner has no locus standi to challenge the allotment of 98000 share made by respondent no. 1 to respondent no. 3 and therefore the name of the respondent no. 3 has been entered in the register of members in respondent no. 1 company for sufficient cause and there is no ingredients to invoke the jurisdiction of clause (a) of section 43(1) of the companies Act 1994 here. In turn, the petition filed under section 43 of the companies Act is not maintainable and therefore, it is liable to be dismissed.

Deliberations

56. At the very onset of passing the judgement, I must express my deepest appreciation to the learned counsels for the parties who actually left no stone unturned at their end in defending their respective cases which also helps me to go in depth of the facts and relevant laws in adjudicating the matter. However, on going through the entire record, I find that, apart from the substantive petition filed by the petitioner and respective affidavits-in-oppositions filed by two sets of respondents, I do not feel it expedient to mention other various applications, affidavit-in-reply filed by the contending parties in this judgement, as I find a plethora of applications have been filed by both the sides which on careful perusal, I find those to be not so relevant here.

57. As stated above, the learned counsels for both the parties have made exhaustive argument

and I have considered their submission with utmost importance, perused the petition, three sets of Affidavit-in-opposition filed by Respondent no. 3 and then Respondent nos. At the outset, I should mentioned that, the petitioner sought three different reliefs namely, 1) Rectification of share register of Respondent No. 1, company upon cancelling allotment of 98000 share given to Respondent No. 3 vide resolution of Respondent No. 1 dated 25.10:2015 (ii). After such cancellation, striking out the name of Respondent No. 3 from the register of Respondent No. 1 company and (iii) striking out the name of Respondent nos. 4 and 5 as directors of Respondent no. l company. In addition to those remedies, the petitioner has also sought interim prayer for maintaining status quo in enjoying possession and position in the residential apartments claimed to have purchased from the fund of Respondent No. 1 where she has now been residing.

58. In view of the, said claim, I feel it urge to go through the provision of section 43 of companies act, 1994 (hereinafter referred to "the Act") and for the convenience of understanding section 43 is reproduced below in verbatim :

Section 43 of Companies Act:

Prayer to court to rectify register : (1) If

(a) the name of any person is without sufficient cause entered in or omitted from the register of members of a company; or

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having become, or ceased to be, a member.

the person aggrieved or any member of the company, or the company may apply to the court for rectification of the register.

(2) The court may either refuse the application, or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved and may also make such order as costs as it may consider proper.

(3) On any application under this section the cour 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 whether the question arises between members or alleged members of between members of alleged members on the one hand and the company on the other hand and generally may decide any question necessary or expedient to be decided for rectification of the register and may also decide any issue involving any question of law.

On careful perusal of the said provision, I actually find the first part of clause (a) of section 43(1) of the Act is applicable here which speaks :

"The name of any person is without sufficient cause interred in *or omitted from the register of members of a company*

or. .....

(b) .....

the person aggrieved or any member of the company or the company may apply to the court for rectification of the register.

59. And if the petitioner has been able to satisfy the said term so provided in clause (a) in that event, this court may decide the issue in the affirmative in view of sub-section (3) of section 43 of the Act.

60. Now, let me peruse what are the main grievance of the petitioner for claiming aforesaid reliefs.

61. It is the chief contention of the learned Counsel for the petitioner so far as it relates to cancelling 98000 share allotted to Respondent No. 3 that, the said decision was taken in the board meeting dated 25.11.2015 claiming it to be absolutely illegal in view of the provision of Article 10 of the Articles of Association of Respondent no. 1 company read with section 155(b) of the companies Act.

62. To counter the said contention, it is the definite case of the Respondents that, the said allotment was rightly made in pursuance of the Audit Report ended in June 30, 2015 (Annexure -6 to the affidavit-in- opposition filed by Respondent No. 2) where taka 98,78,829 has been shown as "Share money deposit" extended to Respondent No. 1 and against that very sum, 98000 share was allotted to Respondent No. 3 which has been derived from "Quasi-Equity loan" executed by Respondent No. 2 giving effect from 7/10/2008 (Annexure 2(c) of the Affidavit-in-opposition filed by Respondent No. 3) and its renewal dated 01.7.2015 (Annexed as Annexure 2 the Affidavit-in-opposition by Respondent No. 2). It is the further contention of the learned counsels for the Respondents that, in view of clause 5.2(i) of the said Renewal Agreement dated 1.7.2015, Respondent No. 4 was appointed as Executive Director as well as Additional Director of Respondent no. 1, Company and by virtue of the Board meeting of Respondent 3 dated 9.10.2015 resolution was taken appointing Respondent No. 4 as executive director of Respondent No. 1 company. After forming quorum, Respondent No. 2 and Respondent no. 4 then passed a resolution in the Board meeting held on 25.10.2015 and allotted 98000 share of Respondent No. 1 company to Respondent No. 3 (Annexure 3 of the Affidavit-in-opposition filed by respondent No. 2).

63. Now, let me address the contention and counter-contention placed by the learned Counsel for the parties on those core points in the light of the respective provision of Companies Act, Articles of Association of Respondent no. 1 company, and that of the documents annexed therewith in the

petition and Affidavit-in-opposition. In first place, the learned Counsel for the petitioner has vehemently challenged the veracity of the "Quasi Loan Agreement", meeting of the Board of Directors of Respondent No. 1 and EGM of Respondent no. 1 all dated 8.10.2008 and that of renewal of such "Quasi loan Agreement" dated 01.7.2015.

64. On going through the "Quasi Loan Agreement" dated 8.10.2008, its renewal dated 01.7.2015 and EGM held on 8/10/2008 I find that, in all those meetings this petitioner was absent and only Respondent No. 2 and Respondent No. 4 remained present and signed respective minutes, agreement, resolution. At that point of time, Mr. Miraj Hossain Khan Respondent No. 4. was admittedly nobody to represent Respondent No. 1 so under what authority, he sat in the meeting of the Board of Directors and EGM of Respondent No. 1 on 8/10/2008 is totally incomprehensible to me. And there has been nothing in the record whether this petitioner had ever been notified in the said board and EGM meeting of Respondent No. 1 dated 8.10.2008 when she stood its Managing director. So, obviously whatever resolution had adopted in those two meetings is absolutely illegal having no operative value.

65. Now reverting to the propriety of "Quasi loan agreement dated 8/10/08" and its "renewal dated 01.07.2015". On going through Annexure 2(c) that has been annexed with the Affidavit-in-opposition of Respondent No. 3 dated 18/2/19, I find the alleged "Quasi Equity loan" has been typed in the "letter head" of Capta Development Limited (Shortly, CDL), Respondent No. 3 where certain important terms & conditions have been embodied namely, transfer of 4 properties by Respondent no 3 to Respondent No. 1 on credit making it repayable by 30.6.2015 and created "share money deposit account" against the fund to be injected by Respondent No. 3 to Respondent no. 1. And in the name of "share money deposit" an amount of Tk. 98,78,829/- has been shown in the Audit repoil dated 30.6.2015 and it was alleged, against the said amount, 98000 share was allotted to Respondent No. 3. And by renewal of the said Quasi Equity loan dated 1.7.2015, earlier term of repayment schedule was extended upto 30.6.2015 and a proposal was made to allot share to Respondent no. 3 against the above "share money deposit" within 3 months and give authority to CDL to appoint an executive director to Ardent Capita Limited (Shortly as ACL), Respondent no. 1.

66. First of all, the Quasi Equity loan agreement was executed (though not affixed any stamp paper on it) by one, Respondent No. 4 representing CDL as its managing Director and for other side Respondent No. 2 representing ADL as its Chairman. In the renewal Agreement dated 01.7.2015, it is found that, it was executed by one, Mahira Hossain Khan representing CDL and for other side Respondent No. 2 representing Respondent No. 1, ADL.

67. It is an admitted position that, in those letters, Agreement, this petitioner was not made any party or signatory nor it has ever been affirmed by the Respondents that, she had ever been notified before signing those two vital documents creating charge upon Respondent No. 1, Company where she is the Managing Director. So as per provision of section 105 of the Companies Act, the said Agreement and its renewal is totally unlawful. Further, as per Article 13 of

Articles of Association only the petitioner is authorized as Managing Director to sign the agreement even it require approval from the Board of Directors. But admittedly in entering into such loan agreement no approval was ever taken let alone, respondent No. 2 was not the Managing Director of Respondent No. 1 at the relevant time. Hence the "Quasi Loan Agreement" and its "renewal" have got no legal basis.

68. Now, let me examine the legal basis of the meeting of the Board of Directors of Respondent No. 1, company held on 25.10.2015 and if it is found that, the meeting had not been held in accordance with the respective provision of Companies Act and that of the Articles of Association then the very resolution taken for allotment of 98000 share by that Board meeting whether tenable in law.

69. On perusal of clause 5.2(i) of Renewal agreement made between CDL & ADL dated 01.7.15, I find that, CDL has been given authority to appoint an Additional Director in Respondent No. 1 company in the event of occurring default by ADL where one, Mannan Hossain khan signed the said Renewal agreement for ADL. And by virtue of the said clause, a meeting of the Board of Directors of CDL (Respondent No. 3) was held on 9.10.2015 and in that meeting, Mr. Miraj Hossain Khan as the Chairman of CDL was appointed as the Additional Director of Respondent No. 1 company and signed the minutes. And having appointed as Additional director of Respondent No. 1, Company he then sat at the meeting of the Board of Directors of Respondent No. 1 company on 25.10.2015 and passed Agenda No. 5 allotting 98000 share to Respondent No. 3, Company forming quorum in attendance with Mukaram Hossain Khan, Managing Director of Respondent No. 1. (On that very meeting he was also appointed as managing director without removing the petitioner from the post of Managing Director,)

70. Now question certainly crops up, whether a third company can appoint any director of an individual company. The simple answer in "No" as there has been such provision in the Companies Act. So the very appointment of Miraj Hossain Khan as the Additional Director of Respondent no 1, company is absolutely without any lawful authority. And if it is so, then Respondent no. 4 had no legal authority to sit as a director of Respondent No. 1 company let alone to allot any share. In the same vein, the Respondent no. 5 who is mere a company secretary of CDL can not be appointed as director of Respondent No. 1, company though there has been no resolution to that effect.

71. Now, let me discuss what law says in that respect. Under the provision of section 91(b)(c) of the Companies Act, a director of a company shall be elected among the shareholder by the members of the company in a general meeting but nothing sort of this has ever been happened in appointing Respondent No. 4 and 5 as directors of Respondent No. 1 Company. Now let me examine the Articles of Association of Respondent No. 1 company in that regard. It is admitted that no alternation or insertion of Memorandum and Articles of Association of Respondent no. 1 was held since the incorporation of Respondent no. 1 Company. So Article 16 of Articles of Association will come into play here, where it has clearly been outlined that, a director may either

be appointed or removed only through its annual general meeting that also commensurates section 91 of the Companies Act. So in such a circumstances, it can safely construe that, the appointment of Respondent No. 4 and 5 as director of Respondent no. 1, Company is totally illegal. Since the appointment of Respondent No. 4 is found to be illegal, so no question can arise to form quorum in the meeting of Board of Directors of respondent no. 1 by him within the meaning of Article 18 and 26 of the Articles of Association of Respondent No. 1. So, for such obvious reason, the allotment of 98000 share vide resolution of the meeting of the Board of Directors dated 25.10.2015 bears no basis which is liable to be cancelled.

72. In this regard, Respondents are relying upon the provision of section 98 of the Companies Act to give the validity of such meeting but the proviso so provided therein rather goes against their such assertion because very proviso of that section clearly negates the invalid act, if done by any director.

73. Then again, under Article 10, 11 of the Articles of Association, of Respondent No. 1 since the transfer of allotment has not been approved by the Board of Directors of Respondent no. 1, it can not be made effective as well.

74. It is the contention of the learned Counsel for the Respondents that, since the share of the petitioner remained unpaid so her shareholding in the company has been ceased. But that contention does not lie in view of the provision of rule 24 of the first schedule (Forfeiture of Share) of the Companies Act.

75. It has been submitted by the learned Counsel for the Respondents that, the petitioner is no more any Managing Director of Respondent No. 1, Company in view of the provision of Section 110 of Companies Act as Respondent No. 2 was appointed as Managing Director vide meeting of the Board of Directors of Respondent No. 1 dated 25.10.2015. But prevailing facts speaks otherwise. Because, in the Board meeting dated 25.10.2015 and that of the AGM held under the chairmanship of an Independent Chairman dated 26.10.2017, the petitioner was notified as director of Respondent No. 1 company having no reason to allege that the petitioner is no more the Managing Director.

76. Furthermore, there has been no resolution ever taken under Article 16 of Articles of Association to remove her from the post of Managing Director as well. Since it is found .that, till holding of AGM dated 26.10.2017, the petitioner held the post of Managing Director then, all the documents agreements executed dated 8.10.2008 and 1.7.15 and signed by Respondent No. 2 representing Respondent No. 1 Company is absolutely illegal. Because, in view of Article 13 and 31(2) of the Articles of Association only the petitioner as Managing Director of Respondent No. 1 company was authorised to sign those documents.

77. It is the contention of the learned Counsel for Respondents that, under the purview of "Quasi-Equity loan Agreement", EGM & meeting of the Board of Directors of Respondent No. 1 company,

CDL acted as Managing Agent of Respondent No. 1, Company which has been proved to be absurd proposition for having no legal backing of those Agreements and meeting as observed earlier.

78. It is the definite case of the petitioner that, she had no knowledge about the Quasi Equity loan Agreement dated 8.10.2008, its renewal dated 7.1.2015 EGM and that of Meeting of Board of Directors dated 8.10.2008. To counter such assertion, the respondents contends that, it is totally untrue statement because on the basis of those agreements she rather concedes those, as the petitioner signed two sell deeds in regards to commercial apartments representing Respondent no. 1 as purchaser on 8.10.2008 and 26.08.2009.

79. But in the aforesaid observation this court clearly finds the EGM & Board Meeting of Respondent no. 1 both held on 08.10.2008 and that of Quasi Equity loan Agreement dated 8.10.2008 and its renewal dated 7.7.2015 invalid one, so whatever has done subsequently basing on those invalid acts, can not be validated. Because, mere furnishing sell deeds basing on invalid meetings/Agreements cannot validate earlier invalid acts.

80. However, it is worthwhile to mention here that, I don't find any nexus with the alleged purchase of properties for Respondent No. 1 by the petitioner while adjudicating this application and for obvious reason, I find no rationale to sustain any interim order in respect of enjoying possession of properties alleged to have purchased for Respondent No. 1 as it has nothing to do with allowing or rejecting this application filed by the petitioner. Rather the party can invoke other forum for its redress.

81. It is argued by the Respondents with reference to the audit report ended in June, 30, 2015 (Annexure-6 to the Affidavit-in-opposition of Respondent No. 2) that, against "Share Money Deposit" of TK. 98,78,829 shown in the said report, 98000 share was allotted to Respondent No. 3. In the foregoing discussion, holding of Board meeting dated 25.10.2015 through which the impugned allotment has been found unlawful and that of the appointment of Respondent No. 4 as director in Respondent no. 1. Furthermore, there has been no stipulation in the four comer of any documents filed by respondents even in the minutes of the board meeting dated 25.11.2015 showing that, against the alleged amount shown in audit report, 98000 share was allotted to Respondent No. 3 company.

82. Given the above discussion and observation I find material substance to sustain the application apart from claiming interim relief by the petitioner in its petition.

Hence it is ORDERED.

1) The application is allowed in-part.

83. The allotment of 98000 share in favour of Respondent No. 3, Capita Land Development Ltd.

respondent no. 3 through the meeting of the Board of Directors of respondent no. 1 dated 25.10.2015 is hereby cancelled.

84. The name of the Respondent No. 3 as share holder of 98000 share is thus ordered to be omitted from the register of Respondent No. 1, Company, The name of Respondent Nos. 4 and 5 as directors of Respondent no. 1 company stands struck out.

85. The order of status quo granted and extended from time to time by this court on the enjoyment of possession and position of the Duplex formed by Flat nos. A/401(4th Floor) and A/501 (5th Floor) in the building known as "The Balmoral" by the petitioner is set aside.

86. The Respondent No. 6 is directed to rectify the Register of share and that of particular of Directors of Respondent No. 1, company as directed aforementioned.

87. The Respondent No. 1 is thus directed to file necessary documents to Respondent No. 6 to carry out the order.

88. The Respondent no. 1, company is also directed to donate an amount of taka 50,000/- through pay order in favour of Byasdi Rashida Nabi High School vide S/B A/C no 2024834024888 Sonali Bank Limited, upazila complex Branch, Madhukhali, Faridpur within 2 weeks from receiving the copy of this order.

89. The Respondent No. 1 is further directed to file Affidavit-in-compliance within 02 months from date.

90. Let a copy of this order be communicated to Respondent No. 6 forthwith .