

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

WRIT PETITION NO.11527 OF 2015.

Mr. Sheikh Hassan Arif, J	S. M. Akbar and Another .....Petitioners.
Mr. Md. Badruzzaman, J	Vs Bangladesh and others. .....Respondents.
<b>Judgment on 22.05.2017.</b>	

For the petitioner:	Mr. A.F. Hassan Arif with Mr. Md. Forrukh Rahman, Advocates.
For the respondent no.3:	Mr. Mohammad Anwarul Islam with Mr. Md. Shafiqur Rahman, Advocates.
For the respondent no.4:	Mr. Ruhul Ameen, Advocate.

**Terms, Issues and Phrases:**

*CIB report, Guarantor-borrower, Defaulter-borrower, Interested establishments.*

**Main Finding:**

*Rule discharged without an order as to costs; the ad interim order, if any, thus stands recalled and vacated.....(Para 12).*

**Main Legal Issues:**

**Issue-1:**

Whether the CIB report publishing the name of the petitioner as guarantor should be declared as illegal or not.

**Issue-2:**

Whether the director of a Company who has transferred his shares without the consent of the loan-providing

bank/financial institutions can absolve himself from the liability and reporting his name in the CIB report or not.

**Main Findings:**

**Finding-1:**

*The CIB report publishing the name of the petitioner as guarantor should not be declared as illegal as the petitioner, as director, was part of the management of the credit receiving (borrower company) company.....(para 8).*

**Finding-2:**

*It cannot be denied that the petitioner no.1 was the part of management of Benetex at the relevant time when Benetex obtained the said credit facilities and as such it was incumbent upon the petitioner no.1 and/or petitioner no.2 to withdraw UBICO shareholdings from the Benetex and to resign as director of Benetex with prior consent of GSP in view of the provisions under Section 27Ka of the Bank Companies Act, 1991.....(Paras 8 & 9).*

**Bank Companies Act, 1991: Sections 2, 5GaGa, 27KaKa:** There is no distinction between director and nominee-director as far as loan liability of a company is concerned:

*Since the law, namely the definition of 'director' as provided by Section 2(f) of the Companies Act, 1994 and the definition of 'defaulter borrower' as provided by Section 5GaGa of the Bank Companies Act, 1991 do not distinguish between director or nominee-director, we are of the view that, merely because the petitioner no.1 was the nominee-director of UBICO and representing UBICO in Benetex that does not give him any extra benefit in so far as referring his name to CIB under Section 27KaKa is concerned.....(Para 9).*

**Bank Companies Act, 1991: Sections 2, 5GaGa, 27KaKa:** Director of an 'interested establishment' may be reported to CIB report if it becomes a defaulter borrower.

*Since the admitted position is that neither the petitioner no.1 nor the petitioner no.2 executed any guarantee securing the credit facilities obtained by the Benetex, none of them should be referred to in the CIB as 'guarantor'. Rather, they should be referred to as director and nominee-director of Benetex, the same being an interested establishment of the petitioner's in view of the definition of 'defaulter borrower' as provided by Section 5(GaGa) of the Bank Companies Act, 1991.....(Para 9).*

**Bank Companies Act, 1991: Sections 2, 5GaGa, 27KaKa:** A director of a company, after availing of credit facilities from a bank/financial institution, cannot resign or transfer his shares without consent of the concerned bank/financial institutions:

*No resignation of any director or borrower company shall take effect and no director of borrower company shall be entitled to transfer or sell his shares without approval of the authority of the lender bank or financial institution. This being so, we have no doubt to declare that the said purported transfer of shares and change of management which took place in 2011 did not become effective in the eye of law. The consequence of which is that, in so far as the obligation of GSP to refer the name and status of defaulter-borrowers to CIB under Section 27KaKa of the Bank Companies Act is concerned, they were required to send the names of Benetex and its directors in the CIB including the name of the petitioner no.1, as, admittedly, petitioner no.1 was the director of the Benetex at the relevant time.....(Para 8).*

**Bank Companies Act, 1991: Sections 2, 5GaGa, 27KaKa:** Guarantor-borrower-director vis-à-vis director and nominee-director:

*Since the admitted position is that neither the petitioner no.1 nor the petitioner no.2 executed any guarantee securing the credit facilities obtained by the Benetex, none of them should be referred to in the CIB as guarantor. Rather, they should be referred to as director and nominee-director of Benetex, the same being an interested establishment of the petitioners in view of the definition of 'defaulter borrower' as provided by Section 5(GaGa) of the Bank Companies Act, 1991.....(Para 9).*

## JUDGMENT

**MR. SHEIKH HASSAN ARIF, J:**

1. Rule Nisi was issued calling upon the respondents to show cause as to why the impugned CIB report, under impugned code No. A0000101974, publishing the name of petitioner No. 1, Mr. S.M. Abkar, as guarantor (Annexure-C), should not be declared to be without lawful authority and is of no legal effect.

### Background Facts:

2. Short facts, relevant for the disposal of the Rule, are that, petitioner No.1 is the Managing Director of petitioner no.2 company, UAE Bangladesh Investment Company Ltd. a company incorporated as a joint venture between the Abu Dhabi Fund for Development and the Government of Bangladesh under the relevant Companies Act of Bangladesh on 11.06.1987. The petitioner No.2 company is engaged in the business of financing viable socio-economic development projects in Bangladesh and, accordingly, under the Financial Institutions Act, 1993, it

obtained license from Bangladesh Bank in 1995 to engage in the business of financing and investing by way of making equity inducements or giving loans etc. It is stated that, the petitioner No.1 is the salaried Managing Director of the petitioner No.2 company. That he does not hold any share in petitioner no.2 company and merely function as CEO of the company in accordance with the Articles and Association of the same.

3. That Harvest Rich Ltd, later renamed as Benetex Industries Limited (hereinafter called as "Benetex") (respondent no.5), being engaged in the business of garments, approached the petitioner no.2 company for getting credit facilities. Accordingly, the petitioner no.2 company gave financial assistance to Benetex through equity investment, namely by purchasing shares of the Benetex vide Subscription Agreement dated 08.12.1997 between the Petitioner No. 2 and Benetex and, accordingly purchased 35,000 shares of Benetex for the value of Tk. 2,35,000,00/-. As per the said subscription agreement petitioner no.2 nominated petitioner no.1 as its nominee-director in the Board of the Benetex and, accordingly, Form-XII of the Benetex has disclosed the name of the petitioner no.1 as one of its directors. That subsequently, the petitioner no.2 decided to withdraw its equity investment from Benetex and thus, transferred its entire share in the Benetex and thereby petitioner no.1 seized to be a director of Benetex vide its board resolution dated 31.03.2011.

4. However, in the meantime, Benetex obtained different credit facilities from GSP Finance Company (Bangladesh) Ltd. (hereinafter called "GSP") (respondent no. 4) under lease financing for procurement of garments machineries and instruments. It is stated that, though the petitioner no.1 was the

nominee-director of petitioner no.2 at the relevant time of obtaining such credit facilities, he never executed any personal guarantee or any charge documents to secure the said loan. However, it is stated, GSP illegally referred the name of the petitioner no.1 to the Bangladesh Bank under Section 27KaKa of the Bank Companies Act, 1991 for publication of the same in its CIB report and, accordingly, the name of the petitioner no.1 appeared in the impugned CIB report as a guarantor. As against this back-drop, both the petitioners made several representations to the GSP as well as the Bangladesh Bank to get the CIB report corrected, namely to delete the name of the petitioner no.1 from the same but to no avail. It is stated that as a result of such publication of the name of the petitioner no.1 in the CIB, he became disqualified to obtain any loan for his personal purpose from any bank or financial institutions. It is further stated that the petitioner no.1 only represented the petitioner no.2 company as its nominee-director in the board of the Benetex, even if there is any consequence for withdrawal of equity investment from Benetex in 2011, the petitioner no.1 should not suffer as he had only acted as an agent of petitioner No.2. Under such circumstances, the petitioners moved this Court after serving demand justice notice on the GSP and Bangladesh Bank for correction of the impugned CIB and obtained the aforesaid Rule. At the time of issuance of the Rule, this Court, vide ad-interim order dated 27.11.2015, stayed operation of the impugned CIB report till 15.01.2018, which was subsequently extended on several occasions for certain periods. It is further stated by the petitioners that, though the Benetex obtained credit facilities from other bank, and financial institutions, e.g. Rupali Bank Ltd., One Bank Ltd. etc., they did not refer the name of the petitioner No.1 in the CIB. Rather, they only referred the name of

the promoter directors of the Benetex in the CIB.

5. The Rule is opposed by GSP (respondent no. 4) by filing affidavit-in opposition contending, *inter alia*, that the petitioner no.1 was the nominee-director of petitioner no.2 in the board of the Benetex at the relevant time when the Benetex obtained credit facility GSP and that neither the petitioner nor the Benetex took any written consent from the GSP at the time of withdrawal of share-holding from Benetex in violation of the provisions under Section 27Ka of the Bank Companies Act, 1991. It is further contended by this respondent that, since the petitioner no.1 was a member of the board of the Benetex which obtained different credit facilities from GSP, it was incumbent upon the GSP to refer the name of all directors of Benetex to CIB in view of the provisions under Section 27KaKa of the Bank Companies Act, 1991 inasmuch as that, being a director of the Benetex, the defaulter borrower company Benetex became স্বার্থ সংশ্লিষ্ট প্রতিষ্ঠান (interested establishment) of the petitioner in view of the definition of 'defaulter borrower' as provided by Section 5GaGa of the Bank Companies Act, 1991 (as amended). It is further contended that, since the Benetex defaulted almost all credit facilities provided by GSP, the GSP has already filed several Artha Rin Suits before the Artha Rin Adalats and obtained decrees in some of them followed by continuation of execution proceedings against the Benetex and petitioner no.1.

**Submissions:**

6. Mr. A.F. Hassan Ariff, learned senior counsel appealing for the petitioners, has argued at length regarding the law relating to different incidents of agency agreement or agency relationship between principal and its

agent. Mr. Ariff submits that, since the petitioner no. 1 was the salaried Managing Director of UBICO (petitioner No.2), which is a government to government joint venture between UAE and Bangladesh, he only represented UBICO as its Managing Director as nominee-Director of UBICO in the board of the Benetex. Therefore according to him, it was, in fact, UBICO which was the Director of Benetex and that petitioner no.1 was merely an agent of UBICO. Thus, he submits, even if any wrong has been done by the petitioner no.1 in withdrawing from the board of the Benetex without consent of GSP, petitioner no.1 cannot face any consequences such withdrawal of share holding inasmuch as that it was the UBICO which, in fact, withdrew the share holding without the consent of GSP. Therefore, learned advocate argues that, the petitioner No.1 will not come under the mischief of 'defaulter borrower' as defined by Section 5GaGa of the Bank Companies Act, 1991 in view of the fact that it was the petitioner no.2 which was in fact the director of Benetex. Further referring to the Form XII of Benetex, as submitted before the Registrar of Joint Stock Companies and Firms (as annexed to writ petition) learned advocate submits that, though the Form XII does not show anything about UBICO or that it does not show the petitioner no.1 as nominee director of UBICO, the admitted fact remains that the petitioner no.1 was the nominee-director of UBICO. This being so, he submits, non mentioning the name of UBICO in the Form X Benetex (Annexure-B series) dated 26.07.2011 is a mere mistake on the part of the Benetex in submitting Form XII before the Registrar, Joint Stock Companies. Learned advocate further submits that, unless the name of the petitioner no.1 is deleted from the CIB, thereby exonerating him for the default of his principal, the entire purpose of the Bank Companies Act as well as the principles of

agency will be frustrated. Accordingly, he submits, this Court should direct the concerned authority to delete the name of the petitioner no.1 from the impugned CIB report of Bangladesh Bank.

7. As against above submissions, Mr. Ruhul Ameen, learned advocate appearing for GSP (respondent no.4), upon referring to the definition of the term 'director' as defined by Section 2(f) of the Companies Act, 1994, submits that, a director of a company is a director by whatever name he or it is called. According to him, even if the petitioner no.1 was a nominee- director of UBICO, all the incidents of director will fall upon him and accordingly, he will also come under the definition of the term 'defaulter borrower' as provided by Section 5GaGa of the Bank Companies Act, 1991. Mr. Ameen further argues that the admitted position being that neither the Benetex nor the petitioners took any prior consent from GSP before withdrawal of UBICO share-holding from the Benetex or before change of management of Benetex by transfer of shares of UBICO, such transfer of shares or change of directorship in Benetex by such transfer will be regarded as valid transfer and change of management in the eye of law inasmuch as that, according to Section 27Ka of the Bank Companies Act, 1991, such resignation of a director or transfer of shares will not take effect under the law. This being so, according to him, the GSP did not commit any illegality in referring the name of the petitioner no. 1, who was admittedly in the board of the Benetex at the relevant time, to Bangladesh Bank for publication of the same in the CIB. Further referring to various certified copies of decrees in Artha Rin. Suit as well as execution case filed against Benetex and its directors including the petitioner no.1, learned advocate submits that, the issues involved in this writ petition have already

been decided by the Artha Rin Adalat and as such the petitioners do not have any case before this Court except filing appropriate appeal in accordance with law against the said judgment and decrees passed by the Artha Rin Adalat.

#### **Deliberations of the Court:**

8. It appears from materials on record, in particular the Form XII of Benetex, as submitted before the Joint Stock Companies and Firms on 26.07.2011 (Annexure-8 series), that, the petitioner no. 1 was, in fact, shown as a director of Benetex. He was also shown to have seized to be such director with effect from 31.03.2011. This is admitted position that Benetex obtained credit facilities from GSP before such seizure of directorship of petitioner no.1 and that petitioner no.1 was in the board of the Benetex at the relevant time of obtaining such credit facilities. It is so admitted position that the petitioner no.1 in fact was in the board of Benetex as a nominee-director of UBICO (petitioner no.2) Therefore, it cannot be denied by the petitioners that the petitioner no.1 was the part of management of Benetex at the relevant time when Benetex obtained the said credit facilities and as such it was incumbent upon the petitioner no.1 and/or petitioner no.2 to withdraw UBICO shareholdings from the Benetex and to resign as director of Benetex with prior consent of GSP in view of the provisions under Section 27Ka of the Bank Companies Act, 1991. Admittedly, neither the Benetex nor the petitioners took such prior consent of GSP. Therefore, whatever share-transfer took place in 2011 or whatever change of management took place at that time, such transfer or change of management did not, in fact, come into force in view of the provisions under Section 27Ka of the Bank Companies Act, 1991, which provides that, no resignation of any director or borrower company shall take effect

and no director of borrower company shall be entitled to transfer or sell his shares without approval of the authority of the lender bank or financial institution. This being so, we have no doubt to declare that the said purported transfer of shares and change of management which took place in 2011 did not become effective in the eye of law. The consequence of which is that, in so far as the obligation of GSP to refer the name and status of defaulter-borrowers to CIB under Section 27KaKa of the Bank Companies Act is concerned, they were required to send the names of Benetex and its directors in the CIB including the name of the petitioner no.1, as, admittedly, petitioner no.1 was the director of the Benetex at the relevant time.

9. Since the law, namely the definition of 'director' as provided by Section 2(f) of the Companies Act, 1994 and the definition of 'defaulter borrower' as provided by Section 5(GaGa) of the Bank Companies Act, 1991 do not distinguish between director or nominee-director, we are of the view that, merely because the petitioner no.1 was the nominee-director of UBICO and representing UBICO in Benetex that does not give him any extra benefit in so far as referring his name to CIB under Section 27KaKa is concerned. However, it appears from that impugned CIB report, as annexed to this writ petition as Annexure-C series, that, only the name of the petitioner No. 1 was published therein as a 'guarantor' of the credit facilities obtained by Benetex. We are of the view that, since the admitted position is that it was the UBICO which was in fact holding the shares in Benetex and as such the petitioner no.1 was the human face of the UBICO in Benetex board, the names of petitioner nos.1 and 2 should have been referred to for publication in the CIB disclosing their separate characters therein in that the petitioner no.1 should have

been shown as nominee-director of petitioner no.2 UBICO. This follows that, both the petitioner nos. 1 and 2 will face the consequences of non-obtaining consent from GSP before withdrawal of share-holding or change of management in the Benetex in view of the provisions under Section 27Ka of the Bank Companies Act, 1991. Further, since the admitted position is that neither the petitioner no.1 nor the petitioner no.2 executed any guarantee securing the credit facilities obtained by the Benetex, none of them should be referred to in the CIB as guarantor. Rather, they should be referred to as director and nominee-director of Benetex, the same being an interested establishment of the petitioners in view of the definition of 'defaulter borrower' as provided by Section 5(GaGa) of the Bank Companies Act, 1991.

10. In view of above, though we do not find any substantial merit in the Rule, we are of the view that, concerned authorities like GSP as well as the Bangladesh Bank should take necessary steps for correction of the concerned CIB report in line with our above observation.

11. Regard being had to the above facts and circumstances of the case, we do not find any merit in the Rule and as such the same should be discharged.

12. In the result, the Rule is discharged without an order as to costs, the ad interim order, if any, thus stands recalled and vacated.

13. Communicate this.

**Md. Badruzzaman, J**  
I agree.