

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13579 of 2016

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1. Bhagat Infrastructure & Development Pvt. Ltd. having its Head Office at Maya Sadan, Sri Ram Path, Anandpuri, West Boring Canal Road, Patna-800001.
 2. Uttam Kumar, son of Late Ram Prasad Bhakta, Managing Director, Bhagat Infrastructure & Development Pvt. Ltd. resident of Maya Sadan, Sri Ram Path, Anandpuri, West Boring Canal Road, Patna-800001.

.... Petitioner/s

Versus

1. The Reserve Bank of India through Its Regional Director, Patna Regional Branch, South Gandhi Maidan, Patna 800001.
2. The Consumer Education and Protection Cell, Financial Inclusion Development Department Reserve Bank of India, South Gandhi Maidan, Patna-800001.
3. The Banking Ombudsman, Reserve Bank of India, South Gandhi Maidan, Patna-800001.
4. The Registrar of Companies Bihar and Jharkhand having its office at Maurya Lok Complex, Block A, Western Wing, 4th Floor, Dak Banglow Road, Patna-800001.
5. The Branch Manager, Axis Bank, having its office at Udaiman Apartment, Boring Road, Patna-800001.
6. Maya Devi wife of Late Ram Prasad Bhakta, resident of Maya Sadan, Sri Ram Path Anandpuri, West Boring Canal Road, Patna-1.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Tiwary
For the Respondent/s : Mr. Kaushal Kumar Jha

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

Date: 26-07-2018

Heard learned counsel for the petitioners, learned counsel
for the Union of India, learned counsel for the respondent nos. 4, 5
and learned counsel for the private respondent no. 6.



Petitioners in the writ application have prayed for the following reliefs:

- (a) To quash decision dated 28.01.2016 passed by Consumer Education and Protection Cell, Reserve Bank of India [hereinafter, referred to as 'RBI'] whereby and whereunder the petitioner was directed to comply with the observation dated 03.09.2015 passed in the Lok Adalat before the Registrar of Companies.
- (b) To quash the order as contained in Letter No. 1557/2014-15 dated 29.11.2014 passed by the Banking Ombudsman whereby and whereunder complaint of the petitioner-Company was rejected on the ground that the banking Ombudsman lacks jurisdiction to entertain the grievances of the petitioners.
- (c) To direct the concerned authorities of the Reserve Bank of India to resolve the



grievance of the Petitioner-Company with the Axis Bank and further issue a direction to the Axis bank to change the mode of operation of the current account of the petitioner-Company maintained with Boring Road Branch of Axis Bank to in terms of decision taken in meeting of Board of Directors dated 10.10.2014.

- (d) To pass any other order/orders in shape of a consequential relief to which the petitioner may be found to be legally entitled to in the facts and circumstances of the instant case at hand.

The petitioners confine their relief to (a) (b) and (d) and do not press relief- (c) as he submits that this is consequential to the decision which will be taken by this Court in the writ application.

Petitioner no. 1 is a private limited company in the name and style of 'Bhagat Infrastructure & Development Pvt. Ltd.' and petitioner no. 2 is one of its Directors. The petitioner no. 2 and private respondent no. 6 were Directors of the said private limited company. By the Board's Meeting dated 15.10.2014, the petitioner no. 2 resolved to operate the bank account as a sole operator for the



company in the interest of the company. Said Board's Meeting is Annexure-1 to the writ application. The minutes of the Board's Meeting was only attended and signed by the petitioner no. 2. It is relevant to state here that on 10.10.2014, an Additional Director was appointed namely Ms. Nibha Kumari. Notice was given to the respondent no. 6 of the Board's Meeting for 07.11.2014 which was held subsequently on 09.11.2014 and the signature which would be required on the agenda-7 of the Board's Meeting dated 15.10.2014 authorizing the petitioner no. 2 to solely operate the bank account which was with the Axis Bank. Ms. Nibha Kumari was then appointed as a Director of the said company by an ordinary resolution on 09.01.2015 and by special resolution on the same day the respondent no. 6 was removed from the Directorship which is Annexure-5 to the writ application. The said respondent no. 6 on coming to the knowledge of the Board's Resolution of having removed her, approached the respondent no. 4 the Registrar of Companies making a complaint for illegal removal from the Directorship. The matter was sent by the respondent no. 4 to the Lok Adalat which passed an order dated 03.09.2015 (Annexure-11) whereby the Lok Adalat observed that cessation of respondent no. 6 in the present management is not maintainable and the management should take appropriate steps to reinstate the respondent no. 6 as a Director. It is the adjudicatory order



of the Lok Adalat which has been challenged by the petitioners in the present writ application. The petitioners moved the Banking Ombudsman for direction to the Axis Bank to allow the petitioner no. 2 to operate the account. The Banking Ombudsman vide order dated 29.11.2014 refused to entertain the said application on the ground that it lacked jurisdiction which is Annexure-13 to the writ application. Petitioners then moved the Consumer Education and Protection Cell of the Reserve Bank of India which endorsing the observation of the Lok Adalat observed that parties should settle the initial dispute amongst themselves by its decision dated 28.01.2016 (Annexure-14).

Petitioner no. 2 being one of the Directors of petitioner no. 1 has challenged the said decision of the Lok Adalat relying on the decision in the case of **State of Punjab & another v. Jalour Singh & Ors., since reported in (2008) 2 SCC 660** para-10 that the Lok Adalats is a conciliatory authority and can only pass an award in terms of compromise or settlement. It has no adjudicatory or judicial functions. His other contention that the resolution of the Board's Meeting dated 15.10.2014 by which the petitioner no. 2 made was the sole operator of Axis Bank Account and the subsequent removal of respondent no. 6 from the post of the Director of the company is in accordance with Section 103 of the Companies Act, 2013 and refers to Sub Clause (b) of Sub Section (1) and Sub Section (3) that if in the



adjourned meeting the quorum is not present then the members present shall be the quorum. As such, the resolution of the Board dated 15.10.2014 and 09.01.2015 does not suffer from any vice. He submits that if the respondent no. 6 had any grievance against the said company, she could approach the Tribunal constituted for the said purpose as postulated in Section 241 of the Companies Act, 2013. He submits that the notices were validly served on the Director respondent no. 6 before induction of one Nibha Kumari as a Director and has also annexed the postal envelop which is Annexure-18 stating that the agenda of the meeting was sent to the respondent no. 6 which she had refused. He submits that since the respondent no. 6 did not attend the earlier meeting and the subsequent meeting was convened and the quorum was complete as per Section 103 sub section (3) of the Companies, Act, hence the induction of the other Director namely Nibha Kumari was legal and proper and did not suffer from any illegality. He thus, challenges the order passed by the Lok Adalat and the order of the Banking Ombudsman and Consumer Education and Protection Cell stating therein that the Lok Adalat had no jurisdiction to give direction for reinstatement as Lok Adalat was not an adjudicatory authority but could only pass an award in cases of settlement or compromise.

Learned counsel for the respondent no. 4, however,



submits that on the complaint of the respondent no. 6, the matter was sent to the Lok Adalat for investors grievances and the order passed by the Lok Adalat on 03.09.2015 is merely by way of observation and not a judicial decision. He submits that the said Nibha Kumari was initially appointed as an Additional Director of the Board in the Board's Meeting dated 10.10.2014 and was appointed as Director on 09.01.2015 without such information to the Registrar of the Companies by filling a proper Form-32 which had to be filled up by the Director and the newly inducted Director. The removal of the respondent no. 6 was done in the absence of quorum by one Director whereas Sub Section (3) of Section 103 of the Companies Act, 2013 postulates quorum to be of members and not a single member.

Learned counsel for the respondent no. 6, however, submits that the present writ application is not maintainable as in the garb of the present writ application he wants to operate the Bank Account which is with the Axis Bank and has sought quashing of the order passed by the C.E.P.C. of the Reserve Bank of India dated 28.01.2016, order of the Banking Ombudsman dated 29.11.2014 and the order of Lok Adalat dated 03.09.2015 without availing the alternative remedy. He submits that the respondent no. 6 was not noticed before appointing Nibha Kumari as a Director as the letter dated 27.10.2014 Annexure-4 was for the Board's Meeting dated 7th



November, 2014 but the letter has been refused on 17.11.2014 as evident from Annexure-18. Hence, in view of the fact that the Articles of Association provides two Directors to form a quorum, the respondent no. 2 unilaterally took a decision to induct the Nibha Kumari as a Director on 19.11.2015 under the ordinary resolution which is Annexure-5, on the same day removed the respondent no. 6 by special resolution dated 09.01.2015 which as per Section 103 of the Companies Act is not permissible. He submits that under Section 103 of the Companies Act, 2013 sub section (1) sub clause (b) postulates that two members should be present for the meeting of the company and even at the adjourned meeting as per clause sub section (3), the members should be present to form a quorum (emphasis mine) but the petitioner no. 2 as a single member convened Board's Meeting. Such quorum is no quorum in the eye of law. Hence, the removal of the respondent no. 6 from the Director suffers from vice of illegality.

Having gone through the rival contentions of the parties, the petitioners have not pressed their prayer of being allowed to operate the Axis Bank Account, hence the order of Banking Ombudsman dated 29.11.2014 which was for operating the Bank Account of Axis Bank of which it lacked jurisdiction would also have no meaning. The petitioners have merely challenged the order of the



Lok Adalat which is a forum for compromise and settlement. Hence, the direction of the Lok Adalat directing the management to take steps for reinstatement of Maya Devi respondent no. 6 as Director is to be treated only as an observation. The order of the Banking Ombudsman as having no jurisdiction does not call for any interference and the order passed by the C.E.P.C. of the Reserve Bank of India also cannot be interfered with because the observation of the Lok Adalat has been noted but no direction has been issued. The direction is only of settlement of the dispute amicably.

Under such facts and circumstances, this writ application is disposed off with the observations as above.

Petitioners are at liberty to approach the appropriate forum for redressal of grievances.

(Nilu Agrawal, J)

Devendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	30.07.2018
Transmission Date	NA

