

25th November,
2020

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W.P.A. 6429 of 2020
with
CAN No. 1/2020
(Old No. CAN 5046/2020),

(Via Video Conference)

Awesome Infrastructure Pvt. Ltd. & Anr.
-vs-
Bank of Baroda & Ors.

Mr. Rahul Karmakar
Mr. Debabrata Ray

... for the petitioners.

Mr. Pradip Kumar Datta

... for the Respondent
Nos. 1 to 4.

Mr. Sanjoy Mukherjee
.....for the Respondent
No.5

This writ petition is for a direction on the respondent Bank (Bank of Baroda) for allowing the petitioner no.1 Company to operate the current account bearing No.28670200001013 stated at prayers (a) and (b) of the writ petition.

Learned counsel appearing for the petitioners submits that the petitioner no.1 is a Company and the second petitioner is one of the Directors of the Company. Counsel places several documents to show that the private respondent no.5 has been removed as a Director by a resolution taken at a meeting of the Board of Directors on 28th November, 2019.

Counsel submits that pursuant to such removal, the private respondent filed a Title Suit before the Alipore Court and prayed for various reliefs including injunction restraining the defendants (which includes the petitioner no.2) from initiating any monetary transactions from Bank of Baroda being the current account no. 28670200001013 of the said Company.

Counsel places the order passed on such application dated 13th December, 2019 by which the defendants in the said suit were restrained from making any agreement, indenture, instrument, etc. with the third party violating the provisions of the Companies Act the Memorandum and Articles of the Company. The order was to remain effective till 20th January, 2020. Counsel submits that the said order has been extended from time to time.

Counsel places a chain of correspondence between the petitioners and the advocate of the Bank of Baroda culminating in a letter dated 22nd September, 2020 of the written on behalf of the Bank which mentions that the plaintiff (the private respondent herein) has prayed for an order restraining the defendants from initiating any monetary transactions from the Bank and that due to this said fact, the Bank cannot deal with the current account, bearing the same number as mentioned in the plaint of the private respondent till disposal of the application for injunction filed by the private respondent.

Counsel submits that by reason of the refusal of the Bank who allow the petitioners to operate the current account, the business of the Company is being severely affected.

Learned counsel for the private respondent places the resolution taken by the company for removing the private respondent from Director of the Company and submits that the wife of the petitioner no.1 has been inducted as a Director in the Company in place of the private respondent. Counsel also submits that the private respondent has approached the National Company Law Tribunal (NCLT) for challenging the removal of the private respondent.

The Bank is represented and counsel appearing for the Bank submits that the Bank does not seek to stand in the way between the parties.

On hearing learned counsel, this court is of the view that whatever may be inequities of the removal of the private respondent as a Director of the Company, a writ court cannot look into the matter since appropriate relief can only be granted by the NCLT or any other forum which is competent to grant such relief. It is evident that the prayer of the private respondent of restraining the defendants (including the petitioner nos. 1 and 2 herein) from initiating any monetary transactions from the current account bearing the same number as prayers (a)

and (b) of the present writ petition, has not been granted by the Alipore Court.

The ordering portion of the order dated 13th December, 2019 makes it clear that relief has only been granted in respect of the petitioners herein from entering into any agreement, indenture, instrument, etc. with third parties which would have the effect of violating the provisions of the Companies Act and Memorandum and Articles of the Association of the Company. This would be reinforced from the recording of the learned Judge in the body of the order that the plaintiff (the private respondents) has prayed for an ad interim order of injunction in restraining the defendants from initiating any monetary transactions from the registered Bank account of the Company. The ordering portion does not mention this portion of the prayer of the private respondent.

In view of the above, WPA 6429 of 2020 is disposed of in terms of prayer (a).

The respondent Bank will allow the petitioner no.1 to operate the Bank account with the assistance of the private respondent, if required. The assistance given by the private respondent will be subject to any order passed by a competent forum with regard to the removal of the private respondent from the Company. This order has been made only with a view to ensuring that the Company is able to carry on its business by operating the

Bank account. Any assistance given by the private respondents in this regard shall not be seen as the private respondent acting as a Director of the Company or in a capacity which is contrary to the resolution taken on 28th November, 2019.

(Moushumi Bhattacharya, J.)