

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

MAT 1874 of 2022

with

CAN 1 of 2022

Reserved on : 01.02.2023

Pronounced on: 01.03.2023

Bhartia Mini Spring & Engineering Company Pvt. Ltd.

...Appellant

-Vs-

The State of West Bengal & Ors.

...Respondents

Present:-

Mr. Kishore Dutta, Senior Advocate

Mr. Rohit Banerjee,

Mr. R. N. Bandyopadhyay,

Mr. V. Singh, Advocates

... for the Appellant

Mr. Asish Kumar Guha

Mr., Joyak Kr. Gupta, Advocates

... for the State

Ms. Sangeetha Ghosh

... for the Respondent Nos. 2 to 4

Mr. Swatarup Banerjee,

Mr. Nirmalya Dasgupta,

Mr. Jitendra Patnaik

... for the Intervenor

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Rajarshi Bharadwaj, J:

1. By this appeal, the correctness of the judgement of the Learned Single Judge dated 15.09.2022 and as clarified vide order dated 17.11.2022 passed in W.P.A. No. 8370 of 2022 (Bhartia Mini Spring & Engineering Co. Pvt Ltd.- versus-The State of West Bengal & Ors.) has been questioned by the appellant/respondent No.1.

2. The facts of the case in a nutshell are that the writ petitioner herein the appellant namely Bhartia Mini Spring & Engineering Company. Pvt. Ltd was incorporated on 26th December 1984 under the provisions of the Companies Act, 1956 having registration No. ISO-9001/2015. The appellant company is a manufacturer and exporter of helical oil springs, spares and track items on approved list of Indian Railways.

3. The appellant/writ petitioner has bank accounts with respondent No. 2-4 (hereinafter referred to as respondent bank) Canara Bank, Howrah Branch and Canara Bank, Prinsep Street Branch. The main financial transactions of the petitioner company were being carried on in the respondent bank. The appellant/petitioner was maintaining two bank accounts being account No. 95401400000765 and 954030700021115 in the respondent bank.

4. The Directors to the petitioner company were one Rahul Kumar Singh, one Raj Kumar Singh, one Ricky Kumar Singh and the respondent No. 5 herein the intervenor in the writ petition one Ramesh Kumar Singh. The intervenor was one of the key promoters of the petitioner company. He was also a duly appointed Managing Director (DIN- 00120831) who held 50% of the total issued, subscribed and paid-up share capital of the company however he resigned from the Board on April 4, 2022 by Form No. DIR-12.

5. The respondent No. 5 in order to restrain one Rahul Kumar Singh through one Raj Kumar Singh filed a Title Suit being T.S No. 806 of 2022 before the Learned City Civil Court, Calcutta for direction upon the respondent bankers of the company to not allow operation of the bank accounts without joint

signatures, suspend operations of the bank accounts and investments through the appellant company's bank for the time being and to not give access to such accounts and investments. In the order dated April 7, 2022, an order of ad-interim injunction restraining operation of the bank account was granted till April 19, 2022 and the bank authority was directed to keep a close check on transactions of the petitioner company. Instead, the bank authority froze the appellant/ writ petitioner's bank account.

6. The title suit was subsequently withdrawn vide order dated April 25, 2022 by City Civil Court as dispute regarding accounts had been resolved. Several representations made by the appellant/writ petitioner did not lead to de-freezing of bank account by the respondent bank authorities.

7. The intervenor in the writ petition preferred a company petition being CP/170/KB 2020 before the Hon'ble National Company Law Tribunal (hereinafter referred to as Hon'ble NCLT), Kolkata Bench for his reinstatement as Director and to operate appellant/writ petitioner's bank account only with his consent and approval. The order dated July 18, 2022 directed that the shareholding, assets and composition of Board be maintained by the appellant/writ petitioner and further directed that the accounts of the company be regularly provided to the intervenor along with periodically bank statements fortnightly.

8. In this regard, the appellant filed a writ petition being WPA No. 8370 of 2022 before the Hon'ble Court at Calcutta. The writ petition was allowed vide an order dated September 15, 2022 by the Learned Single Judge and the respondent bank authority were directed to permit the petitioner to operate bank accounts without further fetters from the respondent bank.

9. The Learned Single Judge by order dated November 17, 2022 further clarified that the bank account shall be operated only on the concurrence of the present directors to the petitioner company and respondent No. 5. Thus, being aggrieved by the orders dated September 15, 2022 and as clarified vide order

dated November 17, 2022, the instant appeal by the appellant has been preferred.

10. Submissions of the Learned Counsel for the appellant/writ petitioner are that the filing of a Company petition being CP/170/KB/2022 under section 241/242 of the Companies Act, 2013 by the respondent No.5 for the ad-interim reliefs for the appellant's bank account to be operated only with his consent and approval has been refused by the Hon'ble NCLT. The Hon'ble NCLT has permitted the appellant to run its bank accounts and such decision of the Tribunal cannot be modified or changed by way of the impugned order as such order would contravene the doctrine of res judicata. Moreover, allowing the appellant company to operate the bank account only upon intimation to the respondent No.5 would have effects of frustrating the pending application before the Hon'ble NCLT, particularly when it has been disallowed by the Tribunal in the ad-interim stage.

11. The respondent No.5, the intervenor in the writ petition is an erstwhile director in the appellant company and has no locus standi to interfere with the regular affairs of the appellant company including operation of the bank accounts. However, despite granting the prayer for operation of the bank account by the appellant without any further limitations from the respondent bank, the Learned Single Judge should not have casted any obligation to get concurrence of the parties herein the appellant and respondent No.5 for any transaction made through the bank. The palpable collusion between the respondent bank and the respondent No.5 is motivated to disrupt functionality of the company and ultimately bring its affairs to a complete stoppage.

12. The order dated 18.07.2022 passed by the Hon'ble NCLT has directed to provide the respondent No.5 with the accounts of the appellant company along with periodical bank statement on a fortnight basis, as an ad-interim measure of protection that shall sufficiently keep the intervenor aware of the financial functionalities of the company. Therefore, there stands no possibility and/or any apprehension in future of any misappropriation.

13. It has been submitted by the respondent Bank, herein respondent No.2, 3 and 4 that on account of allegation of suspicious transactions of the bank accounts of the appellant company as well as to stop any illegal transaction made by the parties, the respondent bank as a preventive measure has frozen the accounts thereby disallowing any transaction.

14. Submissions of the Learned Counsel for the respondent No.5, the intervenor are that one Rahul Kumar Singh, the director in the appellant company since 2004 indulged in several fraud, forgery, misappropriation of funds and other criminality to render loss to the appellant company, in turn, manipulated records, books, registers, files and documents of the appellant company made unlawful gains for himself. Availing the benefit of individual operation of bank accounts, the said director under his sole signature issued cheques to bogus vendors and withdrawing huge cash to misappropriate funds. Owing to this reason the respondent No.5 filed a Title Suit to cease the bank operations. However, with the help of public records available in the official website of the RoC/MCA the said director illegally filed a withdrawal application in the Title Suit and obtained an order in favor of him vacating the ad-interim order passed directing the bank to not allow any operation.

15. The said director has also forged a resignation letter of the respondent No.5 stating that due to preoccupation elsewhere, the respondent No.5 is not in a position to devote time to the affairs of the company wherein the resignation has been approved by the said director. Moreover, despite raising several objections with respect to several transactions and entries, no statutory returns of the appellant company for the financial year 2020-21 have been filed.

16. Having heard the learned counsel for the parties and on perusal of the records, this Court finds that the Learned Single Judge has not erred in allowing

“the prayer in the present writ petition for allowing the Company represented by one of its Directors to operate the bank account without any further fetters from the respondent Bank. However, since the Court has been informed that the intervenor/applicant in CAN 1 of 2022 is the

petitioner in pending petition before the NCLT, Kolkata in which the representing Director before the Court is also a party, the order of removing the fetter in operating the bank account shall be subject to any orders passed in the NCLT proceeding.

By way of adequate protection to all the parties before the Court, any transaction made by either of the parties before the Court shall be upon intimation to one and another.”

17. The Learned Single Judge was mindful of the fact that an interim application is pending before NCLT, Kolkata for joint operation of bank accounts. Therefore, the order to make bank transactions by the parties with the concurrence of the other was passed to protect the interest of the parties pending final adjudication of the company petition and to prevent hampering of the pending application before the NCLT. The matter pending before the NCLT relates to affairs of a private company; its business efficacy, financial transactions, management and disputes between the shareholders of the company and thus the need for judicial intervention and interference into orders and proceedings of the NCLT must be kept to bare minimum.

18. For the foregoing reasons, no case is made out to interfere in the order of the Learned Single Judge and therefore, the appeal is devoid of any merits. All pending applications are accordingly disposed of. However, the appellant will be at liberty to raise all grounds raised in the present petition before the NCLT.

**(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE**

**(RAJARSHI BHARADWAJ)
JUDGE**

Kolkata
01.03.2023
PA(BS)