

**MAT 836 of 2020
With
CAN 1 of 2020
With
CAN 2 of 2022**

**Awesome Infrastructure Private Limited & Anr.
Vs.
Bank of Baroda & Ors.**

Mr. Deepnath Roy Chowdhury
Mr. Dhiman Ray
Mr. Dip Chanda

... ... for the appellants

Mr. Dipak Kumar Paul

... ... for the respondent nos.1 to 4

Mr. Pourush Bandyopadhyay
Mr. Barnik Ghosh

... ... for the respondent no.5

1. Heard Deepnath Roy Chowdhury, learned counsel for the appellants, Shri Dipak Kumar Paul, learned counsel for the respondent nos.1 to 4/bank and Shri Pourush Bandyopadhyay, learned counsel for the respondent no.5.
2. Briefly stated facts of the present case are that appellant no.1 is a private limited company incorporated under the Companies Act. The appellant no.2 is one of the directors in the aforesaid company. The respondent no.5 was also a director in the appellant no.1/company but he was removed from directorship of the company sometimes in the year 2019. Aggrieved with his removal from directorship, the respondent no.5 has

filed a petition before the National Company Law Tribunal which is stated to be pending. Learned counsel for the respondent no.5 has admitted before us that no interim relief could be obtained by the respondent no.5 in the aforesaid case pending before the National Company Law Tribunal. It is stated by learned counsel for the respondent no.5 that the respondent no.5 has filed an injunction suit before the Court of Civil Judge (Junior Division), 2nd Court at Alipore praying to restrain the appellants herein from initiating any monetary transaction from the current account in question. No interim relief so far was granted by the Civil Court in the injunction suit filed by the respondent no.5. It is stated by the learned counsel for the respondent no.5 that the injunction suit is still pending.

3. Since the respondent nos.1 to 4/bank were not permitting the appellants herein to operate the current account bearing no.28670200001013, therefore, the appellants herein filed WPA No.6429 of 2020 (Awesome Infrastructure Pvt. Ltd. & Anr. Vs. Bank of Baroda & Ors.) which was disposed of by the impugned order dated 25.11.2020 passed by the learned Single Judge. The concluding portion of the impugned order

passed by the learned Single Judge is reproduced below :

“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.”

4. The appellants herein are aggrieved with the impugned order of the learned Single Judge, only to the extent of direction issued for operating the bank account with the assistance of the private respondents. Hence, the appellants herein have filed the present appeal.
5. Learned counsel for the appellants submits that the respondent no.5 is neither a director nor has any authority to interfere with the normal working of the appellants' company or operation of the bank account, therefore, the direction issued by the learned Single Judge is bad in law. He submits that the learned Single Judge has allowed the respondent no.5 to become necessary part in day to day working of the appellants' company by allowing him to assist in the operation of the bank account,

whereas the legal position as it stands today, the respondent no.5 is a stranger and he could not yet get any relief so far either from the National Company Law Tribunal or in the injunction suit filed by him in the Civil Court.

6. Learned counsel for the respondent bank submits that the direction given by the learned Single Judge is not adverse to the respondent bank, rather it is a matter of dispute between the appellants and the respondent no.5.
7. Learned counsel for the respondent no.5 submits that the appellants the respondent no.5 was a direction in the appellants' company and he was illegally removed. Therefore, the learned Single Judge has not committed any error of law to allow the appellant no.1 to operate bank account with the assistance of the respondent no.5 herein. He, however, admits that the respondent no.5 could not get any relief so far against his removal from the directorship in the appellants' company, nor he could get any relief so far in the injunction suit filed in the Civil Court.
8. We have carefully considered the submissions of the learned counsel for the parties and perused the record of the appeal.
9. It is undisputed that the respondent no.5 has been removed from the directorship of the appellants'

company. The petition filed by the respondent no.5 before the National Company Law Tribunal is still pending in which the respondent no.5 could not get any relief so far. In the injunction suit also the respondent no.5 could not get any relief so far. Thus, the legal position as it stood at the time of passing of the impugned order and also as it stands today, the respondent no.5 has no legal right to assist the appellants' company or the appellant no.2 in operation of the bank account in question. Once the respondent no.5 has not authority to interfere with the working of the appellants' company including the operation of the bank account, there was no justifiable reason before the learned Single Judge to provide that the appellants shall operate bank account with the assistance of the respondent no.5. Therefore, the impugned order passed by the learned Single Judge is set aside to the extent it directs for operation of bank account with the assistance of the private respondent no.5 herein.

10. For all the reasons aforestated the appeal is allowed to the extent indicated above.
11. It is made clear that any observation made in the body of this order shall not be treated as adverse to the respondent no.5 either in the proceedings pending before the National Company Law Tribunal

or in the pending injunction suit or in any other suits.

12. Pending applications, if any, are also disposed of.

(Surya Prakash Kesarwani, J.)

(Rajarshi Bharadwaj, J.)