IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.17813 of 2009

Cotton County Retail Limited .... ***Petitioner***
Mr.Goutam Mukherji, Sr. Advocate

-versus-

UCO Bank, Cuttack and another .... ***Opp. Parties***
Mr. B.K. Udgata, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIK

<u>ORDER</u>
10.02.2022

<u>Order No.</u>

07. 1. The Petitioner approached this Court aggrieved by refusal of the Opposite Party UCO Bank to encash the bank guarantee (BG) in the sum of Rs. 15 lakhs issued in its favour. The original BG was issued in favour of M/s. Nahar Industrial Enterprises Limited ('Nahar') which was manufacturing apparels and garments under the brand name Cotton County. Subsequently, it was taken over and merged with M/s. Nahar Retail Limited on 25th October, 2008. The company's name further changed to Cotton County Retail Limited.

2. Nahar had appointed one Rajeet Udyog as its franchisee in Cuttack. Towards security against transfer of stocks, the said Rajeet Udyog furnished the aforementioned BG in favour of the Petitioner. The said BG was to expire on 18th July, 2007. The predecessor in the interest of the Petitioner issued a letter to the Bank on 1st June, 2007 calling upon it to issue a Demand

Draft for Rs.15,00,000/- upon encashment of the BG. Alternatively, the BG was asked to be extended for a period of one year in favour of Nahar Retail Ltd.

3. With the UCO Bank declining to do so reminders were sent. It is stated that on 17th October, 2007, UCO Bank informed the Petitioner that the State Consumer Disputes Redressal Commission, Cuttack (SCDRC) has restrained the bank for making payment upon encashment of the BG. Subsequently, the Petitioner found that the said consumer complaint had been dismissed by the SCDRC for non-prosecution on 22nd July, 2009. Another letter was written by the Petitioner to the Bank on 6th August 2009 asking for payment against the BG. This was refused and thereafter, the present petition was filed.

4. This Court has heard the learned counsel for the parties. Learned counsel for the Bank informs the Court that during pendency of the present petition, the period of the BG has expired and it was not renewed. The original BG has been returned to M/s. Rajeet Udyog.

5. Learned counsel for the Petitioner insisted that the Petitioner had requested the Bank during the validity of the BG to encash it or to extend its validity period, and since the Bank wrongly refused to do so it was still liable to make payment against the said BG.

6. The period of BG in question having already expired, it is not possible for the Court to issue any directions to the Bank to encash it at this stage. Nevertheless, it is open to the Petitioner to seek other remedies as may be available to it in accordance with law to recover its dues in respect of such BG.

7. The writ petition is disposed of in the above terms.

8. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

KC Bisoi