IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9955 of 2022

M/s. Kalinga Polypack Pvt. Ltd. & Others .... ***Petitioners***

Mr. Bigyan Kumar Sharma, Advocate

-versus-

District Magistrate-cum-Collector, Cuttack and Others .... ***Opp. Parties***

Mr. Bhaskar Chandra Panda, Advocate for the Bank

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER (Oral)
11.07.2022

Order No.

02. **1.** This matter is taken up through hybrid arrangement (virtual/physical mode).

2. The petitioner No.1 is the defaulting borrower and petitioner No.5/Narasingha Purohita is the guarantor, whereas petitioner Nos.2 to 4 are the Directors of Petitioner No.1 Company.

3. Briefly the facts are that the petitioner Company had availed a Term loan of Rs.2.70 crores and a Cash Credit loan of Rs.80 lakhs during 2016-2017 from the erstwhile Corporation Bank, Cuttack, at present Union Bank of India. Due to default in repayment of the installments and non-servicing of the C.C. Loan Account, both the accounts were declared NPA on 31.03.2019 leading to issuance of a Demand Notice dated 01.07.2019 under Section 13 (2) of the SARFAESI Act, 2002 (for short "the Act, 2002") recalling the outstanding liabilities of Rs.3,82,12,506/- plus expenses due as on 01.07.2019. The symbolic possession of the mortgaged properties was assumed on 19.12.2019 by issuance of a notice under Section 13 (4) of the Act, 2002. An application under Section 14 of the Act was filed on 19.02.2020 by the Bank before the Collector-cum-District Magistrate, Cuttack for securing physical possession.

4. The challenge in the present writ petition is laid to the order dated 30.03.2022 (Annexure-2) passed by the Collector & District Magistrate, Cuttack on the application moved by the secured creditor (Union Bank of India) under Section 14 of the Act, 2002, whereby official assistance has been provided for taking over the actual physical possession of the secured assets.

5. The only argument raised by the learned counsel for the petitioners is that by virtue of the second proviso, the District Magistrate is required to pass suitable order on the application under Section 14 within a period of 30 days from the date of application, and thereafter the next proviso provides that the District Magistrate may after recording of reason in writing thereafter pass an order within an extended period not exceeding further 60 days. In the instant case, the application was moved by the Bank on 19.02.2020, however the same came to be decided on 30.03.2022 without recording of reasons for extending the time and further beyond the outer limit of limitation provided, therefore the impugned order (Annexure-2) is bad in law and liable to be set aside.

6. After considering the submissions, we are not inclined to accept the stand of the petitioners. It is well settled that such like direction for deciding the applications within a time frame by the official authorities/State authorities are directory and not mandatory. Still further the non-recording of the reasons and the delay in deciding the application has if at all caused a prejudice to the secured creditors/ Bank and not the defaulting borrower/guarantor like the petitioners, who are in fact beneficiaries of such a delay. In our view, the said conditions have been provided for ensuring speedy recoveries of the outstanding dues of secured creditors keeping in view the Scheme of the Act, 2002.

Be that as it may, we are not inclined to entertain the writ petition as the proper remedy of the petitioners is to file an application challenging the said order, if so advised, under Section 17 of the Act, 2002 as held by the Division Bench of this Court in W.P.(C) No.26500 of 2021 (*M/s. Maa Kalika Bhandar* *and Others v. The Collector and District Magistrate, Khordha and Others*) and W.P.(C) No.27775 of 2021 (*M/s. Dwarikamayee Bhandar and another v. The Collector and District Magistrate, Khordha and Others*) decided on 29.06.2022.

7. The present Writ Petition is accordingly dismissed, however relegating the petitioners to seek their remedies available in law.

(Jaswant Singh)
Judge

(M. S. Raman)
Judge

AKK

11th July, 2022
Cuttack