

IN THE HIGH COURT OF ORISSA AT CUTTACK

**ARBA No.19 of 2022
(Through hybrid mode)**

***M/S. Ashok Bricks Industries Pvt.
Ltd.***

Appellant

Mr. D.P.Nanda, Senior Advocate
Mr. Debendra Kumar Dwibedi, Advocate

-versus-

***National Small Industries
Corporation Ltd. and another***

Respondents

CORAM: JUSTICE ARINDAM SINHA

**ORDER
29.04.2022**

Order No.

01. 1. Mr. Nanda, learned senior advocate appears on behalf of appellant and submits, impugned is order dated 31st March, 2022 passed by the Court below in requesting to grant ad-interim measure of restraining encashment against two bank guarantees aggregate Rs.2 crores, invoked by opposite party no.1 for payment by opposite party no.2 (bank). He submits, by reason of consequences and setback due to super cyclone 'Fani' his client fell into default on facilities extended by opposite party no.2. Said opposite party no.2 wrongfully declared his client's account be a nonperforming asset (NPA). Consequently,

his client was unable to renew the bank guarantees, wherein the claim period is up to 28th June, 2022.

2. He submits further, his client obtained raw materials supplied from opposite party no.1, payment for which was secured by the bank guarantees. There was no default committed on transactions between his client and opposite party no.1. He draws attention to invocation letter dated 23rd March, 2022, to demonstrate that the reason for invocation is omission to renew the bank guarantees. He submits, the bank guarantees will be renewed before expiry of claim period on 28th June, 2022. On query from Court he submits, payout on the bank guarantees have not been made by opposite party no.2, presumably because his client's account has declared NPA. On further query from Court he submits, his client has taken steps for issuance of notice pursuant to impugned order.

3. The invocation was as on 23rd March, 2022. It appears, appellant promptly approached the Court below for ad-interim measure, rejected by impugned order dated 31st March, 2022. This appeal was presented on 25th April, 2022. Payout on the bank guarantees have not yet been made by opposite party no.2.

4. Appellant has liberty to serve this order on opposite parties and mention before the Court below for early hearing. On approach by appellant to the Court below, furnishing proof of service of this order on opposite parties, said Court is requested to post the petition for hearing in presence of parties and deal with it.

5. With above observations, the appeal is disposed of.

(Arindam Sinha)
Judge

Prasant

