

GAHC010140992021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5029/2021

M/S TRIDEEP CHANGMAI
REPRESENTED BY ITS PROPRIETOR SRI TRIDEEP CHANGMAI, AGED
ABOUT 44 YEARS, SON OF SRI C.K CHANGMAI, HAVING ITS PLACE OF
BUSINESS AT HOUSE NO. 06, ROOM NO. 103, OPP. STATE BANK OF INDIA,
M.R.D ROAD, CHANDMARI, DIST KAMRUP (M) 781021, GUWAHATI ASSAM

VERSUS

MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL
(SAMADHAAN) AND ANR
MSEFC, CHHATTISHGARH, OFFICE OF THE DIRECTORATE OF
INDUSTRIES, UDYOG BHAWAN, RING ROAD NO. 1, TELIBANDHA,
RAIPUR, C.G CHAHATTISGARH, 492001

2:M/S SUNTECH GEOTEXTILE PRIVATE LIMITED
REPRESENTED BY SRI AMIT JAIN
RESIDENT OF PRABHU KUTIR
RAMADAN MARG
VILL RAJNANDGAON
CHHATTISHGARH
49144

Advocate for the Petitioner : MR. B PATHAK

Advocate for the Respondent : MR G N SAHEWALLA (R-2)

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

JUDGMENT & ORDER (ORAL)

Date : 26-02-2024

Heard Mr. B. Pathak, learned counsel for the petitioner. Also heard Mr. G.N. Sahewalla, learned Senior Counsel assisted by Mr. H.K. Sarma, learned counsel for the respondent No. 2.

2. By filing this writ petition, the petitioner is challenging the intimation order dated 29.07.2021 issued by the respondent No. 1 (Micro and Small Enterprises Facilitation Council), advising the petitioner to make the due payments to respondent No. 2, failing which, on expiry of 15 (Fifteen) days, a case will be registered by the respondent No. 1.

3. The brief facts of the case are that the respondent No. 2 is a high quality manufacturer and supplier of geo-synthetic products. The petitioner in the year 2015 purchased non-woven geo-textile materials from the respondent No. 2 amounting to Rs.29,12,144/- (Rupees Twenty Nine Lakh Twelve Thousand One Hundred Forty Four). The same were allegedly delivered to the petitioner at the address furnished by the petitioner. It is the further case of the petitioner that the respondent No. 1 without conducting any conciliation proceedings, intimated the petitioner by the impugned intimation order dated 29.07.2021 to make the balance payment with regard to the aforesaid purchase, failing which a case shall be registered against the petitioner.

4. Mr. B. Pathak, learned counsel for the petitioner submits that the action of the respondent No. 1 is totally arbitrary and uncalled for.

5. Mr. G.N. Sahewalla, learned Senior Counsel appearing for the respondent No. 2 on the other hand submits that this writ petition is pre-mature. He further

submits that out of the total amount of Rs.29,12,144/- (Rupees Twenty Nine Lakh Twelve Thousand One Hundred Forty Four), a sum of Rs.50,000/- (Rupees Fifty Thousand) was paid by the petitioner against the subject supply. However, the balance Rs.28,62,144/- (Rupees Twenty Eight Lakh Sixty Two Thousand One Hundred Forty Four) was not paid. Accordingly, the respondent No. 2 was compelled to approach the respondent No. 1 by filing an application under Section 18 (1) of the *Micro, Small and Medium Enterprises Development Act, 2006* (hereinafter referred as the Act of 2006). He further submits that upon receipt of the said application, along with the supporting documents and upon scrutinizing the same, the respondent No. 1 issued the intimation order dated 29.07.2021 to the petitioner to make necessary payments.

6. I have heard the submissions made at the bar and have perused the materials available on record.

7. In order to appreciate the rival contentions of the parties, Sections 15, 16, 17 and 18 of the Act of 2006 are reproduced hereunder for ready reference:

“15. Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing, or, where there is no agreement in this behalf, before the appointed day:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

16. Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be from the date immediately

following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

17. For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16.

18. (1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1966 shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such reference."

8. A bare perusal of the aforesaid provisions of law indicates that under

Section 15 where any supplier supplies any goods to a buyer, the buyer is under an obligation to make the payment either on the agreed date and where there is no agreement, before the appointed day. Further, under Section 16 it is provided that if the payment is not made as contemplated under section 15, the buyer shall be liable to pay compound interest with monthly rests to the supplier. Furthermore, under Section 17, the buyer is liable to pay the amount with interest for any goods supplied or services rendered by the supplier. Section 18 provides the mechanism of making a reference to the Micro and Small Enterprises Facilitation Council, when any dispute arises with regard to recovery of amount due under Section 17.

9. It appears that if any party to a dispute makes reference to the said Council with regard to the amount due under Section 17, the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and that the provisions of Section 65 to 81 of the Arbitration and Conciliation Act, 1996 shall apply to such dispute. It further appears that in case such conciliation fails, the Council shall either itself take up the dispute for arbitration or refer it to any such institution in terms of the provisions of Arbitration and Conciliation Act, 1996.

10. Thus, in a case, where there is a dispute as regards the recovery of the amount, on a reference being made before the said Council, by either party to the dispute; a conciliation process shall be initially initiated, failing which arbitrator as stipulated under the said section shall be constituted to conduct arbitration proceedings.

11. In the present case, it appears that the petitioner has purchased non-

woven geo-textile products from the respondent No. 2 amounting to Rs.29,12,144/- (Rupees Twenty Nine Lakh Twelve Thousand One Hundred Forty Four) out of which, Rs.50,000/- (Rupees Fifty Thousand) was paid by the NEFT transaction. However, the balance amount of Rs.28,62,144/- (Rupees Twenty Eight Lakh Sixty Two Thousand One Hundred Forty Four) is still remaining due for which the respondent No. 2 filed an application before the respondent No. 1 under Section 18(1) of the Act of 2006.

12. From the affidavit-in-opposition by the respondent No. 2, it appears that the respondent No. 1 upon receiving the said application along with supporting documents and after scrutinizing the same, was of the view that the petitioner is a buyer as defined under Section 2(d) of the Act of 2006 and on the other hand, respondent No. 2 is a supplier as defined under Section 2(n) of the Act of 2006 and consequently, the intimation order dated 29.07.2021 was issued to the petitioner to the effect that *"if payment due is not paid within 15 days, a case shall be registered under the provisions of the Act 2006"*.

13. Upon receiving the aforesaid notice, the petitioner approached before this Court by way of this writ petition and thereby obtained an interim order in the matter.

14. The mandate of the law is that a mechanism has been provided under Section 18 when a dispute arises as regards to the payment. The petitioner instead of availing the aforesaid remedy, approached this Court and scuttled the mechanism provided in law. Under the provisions of Section 18, the matter shall be first attempted to resolve by way of a conciliation proceeding, failing which arbitration proceeding as prescribed under Section 18 shall be conducted.

15. In view of the aforesaid provisions of law, this Court is of the opinion that

there is no justification in keeping this writ petition pending before this Court. As such, this writ petition is disposed of with the direction that the petitioner is at liberty to avail the remedy as provided under Section 18 and or respond to the intimation notice dated 29.07.2021 within a period of one month from today, failing which, the authorities are at liberty to proceed in accordance with law.

16. Interim order passed earlier shall stand vacated.

17. With the aforesaid observations and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant