

GAHC010226712021



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

Case No. : WP(C)/39/2022

M/S WEB PRINTZ
REP. BY ITS PROPRIETOR APARAJITA RAJKHOWA, AGE- 38 YRS.
W/O- PARAG KR. RAJKHOWA,
OFFICE- HATICHILA, KHANKAR GAON, GUWAHATI- CHANDRAPUR
ROAD, GUWAHATI ASSAM.
P.S- PRAGJYOTISHPUR, PIN-781150.
E.MAIL- WEB_PRINTZ@YAHOO.COM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF ELEMENTARY EDUCATION, DISPUR, GUWAHATI-06

2:THE CHAIRMAN
ASSAM TEXTBOOK PRODUCTION AND PUBLICATION CORPORATION
LTD. PANBAZAR
GUWAHATI-781001

3:THE MANAGING DIRECTOR
ASSAM TEXTBOOK PRODUCTION AND PUBLICATION CORPORATION
LTD. PANBAZAR
GUWAHATI-78100

Advocate for the Petitioner : MR. M K BORAH

Advocate for the Respondent : SC, ELEM. EDU

Linked Case : WP(C)/4794/2022

ASSAM STATE TEXTBOOK PRODUCTION AND PUBLICATION
CORPORATION LIMITED
REP. BY ITS MANAGING DIRECTOR
SRI SHAH NAWAZ CHOWDHURY AND HAVING ITS OFFICE AT G.N.B. ROAD
PANBAZAR
GUWAHATI- 781001
DIST.- KAMRUP (M)
ASSAM.

VERSUS

MICRO AND SMALL ENTERPRISE FACILITATION COUNCIL AND 2 ORS
REP. BY ITS CHAIRMAN AND HAVING ITS OFFICE AT OFFICE OF
COMMISSIONER OF INDUSTRIES AND COMMERCE
UDYOG BHAWAN
BAMUNIMAIDAN
GUWAHATI- 781021
DIST.- KAMRUP (M)
ASSAM.

2:THE CHAIRMAN
MICRO AND SMALL ENTERPRISE FACILITATION COUNCIL
ASSAM
AT OFFICE OF THE COMMISSIONER OF INDUSTRIES AND COMMERCE
UDYOG BHAWAN
BAMUNIMAIDAM
GUWAHATI- 781021
DIST.- KAMRUP (M)
ASSAM.

3:M/S WEB PRINTZ
REP. BY ITS PROPRIETOR SMT. APARAJITA RAJKHOWA
AND HAVING ITS REGISTERED OFFICE AT HATICHILA
KHANKAR GAON
GUWAHATI-CHANDRAPUR ROAD
GUWAHATI- 781150
DIST.- KAMRUP (M)
ASSAM.

Advocate for : MR. P N GOSWAMI

Advocate for : SC

INDUSTRIES AND COMMERCE appearing for MICRO AND SMALL
ENTERPRISE FACILITATION COUNCIL AND 2 ORS

BEFORE
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI
ORDER

28.02.2024

Heard Mr K P Pathak, learned counsel for the petitioner in WP(C) No. 4794 of 2022 and for the respondent in WP(C) No. 39 of 2022 and Mr M K Boro, learned counsel for the respondent No. 3/M/s Web Printz in WP(C) No. 4794 of 2022 and for the petitioner in WP(C) No. 39 of 2022. Also heard Mr A Kalita, learned Standing Counsel for Industries and Commerce.

2. Since the issue is connected, both the writ petitions are taken up for disposal by the common judgment and order.

3. In WP(C) No. 4794/2022, the petitioner is assailing the directions passed by the Micro and Small Enterprise Facilitation Council, Assam, vide the minutes dated 22.02.2021, whereby the conciliation authorities passed an award to the effect that the petitioner will pay interest amount as per Section 16 of the Micro, Small and Medium Enterprises Development Act, 2006.

4. In WP(C) No. 39 of 2022, the petitioner by filing the writ petition is seeking a direction to the respondent to pay the interest as awarded by the Micro and Small enterprise Facilitation Council, vide the Award dated 09.03.2021.

5. The facts of the case is that as per the concerned work orders, the petitioner in WP(C) No. 39/2022, who is the respondent No. 3 in WP(C) No. 4794/2022, i.e. M/s

Web Printz supplied text books to the writ petitioner, Assam State Textbook Production and Publication Corporation Limited. Though payments have been made by the petitioner to the respondent against the supply of the aforesaid text books, interest was not paid in terms of Section 16 of the MSMED Act. Accordingly, the respondent filed an application before the Micro and Small Enterprise Facilitation Council, Assam, for settling the dispute that has arisen between the parties for recovery of the said interest. Though the settlement was not successful before the Micro and Small Enterprise Facilitation Council, the Council passed the award directing the writ petitioner to pay the subject interest to the respondent.

6. Mr K P Pathak, learned counsel for the petitioner submits that the impugned award of the Micro and Small enterprise Facilitation Council, is without jurisdiction and as such is illegal. He further submits that the mandate of the law under Section 18 is absolutely unambiguous to the effect that dispute shall be settled by arbitration.

7. Mr Boro, on the other hand, submits that the conciliation proceedings failed because of the non-representation of the writ petitioners and as such, the award ought not be interfered with and the interest as directed under the award dated 09.03.2021, be paid.

8. I have heard the submissions made at the Bar and have perused the materials available on record.

9. Sections 16, 17 and 18 of the Micro, Small and Medium Enterprises Development

Act, 2006, are reproduced hereunder for a ready reference:-

“16. Date from which and rate at which interest is payable.—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. Recovery of amount due.—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. Reference to Micro and Small Enterprises Facilitation Council.—

(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, 1996 (26 of 1996) 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 (26 of 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 a reference.”

10. A bare perusal of the aforesaid provisions indicates that in case there is a dispute as regards the recovery of an amount due, under the provisions of the said Act, a party has the right to refer the dispute to the conciliation authorities under Section 18 for resolving the said dispute. It is further provided under Section 18 that if such conciliation proceedings fail, the dispute shall be referred to the arbitration for settlement.

11. In the present case, admittedly, there was no settlement arrived before the conciliation authorities. It appears from the letter dated 01.12.2020, annexed as Annexure-F to the writ petition that the writ petitioner did not come into a settlement as regards payment of interest.

12. In view of the aforesaid letter, the order of the Commissioner, Industries and

Commerce, Assam and Chairman, Micro and Small enterprise Facilitation Council, Assam (Conciliation Authority) to the effect that the writ petitioner is directed to pay interest amount as per Section 16 of the said Act, is *per se* illegal and liable to be interfered with, inasmuch, as the conciliation authorities have no jurisdiction or power whatsoever, to pass award where settlement has not been arrived between the parties.

13. Accordingly, the award dated 09.03.2021, is hereby set aside and quashed.

14. Resultantly, the writ petition, being WP(C) No. 4794/2022 is allowed.

15. Consequently, the writ petition, being WP(C) No. 39/2022 is dismissed.

16. It is needless to clarify that the subject dispute shall now be referred to the arbitration, in accordance with law.

17. Writ petitions, accordingly, stand disposed of.

JUDGE

Comparing Assistant