

GAHC010315922019



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

Case No. : WP(C)/9467/2019

M/S J L ELECTRICAL AGENCY AND 15 ORS
A PROPRIETORSHIP FIRM, HAVING ITS OFFICE AT NAPOMUA, DIST-
JORHAT, ASSAM. REP. BY IT PROPRIETOR MR. RINKUMONI DUTTA
(D.O.B.- 31.08.1986)

2: M/S HAZARIKA TRADERS
A PROPRIETORSHIP FIRM
HAVING ITS OFFICE AT SANTIPUR
DIST- JORHAT
ASSAM. REP. BY ITS PROPRIETOR MR. DIPU HAZARIKA (D.O.B.-
12.01.1972)

3: M/S DUTTA ELECTRICALS
A PROPRIETORSHIP FIRM
HAVING ITS OFFICE AT NOWBOISHIA GAON
DIST.- JORHAT
ASSAM. REP. BY ITS PROPRIETOR MR. DINOMONI DUTTA. (D.O.B.-
01.01.1976)

4: M/S BORAH ELECTRICALS
A PROPRIETORSHIP FIRM
HAVING ITS OFFICE AT DISOI NAGAR
DIST.- JORHAT
ASSAM. REP. BY ITS PROPRIETOR MR. NITUL BORAH (D.O.B.- 01.08.1975)

5: M/S A B ELECTRONICS
A PROPRIETORSHIP FIRM
HAVING ITS OFFICE AT BORALI GAON
NEMATI GHAT
DIST.- JORHAT
ASSAM. REP. BY ITS PROPRIETOR MR. BIMAN CHANDRA DAS (D.O.B.-
01.02.1982).

6: M/S BHAIJAN HUSSAIN

A PROPRIETORSHIP FIRM
HAVING ITS OFFICE AT DHEMAJI KABRATNA
P.O. BHGURI
DIST.- DHEMAJI
ASSAM. REP. BY ITS PROPRIETOR MR. BHAIJAN HUSSAIN (D.O.B.-
29.01.1971)

7: M/S S B ASSOCIATION
A PROPRIETORSHIP FIRM
HAVING ITS OFFICE AT BORPUKHARIPAR GAON
PO- MUDOI GAON
DIST- JORHAT
ASSAM. REP. BY ITS PROPRIETOR MR. SANJIB BORAH (D.O.B.- 04.05.1984)

8: M/S S S ELECTRICALS
A PROPRIETORSHIP FIRM
HAVING ITS OFFICE AT KOLAKHOWA GAON
DIST.- JORHAT
ASSAM. REP. BY ITS PROPRIETOR MR. SOURAV SAIKIA (D.O.B.- 30.04.1974)

9: M/S N NATH ELECTRICAL AGENCY
A PROPRIETORSHIP FIRM
HAVING ITS OFFICE AT VILL- RONGDOI HOLLOWCHAK
DIST.- JORHAT
ASSAM. REP. BY ITS PROPRIETOR MR. NITUL NATH (D.O.B.- 01.01.1969).

10: M/S P B ENTERPRISE
A PROPRIETORSHIP FIRM
HAVING ITS OFFICE AT KOLAKHOWA GAON
DIST. JORHAT
ASSAM. REP. BY ITS PROPRIETOR MR. SOURAV SAIKIA (D.O.B.- 30.04.1974)

11: M/S PARIKHIT BORUAH
A PROPRIETORSHIP FIRM
HAVING ITS OFFICE AT CHARI GAON
BAHONA
DIST.- JORHAT
ASSAM. REP. BY ITS PROPRIETOR MR. PARIKHIT BORUAH (D.O.B.-
06.08.1981).

12: M/S PERFECT ELECTRICAL
A PROPRIETORSHIP FIRM
HAVING ITS OFFICE AT ITATHULI GARMUR
DIST.- JORHAT
ASSAM. REP. BY ITS PROPRIETOR KRISHNA GOSH (D.O.B.- 19.08.1953).

13: M/S SUN ENTERPRISE
A PROPRIETORSHIP FIRM

HAVING ITS OFFICE AT TANTI GAON
PURANA TITABOR
DIST.- JORHAT
ASSAM. REP. BY ITS PROPRIETOR MR. PANKOJ SAIKIA. (D.O.B.-
11.12.1984).

14: M/S HAZARIKA ENTERPRISE
A PROPRIETORSHIP FIRM
HAVING ITS OFFICE AT NIKINI KHOWA
GAYANGAON
MAJULI
ASSAM. REP. BY ITS PROPRIETOR MR. PRODIP HAZARIKA (D.O.B.-
01.03.1976).

15: M/S M D ENTERPRISE
A PROPRIETORSHIP FIRM
HAVING ITS OFFICE AT MAJULI GARMUR
ASSAM. REP. BY ITS PROPRIETOR MR. MUNINDRA PEGU (D.O.B.-
05.02.1991).

16: M/S ARUNDOI ENTERPRISE
A PROPRIETORSHIP FIRM
HAVING ITS OFFICE AT POHUMORA NATH GAON
MAJULI
ASSAM. REP. BY ITS PROPRIETOR MR. PRAFULLA NATH

VERSUS

THE STATE OF ASSAM AND 9 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, POWER
DEPTT., DISPUR, GHY.-06.

2:THE APDCL
BIJULEE BHAWAN
5TH FLOOR
PALTAN BAZAR
GUWAHATI- 781001.

3:THE MANAGING DIRECTOR
APDCL
BIJULEE BHAWAN
5TH FLOOR
PALTAN BAZAR
GUWAHATI- 781001.

4:THE CHIEF GENERAL MANAGER (COM AND EE)
APDCL
BIJULEE BHAWAN

PALTAN BAZAR
GUWAHATI- 781001.

5:THE GENERAL MANAGER (COM-REV)
APDCL
BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI- 781001.

6:THE ASSAM STATE ELECTRICITY BOARD
BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI- 781001.

7:THE CEO
JEC
APDCL
JORHAT.

8:ASSTT. GENERAL MANAGER
JORHAT ELECTRICAL DIVISION-I
APDCL
JORHAT.

9:ASSTT. GENERAL MANAGER
JORHAT ELECTRICAL DIVISION-II
APDCL
JORHAT

10:ASSTT. GENERAL MANAGER
JORHAT ELECTRICAL DIVISION-III
APDCL
JORHAT

Advocate for the Petitioner : MR. J ROY

Advocate for the Respondent : SC, APDCL

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

20.05.2024

Heard Mr. J. Roy, learned Sr. Counsel assisted by Mr. R. Hazarika, learned

counsel for the petitioners and Mr. K.P. Pathak, learned Standing Counsel, APDCL. Ms. S. Sarma, learned Government Advocate appears for the State respondents.

2. By way of the instant writ petition the writ petitioners are assailing the impugned final notice of termination issued to the petitioners by the APDCL and for release of their respective outstanding dues.

3. The brief facts of the case is that the 16 numbers of the writ petitioners are franchisees under the APDCL under Jorhat Electrical Circle. The Jorhat Electrical Circle consists of 3 divisions, wherein the petitioners have been serving as franchisees under the APDCL in the said electrical circles since 2005. After expiry of the 2 years of service of the petitioners, in the month of September, 2018, the respondent authorities have not extended their services for another 3 years and also not released their outstanding dues. As such, the present writ petition has been filed.

4. It appears that the petitioners have been appointed vide an Agreement dated 01.10.2016. It further appears that due to notice of termination and for non payment of the outstanding dues to the petitioners, the petitioners herein have filed the instant writ petition. The details of the payment due to the petitioners are as follows-

“Total amount receivable by the Franchise from APDCL

1. Jorhat Electrical sub div III Total amount (Rs)	= 25,72,141/-
2. Jorhat Electrical sub div I Total amount (Rs)	= 17,85,308/-
3. Titabar Electrical sub div Total amount (Rs)	= 7,03,366/-
4. Dargoan Electrical sub div Total amount (Rs)	= 6,69,892/-
5. Majuli Electrical sub div Total amount (Rs)	= 7,64,075/-

Grand Total = 64,94,782/-”

5. Before going into the other issues involved in the writ petition this Court finds that the subject agreement provides for a dispute mechanism. Clause 15 of the agreement is reproduced hereinbelow for ready reference-

“15. Dispute

1) Any dispute or difference between the parties arising from the agreement shall be tried to be settled amicably through consultations and negotiations by the AGM of the franchised area.

ii) If remains unsettled it shall be first referred to the CEO of the franchised area for amicable settlement.

iii) If the dispute still remains unresolved after negotiation between the franchisee and CEO of the franchised area, it shall be referred to the General Manager (Com-Rev), APDCL for final settlement.”

6. It also appears from the affidavit-in-opposition filed on behalf of the APDCL that the APDCL authorities disputes the claim of the petitioners. There appears to have been a dispute arisen between the parties.

7. That being so, the said dispute is ought to be resolved in view of the mechanism stipulated in the agreement made between the parties. However, without resorting to the aforesaid mechanism, this writ petition has been filed.

8. In view of the alternative mechanism available between the parties, this Court finds no merit whatsoever in this writ petition.

9. Accordingly, the writ petition stands dismissed.

10. Needless to clarify that the petitioners are at liberty to resort to the mechanism as provided under the subject agreement, if so desired.

JUDGE

Comparing Assistant