

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.586 of 2024

M/s Maa Harisiddhi Infra Developers Pvt. Ltd., a Private Limited Company, registered under the Companies Act, 1956, having its registered Office at S-6 and S-7, 2nd Floor, L.K. Corporate Tower, L.K. Corporate and Legal Park, Dhamtari Road, District Raipur, Chhattisgarh, constituted by its Directors, namely,

- i. Sri Koda Babu Ella Rao, son of Late Koda Appanna, residing at Banyan-46, Chhattisgarh-Housing Board Colony, Boriya Kala, Housing Board Colony, Boria Kalan, P.O.-Mana Camp, District-Raipur, Chhattisgarh, PIN-492015, aged about 46 years;
- ii. Smt. Koda Prasanna, wife of Sri Koda Babu Ella Rao, residing at Banyan-46, Chhattisgarh-Housing Board Colony, Boriya Kala, Housing Board Colony, Boria Kalan, P.O.-Mana Camp, District-Raipur, Chhattisgarh, PIN-492015, aged about 36 years;
- iii. Sri Ch. Y. Krishna, son of Late Ch.. Masenu, resident of Cedar-34, Chhattisgarh-Housing Board Colony, Boriya Kala, Housing Board Colony, Boria Kalan, P.O.-Mana Camp, District-Raipur, Chhattisgarh, PIN-492015, aged about 34 years;

Represented by its Authorized Representative, Sri Koda Babu Ella Rao, son of Late Koda Appanna, residing at Banyan-46, Chhattisgarh-Housing Board Colony, Boria Kala, Housing Board Colony, Boria Kalan, P.O.-Mana Camp, District-Raipur, Chhattisgarh, PIN-492015, aged about 46 years

.....Appellant(s);

Versus

1. The Union of India, represented by the Secretary, Ministry of Power, having his office at Shram Shakti Bhawan, Rafi Marg, New Delhi-110001.
2. The Secretary, Ministry of Power, Government of India, having his office at Shram Shakti Bhawan, Rafi Marg, New Delhi-110001.
3. The State of Tripura, represented by the Secretary (Power), Government of Tripura, having his office at Secretariat Building, PO- Kunjaban, PS- New Capital Complex, District- West Tripura, PIN-799006.
4. The Secretary (Power), Government of Tripura, having his office at Secretariat Building, PO- Kunjaban, PS- New Capital Complex, District- West Tripura, PIN-799006.
5. The Tripura State Electricity Corporation Limited, represented by its Managing Director, having his office at Bidyut Bhavan, North Banamalipur, Agartala, Tripura, PIN-799001.
6. The Managing Director, Tripura State Electricity Corporation Limited, having his office at Bidyut Bhavan, North Banamalipur, Agartala, Tripura, PIN-799001.
7. REC, Zonal Office Kolkata, represented by its Senior Chief Program Officer, having his office at IB-186, Sector III, Salt Lake, Kolkata 700106.

.....Respondent(s).

For Petitioner(s)	: Mr. Somik Deb, Sr. Advocate, Mr. Pannalal Debbarma, Advocate.
For Respondent(s)	: Mr. Saktimoy Chakraborti, Advocate General, Mr. Bidyut Majumder, Deputy SGI, Mr. Karnajit De, Addl. G.A., Mr. Nepal Majumdar, Advocate, Mrs. Pinki Chakraborty, Advocate, Mr. Kushal Deb, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Order

01/05/2025

Heard Mr. Somik Deb, learned senior counsel assisted by Mr. Pannalal Debbarma, learned counsel for the petitioner and Mr. Saktimoy Chakraborti, learned Advocate General representing the State and TSECL assisted by Mr. Nepal Majumdar, learned counsel. Mr. Bidyut Majumder, learned Deputy SGI represents the Union of India.

2. The writ petition was preferred with the following prayer:

"i) Issue Rule, calling upon the official respondents and each one of them, to show cause as to why a Writ of Certiorari and/or in the nature thereof, shall not be issued, for directing them, to transmit the records, appertaining to this writ petition, lying with them, for quashing setting aside the impugned Letters dated 19.11.2021 & 16.03.2024 (Annexures-11 & 28 respectively supra);

ii) Issue Rule, calling upon the official respondents and each one of them to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, for mandating/directing them, to forthwith revoke/rescind the impugned Letters dated 19.11.2021 & 16.03.2024 (Annexures-11 & 28 respectively supra);

iii) Issue Rule, calling upon the official respondents and each one of them to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, for mandating/directing them, specifically the respondent Nos.5 & 6, to forthwith pay to the petitioner, the following amounts of:-

(i) Rs. 13,06,55,211/-, as already admitted by the respondent Nos. 5 & 6,

(ii) Rs.2,25,43,224/-, illegally withheld under the head of Liquidated Damage, by the respondent Nos.5 & 6,

(iii) Rs.1,98,49,790/-, unauthorizedly withheld under the head of less payment of Central Goods & Service Tax/Tripura State Goods & Service Tax/Integrated Goods & Service Tax, by the respondent Nos.5 & 6,

(iv) Rs.1,54,17,106/-, illegally and unlawfully withheld because of erroneous calculation of the amounts payable to the petitioner by the respondent Nos.5 & 6, &

(v) Rs.15,20,16,470/-, illegally and unlawfully withheld by the respondent Nos. 5 & 6 despite corresponding payment having been received from

the respondent Nos.1 & 2, along with Interest at the rate of 24% per annum, on to each of the said amounts till the date of actual payment;

vi) Call for the records appertaining to this writ petition;

vii) After hearing the parties, be pleased to make the Rule Absolute in terms of (ii) above;

viii) Costs of and incidental to this writ proceeding;

ix) Any other Relief(s) as to the Hon'ble High Court may deem fit and proper."

Petitioner approached this Court for payment of contractual dues. The claim arises out of execution of work under agreements dated 24.09.2019, 03.10.2019, 29.10.2019 and 29.10.2019 for "Rural Electrification Works for Survey, Erection, Testing & Commissioning for System Strengthening through re-conductoring of existing 11 KV line by ACSR DOG conductor, LT Line by AB Cable and augmentation of distribution transformers i/c. DTR earthing and other related works on turnkey basis under DDUGJY Phase-II" for eight different districts i.e. (i) West Tripura & Sepahijala Districts; (ii) North Tripura & Unakoti Districts; (iii) Gomati & South Tripura Districts; & (iv) Dhalai & Khowai Districts.

3. When the matter was taken up earlier on 11.09.2024, learned senior counsel for the petitioner contended that though the work has been executed satisfactorily and completion certificate has been issued in respect of each of the works vide Annexure-10 dated 16.08.2021, Annexure-20 dated 06.08.2022 and Annexure-22 dated 26.08.2022, but the outstanding dues are not being paid. The respondents-TSECL, with whom the agreements were entered and work has been executed, filed a detailed counter affidavit.

4. When the matter was taken up on 24.04.2025, the following order was passed:

“Mr. Somik Deb, learned senior counsel assisted by Mr. Manay Nath Thakur, learned counsel and Mr. Panna Lal Debbarma, learned counsel appears for the petitioner. Mr. Nepal Majumder, learned counsel appears for the respondents-TSECL. Mr. Bidyut Majumder, learned Deputy SGI represents Union of India and its officials and Mr. Karnajit De, learned Additional Government Advocate appears for the State-respondents.

Reference is made to the order dated 11.09.2024. Counter Affidavit has been filed thereafter by the contesting respondents-TSECL.

Today when the matter has been taken up, at the outset a pointed query has been made to learned counsel for the respondents-TSECL Mr. Nepal Majumdar to categorically state as per the stand of the respondents-TSECL as to the admissible dues payable to the petitioner. On the basis of written instructions, learned counsel for the respondents-TSECL submits that an amount of Rs.8,56,96,761/- is admissible after carrying out all reconciliation exercises. He submits that apart from the above amount, an amount of Rs.3,95,58,450/- has already been paid to the petitioner in the midst of the writ proceedings.

Learned senior counsel for the petitioner has pointed out to Annexure-8 of the Counter Affidavit of respondents-TSECL which is the minutes of a meeting held on 18.07.2024 in the TSECL Office in presence of General Manager (Finance), Manager (Finance), Assistant Manager (Finance) and Director, MHIDPL and other officers i.e. representatives of the petitioner. He submits that the meeting was called for reconciliation of outstanding dues to MHIDPL in which certain issues were discussed. He has, in particular, referred to paragraph 7 thereof which states that after all deductions and withheld amount, the net payable amount is Rs.14,69,87,553/- out of which total invoice value of Rs.2,86,78,504/- is subject to technical clearance. By referring to this document, it is submitted that the Corporation has admitted a net payable dues of Rs.14,69,87,553/- out of which Rs.2,86,78,504/- is subject to technical clearance. Therefore, he has prayed that the learned counsel for the respondents-TSECL should be asked to state as to the exact quantum of the admitted dues in the light of the statements that are being made today by learned counsel for the Corporation Mr. Majumdar. Petitioner has raised other claims in relation to deduction of liquidated damages, withholding of GST paid to the State during the execution of the agreement and certain other amounts.

Petitioner was a small enterprise within the meaning of the Micro, Small and Medium Enterprises Development Act, 2006 [‘Act of 2006’, *for short*] at the time of execution of the contract. Now it is a medium enterprise.

Therefore, petitioner is covered under the provisions of Act of 2006 Chapter V thereof specifically provides that the micro and small enterprises can approach the Micro and Small Enterprises Facilitation Council with regard to any amount due under Section 17 of the said Act. A detailed mechanism has been prescribed under Chapter V of the Act of 2006 for either settlement of the dispute between the parties or in case conciliation fails, for adjudication in terms of the provisions of the Arbitration and Conciliation Act, 1996. The Act is a beneficial piece of legislation.

In this background, learned counsel for the respondents-TSECL is directed to seek instruction as to the time within which the admissible amount as per their stand shall be paid to the petitioner. Mr. Majumdar, learned counsel for the respondents-TSECL, seeks one week’s time to obtain specific instructions. He would also seek instruction in respect of the minutes of the meeting dated 18.07.2024 enclosed as Annexure-8 to their Counter Affidavit.

Learned Additional Government Advocate for the respondents-State Mr. Karnajit De is directed to take specific instructions as to whether a Micro and Small Enterprises Facilitation Council has been constituted in the State of Tripura or not. Let the relevant notification be produced on the next date.

List the matter on **01.05.2025.**”

5. Today when the matter has been taken up, learned Advocate General Mr. Saktimoy Chakraborti assisted by learned counsel Mr. Nepal Majumdar has, on instruction, made a categorical statement that the payable amount admitted by both the parties as per minutes of meeting signed on 18.07.2024 is Rs.14.69 crores. The minutes of the meeting itself records that out of this amount, the invoice value of Rs.2,86,78,504/- is subject to technical clearance. Therefore, the undisputed amount would be Rs.11.83 crores. Out of Rs.11.83 crores (approximately), an amount of Rs.3.95 crores has already been paid to the agency. The balance undisputed amount which remains to be paid is Rs.7.88 crores. It is submitted that though a claim of Rs.54 lakhs has been raised on behalf of a worker of the petitioner alleged to have died during execution of the work, but for the time being since the claim has not been finally established or adjudicated, the said amount cannot be withheld from the petitioner though if the adjudication results in his liability, the petitioner will have to pay the amount adjudged or established. Therefore, the net payable amount for the present is Rs.7.88 crores. Learned Advocate General submits that rest of the claims enumerated by the petitioner, are in the realm of disputed claims. He further submits that as per his instruction, the admissible amount would be paid to the petitioner within a period of 45 days from today.

6. Since the petitioner is an MSME, on the previous date learned counsel for the State was specifically asked to apprise the Court as to whether a Micro and Small Enterprises Facilitation Council has been constituted in the State of Tripura or not. Learned Advocate General informs that vide notification dated 13.07.2021, the Tripura Micro and Small Enterprises

Facilitation Council has been constituted by the Department of Industries & Commerce, Government of Tripura. It is submitted on behalf of the State and TSECL that petitioner may raise his disputed claim before the Facilitation Council.

7. In view of the aforesaid categorical stand of the TSECL, learned senior counsel for the petitioner submits that the respondents-TSECL may be directed to make the payment of the admissible dues to the tune of Rs.7.88 crores (approximately) within the period of 45 days. He further submits that petitioner may be allowed liberty to raise rest of his claims which are disputed before the Facilitation Council.

8. In view of the aforesaid stand taken on behalf of respondents-TSECL on instruction by learned Advocate General, the respondents-TSECL should make the payment of the admissible dues totaling Rs.7.88 crores to the petitioner against the works executed under the above four agreements within a period of 45(forty five) days from today. Petitioner is at liberty to raise rest of his claims before the Facilitation Council.

9. The instant writ petition is disposed of in the aforesaid terms. Let it be made clear that this Court has not made any comments on the claim of the petitioner on merits.

(BISWAJIT PALIT), J

(APARESH KUMAR SINGH), CJ

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