

\$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) No.9060/2015 & CM No.20509/2015 (for directions)
DRIPLEX WATER ENGINEERING PVT. LTD. Petitioner
Through: Mr. Vikram Nandrajog and Mr.
Abhimanyu Singh, Advs.

Versus

MICRO AND SMALL ENTERPRISES
FACILITATION COUNCIL AND ORS. Respondents
Through: Mr. Satyakam, Adv. for GNCTD.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **04.12.2015**

1. The petitioner has filed this petition with the grievance that the respondent no.1 Micro and Small Enterprises Facilitation Council (Council), constituted under the Micro, Small and Medium Enterprises Development Act, 2006 *inter alia* to adjudicate the monetary claims of the Micro Small and Medium Enterprises, is non-functional and the references made by the petitioner to the respondent no.1 Council since October, 2013 have not been dealt with, lest decided. A mandamus is claimed to the respondent no.1 Council, respondent no.2 The Lieutenant Governor, Delhi and the respondent no.3 Government of National Capital Territory of Delhi (GNCTD) to forthwith process and decide the references/cases filed by the petitioner before the respondent no.1 Council.

2. Notice of the petition was issued and the respondents have filed an affidavit stating that "by inadvertence, the claim references of the petitioner for delayed payments and non-payments could not be taken up earlier. The decision has been taken to take up these cases in the next meeting of MSEFC

Council which is scheduled to be held on 23rd November, 2015 on priority basis. The notices have also been issued in this regard”.

3. The counsel for the respondents states that in the meeting held on 23rd November, 2015 all the references filed by the petitioner were taken up and are now being dealt with. He thus states that the petition has served its purpose and be disposed of.

4. The counsel for the petitioner states that the respondent no.1 Council has taken action only upon notice of this petition being issued and expressed an apprehension that in the event of the petition being disposed of, the respondent no.1 Council may again relapse into slumber and not process and not proceed expeditiously with the references/claims of the petitioner.

5. I have enquired from the counsel for the respondents, within how much time the claims/references of the petitioner will be disposed of by the Council.

6. The counsel for the respondents states that all the 13 claims/references of the petitioner, a Status Report with respect thereto is handed over in Court and is taken on record, will be disposed of within four months of today.

7. I have considered the matter.

8. The Act aforesaid has been enacted, as per its Preamble, to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith. Section 3 of the Act requires the Central Government to establish, for the purposes of the Act, a Board to be known as a National Board for Micro, Small and Medium Enterprises to perform the functions set out in Section 5 of the Act. One of the aims which the Act, as per its

Statement of Objects and Reasons, seeks to achieve is to minimise the incidence of sickness among Small and Medium Enterprises. Chapter V of the Act is titled “Delayed Payments to Micro and Small Enterprises” and Section 15 thereof provides that whenever any Micro or Small Enterprise 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 latest within 45 days where there is no agreement in this behalf. Section 16 provides that wherever any such buyer fails to make payment within the time prescribed in Section 15, the buyer shall be liable to pay compound interest with monthly rests to the supplier at three times the bank rate notified by the Reserve Bank of India. Section 20 of the Act obliges the State Government to, by Notification, establish one or more Micro and Small Enterprise Facilitation Councils at such places, exercising such jurisdiction and for such areas, as may be specified in the Notification. Section 18 enables a Micro and Small Enterprises to make reference of a dispute to the said Council.

9. The GNCTD, in discharge of its obligation under Section 20 supra of the Act has vide Notification dated 25th July, 2012 set up the respondent no.1 Council for the National Capital Territory (NCT) of Delhi, comprising of five members and to *inter alia* entertain references received under Section 18 with regard to any amount due from the buyer for goods supplied or services rendered by Micro and Small Enterprises.

10. Section 24 of the Act gives the provisions of Section 15 to 23 of the Act overriding effect notwithstanding anything inconsistent therewith contained in any other law.

11. It would thus be seen that the Act aforesaid has provided for the establishment of the Council to enable Micro and Small Enterprises, which may turn sick if the dues owed to them by the buyers of their goods and services are not recovered immediately, to expeditiously recover their dues and to not depend upon the procedure of the ordinary civil courts before whom owing to huge volumes, disposal of cases takes considerably longer. Section 18(5) of the Act mandates the Council to decide the references made to it by Micro and Small Enterprises within a period of 90 days only.

12. In this light, the “inadvertent error” on the part of the respondent no.1 Council in dealing with and/or disposing of the references/claims made by the petitioner for the last over two years is alarming. Notwithstanding the Council having been established, it has not served the purpose for which it was established.

13. I have thus enquired from the counsel for the respondents, the number of references pending before the Council and the average time of disposal thereof.

14. The counsel for the respondents, on instructions, states that at the moment there are 47 references pending and the average time of disposal of a reference is six month.

15. The same is not a satisfactory state of affairs. When the Statute mandates decision of the reference/claim within three months (90 days), the time taken of six months is unacceptable.

16. I may in this regard notice that Section 20 does not limit the power of the State Government to establishment of one Council only. The same empowers the State Government to establish one or more Councils for different areas within its territory. If the workload of the respondent no.1

Council established for the entire NCT of Delhi is more than what can be dealt with efficiently, the respondents no.2&3 ought to consider having more than one Council for the NCT of Delhi.

17. However, the total volume of pending references/claims before the respondent no.1 Council does not appear to be much. The reason for delay seems to be otherwise. I have thus enquired from the counsel for the respondents the frequency at which the respondent no.1 Council hold its meetings/sittings and takes up the claims/references.

18. I am told that the respondent no.1 Council meets once in two months.

19. The same also does not appear to be in order. Rule 4(i) of the Delhi Micro and Small Enterprises Facilitation Council Rules, 2007 mandate the Council to meet “at least once a month”. The other sub-rules of Rule 4 laying down the procedure to be followed by the Council in discharge of its function provide a strict time schedule to be followed by the Micro/Small enterprises who have made the reference / claim as well as by the buyer from who dues are claimed. Not only so, Section 18 of the Act as well as the Rules aforesaid enable the Council to conduct initially conciliation and if need be arbitration, either itself or refer the same to any other institution or centre providing Alternate Dispute Resolution services. All this is aimed at expeditious disposal of the reference/claim within 90 days.

20. If the respondent no.1 Council, for any reason is finding it difficult to itself deal with the references/claims, it should explore the possibility of referring the same to any other institution or centre providing Alternate Dispute Resolution services so that the purpose of the Act is served.

21. I also find that though Section 21 of the Act providing for the composition of the Council provides for the same to consist of not less than

three but not more than five members but the respondent no.1 Council, vide Notification aforesaid, has been constituted of five members and all of whom are found to be high functionaries. It is felt that the said members of the Council, owing to their pre-occupation with their other duties may be finding it difficult to devote time to the aforesaid functions of the Council. Section 21 of the Act gives considerable latitude to the State Government in the constitution of the Council and I feel that if the respondent no.1 Council with the present composition is having paucity of time to deal with the references within the time they are statutorily required to be dealt with, GNCTD may, as an alternative to setting up more Councils for the NCT of Delhi, consider changing the composition of the Council so as to comprise of members who are able to devote more time in discharge of their functions, as a Council. For instance, instead of the Secretary and Commissioner of Industries of the GNCTD, the Director of Industries can be the Chairperson of the Council.

22. The purport of the aforesaid discussion is to remind the respondents of the statutory provisions by which they are equally bound and to consider devising ways and means for abiding therewith.

23. In the aforesaid state of affairs, the grant of four months time from today for disposal of the references/claims of the petitioner already pending for two years is not justified. The respondent no.1 Council should decide the same at least within 90 days from today.

24. This petition is disposed of by,

- A. directing the Chairperson of the respondent no.1 Council to ensure that all the references made by the petitioner are disposed of within 90 days of today; and,

B. by directing the respondents i.e. the respondent no.1 Council, respondent no.2 Lt. Governor, Delhi and respondent no.3 GNCTD to, within three months herefrom, consider the number of Councils required for NCT of Delhi, the constitution of the Council/s as well as other ways and means for compliance with the statutory mandate of disposal of references made to the Council within 90 days and to file a Report in this regard before this Court within three months.

25. Though the petition is disposed of in terms of aforesaid directions, but may be put up before the Court on receipt of Report aforesaid.

No costs.

Dasti under signature of Court Master.

RAJIV SAHAI ENDLAW, J.

DECEMBER 04, 2015

‘pp’..