

ORDER SHEET
W.P.O. No. 671 of 2021
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

National Small Industries Corporation Ltd.
Versus
West Bengal Micro Small & Medium Enterprises Facilitation Council.

BEFORE:
The Hon'ble JUSTICE RAJASEKHAR MANTHA
Date : 4th October, 2021.

Mr. Bodhisatta Biswas, Adv.
... for petitioner

Mr. Soumitra Mukherjee, Adv.
... for MSMEF Council

Mr. Sarvapriya Mukherjee with Mr. Ayan Dutta,
Mr. Rajib Mullick & Mr. Rakesh Sarkar, Adv.
... for respondent no.2

The writ petitioner is aggrieved by the order dated 5th February, 2020 passed by the West Bengal Micro, Small and Medium Enterprises Facilitation Council. In the said order failure of conciliation proceedings was recorded and the parties were directed to arbitration.

Counsel for the petitioner submits that his clients were mere facilitators of transactions between the seller and buyer. In the instant case, the buyers were certain State Electricity Boards.

The Counsel for the petitioner submits that except raising invoices in their names and receiving service charges, they have no role to play in the matter. It is, therefore, claimed that the impugned order passed on 5th February, 2020 is erroneous to the extent that it treated the petitioner as a defaulting buyer and hence liable to the seller, respondent no.2.

In this regard reference is made to a decision of Agriculture Finance Co. Ltd. vs. Micro & Small Enterprises Facilitation Council reported in 2013 SCC Online Cal 22786 : (2013) 5 CHN 375.

This Court is of the view that the issues are contractual in nature and require interpretation of the terms and conditions of the contract which cannot be done by the Writ Court. In the event of the petitioner is dragged into arbitration and it is found later that the petitioner has little or no role to play in the transactions between the respondent no.2 and the actual buyers, the claimant shall be liable for exemplary costs towards the writ petitioner.

It is further made clear that the communication dated 31st August, 2016 does not appear to have been considered in the impugned order dated 5th February, 2020. The same may be considered in course of arbitration.

Counsel for the respondent no.2 disputes the contentions of the petitioner and the applicability of the aforesaid communication.

Since no affidavit has been used by any of the respondents, none of the allegations contained in the petition shall be deemed to have been admitted.

(RAJASEKHAR MANTHA, J.)