

ORDER SHEET

WPO/559/2023

IN THE HIGH COURT AT CALCUTTA  
Constitutional Writ Jurisdiction  
ORIGINAL SIDE

GREENPLY INDUSTRIES LIMITED AND ANR.  
VERSUS  
STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : May 3, 2023.

*Appearance:*

*Mr. Suddhasatva Banerjee, Adv.*

*Mr. Debraj Sahu, Adv.*

*Mr. Snehashis Sen, Adv.*

*Mr. Abhishek Banerjee, Adv.*

*...for the petitioners*

*Mr. Soumitra Mukherjee, Adv.*

*...for State*

*Mr. Saket Sharma, Adv.*

*...for respondent no.4*

The Court: The present petition was filed by the petitioners/buyers for directing the Facilitation Council constituted under the MSME Act, 2006 by considering a mail dated 17<sup>th</sup> January, 2023 which, in effect, was the petitioners' request to the Council to permit the petitioners to file their counter to the claim of the supplier/private respondents.

The petitioners are aggrieved by the procedures adopted by the Council which the petitioners say are contrary to the provisions of The Arbitration and Conciliation Act, 1996. The petitioners essentially say that

the petitioners have not been given an opportunity to counter the claim of the private respondents/suppliers.

The records show that the Council communicated the failure of the conciliation proceedings and requested the parties to submit their respective claim and the statement of defence. The Council's letter is of 25<sup>th</sup> March, 2022. The minutes placed before the Court record that the petitioners failed to comply with these directions. Other material placed before this Court, however, also shows that the Council did not consider the petitioners' application questioning the jurisdiction of the Council.

Whatever be the case, the petitioners now seek a direction on the Council to allow the petitioners to submit their statement of defence and counterclaim. Section 18(3) of the MSME Act contemplates the Council following the provisions envisaged under the 1996 Act as if the parties were acting in pursuance of an arbitration agreement under Section 7 of the 1996 Act. The 1996 Act reinforces equal treatment of the parties and sufficient opportunity being given to the parties to present their case. The Facilitation Council should give an opportunity to the petitioners to file their pleadings and consider the same before passing any award under the 2006 Act. Since Section 18(5) gives an outer limit for reference to be made by the Council, the petitioners are directed to file their statement of defence and counterclaim by 19<sup>th</sup> May, 2023. The Council shall then follow the procedure under the MSME Act and pass its award after considering the pleadings filed by the parties.

WPO/559/2023 is disposed of in terms of the above.

Since none of the respondents have used any affidavits, the allegations made in the petition are deemed not to have been admitted.

(MOUSHUMI BHATTACHARYA, J.)

sg.