

(2013) 06 CAL CK 0055
In the Calcutta High Court
Case No : Writ Petition No. 18318 (W) of 2012

Agriculture Finance Co. Ltd.	Vs	APPELLANT
Micro and Small Enterprises Facilitation Council and Another		RESPONDENT

Date of Decision : 12-06-2013

Acts Referred:

Citation : (2013) 5 CHN 375 : (2013) 4 WBLR 616

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Surest Dhole, Anant Kr. Shaw and Mainak Ganguly, for the Appellant; Jayanta Kr. Mitra, Indranil Roy and Sankar Kr. Samanta for the Respondent No. 2, for the Respondent

Judgement

Sanjib Banerjee, J.—The petitioner has come with a two-fold grievance against an order or award of the West Bengal State Micro and Small Enterprises Facilitation Council apparently rendered under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006. The award has been made in favour of the respondent No. 2. The respondent No. 2 claims to have supplied services to the petitioner herein in connection with the socio economic survey of villages in Jharkhand under a programme by the name of Gram Bhagirathi Yojana. Upon the petitioner not making payment of the amount claimed by the second respondent, the second respondent applied to the Council u/s 18 of the said Act of 2006.

2. Section 15 of the said Act mandates that a buyer within the meaning of the said Act would pay the supplier within the meaning of the said Act within 15 days from the date of acceptance or deemed acceptance of any goods or services. The proviso to the section prohibits any agreement between a supplier and buyer to extend the period of payment beyond 45 days from the date of acceptance or deemed acceptance of the goods or services. Section 16 of the Act provides that upon the buyer failing to make the payment to the supplier in terms of Section 15 of the Act, the buyer would be liable to pay compound interest with monthly

rests to the supplier on the amount due from the appointed day or the relevant date at three times of the bank rate notified by the Reserve Bank. Section 17 provides that a supplier would be entitled to recover both the principal and the interest u/s 16 of the Act from the buyer.

3. A claim by any party to a dispute with regard to any amount due u/s 17 of the Act is permitted to be carried to the Council u/s 18 of the Act. A supplier is defined u/s 2(n) of the Act as a micro or small enterprise which has filed a memorandum with the appropriate authority u/s 8 of the said Act. On receipt of a reference u/s 18(1) of the said Act, the Council is required to either conduct conciliation or seek the assistance of any institution providing alternate dispute resolution services by making a reference to such institution for conducting conciliation under the Arbitration and Conciliation Act, 1996. Section 18(3) of the Act is of some relevance in the present context and reads as follows:--

Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the disputes as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of the Act.

4. In the instant case, the second respondent made a reference to the Council on February 22, 2008 for a principal claim of Rs. 24,29,604/- together with the interest as admissible under the said Act. It appears that the matter was taken up in right earnest by the Council only on January 20, 2011 as would be evident from the following key paragraph in the award or order of the Council dated July 28, 2011:--

On 20.01.11, Mr. Manish Biswas, Partner, Mr. Shyamal Roy and Mr. Kashinath Roy were present for the supplier unit and Mr. S. Dayal & Ms. A Bagchi were present for the buyer unit. The supplier unit explained his claim and reported that the buyer unit had already admitted their claim. The buyer unit also admitted the claim of the supplier unit but raised the point of terms of payment in the agreement expressing their inability to make the balance payment if they do not get it from the Govt. of Jharkhand. The Council pointed out that AFC had received Rs. 196.59 lakh from GBY as per AFC's letter dated 12.08.2008 addressed to the Council. The council requested both the parties whether they were ready for conciliation in the matter. The representatives of the buyer unit informed that they could not decide on the spot. They reported that they would inform the matter to their higher authority for a decision in this regard. Since it is a long pending issue, the council decided to make an award in this matter in the next meeting.

5. The two points canvassed by the petitioner are the lack of jurisdiction of the council and violation of the principles of natural justice. The petitioner says that

the second respondent was not a supplier within the meaning of Section 2(n) of the said Act since the statement of claim lodged by the second respondent before the Council did not reveal that its memorandum had been submitted to the appropriate authority u/s 8 of the Act. The petitioner also suggests that the procedure adopted by the Council was in incomplete derogation of the petitioner's right to be heard and present the petitioner's version of things as would be evident from the above quoted paragraph of the order or award. According to the petitioner, an attempt at conciliation was made and it is evident that the petitioner did not get back to the Council as to whether it was agreeable to the Council conducting the conciliation. The petitioner demonstrates from the order that upon the Council perceiving the petitioner to not have got back to the Council, there was no notice issued by the Council to the petitioner that the Council would arbitrate upon the dispute between the parties and make a publish an award.

6. As to the first point raised on behalf of the petitioner, it is submitted by the second respondent that the objection was not indicated in the written statement filed by the petitioner before the Council. The second respondent states that the second respondent is a supplier within the meaning of Section 2(n) of the Act and its memorandum was duly submitted to the appropriate authority. The second respondent insists that in the light of the petitioner not having raised the objection before the Council, it is precluded from urging such ground at this stage. There is considerable substance in the submission of the second respondent and since it is evident from the written statement filed before the Council by the petitioner that the objection as to the second respondent's status as a supplier under the said Act was not raised before the Council, the petitioner cannot be permitted to urge such ground in the present proceedings.

7. It is, however, the second ground canvassed by the petitioner which is of some substance. The scheme of Section 18 of the said Act admits of a process of conciliation and, upon the conciliation failing, arbitration of the disputes between the parties. On a reading of sub-sections (2) and (3) of Section 18, it is evident that upon a Council taking up the conciliation and the conciliation failing, it is for the Council to take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services. At the meeting of January 20, 2011, the petitioner did not indicate as to whether the petitioner was agreeable to a conciliation in the matter. The representatives of the petitioner at such meeting had submitted to the Council that they could not take a decision on the matter immediately. They represented to the Council that they would inform the matter to the higher authorities of the petitioner for a decision in such regard. The order or award of the Council is silent as to whether any decision as to the petitioner's participation in the conciliation was communicated by the petitioner to the Council. Assuming that the petitioner kept silent and did not communicate any decision to the Council, it was then incumbent on the Council to inform the petitioner that the arbitration would be taken up by the Council itself or the arbitration would be directed to be taken up by any institution or

centre providing alternate dispute resolution services.

8. In the context of the reference before the Council having been made on February 22, 2008 and the first meaningful meeting having been held only on January 20, 2011, it would not do for the Council to rely on Section 18(5) of the Act that provides for a reference to be decided within a period of 90 days from it being made.

9. If the Council took the petitioner's silence in the matter following the meeting of January 20, 2011 to be the petitioner's refusal to accept the conciliation, the Council ought to have issued a notice to the petitioner indicating that the Council would take upon itself to arbitrate upon the disputes between the parties. In the Council not having adopted such procedure, there has been a complete violation of the principles of natural justice and the petitioner's right to be heard in the matter.

10. It is submitted on behalf of the second respondent that the adjudication was a mere formality as would be evident from the relevant paragraph of the order or award that the petitioner herein had admitted the claim of the supplier. It is elementary that for an admission to be effective, it must be accepted as a whole and a part of something said cannot be culled out as an admission by disregarding the other part thereof. It is evident from the third sentence of the relevant paragraph of the order or award that the petitioner had admitted the claim of the supplier unit but had raised a point as to the terms of payment in the agreement. The admission, therefore, that the second respondent relies on, may have related to the principal claim of the second respondent but the admission may not have been as to the immediate liability of the petitioner to make the payment as claimed by the second respondent. Indeed, even an unequivocal admission can be explained away; provided the maker thereof is afforded an opportunity to do so. It would not do to assume that there could be no defence in the light of an admission and proceed to pronounce judgment without affording the party likely to be affected thereby any opportunity of making out a defence.

11. An issue as to the remedy available u/s 19 of the said Act has also been raised. Section 19 provides for a party aggrieved by a decree or award or order of the Council to apply for setting aside the same. Ordinarily, if the reference is concluded upon arbitration taking place, Section 34 of the Act of 1996 would be available to a party aggrieved by the award. However, when the issue that is raised is one of gross or palpable violation of the principles of natural justice, the availability of an alternative remedy is no bar to the Court exercising its authority under Article 226 of the Constitution if the body rendering the award is amenable to the writ jurisdiction of the Court as being a State or other authority within the meaning of Article 12 of the Constitution.

12. The order or award dated July 28, 2011 passed by the first respondent Council cannot be sustained and is set aside and the Council is requested to take

up the reference, upon notice to the parties, as expeditiously as possible in accordance with law.

13. The second respondent seeks a stay of the operation of this order, which is declined. WP No. 18318 (W) of 2012 is allowed as above, but without any order as to costs.