(2016) 09 JH CK 0097

In the Jharkhand High Court

Case No : Writ Petition (C) No. 6464 of 2012

M/s. Bharat Coking Coal Limited, Dhanbad — APPELLANT

Vs

State of Jharkhand — RESPONDENT

Date of Decision : 14-09-2016

Acts Referred:

Micro, Small and Medium Enterprises Development Act, 2006 — Section 18

Citation : (2016) 168 AIC 426 : (2017) 1 JCR 33

Hon'ble Judges : Mr. Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. J.K. Pasari, Advocate, for the Respondent No. 3; J.C. to A.A.G, for the Respondent/State; M/s. Anoop Kumar Mehta and Amit Kumar Sinha, Advocates, for the Petitioner

Final Decision : Allowed

Judgement

Mr. Aparesh Kumar Singh, J. - Heard learned counsel for the parties.

2. Respondent no. 3 invoked the jurisdiction of Jharkhand Micro, Small and Medium Enterprises Facilitation Council (hereinafter referred to as Facilitation Council ''in short'') in terms of Section 18 of Micro, Small and Medium Enterprises Facilitation Council Act, 2006 raising a claim for payment of outstanding bills, 13 in numbers furnished in the Chart enclosed to Annexure?2 totalling Rs. 50,053.00/?. The date of bills are distributed over a period of 4 years starting from 28th March, 2005 till 28th July, 2009.

3. The opposite party/petitioner herein was noticed vide Memo no. 259 Ranchi dated 2nd February, 2012 in Case No. JHMSEFC 03/2011 to appear on 24th February, 2012 before the Council at Directorate of Industries, Nepal House, Doranda, Ranchi and submit its show cause, failing which the matter would proceed ex parte. Apparently, the notice did not enclose the claim petition, which was served vide Annexure?2 dated 27th February, 2012 to General Manager, Kustore Area, B.C.C.L by the claimant/respondent no. 3 herein with the

enclosures. Petitioner sought to submit its written statement on 22nd March, 2012 i.e., the date on which the matter was finally decided. The petitioner did not file its reply on the next date fixed 14th March, 2012 admittedly. He was refused permission to file its show cause on 22nd March, 2012, when the Council proceeded to decide the case on merits. The impugned order passed thereupon and communicated vide Memo no. 1384 dated 26th April, 2012 (Annexure?4) has been challenged by the petitioner in the aforesaid background facts. Petitioner on its part raised the plea of denial of sufficient opportunity to file written statement in its defence. Apart from that a plea of limitation has also been taken in respect of the different claims outstanding referred to in the claim application containing the chart of the bills. It has also questioned the approach of the Facilitation Council in deciding the matter on merits without exhausting the steps stipulated under Section 18(2) of the Act of 2006. It is submitted that the matter was required to be first referred for conciliation and only on failure to arrive at a settlement between the parties, the Council would have taken up dispute for arbitration or referred it to any institution or center for adjudication in the nature of an arbitration proceeding in terms of Section 18(3) of the Act. The impugned order is otherwise also cryptic and straightaway proceeded to determine the liability of the petitioner to the tune of Rs. 50,231/? towards principal amount with interest at three times of Bank rate notified by Reserve Bank of India in terms of Section 16 of the Act till the date payment is made.

4. In response both the Directorate of Industries, Govt. of Jharkhand and private respondent have filed their counter affidavit.

5. The response of Directorate of Industries is to the effect that petitioner despite service of show cause notice failed to take its defence by filing written statement with the time prescribed. The Council has thereafter proceeded to hear the matter on merits and decided it by the impugned Award. It has justified the procedure adopted by the Facilitation Council in terms of Chapter?V of the Act of 2006 by adjudicating the matter on merits.

6. Respondent no. 3, in its counter affidavit has enclosed documents to the claim petition vide Annexure?R3/2 which are letters dated 16th June, 2008 issued by Chief General Manager cum Appellate Authority under Right to Information Act, 2005, Kustore Area B.C.C.L. It has also enclosed details of bills totalling Rs. 3,27,143.41/? with break up of the bill date, bill numbers, the amount etc. Respondent no.3 has also enclosed the bills raised for the outstanding dues dated 20th September, 2008, which according to him, were also served and received in the office of Chief General Manger, Kustore Area, B.C.C.L. It has also enclosed the break up of calculation furnished by Chartered Accountant vide letter dated 6th July, 2016 as referred to in the impugned Award (Annexure?4).

7. Counsel for the respondent no. 3 submits that the information furnished under R.T.I by B.C.C.L itself discloses that as per the details available in the office of Finance Manager (C and S), Kustore Area, B.C.C.L. against the supplies made by the applicant of Hydrolic Hose Assembly, a bill of Rs. 3,27,143.41/? is pending in

the office. Petitioner has, in his application, made a mention of outstanding bill of Rs. 4,30,000/?. It further indicate that the relevant details of remaining part of the bill are being searched in the office of Manager/Regional office of the concerned Finance Department of B.C.C.L. and steps are being taken in accordance with Rule for payment of bill amounts. It is submitted by him that the instant letter along with enclosures furnished to the bills totalling Rs. 3,27,143.41/?, therefore, do not leave any room of doubt that the claim amount was outstanding on the part of the B.C.C.L i.e. petitioner herein. It is submitted that it is true that majority of the bills were paid to the petitioner against the supplies made on verbal order but outstanding amount of Rs. 50,053.00 had remained due, for which the respondent no. 3 had to approach the Facilitation Council in the year 2011 for its realization. In that way, if the opposite party/ petitioner herein has failed to rebut the claim on merits before the Facilitation Council by filing a written statement, the decision/award of Facilitation Council on merits after due examination of the available material cannot be said to suffer from any procedural errors or violation of principle of natural justice against the petitioner. The impugned award has, in fact, protected the interest of Micro/Small Enterprises like the respondent no. 3, which should be upheld by this Court.

8. I have considered the submission of the parties and gone through the relevant materials on record. The factual matrix of the case has been noted in some detail in the foregoing paragraphs of this order.

9. From perusal of the claim petition, it is evident that the claimant/respondent no. 3 raised 13 bills distributed over a period starting from 28th March, 2005 till 28th July, 2009 of different amounts totalling Rs. 50,053.00 against the opposite party/petitioner herein before the Forum created under the Act of 2006. The Facilitation Council under the Act of 2006 has been entrusted with a statutory conciliatory/adjudicatory role to perform as per mandate of law and the procedure laid down therein. It has to fix the liability of a buyer in matters of delayed payment on acceptance of supplies made against work orders or supply orders. Chapter?V of the Act, 2006 deals with Delayed Payment to suppliers, which are relevant for consideration of the issues involved herein.

10. Section 15 thereof creates a liability upon the buyer to make payment. As per the said provisions, where any supplier 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, where there is no agreement in this behalf, before the appointed day:

11. Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty?five days from the date of acceptance or the day of deemed acceptance.

12. Appointed date has been defined in the dictionary Clause at Section 2(b), as under:

"Section?2(b) : "appointed day" means the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier".

13. Section 16 prescribes the date from which and rate at which interest is payable. As per the said provisions, where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

14. Section 17 provides for recovery of amount due for any goods supplied or services rendered by the supplier. The buyer shall be liable to pay the amount adjudicated with interest thereon as provided under Section 16.

15. Section 18 is being quoted in extenso hereinafter, as it lays down the procedure to be followed by Facilitation Council.

"Section 18. Reference to Micro and Small Enterprises Facilitation Council.? (1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under Section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub?section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) 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 subsection (1) of Section 7 of the Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.

16. The State Government has in furtherance of the mandate of the Act by a notification created Facilitation Council. In the scheme of the Act as dealt with herein above whenever a claim petition is made before the Council in the first place as per Section 18(2), it is required to conduct conciliation in the matter itself or seek the assistance of any institution or center providing alternate dispute resolution services by making a reference thereto.

17. The provisions of Sections 65 to 81 of Arbitration and Conciliation Act, 1996 shall apply to such a dispute. It is on the failure of such conciliation effort and where the parties do not arrive at a settlement that the Council under Section 18(3) is required to take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services. The provisions of the Act 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.

18. Sub?section 4 of Section 18 starts with a non?obstante clause which clothes the Facilitation Council with the jurisdiction to act as an Arbitrator or Conciliator in a dispute between supplier and buyer located within its jurisdiction.

19. Section 18(5) provides that every reference made under this Section should be decided within a period of ninety days.

20. The Facilitation Council therefore while entertaining such a reference is required to follow the procedure prescribed therein. Decision or Award of Facilitation Council imposes a pecuniary liability coupled with interest which are penal in nature upon the buyer, who fails to make the payment within the time stipulated in terms of Section 15 of the Act to the supplier. The Facilitation Council when confronted with such a petition has to satisfy itself of all ingredients laid down under Sections 15 and 16 of the Act in respect of every such claim.

21. In the facts of the present case, as has been noticed herein above, the claimant/respondent no. 3 raised 13 claims in respect of different bills distributed over a period of 4 years of different amounts which came to a total of Rs. 50,053.00. Facilitation Council, however, without discussing the admissibility of each of such claim in a proceeding in the nature of arbitration proceeding has by cryptic order straightaway proceeded to hold that the opposite party is liable for outstanding amounts of Rs. 50,231/- as principal amount along with interest at 3 times of Bank rate. It would only be proper to extract the order passed by the Facilitation Council, which on the face of it discloses complete non application of mind to each and every claim of the applicant before it.

"Case no. JHSEFC?03/11

M/s. C.K. Industries, Dhanbad

v.

M/s Bharat Coking Coal, Dhanbad

DECISION on 22.03.2012:? The first party appeared but second party did not appear. First party informed the Council that deficiencies in the application namely application in prescribed format has been made. The second party was directed in the previous meeting dated 24.02.12 to submit their final stand by 14th March 2012 so that the case may be decided in the meeting fixed on 22.03.12. Advocate of the opposite party filed ''Vakalatnama'' along with time petition, praying for 10 days more time. The opposite party did not attend the meeting held on 22.03.12. The council is of the view to decide the case on the basis of its merit.

Brief history of the case

This is a case of local purchase of material without obtaining proper sanction from competent authority of Kustore Area No.?VIII of M/s BCCL. The first party supplied the material on verbal order and submitted the bills against supply of material. It is evident from the papers that supplier bill was processed, 1st for obtaining sanction and thereafter for payment. In this process some bills are left out for payment and in some cases there was considerable delay in making payment. The first party has informed the opposite party, vide his letter dated 06.07.2011 by enclosing a CA certificate, showing the details of outstanding principal amount of various bills totalling to Rs. 50,231 and interest of Rs. 3,82,443, with a copy to the Council.

Decision/award On 22.03.2012

1. The Council is of the considered view that the first party is entitled to get payment of outstanding principal amount and interest on delayed payment in terms of MSMED Act 2006.

2. The opposite party is directed to pay Rs. 50,231/? towards principal amount and interest at three times of the Bank rate, notified by Reserve Bank in terms of section 16 of MSMED Act, 2006, till the date, payment is made.

3. The opposite party is directed to pay within 30 days failing which the claimant is entitled to realise the amount through process of law.

Sd/?

Sri R.P.Shahi(JSIA, Ranchi)

Sd/-

S.N.Kejariwal

Sd/-

Sri Ajoy Govind Prasad(Consultant) (SBI, Ranchi)

Sd/-

Sri Sunil Kumar Singh (SLBC, Ranchi)

Sd/?

Sri Dilip Kumar Sharma (Dy. Director Ind., Ranchi)

Sd/-

Sri P.P.Pandey (Joint Sec.) (Dept. of Law, Jharkhand)

Sd/-

Smt. Vandana Dadel Director of Industries cum Chairman?JMSMEFC)

Jharkhand Micro Small And Medium Enterprises Facilitatoin Council

(Established U/S 20 of Micro Small and Medium Enterprises Development Act? 2006)

3rd Floor, Nepal House, Doranda, Ranchi?834002, Jharkhand Case no. JHSEFC? 03/2011

M/s. C.K. Industries, Matkuria Road, Dhanbad

v.

M/s. Bharat Coking Coal Ltd., through its General Manager, Kustore Area Bhalgoria, Dhanbad

Decision/award On 22.03.2012

1. The Council is of the considered view that the first party is entitled to get payment of outstanding principal amount and interest on delayed payment in terms of MSMED Act 2006.

2. The opposite party is directed to pay Rs. 50,231/? towards principal amount and interest at three times of the Bank rate, notified by Reserve Bank in terms of section 16 of MSMED Act, 2006, till the date, payment is made.

3. The opposite party is directed to pay within 30 days failing which the claimant is entitled to realise the amount through process of law.

Sd/?

(Smt. Vandana Dadel)

Director of Industries cum Chairman

Jharkhand Micro, Small and Medium Enterprises Facilitation Council Jharkhand, Ranchi

Memo no. 1384/Ranchi, Dated 26/04/2012

7/u.ni./Aou.Su.Puri.?01/2010

Copy to: 1. M/s. C.K.Industries, Matkuria Road, Dhanbad

2. M/s. Bharat Coking Coal Ltd., through its General Manager, Kustore Area Bhalgoria, Dhanbad for king information and necessary action.

Dy. Director of Industries Directorate of Industries Jharkhand,

Ranchi."

22. It would be repetition to say that the Facilitation Council had to satisfy itself on the necessary ingredients of the provisions of Section 15 and 16 etc. and render its finding on each of such claim arising out of such supply orders such as the date of supply orders, the date on which the supplies were made, the date on which bills were raised, the date on which the acceptance of supplies were made or refused. In the facts of the case of the applicant, it was required to render a finding as to from which dates the liability of the buyer arose to make payment of outstanding dues. The payments would then became due from those dates against the buyer in favour of supplier. The liability of the buyer to pay interest over, the original amount would then accrue from the due date as adjudicated by the Facilitation Council. Instead, Facilitation Council in a summary manner has straightaway held the opposite party/petitioner herein liable to pay the entire amount claim of Rs. 50,231/? towards principal amount with interest at 3 times of Bank rate. Even if the opposite party/petitioner herein had failed to file written statement within time, it was an obligation on the Adjudicatory Body i.e., Facilitation Council to exercise independent application of mind on the claim petition in the light of the provisions of Act, 2006 to satisfy itself whether the ingredients therein are satisfied by the claimant to succeed against each of such claims. It is another matter that the Facilitation Council has also chosen to bye-pass the first step of undertaking conciliation on the dispute between the parties.

23. Before parting, therefore, it is felt necessary to reiterate that the Facilitation Council exercising an adjudicatory role in the nature of a arbitration proceeding as conceived under the Arbitration and Conciliation Act, 1996, has an onerous duty to examine such claim petition and render its finding in accordance with law. Failure to do so, would amount to abdication of its adjudicatory role as well as lack of application of mind on its part.

24. In totality of the facts and circumstances and the discussions made herein above, the impugned Award at Annexure?4 cannot be upheld in the eye of law. The matter is remanded to the Facilitation Council to hear the reference afresh and take a decision after due opportunity to the parties within a time frame. Consequently, 75% of the awarded amount deposited by way of a demand draft before learned Registrar General of this Court in pursuance of the interim order dated 15th July, 2013 passed in the instant case shall be returned to the petitioner.

25. Accordingly, the writ petition is allowed in the manner and to the extent indicated herein above.

