GAHC010038962026

2026:GAU-AS:6056

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1509/2026

CHARU ENGINEERING INDUSTRIES AND ANR
A REGISTERED PROPRIETORSHIP FIRM HAVING ITS REGISTERED OFFICE AT THAKURIA NOVELTY, FOREST GATE, MOTHER TERESA ROAD, NARENGI, GUWAHATI 781026

2: LAKSHMI RAM THAKURIA
PROPRIETOR OF CHARU ENGINEERING INDUSTRIES
R/O THAKURIA NOVELTY
FOREST GATE
MOTHER TERESA ROAD
NARENGI
GUWAHATI 78102

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECY. TO THE GOVT. OF ASSAM, PUBLIC HEALTH ENGINEERING DEPTT., DISPUR, GUWAHATI 781003

2:PRINCIPAL SECY. GOVT. OF ASSAM
GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GUWAHATI 781003

3:THE CHIEF ENGINEER

PUBLIC HEALTH ENGINEERING DEPTT.
GOVT. OF ASSAM
HENGARABARI
GUWAHATI 781003

4:THE EXECUTIVE ENGINEER

PHE STORES AND WORKSHOP DIVISION
BETKUCHI
GUWAHATI

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioners(s) : Ms. M. Hazarika, Sr. Advocate
Mr. D. Khan, Advocate

For the Respondent(s) : Mr. P.N. Goswami, Sr. Advocate
Mr. B. Gogoi, Addl. A.G.
Mr. I. Kalita, Advocate

- Date on which Judgment was reserved : N/A
- Date of Pronouncement of Judgment : **04.05.2026**
- Whether the pronouncement is of the Operative Part of the Judgment : No
- Whether the full Judgment has been Pronounced : Yes

JUDGMENT AND ORDER (ORAL)

Heard Ms. M. Hazarika, the learned Senior Counsel assisted by Mr. D. Khan, the learned counsel appearing on behalf of the petitioners. Mr. P.N. Goswami, the learned Senior Counsel assisted by Mr. I. Kalita, the learned counsel appears on behalf of the PHE Department of the Government of Assam and Mr. B. Gogoi, the learned Additional Advocate General appears on behalf of the Finance Department of the Government of Assam.

2. The present writ petition has been filed by the petitioners seeking a direction upon the respondents to perform their statutory duties and obligations under the Micro, Small and Medium Enterprises Development Act, 2006 (for short, "the Act of 2006") and, in consequence thereof, to release the outstanding dues of the petitioners along with interest thereon as per the provisions of the said Act.

3. It is relevant to take note of that the petitioner No. 1 herein claims to be a small enterprise within the meaning of the Act of 2006. Pursuant to certain work orders issued, the petitioners supplied various UPVC pipes and thereupon claimed the dues. On account of non-payment, the petitioners submitted a representation and as the said representation was not considered, a writ petition being WP(C) No. 3246/2018 was filed before this Court. The learned Coordinate Bench of this Court vide order dated 23.05.2018 disposed of the said writ petition thereby directing the Chief Engineer, PHE, to consider the petitioners' representation dated 17.01.2018 for payment of the outstanding dues with interest within a period of 3 (three) months from the date of receipt of the certified copy of the order. It is the further case of the petitioners that in spite of the said order dated 23.05.2018 in WP(C) No. 3246/2018, no steps were taken for disposal of the

representation and making payment to the petitioners. Resultantly, the petitioners filed a contempt petition before this Court, which was registered and numbered as Cont. Cas(C) No. 513/2018. It is the further case of the petitioners that pursuant thereto, a Memorandum of Understanding was entered into by and between the petitioners and the PHE Department, Government of Assam, wherein it was duly agreed that an amount of Rs. 49,99,098/- would be the final payment towards the dues under the NRDWP account.

4. The record reveals that the said contempt petition was withdrawn by the petitioners in the year 2022 on the ground that the petitioners would not like to pursue the said contempt application in the present form. The records further reveal that pursuant to the said Memorandum of Understanding so entered into by and between the petitioners and the PHE Department, various other work orders were issued in the years 2020 and 2021 for the supply of UPVC pipes and it is the case of the petitioners that the petitioners duly made those supplies, however, no payment was made in that regard. It is under such circumstances, the petitioners submitted several representations since the year 2022.

5. It is also relevant to take note of that the PHE Department invited various parties, including the petitioners, for an amicable and equitable resolution to the disputes vide the communication dated 29.05.2024. The record further reveals that on 17.03.2025, the petitioners took up a stand that in view of non-payment of dues, the petitioners had withdrawn itself from the Memorandum of Understanding, which was informed to the Executive Engineer, Store & Workshop Division, PHE Department, Government of Assam. Thereupon, the petitioners continued to submit representations, and as the representations fell into the deaf ears of the respondents, the petitioners have approached this Court by filing the present writ petition.

6. Ms. M. Hazarika, the learned Senior Counsel for the petitioners submitted that as the petitioner No. 1 is a small enterprise within the meaning of the Act of 2006, is entitled not only to the amount for the supplies made, but also to interest in terms with Section 16 of the Act of 2006. In this regard, the learned Senior Counsel referred to the judgment of this Court in the case of ***Garg Poly Industries & Others Vs. State of Assam & Others***, reported in ***2026 (1) GLT (1)*** and submitted that the petitioners' case would be covered by the said judgment.

7. Mr. P.N. Goswami, the learned Senior Counsel for the PHE Department submitted that the petitioners have an alternative and efficacious remedy available before the MSME Facilitation Council under Section 18 of the Act of 2006. The learned Senior Counsel further submitted that the petitioners have made claims in respect to certain amounts which have been already amicably settled in terms with the Memorandum of Understanding, and there is no challenge to the said Memorandum of Understanding. The learned Senior Counsel further submitted that in terms with Section 18 of the Act of 2006 not only there is a provision for arbitration, but prior to that there is a proceeding for conciliation and while carrying out such conciliation proceedings, the parties are given an opportunity to settle their dues. The learned Senior Counsel therefore submitted that this Court ought not to entertain the present writ petition.

8. Ms. M. Hazarika, the learned Senior Counsel rejoining to her earlier submission submitted that here is a case where the respondents have not disputed the petitioners' claim rather have remained silent in spite of various representations being submitted. The learned Senior Counsel further submitted that as there is no dispute, the question of invoking the jurisdiction under Section 18 of the Act of 2006 do not arise in the present facts and

circumstances of the case.

9. This Court has given an anxious consideration to the respective submissions and has also taken note of the judgment passed by this Court in the case of ***Garg Poly Industries (supra)***, wherein the very submission pertaining to alternative and efficacious remedy under Section 18 of the Act of 2006 was duly taken note of. Paragraph Nos. 74 to 84 of the said judgment being relevant are reproduced herein under:

> "*74. On the other hand, Mr. RR Gogoi, the learned counsel appearing on behalf of the respondents had submitted that issuance of work orders upon the petitioners is one thing, but for payment of interest in terms with Section 16, unless and until such disclosure is not made, the authorities cannot be said to have known that the petitioners were entities registered under the Act of 2006, and, more particularly, when the work orders did not stipulate that the works have been allotted to Enterprises registered under the Act of 2006.*
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> *75. This Court had duly perused the work orders which have been issued to the petitioners in the three writ petitions. From a perusal of these work orders, it is apparent that the supply orders were routed through the Assam Small Industries Development Corporation Limited and because of that a 5% commission had been paid to the said Corporation. It is also pertinent to mention that these aspect have been stated in the pleadings of the writ petitioners. However, the same have not been replied to. In that perspective, this Court now finds it relevant to take note of Sections 15 and 16 of the Act of 2006, which imposes an obligation upon the buyer to make payment and statutorily imposes an interest if the buyer fails to make payment within the*

time-frame stipulated. It being a statutory mandate, the respondents were supposed to be well aware of the said provisions. All the work orders having been routed through the Assam Small Industries Development Corporation also gives a clear indication that these work orders were meant for small industries only.

76. Considering the above, it is, therefore, the opinion of this Court that the third reason so assigned cannot also be sustained in law.

77. This Court, therefore, is of the opinion that the grounds and reasons assigned in the impugned orders dated 27.04.2023 in all the three writ petitions cannot be sustained in law, the same are required to be interfered.

78. Now, let this Court take up another aspect of the matter as regards availability of alternative and efficacious remedy as taken by the respondent authorities. It is seen from a perusal of the affidavits-in-opposition that the respondent authorities have taken the plea that instead of initiating proceedings under Articles 226 of the Constitution, the petitioners or any aggrieved person having not been paid the amounts in terms with Sections 15 and 16, a reference can be made to the Micro and Small Enterprise Facilitation Council and, therefore, these writ petitions ought not to be entertained. It is the opinion of this Court that the said submission is misconceived, taking into account the orders dated 27.04.2023 question the very entity of the petitionerss as MSM Enterprises and the registration under the Act of 2006. In the opinion of this Court, this very aspect could not have been decided by the Micro and Small Enterprises Facilitation Council and, therefore, the plea that there was an alternative and efficacious remedy cannot be applied.

79. Having opined so it is also very pertinent to take note of Sections 15 and 16 of the Act of 2006, which are reproduced hereinunder:

"*15.**Liability of buyer to make payment**.—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:*

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

*16. **Date from which and rate at which interest is payable**.—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."*

80. A perusal of the above-quoted Section 15 of the Act of 2006 statutorily imposes an obligation upon the buyer to make payment on or before the date agreed upon between the buyer and the supplier in writing or where there is no agreement in that behalf before the appointed day. The term "appointed day" has been defined in Section 2(b) of the Act of 2006, meaning the day following immediately after the expiry of the period of 15(fifteen) days from the date of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier. Section 2(b) of the Act of 2006 being relevant is reproduced hereinunder:

"*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".

81. The proviso to Section 15 further stipulates that under no circumstances, the period agreed upon between the supplier and the buyer in writing shall exceed 45 (forty-five) days from the date of acceptance or the day of deemed acceptance. The proviso is relevant taking into account that irrespective of any agreement/contract between the parties, the statutory injunction holds the field and thereby confines the period not to exceed 45(forty-five) days from the date of acceptance or the day of deemed acceptance.

82. Now let this Court take note of Section 16. There are two aspects of interest in Section 16: first, that it is to be calculated from the appointed day and secondly, the liability to pay compound interest with monthly rests. In this regard, this Court finds it very relevant to take note of a judgment of the learned Calcutta High Court in the case of V.K. Patel and O Vs. Simplex Infrastructure Ltd. reported in 2024 SCC Online Cal.6617, wherein the learned Calcutta High Court explained the very concept as to how the calculation is to be made in terms of Section 16. Paragraph No. 20 to Paragraph No. 31 of the said judgment being relevant are reproduced hereinunder:

"20. To ascertain such issue, the very concept of compound interest versus simple interest is to be explored, since compound interest is the chosen mode in Section 16. Importantly, it has also been stipulated in Section 16 of the MSME Act that the compound interest shall be with "monthly rests". Thus, the interest is to be compounded at the end of each month after the appointed day. 21. The very concept of compound interest is variable progression, as opposed to simple interest which, by its very definition, always has to be at a fixed rate as on the date of

commencement of calculation. In case of simple interest, the interest is calculated at the fixed rate which prevailed at the juncture of commencement of calculations till the date of payment, on the principal.

22. As opposed thereto, the premise of compound interest is staggered progression in the sense that the interest has to be calculated at defined intervals, in the present case, at monthly intervals, which are known as "rests". Hence, for example, if the principal is Rs. 100/- and the initial rate of interest on the appointed day is 10%, after the end of the first month, the total amount would be Rs. 100 + 10% thereof that is Rs. 10/-, which equals Rs. 110/-.

23. The said sum of Rs. 110/-, which is the initial principal plus interest for the first month, forms the basis of calculation or principal for the second month. Thus, calculated, the principal for the second month would be Rs. 110/-, which would be the base amount on which further interest would be calculated.

24. Hence, although the commencement of calculation is tied to the appointed day, the point of incidence of the bank rates for calculation of interest becomes the end point of each month, which are also known as monthly "rests" as stipulated in Section 16 itself. Hence, by its very nature, compound interest has to be imposed at staggered intervals.

25. Since the point of incidence of the rate of interest is the rate prevailing at the end of each month, which is the monthly rest, the rate prevailing on such date must be the premise of calculation. For instance, if the initial rate of interest prevailing on the appointed day was "x%", the calculation for the first month would be equal to Principal (P) + "x% of principal". Again, at the beginning of the second month the rate of

interest becomes "y", the second month"s calculation would be equal to (P + x% of P) + y% of (P+ x% of P), which would again form the base amount for calculation of the third month. The only difference between a normal calculation of compound interest and that under Section 16 is that the rate will be three times the bank rate as notified by the RBI in case of the latter.

26. Section 16 mentions the appointed day merely as the starting point of calculation but does not provide that the rate of interest should also be inextricably linked to the said date; rather, the language used is "three times the bank rate notified by the Reserve Bank".

27. The argument of the petitioners, that if the rates are variable, the appointed day has to be calculated at the end of each month, is not acceptable, since there is no such possibility if the variable rates are taken into consideration. The appointed day merely provides the starting point of calculation. Thereafter, the calculation will progress at compound rate with monthly rests, meaning thereby that the rate prevailing at each monthly rest should be taken into account for incidence of interest for the said month. In Section 16, the term "rests" has been interchangeably used with "intervals".

28. The very character of compound interest makes it fluid and variable. If the rate of calculation of interest is fixed at the date of inception of calculation, the same would be a counter-intuitive, artificial and arbitrary superimposition on the normal mode of calculation as given in the statute, since Section 16 provides that the compound interest will be calculated with „monthly rests", at which points the prevailing bank rate of interest is to be taken into account.

29. Just as in the case of the simple interest if suddenly varied rates are imposed it would be arbitrary since the mode of calculation is continuous, similarly, in case of compound interest, which is to be calculated on a staggered basis, fixation of the rate prevailing at the inception would also be arbitrary.

30. The very premise of compound interest with monthly rests is that the calculation of further interest is made at the end of every month at the rates prevailing then. In a Section 16 scenario, the rate at which interest is to be imposed at each monthly rest is three times the bank rate notified by the RBI prevalent at that juncture.

31. Hence, by its very definition, compound interest at monthly rest is variable and cannot be static, frozen at the appointed day."

83. It is the opinion of this Court that the interpretations so given to Section 16 of the Act of 2006 by the learned Calcutta High Court as quoted hereinabove have lucidly laid down the principles for calculation of the interest and this Court duly agrees to the same.

84. The above analysis shows that the petitioners herein in the batch of three writ petitions would be entitled to the benefits under Sections 15, 16 and 17 of the Act of 2006. Be that as it may, what would be the interest component on the admitted dues has to be worked out as per the principles laid down as discussed above. The materials before this Court only refers to the work orders and the date on which these work orders were issued. Questions of facts arise pertaining to as to when the supplies were made; when the supplies were accepted; whether it was accepted or it was a deemed acceptance; what is the rate declared by the RBI during the relevant period, more particularly, taking into account that the interest payable is to be

compounded with monthly rests; cannot be decided by this Court. It would require exercise to be carried out by the petitioners and looked into by the respondent PHED."

10. From a perusal of the above quoted paragraphs, it would be seen that in terms with Section 16 of the Act of 2006, two aspects are required to be taken note of. First, the interest is to be calculated from the appointed date and secondly, the liability to pay compound interest with monthly rests. It is also very pertinent to take note of that when the Act stipulates that the interest is to be calculated by compounding with monthly rests, there is a requirement of making calculation of the amount payable by compounding it with monthly rests.

11. This Court has duly taken note of the representations which have been enclosed to the present writ petition as Annexure-13 to the writ petition which would not show as to how and what rate the interest applied. This Court also finds it very pertinent to take note of that at paragraph No. 82 of the judgment passed in the case of ***Garg Poly Industries (supra),*** this Court had duly taken note of the judgment of the learned Calcutta High Court in the case of ***V.K. Patel & Others Vs. Simplex Infrastructure Ltd.*** reported in ***2024 SCC OnLine Cal. 6617***, wherein the principles for calculation of the interest have been specifically mentioned. This Court has

also agreed to the principles set out by the learned Calcutta High Court in the case of ***V.K. Patel (supra)***.

12. It is under such circumstances, the opinion of this Court that if a claim is being made by the petitioners in respect to the supplies so made along with the interest and in terms with the Act of 2006, the petitioners are required to provide the calculation of the interest in the manner stipulated in Section 16 of the Act of 2006. Additionally, the aspects pertaining to, as to when, the supply was affected, when the supply was accepted, and whether the supply was made in terms with the work orders which have been issued are questions of facts which cannot be adjudicated in the present proceedings. Rather, the respondents would be able to do so upon materials placed by the petitioners.

13. Considering the above, the instant writ petition stands disposed of with the following observations and directions:

(i) The petitioners are granted liberty to carry out the exercise of calculating the interest component in terms with Section 16 of the Act of 2006, keeping in mind the interpretation so given by the learned Calcutta High Court in the case of ***V.K. Patel (supra)***, the relevant portion which have been already

quoted herein above. For the purpose of calculation, the petitioners would also have to place necessary materials as to when work orders were issued; when supplies were made; when supplies were accepted etc. On the basis of the above, the petitioners are granted liberty to submit a detailed representation making their claim before the Special Chief Secretary to the Government of Assam, PHE Department, within a period of 60 (sixty) days from today.

(ii) The Special Chief Secretary to the Government of Assam, PHE Department, shall thereupon carry out necessary verification on the claims submitted by the petitioners. The said Authority shall duly consider as to whether the petitioners' claims are in accordance with the work orders issued and whether the petitioners had supplied the materials. Additionally, when such materials were supplied and accepted by the Respondent Authorities. This Court also observes that the Respondent Authorities while carrying out the verification would be at liberty to ascertain the status of the petitioner No. 1 as a "Small Enterprise" under the Act of 2006 inasmuch as the said issue is not decided in the present proceedings by this Court. This Court further observes and directs that upon due satisfaction and after verification, the respondents shall

make payment to the petitioners as per the entitlement. The said exercise be completed within a period of 4 (four) months from the date of submission of the representation by the petitioners as per the liberty given hereinabove.

(iii) It is further observed and directed that in the circumstance, the Respondent Authorities are of the view that the petitioners herein are not entitled to the amount so claimed or part thereof for any reasons permissible under law, the petitioners be duly informed by a Speaking Order within a period of 4 (four) months from the date the petitioners submit their representation as per the liberty granted herein above.

(iv) It is further observed that in the circumstance the parties are not in agreement with the resolution in the manner stated hereinabove, disputes would arise thereby either of the parties would be at liberty to approach the MSME Facilitation Council for redressal of the disputes as per Section 18 of the Act of 2006.

(v) This Court further observes and directs that during this period, i.e. from today till the expiry of 4 (four) months from the date of submission of the representation by the

petitioners, the interest for the said period shall remain freezed. It is however observed that in the circumstance the parties do not agree on the inter se claims resulting into disputes, the above observation as regards the freezing of the interest for the period above mentioned shall have no application.

JUDGE

Comparing Assistant