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PART I—Orders and Notifications by the Governor of West Bengal, the High Court, Government Treasury, etc.

GOVERNMENT OF WEST BENGAL

Department of Micro, Small and Medium Enterprises and Textiles

Hemanta Basu Bhawan, 12, B.B.D. Bag (East), 4th Floor, Kolkata-700 001

No.369-MSMET(III)/12S-17/05

Date : 05/02/2016

NOTIFICATION

In exercise of the powers conferred by section 30 *read with* sub-section (3) of section 21 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006) (hereinafter referred to as the said Act) and in supersession of the West Bengal Micro and Small Enterprises Facilitation Council Rules, 2006, issued *vide* the then Cottage & Small Scale Industries Department notification No. 603/CS/O/C-III/12S-17/2005, dated the 22nd December, 2006, and published in the Kolkata Gazette, Extraordinary, PART I, dated the 11th January, 2007, the Governor is pleased hereby to make the following rules, namely:- .

Rules

1. **Short title and commencement-**(1) These rules may be called the West Bengal Micro and Small Enterprises Facilitation Council Rules, 2016.

(2) They shall come into force from the date of its publication in the Official Gazette.

2. **Definitions**-(1) In these rules, unless the context otherwise requires-

- (a) "Act" means the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006);
- (b) "arbitrator" means the West Bengal Micro and Small Enterprises Facilitation Council or any institution or centre providing alternate dispute resolution services under the Act.
- (c) "Chairperson" means the Chairperson of the Council appointed under clause (i) of sub-section (1) of section 21 of Act;
- (d) "Council" means the West Bengal Micro and Small Enterprises Facilitation Council, established by the Government of West Bengal under section 20;
- (e) "Institute" means any institution or centre providing alternate dispute resolution services referred to in sub-section (2) and (3) of section 18;
- (f) "member" means a member of the Council;
- (g) "section" means a section of the Act;
- (h) "State Government" means the Government of West Bengal in the Department of Micro, Small and Medium Enterprises and Textiles.

(2) Words and expressions used and not defined in these rules but defined in the Act, shall have the same meanings as respectively assigned to them in the Act.

3. **Composition, manner of appointment of members of Council, etc.**- (1) The Council shall consist of not less than three but not more than five members including the Chairperson.

(2) The Director, Directorate of Micro, Small and Medium Enterprises, Government of West Bengal, shall be the *ex officio* Chairperson of the Council.

(3) The State Government shall appoint the following persons as other members of the Council:-

- (i) one or more office-bearers or representatives of associations as specified in clause (ii) of sub-section (1) of section 21;
- (ii) one person having special knowledge in the field of law preferably from legal background;
- (iii) one person having special knowledge in the field of finance;

(4) When a member of the Council dies or resigns or is deemed to have resigned or is removed from the office or becomes incapable of acting as a member, the State Government may, by notification in the *Official Gazette*, appoint a person to fill that vacancy.

5) A member, other than the Chairperson, shall hold office for a period not exceeding two years from the date of his appointment.

(6) A member appointed under sub-rule (3), shall cease to be a member of the Council, if he ceases to represent the category or interest from which he was so appointed.

(7) Any member of the Council may resign from the Council by tendering one month's notice in writing to the State Government. The power to accept the resignation of a member shall vest in the State Government.

(8) The State Government may remove any member from office, if-

- (a) he is of unsound mind and stands so declared by a competent court; or
- (b) he becomes bankrupt or insolvent or suspends payment to his creditors; or
- (c) he is convicted of any offence which is punishable under the Indian Penal Code (45 of 1860); or
- (d) he absents himself from three consecutive meetings of the Council without the leave of the Chairperson, and in any case from five consecutive meetings; or
- (e) he acquires such financial or other interest as is likely, in the opinion of the State Government, to affect prejudicially his functions as a member.

4. Procedures to be followed in discharge of functions of Council.- (1) The Council shall meet at least once a month.

(2) A minimum of seven days' notice shall ordinarily be given for any meeting and in case of urgency, a meeting may be called at such shorter notice as the Chairperson may consider sufficient.

(3) The Council may appoint or engage the services of one or more experts in terms of section 26 of the Arbitration and Conciliation Act, 1996 (26 of 1996).

(4) The Council, or a party to the dispute with the approval of the Council, may apply to the court under section 27 of the Arbitration and Conciliation Act, 1996, for assistance in taking evidence.

(5) (a) The reference or application of the aggrieved micro or small enterprise supplier shall contain full particulars of such supplier and its status, supplied goods or services, terms of payment, if any, agreed between such supplier and the buyer, actual payment received with date, amount due and the interest duly calculated under section 16, supported by an affidavit, with necessary court fee/ stamp affixed thereon.

(b) The Chairperson of the Council may direct a petitioner to provide further particulars of the claim or any relevant documents in support of the claim as he may consider necessary for the purpose of the proceedings.

(c) If the petitioner fails or omits to do so within fifteen days of receipt of such communication or within such further time as the Chairperson may, for sufficient cause, allow, the Council may terminate the proceedings without prejudice to the right of the petitioner to make fresh reference, if he is otherwise entitled so to do.

- (d) The petitioner shall also simultaneously send a copy of the reference or application to the buyers against whom the reference or application is directed.
- (6) The reference or application shall be acknowledged forthwith if it is delivered at the office of the Council. Where the reference or application is received by registered post, its receipt shall be acknowledged on the same day.
- (7) If any reference or application contains any claim in respect of the matters other than sub-rule (5), the Council shall return the claim to the claimant for deletion of the matters extraneous to that rule and if the claimant does not comply within thirty days of such return, the Council may terminate the process without prejudice to the right of the claimant to make any fresh reference, if he is otherwise entitled so to do.
- (8) The Council shall if it is satisfied that on the facts stated therein, it has jurisdiction to proceed with the reference or application and that the claimant is entitled under the Act to make a reference, a copy of the statement of claim to be sent by registered/speed post to the respondent along with the copies of the attached documents and issue notice to the respondent asking him to furnish within fifteen days a statement of defence with such documents and facts in support of his defence.
- (9) The Council may, on an application made by the respondent showing sufficient cause, allow such further time for the statement of defence as it may consider fit, but not exceeding thirty days from the date of receipt by the respondent of the notice under sub-rule (8).
- (10) On receipt of the statement of defence, the Council may send a copy of the statement of defence to the claimant by registered/speed post.
- (11) On receipt of a reference or application under section 18 of the Act, the Chairperson of the Council shall cause the reference or application and the buyers response thereto to be examined and, on being satisfied with the reference or application making a *prima facie* case of delayed payment, cause the reference to be placed before the Council at its next immediate meeting for consideration. The Chairperson shall also ensure that each reference or application received within two weeks of the date of the last preceding meeting of the Council is examined and, if found in order, is placed for consideration of the Council at its next immediate meeting.
- (12) The Council shall either itself conduct conciliation in each reference or application placed before it or seek the assistance of any institute 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 reference or application as if the conciliation was initiated under Part III of that Act.
- (13) The Council or the institute to which it has been referred for conciliation shall require the supplier and the buyer concerned to appear before it by issuing notices to both the parties in this behalf. On the appearance of both the parties, the Council or the institute shall first make efforts to bring about conciliation between the buyer and the supplier. The institute shall submit its report to the Council within fifteen days of reference from the Council or within such period as the Council may specify.

(14) The Council or the institute to which it has been referred for conciliation, may, with the agreement of the parties, at any time during the proceedings, use mediation, conciliation or other procedures to encourage settlement of the dispute.

(15) The Council or the institute to which it has been referred for conciliation shall conduct its proceedings at such place as the Government may specify in the notification and the Council, on such terms as it may think fit at any stage for reasonable or sufficient cause, adjourn the hearing from time to time.

(16) The Chairperson or any other officer authorised by the Chairperson shall forward the quarterly report of the Council including annual progress report to the Member-Secretary of the Advisory Committee constituted under sub-section (3) of the section 7.

5. Settlement of agreement.- If the parties reach an agreement on a settlement of the dispute and sign a written settlement agreement, it shall be final and binding on the parties and persons claiming under them, respectively.

6. Status and effect of settlement agreement.- The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered under this rule.

7. Termination of conciliation proceedings.- The conciliation proceedings shall be terminated-

- (a) through signing of the settlement agreement by the parties or by a written declaration of the parties addressed to the Council on the date of the agreement or on the date of the declaration;
- (b) by a written declaration of a party to the other party and the Council on the date of declaration;
- (c) by a written declaration of the Conciliator *i.e.* Council, after consultation with the parties, to the effect that further efforts at conciliation towards settlement are no longer justified, on the date of the declaration.

8. Conduct of arbitration proceedings.- When conciliation process as per section 18(2), does not lead to settlement of the dispute, the Council shall either itself act as an arbitrator for final settlement of the dispute or any institution or centre providing alternate dispute resolution service, in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The supplier or the buyer may, either in person or through his lawyer registered with any court, present his case before the Council or the institute during the arbitration proceedings. The institute (institution/ centre) shall submit its report to the Council within such time as the Council may stipulate.

9. Place of arbitration.- The place of arbitration shall be determined by the Council or any institution or centre providing alternate dispute resolution services according to the provisions of the Act.

10. Language.-(1) The parties are free to agree upon the languages to be based in the arbitral proceedings.

(2) If the parties fail to agree upon the language to be used in the proceedings, the language to be used in the arbitral proceedings shall be determined by the Council or any institution or centre providing alternate dispute resolution services according to the provisions of the Act.

11. Written notices or communications.— (1) All notices or communications from the arbitrator *i.e.* Council or any institution or centre providing alternate dispute resolution services shall be in writing and shall be deemed to have been duly delivered, when such notices or communications have been sent at the last known address of the party or to its duly notified representative. Such notice or communication may be made by delivery against receipt, registered post/speed post, facsimile transmission, e-mail or any other means of telecommunication that provides a record of the sending thereof.

(2) The parties shall be given sufficient advance notice of the arbitration hearing.

12. Statement of claim and defence.- (1) The claimant shall state the facts supporting his claim and the respondent shall state his defence, if any.

(2) The parties may submit with their statements all documents they consider to be relevant or add a reference to the documents or submit other evidence, if necessary.

(3) All statement, documents or other information submitted by any party before the arbitrator, shall simultaneously be communicated to the other party.

13. Default of parties.- If a party fails to appear at an oral hearing or to produce documentary evidence, the Council may continue the proceedings and make the arbitral award on the basis of evidence placed before it and a notice shall be served to the defaulting party in this regard.

14. Hearing and written proceedings.- (1) The Council may hold oral hearings on the basis of documents submitted by the parties.

(2) The Council shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether proceedings shall be conducted on the basis of documents and other materials.

(3) After the conclusion of evidence and hearing, the Council shall fix a date in the presence of the parties, for pronouncement of the award.

(4) Any decision of the Council shall be made by a majority of its members present at the meeting of the Council.

15. Settlement of dispute.- (1) The Council may use mediation, conciliation or other procedures at any time during arbitration proceeding to encourage settlement of the dispute with the agreement of the parties.

(2) If during the arbitration proceedings, the parties settle the dispute, the Council shall terminate the proceedings and, if requested by the parties, shall record the settlement in the form of an arbitral award on agreed terms.

(3) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the subsequent of the status.

16. Form and contents of arbitral award.- (1) The Council shall make an arbitral award in accordance with section 31 of the Arbitration and Conciliation Act, 1996 (26 of 1996).

(2) An arbitral award shall be made in writing and shall be signed by the members of the Council.

(3) The arbitral award shall state the reasons upon which it is based, unless-

(a) the parties have agreed that no reasons are to be given; or

(b) the award is an arbitral award on agreed terms under rule 15 of these rules.

(4) The arbitral award shall state its date and the place of arbitration and the award shall be deemed to have been made at that place.

(5) After the arbitral award is made, a signed copy of the same shall be delivered to each of the parties within twenty-one days from the date of the arbitral award.

17. Termination of proceedings- (1) The arbitral proceeding shall be terminated by the final arbitral award or by order of the Council.

(2) The Council shall issue an order for the termination of the arbitral proceedings,

(a) where the claimant withdraws his claim unless the Respondent objects to the order and the Council recognizes a legitimate interest on his part in obtaining a final settlement of the dispute,

(b) where the parties agree on the termination of the proceedings, or

(c) where the Council finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

18. Correction and interpretation of award or additional award.- (1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties,-

(a) a party, with notice to the other party, may request the Council to correct any computation errors, any clerical or typographical errors or any others errors of a similar nature occurring in the award;

(b) a party, with notice to the other party, may request the Council to give an interpretation of a specific point or part of the award.

(2) If the Council considers the request made under sub-rule (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The Council may correct any error as referred to in clause (a) of sub-rule (1), on its own initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the Council to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the Council considers the request made under sub-rule (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The Council may extend, if necessary, the period of time within which it shall make a correction or give an interpretation under sub-rule (2), or make an additional arbitral award under sub-rule (5).

(7) The provisions of rule 16 regarding form and contents of arbitral award, shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this rule.

19. Interpretation.-Notwithstanding anything contained in these rules, the arbitral proceedings shall be governed by the Arbitration and Conciliation Act, 1996, and these rules shall be interpreted and applied so as to be consistent with and supplementary to and not- in derogation of the Arbitration and Conciliation Act, 1996.

20. Recovery of amount due as arrears of land revenue.- If a buyer does not file any appeal under section 19 of the Act, for setting aside any award made by the Council or any Institution, or if such appeal is dismissed, such award shall be executed by the Collector of the District concerned and the amount due shall be recovered as arrear of land revenue.

By order of the Governor,



RAJIVA SINHA

Principal Secretary to the Govt. of West Bengal