

# Payment protection and Recovery tools available to MSME



Nishant Mishra

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The importance of Micro, Small, and Medium Enterprises in any nation's economic growth is beyond doubt. For any economy, it is important to move from agriculture to industry and form industry to the service sector for economic growth and this migration is facilitated by the MSME sector.

MSME is defined differently in different countries, however, in India Section 7 of MSME Act, 2006 defines MSME in the following manner.

## In the case of Manufacturing Industry:

- Micro Industry; where the investment in plant and machinery does not exceed twenty-five lakh rupees;
- Small enterprise: where the investment in plant and machinery is more than twenty-five lakh rupees but does not exceed five crore rupees; or



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- Medium enterprise: where the investment in plant and machinery is more than five crore rupees but does not exceed ten crore rupees;



### In the case of Service Industry

- Micro enterprise: where the investment in equipment does not exceed ten lakh rupees;
- Small enterprise: where the investment in equipment is more than ten lakh rupees but does not exceed two crore rupees; or
- Medium enterprise:: where the investment in equipment is more than two crore rupees but does not exceed five crore rupees.

As mentioned above, the importance of MSME is beyond doubt and especially it becomes more important for a country that wants to achieve a \$5 trillion economic mark. Our Government is well aware of this fact has taken the unprecedented action-oriented steps on the issues faced by the sector be it enactment of MSME Act, 2006, the establishment of MSME Facilitation Council or dedicated bank for providing credit facilities to the MSME.

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That being said, I am focusing here on the payment protection and recovery tools available to the MSME. Our lawmakers were fully aware of the fact that MSME cannot survive the long net operating cycle; hence they have provided Section 15 to 23 in MSME Act, 2006 which provides the payment protection and recovery tool to MSMEs.

Section 15 of MSME Act, 2006 provides where any supplier supplies any goods or renders any services to any buyer, the buyer shall make the payment 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.

So even if the term of the sale agreement, for example, provides that buyer can make payment within 60 of the acceptance or deemed acceptance such clause will be void and payment needs to be made within 45 days.

Appointed date as mentioned in Section 15 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.

Explanation.--For the purposes of this clause,--

(i) "The day of acceptance" means,--

(a) the day of the actual delivery of goods or the rendering of services; or

(b) where any objection is made in writing by the buyer regarding the acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier;

(ii) "The day of deemed acceptance" means, where no objection is made in writing by the buyer regarding the acceptance of goods or services within fifteen days from the day of the



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delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services;

So as per Section 15 maximum time for which any buyer can withhold any amount once supplier supplied or provided the goods or services shall not exceed 45 days. It is to be noted that these 45 days shall be maximum time period respective of the fact that whatever period is mentioned in the contract for the sale of services or provisioning of services.

In case Buyer fails to make payment as per Section 15, then, as per Section 16, the Buyer shall be liable to pay compound interest calculated on monthly basis at the rate 3 times of the Bank Interest Rate specified by RBI. Interest to be calculated from appointed date or date as may be agreed. For reference, I am producing Section 16 below.

#### **Section 16 Date from which and the 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.

Further Section 17 talks about the recovery of the amount due, as per this section the buyer shall be liable to pay the amount along with interest, if any, to the supplier of goods and services.

#### **Section 17 Recovery of the amount due**

For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16.



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If any buyer defaults in making payment to the supplier of goods and services as per Section 17 then such MSME supplier can make reference to the MSME Facilitation Council as per Section 18.

Section 18 laid down the procedure for making an application to the facilitation Council. Sub section 1 of Section 18 provides that any party either buyer or seller, subject to the condition that at least one party shall MSME, in case of any dispute related to the amount payable as per Section 17 may make an application to MSME Facilitation Council. Sub Section 1 carries a non-obstante clause, hence such dispute can be raised notwithstanding anything contrary contained in any other law.

Sub Section 2 provides that once the Facilitation Council receives the application under sub section 1, either the Council itself starts the conciliation proceeding or may appoint any other institution engaged in such proceeding. Further all the provisions of Section 65 to 81 of the Arbitration and Conciliation Act, 1996 shall be applicable.

Sub Section 3 further provides that if conciliation proceeding remains unsuccessful than the council shall move arbitration and such arbitration proceeding may be taken by the council itself or council may appoint the third party for the same. All the provisions of the Arbitration and Conciliation Act, 1996 shall be applicable to such arbitration proceeding as if such an application is made under Section 7 of the Arbitration and Conciliation Act, 1996.

Section 7 of the Arbitration and Conciliation Act, 1996 deals with Agreement to be entered for submitting a dispute for Arbitration Proceeding.

Sub-Section 4 provides for the jurisdiction of the Council, Council shall have the power to provide such mediation only in its jurisdiction and jurisdiction of each council is notified by State Government, however, the buyer shall be situated in such jurisdiction in order to make

the reference to the Council. Section 20 gives power to the State Government to establish such a council and define its jurisdiction.

Sub Section 5 provides within 90 days from the date on which the reference made under Section 18 shall be disposed off.

**For reference I am producing Section 18 below;**

**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 dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section(1) of section 7 of that 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.

Section 19 provides the procedure for making the application for setting aside decree, award, or order passed by the council itself or by other institution appointed by the council for making such decision, section provides that any application made to the court for setting aside decree, award, or order passed by the council itself or by other institution appointed by the council for making such decision shall be entertained only after the buyer deposit 75% of the Amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court.

The court may also further direct to pay such percentage of amount out the amount deposited by the buyer as it may fit the supplier. For reference, please find the Section 19 below.

**Section 19: Application for setting aside decree, award or order.**

No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternative dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five percent. of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:

Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose.

Section 20 is already discussed above now moving to Section 21, Section 21 provides for the composition of the council. As per Section 21 council shall consist of a minimum of 3 members and a maximum of 5 members.

(i) Director of Industries, by whatever name called, or any other officer not below the rank of such Director, in the Department of the State Government having administrative control of the small scale industries or, as the case may be, micro, small and medium enterprises; and

(ii) one or more office-bearers or representatives of associations of micro or small industry or enterprises in the State; and

(iii) one or more representatives of banks and financial institutions lending to micro or small enterprises; or

(iv) one or more persons having special knowledge in the field of industry, finance, law, trade or commerce.

The person appointed under clause (i) of sub-section (1) shall be the Chairperson of the Micro and Small Enterprises Facilitation Council.

The composition of the Micro and Small Enterprises Facilitation Council, the manner of filling vacancies of its members and the procedure to be followed in the discharge of their functions by the members shall be such as may be prescribed by the State Government.

Section 22 provides that the Audited Annual Accounts of the Buyer shall specify the amount due along with interest, if any, to the MSME supplier standing at the end of each Financial Year, amount of interest paid under section 16 along with amount of payment made beyond the appointed day, amount paid after appointed but interest is not added on the same, and amount of interest not paid or paid after due date in succeeding year. For reference please find Section 22 below.

**Section 22: Requirement to specify unpaid amount with interest in the annual statement of accounts.**

Where any buyer is required to get his annual accounts audited under any law for the time being in force, such buyer shall furnish the following additional information in his annual statement of accounts, namely:--



(i) the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year;

(ii) the amount of interest paid by the buyer in terms of section 16, along with the amount of the payment made to the supplier beyond the appointed day during each accounting year;

(iii) the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under this Act;

(iv) the amount of interest accrued and remaining unpaid at the end of each accounting year; and

(v) the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure under section 23.

Section 23 states that interest paid by the buyer due to the payment after appointed date shall not be allowed as a deduction for purpose of Income Tax Act, 1961. For the reference, I am producing the Section below.

**Section 23: Interest not to be allowed as a deduction from income.**

Notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), the amount of interest payable or paid by any buyer, under or in accordance with the provisions of this Act, shall not, for the purposes of computation of income under the Income-tax Act, 1961, be allowed as deduction.

Although these provisions are helping the MSME in the recovery of their dues, however, more constant efforts are required from the Government for uplifting the MSME sector. One of the most recent steps that the Government has taken in order to gather information in relation to the amount due to the MSME sector is the introduction of e-Form MSME-1 by the MCA.

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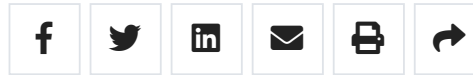
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