

**GUIDE TO DEBT RECOVERY
UNDER MICRO, SMALL AND
MEDIUM ENTERPRISES
DEVELOPMENT ACT, 2006**

INTRODUCTION:-

The Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as “Act”) was enacted for the purpose of facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises.

The Act has provided a financial structure to realize the outstanding money from default buyers. The Act provides a two way dispute resolution mechanism for the recovery of the outstanding amount from the buyer. The first step is conciliation wherein the Parties can resolve the disputes amicably and in the event, conciliation fails, Section 18(3) of the Act is invoked wherein the Council or the Institution as the case may terminate the conciliation proceedings and refer the case for the Arbitration.

**CLASSIFICATION OF MICRO,
SMALL AND MEDIUM
ENTERPRISES**

As per the new Notification dated 01.06.2020, the Micro, Small and

Medium Enterprises are categorized (revised) on the basis of the amount of investment in the Plant and Machinery and their turnover.

The revised definition of Micro, Small and Medium Enterprises is reproduced herein:-

- a) A Micro Enterprise is an Enterprise where investment in Plant and Machinery or Equipment does not exceed Rs.1 Crore and Turnover does not exceed Rs.5 crore;
- b) A Small Enterprise is an Enterprise where the investment in Plant and Machinery or Equipment is more than Rs.1 Crore but does not exceed Rs.10 Crore and turnover does not exceed 50 crore;
- c) A Medium Enterprise is an Enterprise where the investment in Plant and Machinery or Equipment is more than Rs.10 Crore but does not exceed Rs.50 Crore and turnover does not exceed 250 Crore.

All the above-mentioned enterprises come under the ambit of the Act and thus, are entitled to recover the money from the default buyers by moving an Application to Micro and Small

Enterprises Facilitation Center (MSEFC) established by the Government of the respective States or Union Territories.

WHO CAN FILE AN APPLICATION

Anyone who falls within the definition of 'Supplier' as mentioned in Section 2(n) of the Act and is having a Udyog Aadhar Number or Udhayam Registration Number and who supplies any goods or renders any services to any buyer but the buyer fails to make the payment for such goods or services as the case maybe within 45 days from the day of acceptance or the day of deemed acceptance, such supplier is entitled to file an application with the Micro and Small enterprises facilitation Center (MSEFC) for the purpose of recovering the delayed payment from the buyer.

HOW TO FILE AN APPLICATION

An Application to MSEFC in case of the delayed payment can be filed either physically or through an online portal established by the government of India for easy filing known as **MSME Samadhan**. The procedure for the online filing of the application is reiterated below:-

- a) Firstly, click on the link samadhaan.msme.gov.in and search for the option of case filing for entrepreneurs/MSME Units, here the Applicant is required to enter his Udyog Aadhar Number or Udhayam Registration Number as the case may be which the Applicant received at the time of the registration of his MSME along with his registered mobile number. Thereafter, the Applicant will receive an OTP on his registered mobile number, enter the OTP and click on the continue button.
- b) Go to the Application entry option as mentioned on the menu bar, here the Applicant is required to enter the details of the Petitioner/Applicant, Respondent.
- c) Subsequent to the submission of the above mentioned details, the Applicant is required to upload the work orders and invoices in a PDF format.
- d) After filing of all the necessary information, click on the submit button, before proceeding to the final submission the Applicant

will be asked to verify all the details.

- e) Thereafter, the Applicant will receive an email on the registered Email-id regarding the confirmation of the submission of his application wherein the Applicant will be allotted a temporary case number which will change into a regular case number once the Application will be taken up by the Facilitation Council.

ADJUDICATING AUTHORITY

The Application regarding the delayed payment by the buyers shall be adjudicated by the Micro and Small Enterprises Facilitation Council (MSEFC) established by the respective States or UT's government which consists of minimum 3 persons and maximum 5 including the chairman who will head the Facilitation Council.

APPLICATION FEES FOR FILING AN APPLICATION UNDER THE MSMED ACT

There is no uniform amount of Processing Fee(s) for an application under MSMED Act. It varies from State to State.

In Delhi, the fee(s) for filing the Application to the MSEFC is set up at Rs.2000/- (that may vary) which the Applicant has to pay at the time of the filing of the application with MSEFC.

STEPS UNDER MSMED ACT FOR ADJUDICATING

DECISION:-

MSMED Act provides for a two way dispute resolution mechanism for the recovery of the outstanding amount from the buyer.

As per Section 18 (1), an Aggrieved supplier may make a reference (qua an Application) to the Micro and Small Enterprises Facilitation Council who on the receipt of such reference (Application) may either themselves conduct the conciliation proceedings or may refer the same to an institution/body rendering the services of the conciliation for the redressal of the grievance.

The proceedings shall be conducted as per the provisions of Section 65 to 81 of the Arbitration and Conciliation Act, 1996 as if the conciliation is initiated under Part III of the Act.

Now, there can be two outcomes from the above- mentioned conciliation:-

- a) Conciliation may be successful and parties may arrived at amicable settlement;
- b) It may fail without arriving at any mutual settlement between Buyer and Supplier.

In case, the conciliation fails and no amicable settlement arrives between the buyer and the supplier, Section 18(3) of the Act is invoked wherein, the council or the Institution as the case may terminate the conciliation proceedings and refer the case for the Arbitration. The Council may either themselves conduct the Arbitration or refer the same to an Institution or a body rendering the services of the same.

Where the Conciliation has failed and the case has been referred to Arbitration, any such Award passed in Arbitration shall be carried out in accordance with Section 36 of the Arbitration and Conciliation Act, 1996 which says that such an Award passed in the Arbitration shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a decree of the court.

APPLICATION FOR SETTING ASIDE AWARD, DECREE OR ORDER (Section 19)

Any party aggrieved under MSMED Act from the Award, Decree or Order passed by the concerned Authority can make an Application to the Court to set aside such an Award, Decree or Order. However, no Application for setting aside can be entertained by the Court unless the Appellant submits with the Court 75% of the amount in respect of such Award, Decree or Order out of which such percentage or portion shall be paid to the Supplier as per the directions of the Court as it considers reasonable depending upon the circumstances subject to the conditions as the Court deems necessary to impose till the pendency of the Application of setting aside the Award, Decree or Order.

The compliance of Section 19 of the Act is sine qua non i.e. mandatory and thus, it debars the Court from entertaining any Application of setting aside Decree, Award or Order unless the Appellant (not being a Supplier) deposit 75% of the amount in terms of Award, Decree or Order as the case may be.

The proceeding as to deal with the Application of setting aside Award, decree or order is to be carried as per Section 34 of the Arbitration and Conciliation Act. In case of dismissal of Application for setting aside, the aggrieved Party can go for an Appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996.

DISCLAIMER:-

The present Article intends to provide brief and general information on the above mentioned subject & in no manner provides exhaustive details on the same. This document shall not be construed as a legal advise & further, shall not form as a base to take any decision without seeking proper legal advise from us. We shall not be responsible for whatsoever sustained by any person relying on this material.

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