



# **A CONCISE GUIDE TO THE MSME SECTOR:**

LEGAL REGIME, CHALLENGES, AND OPPORTUNITIES

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## TABLE OF ABBREVIATION

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<b>FULL DESCRIPTION</b>	<b>ABBREVIATION</b>
Atma Nirbhar Bharat Scheme	THE SCHEME
Bank Guarantees	BG
Committee of Creditors	COC
CORPORATE INSOLVENCY RESOLUTION PROCESS	CIRP
Goods and Services Tax	GST
Goods and Services Tax Network	GSTN
Gross Domestic Product	GDP
Gross Value Added	GVA
Micro and Small enterprises	MSEs
Micro and Small Enterprises Facilitation Council	MSEFC
Micro, Small and Medium Enterprises	MSMEs
Micro, Small and Medium Enterprises Development Act, 2006	MSMED ACT
Non-Banking Financial Corporation	NBFC
Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012	ORDER, 2012
Public Sector Undertakings	PSUs
The Micro Small and Medium Enterprises Development (Amendment) Bill, 2018	2018 Amendment Bill



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## **INTRODUCTION**

## INTRODUCTION

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Micro, Small and Medium Enterprises (**"MSMEs"**) are one of the strongest limbs of Indian Economy and are regarded as nurseries for Entrepreneurship and Innovation. The MSMEs are spread across the country and produce/provide a diverse range of products/services to meet the needs of the markets (both local and global market) and are intrinsically a part of the national and international value chains. Statistically, MSMEs in India comprise of a vast network of approximately 633.88 lakh enterprises<sup>1</sup> and are the second-largest generator of employment providing numerous opportunities to small companies at relatively low costs, when compared to larger industries. It is pertinent to note that the contribution of MSME sector in the Gross Domestic Product (**"GDP"**) ranges between 28-30%,<sup>2</sup> and 31-33% in the country's Gross Value Added (**"GVA"**)<sup>3</sup>, at current prices, annually. MSME's provide employment to around 1109.89 lakh people<sup>4</sup> and are imperative for the reduction of regional imbalances and in assuring equitable distribution of national income and wealth by catering to the industrialization of rural and backward areas.

In order to revive the Indian economy from an unexpected financial crisis on account of the Covid-19 pandemic, the Government of India has come up with a stimulus Scheme - 'Atma Nirbhar Bharat Scheme' (**"the Scheme"**).

As discussed in the preceding paragraph, the MSMEs have emerged as a significant sector contributing substantially to the Indian economy and employing millions of workers. Thus, strengthening MSMEs was the first and foremost target of the Scheme and making India truly

self-reliant/dependent. The Hon'ble Finance Minister in furtherance of the Scheme announced during the Covid-19 crisis, also emphasized on the crucial impact that these MSMEs have on the entire Indian economy and the need to protect the ailing and the sick MSMEs. As a result, MSME became the highlight of first tranche of announcements that were scheduled for the entire week starting from 13.05.2020 till 17.05.2020. Some of the major changes as announced for the MSMEs as a part of the Scheme are as following:

- Revised Definition of MSMEs.
- Credit Guarantee of INR 3 Lakh Crores for MSMEs.
- INR 20,000 Crores as Subordinate debt for NPA/Stressed MSMEs.
- Fund of Funds.<sup>5</sup>
- Global Tenders disallowed in Government Procurement Tenders up to INR 200 Crores.

Industrialization is key and extremely crucial in economic development and the growth of a country like India. Being heavily reliant on the agriculture sector along with a massive population has led to the Indian economy being reduced to penury in the past. Therefore, it became necessary, as is the practice worldwide, to address the concerns of the micro/ small/ medium scale industries and services together and recognize them as enterprises. As a result, the Government of India enacted the Micro, Small and Medium Enterprises Development Act, 2006 (**"MSMED Act"**) in order to provide a defined legal framework which can help in identification of the concept of "enterprise" (both manufacturing and services entities).

## INTRODUCTION

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The aforesaid policy of the government shall only be fructified in a scenario where there is strong institutional support to ensure that these MSMEs grow. Further, it is pertinent to note that the changes in the definition of MSME were long pending since there have been several discussions and deliberations between the Ministry of MSME and various stakeholders over the course of past few years. But there is still a lot of room for further discussion and deliberation as to whether these changes will help the MSME sector grow and prosper. In this Booklet we shall comprehensively study the various Legal,

Operational and Administrative issues that are faced by these MSMEs operationally and thereafter, certain recommendations have been put forth which might assist in the exponential growth of the MSME sector. It is often said that one needs to take two steps backward to make a giant leap forward. To ensure that MSMEs in India make a giant leap forward and become an integral part of the global supply chain and be a part of the immense growth story, one needs to take two steps back and ensure that practices that ails MSMEs on the ground are duly handled by way of legislative / policy interventions.



# **SCOPE AND COVERAGE OF MSME**

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## SCOPE AND COVERAGE OF MSME

On 13.05.2020, the Hon'ble Finance Minister Smt. Nirmala Sitharaman made an announcement to revise the definition of MSME under the MSMED Act. Thereafter, the limit was again revised on 01.06.2020 after the demand to further increase the threshold by the medium businesses.

A notification in this regard was issued on 01.06.2020 which shall come into effect from 01.07.2020.

The change in the definition of MSME is threefold:

- 1) Existing investment limit has been revised. (Refer to table 2 below)
- 2) A criterion of "**turnover**" has been

introduced which is an additional requirement to the existing investment criterion. It is important to note that as per various Government Press Releases/documents and as per the excerpts from the speech of the Hon'ble Finance Minister Smt. Nirmala Sitharaman on 13.05.2020, Investment Limit and Turnover shall now be the criteria for defining MSMEs.

- 3) The distinction between manufacturing enterprises and service sector enterprises has been done away with.

Following is a Tabular presentation of the change in the definition of the MSME: -

**AS PER EXISTING DEFINITION (TABLE 1.)**

CLASSIFICATION	MICRO	SMALL	MEDIUM
Manufacturing Enterprises	Investment – less than INR 25 Lakhs in Plant and Machinery	Investment – less than INR 5 Crores in Plant and Machinery	Investment less than 10 Crores in Plant and Machinery
Services Enterprises	Investment – less than INR 10 Lakhs for equipment	Investment – less than INR 2 Crores for equipment	Investment – less than INR 5 Crores for equipment



## SCOPE AND COVERAGE OF MSME

### AS PER DEFINITION (TABLE 2.)

CLASSIFICATION	MICRO	SMALL	MEDIUM
(For both Manufacturing and Services Enterprises)	Investment – less than INR 1 Crore in Plant and Machinery or Equipment  <b>AND</b> Turnover – less than INR 5 Crores	Investment – less than INR 10 Crores in Plant and Machinery or Equipment  <b>AND</b> Turnover – less than INR 50 Crores	Investment less than 50 Crores in Plant and Machinery or Equipment  <b>AND</b> Turnover – less than INR 250 Crores

While the aforesaid changes have been made in the pursuance of recent financial stimulus, it ought to be kept in mind that these changes cater to a long-standing need of MSMEs and related stakeholders to amend the criterion of defining MSMEs. In the year 2018 itself, The Micro Small and Medium Enterprises Development (Amendment) Bill, 2018 <sup>6</sup> (“**2018 Amendment Bill**”) was introduced in the Lok Sabha which proposed uniform classification for all MSMEs along with classification solely on the basis of their turnover. The need for the change in definition highlighted in the Amendment Bill 2018, was owing to the fact that the criterion of investment in plant and machinery or equipment as required in the definition required physical verification and called for higher associated transaction costs than anticipated. For instance, the present definition does not reflect the increase in the price of plant and machinery/ equipment as MSMEs mostly due to their informal and small scale of operations do not maintain proper

books of accounts, finding it difficult to present legitimate data regarding Investments in Plant and Machinery/Equipment, which leads to problems for such MSMEs to get classified as per the existing definition. Further, this criterion of "turnover" was also required to cater to the need of the tax regime of Goods and Services Tax ("**GST**"). The Goods and Services Tax Network ("**GSTN**"), captures the turnover details of enterprises and helps in verifying the details of the GST registered MSME units. Hence, the inclusion of "turnover" in the definition will make the system more transparent <sup>7</sup>, progressive and certainly easier to implement.

The parameters in the earlier definition were used by the promoters of the enterprises to keep small investments in order to fall under the category of MSME, and consequently, their growth was also stunted. The Hon'ble Finance Minister Smt. Nirmala Sitharaman, also, while proposing the new definition, had stated that the low

## SCOPE AND COVERAGE OF MSME

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threshold limits in the MSME definition killed the urge to grow owing to the fear of graduating out of the benefits of the classification as an MSME. Therefore, the new definition of MSME is aimed to cater to the object of 'ease of doing business in India', as it has widened the scope of entry for businesses under the MSME Sector by revising the investments limits and also removed any classification of the Manufacturing and Service sector.

Considering the above, the insertion of turnover as an additional criterion i.e. an "and" criteria in the definition is a departure from the suggestion of the 2018 Amendment Bill which required turnover to be a sole criteria. It must be noted herein that the change by way of notification on 1st June 2020 provides for "and" criterion and not an "or" criterion. Thus, an enterprise would remain to be a micro enterprise in case the investment in plant and machinery may have exceeded INR 1 crore but turnover is less than INR 5 crore and vice versa. More than manufacturing industry, service industry may get a huge benefit from this change since it may be unlikely that their investment in plant and machinery would cross the mentioned limits, even though their turnover may be high.

It was also to be noted that "export

turnover" will not be included in the calculation of turnover<sup>8</sup>, however, the notification does not address the issues. There may be some guidance which may be issued by the Ministry to clarify what all income would be included as a part of turnover.

Further, it is to be noted that the Report of the Expert Committee on Micro, Small and Medium Enterprises by RBI in June 2019 (expert committee report) has pointed that most of the countries use only single variable to define MSME.<sup>9</sup> Further, the limit for turnover as per the proposed 2018 Amendment Bill for Small and Medium Enterprise was kept higher at INR 75 Crores.<sup>10</sup> Whereas, as per the new definition the turnover limits have been reduced for Small Enterprises to INR 50 Crores.

Further, under the present legislative framework, traders and wholesalers, who also play a very integral part in the entire supply chain are not included under the ambit of MSME and consequently, the legislative and policy benefits which ensue to a MSME does not apply to traders. This is one aspect that the policy makers will need to bear in mind and then expand the definition of MSME to traders too considering that their vast role in the supply chain process.



# **LEGISLATIVE PROTECTION TO MSMEs**

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## LEGISLATIVE PROTECTION TO MSMEs

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There is an effective legal regime which has been promulgated for the protection of MSME viz: the MSMED Act. One needs to analyze the scheme of the MSMED Act to understand the protection which is being guaranteed to micro and small enterprises (“MSEs”), who constitute the major chunk of the MSME sector.

**1. Objective of the MSMED Act:** An Act to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto. Whereas it is expedient to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto;

**2. Delayed payments to Micro and small enterprises:**

**a.** Section 15: Liability of buyer <sup>11</sup> 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 <sup>12</sup>:

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 <sup>13</sup>.

(emphasis supplied)

**b.** 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.

(emphasis supplied)

**c.** Recovery of 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.

**d. Section 23: Overriding effect**

The provisions of section 15 to 23 shall have effect notwithstanding anything inconsistent contained in any law for the time being in force.

**3.** Thus, we see that an effective legal regime was created to protect the interest of the MSEs which provided for vast enforcement powers. The Courts in India have time and again endorsed the legal

## LEGISLATIVE PROTECTION TO MSMEs

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regime for delayed payments to MSEs and have noted that these provisions are created for the interest of MSEs.

**4.** There have been challenges which have assailed the provisions of the erstwhile Interest on Delayed Payments Act, 1993 and the MSMED Act (which repealed the Interest on Delayed Payments Act, 1993) but none of them have been successful considering that it is a beneficial statute which needs to be interpreted in favor of MSEs. It has been noted by Courts that MSMED Act is a special statute meant for the protections of MSMEs and they are in a different position compared to other creditors.

**5.** Some of the notable position of law enunciated by Courts in India on the rights of MSEs enshrined under the Interest of Delayed Payments Act, 1993, which would be applicable to the MSMED Act, are as under:

**a.** The biggest issue facing the MSEs are lack of working capital. And hence prompt payments to MSEs are need of the hour (*Shanti Conductors Private Limited v. Assam Electricity Board and Others* (2016) 15 SCC 13

**b.** Ensure prompt payment of money by buyers to MSEs and MSME's (*Shanti Conductors Private Limited v. Assam Electricity Board and Others* (2016) 15 SCC 13

**c.** Ensure small or medium enterprises are

not exploited by big entities because of their strong economic strength. The provisions help to strengthen the small and medium enterprises and meet the objective of the Act (*please see, Central Electricity Supply v. Union of India and Ors*, 2016 SCC online Del 2080)

**d.** There is a vested right which has been created for MSMEs to receive the Principal as well as interest since both are statutorily payable, and the law is ensured that the buyer pays the same promptly (*Modern Industries v. Steel Authority of India* (2010) 5 SCC 44).

**e.** If buyers are required to pay interest, they would not engage in dilatory tactics (*Modern Industries v. Steel Authority of India* (2010) 5 SCC 44)

**f.** There was a need to promulgate a legal framework to ensure that prompt payments of money by buyers are statutory ensured and mandatory provisions for payment of interest on outstanding money, in case of default must be made (*Shanti Conductors Private Limited v. Assam Electricity Board and Others* (2016) 15 SCC 13

**g.** Act has been designed to ensure the payments are made in time, in case of delay, interest amount is also payable (*Modern Industries v. Steel Authority of India* (2010) 5 SCC 44)

**h.** The Act was passed by the Parliament to impose a heavy interest on the buyers

## LEGISLATIVE PROTECTION TO MSMEs

who delayed the payment of the small-scale industries in order to deter the buyers from delaying the payments after accepting the supplies from the supplier (*Purbanchal Cable and Conductors Private Limited v. Assam State Electricity Board and another* (2012) 7 SCC 462)

6. Thus, a reading of the law would clearly show that the MSMED Act has created a vested right of payment to the MSEs which must be honored under all circumstances.

Therefore, it is evident that the Legislature has always been cautious in respect of the protection of rights of the MSME Sector and ensuring that their payments due from large industries are duly honored. The same can also be evidenced through numerous Notifications/Circulars issued by various departments/ ministries/agencies of the government over the due course of time. Following is a tabular summary of all recent Notifications/Circulars issued in relation to payments to the MSMEs:

**TABLE 3**

Notification/Circular No. and Date	Purpose	Department/ Ministry/ Agency
Notification No. 4415 of 2018 dated 02.11.2018 <sup>14</sup>	All companies who get supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprise suppliers exceed forty-five (45) days from the date of acceptance or the date of deemed acceptance of the goods or services as per the provisions of the Act, <b><i>shall submit a half-yearly return to the Ministry of Corporate Affairs, stating the amount of payments due and the reasons for the delay in payment.</i></b>	Ministry of Micro, Small and Medium Enterprises

TABLE 3

Notification/Circular No. and Date	Purpose	Department/ Ministry/ Agency
Notification No. RBI/2017/18/129 dated 07.02.2018. <sup>15</sup>	As a measure of support to the MSME in their transition to a formalised business environment, it was decided that the exposure of <b><i>banks and NBFCs to a borrower classified as micro, small and medium enterprise under the Micro, Small and Medium Enterprises Development (MSMED) Act, shall continue to be classified as a standard asset in the books of banks and NBFCs.</i></b>	Reserve Bank of India
Notification dated 06.06.2018. <sup>16</sup>	To temporarily allow banks and NBFCs to classify their exposure to all MSMEs, as per the 180 days past due criterion. It included those enterprises which were not registered under GST, as a 'standard' asset. The notification, also laid down certain conditions in this regard.	Reserve Bank of India
30.10.2017. <sup>17</sup>	MSME Delayed Payment Portal-MSME Samadhaan launched to empower the Micro and Small entrepreneurs across the country to directly register their cases relating to delayed payments by Central Ministries/ Departments/Central Public Sector Enterprises /State Governments.	Ministry of Micro, Small & Medium Enterprises

## LEGISLATIVE PROTECTION TO MSMEs

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Thus, we see that there have been repeated attempts made by the legislature and endorsed by the judiciary to protect the interest of the MSEs. Having said that, a

policy / law is as good as its execution. In the subsequent paragraphs, we will analyze whether the said protection has actually fructified on the ground.





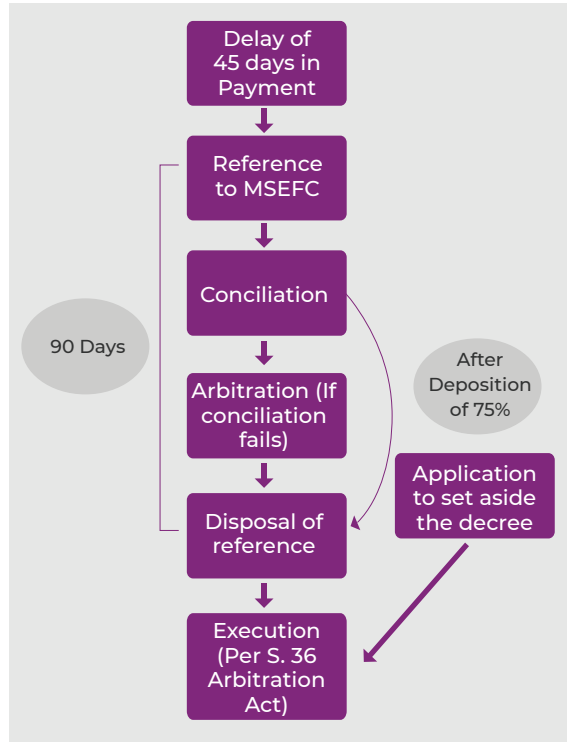
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# **ADMINISTRATIVE REFORMS FOR MSMEs**

ADMINISTRATIVE PROCESS

One of the primary objectives of the MSMED Act was to ensure timely payments to the MSMEs, for which the Act establishes Micro and Small Enterprises Facilitation Council (MSEFC).<sup>18</sup> As discussed in the preceding part, Chapter V of the MSMED Act deals with the issue of delayed payments and Section 15 states that the buyer of the goods should make payment to the supplier within the time stipulated in the agreement between the parties but, not exceeding 45 days from the day of acceptance of goods. Thereafter, Section 16 makes the buyer liable to pay compound interest on a monthly basis at three times of the bank rate notified by RBI to the supplier on the amount due, if the buyer fails to make payment of the amount as per Section 15. Thereafter as per Section 18, when the buyer refuses or delays or makes part payment of the amount due, the supplier has a right to refer such dispute to an institution known as the 'Facilitation Council'. Section 18 (2) provides for Conciliation and Section 18 (3) provides for Arbitration on the failure of the process of conciliation. Thereafter, Section 18(5) stipulates that "every" reference under the Section shall be decided within a period of 90 days from the date of making such reference.

Following chart explains the process of reference to MSEFC-



## ADMINISTRATIVE REFORMS FOR MSMEs

However, the MSEFC has miserably failed to adhere to such stipulation in several cases. Following are some sample

instances where the MSEFC has taken considerable amounts of time in passing their respective awards:

**TABLE 4**

Case Name	Year of Claim	Facts	Year of the Award
M/s. Maa Alloys (P) Ltd. v. M/s. Shree Metallic Ltd. <sup>19</sup>	2011	The claimant supplied goods to the respondent in pursuance of a purchase order dated 27.01.2011 whereas, the respondent only made part payment of the purchase. The claimant, therefore, filed a claim application before the MSEFC.	2016
M/s Gupta Power Infrastructure Ltd. v. Chhattisgarh State Power Distribution <sup>20</sup>	2014	The claimant supplied materials to the Respondent during the year 2010-2012 owing to purchase orders dated 10.05.2010 and 25.10.2010. The OP whereas made only part payment of the raised bill and left an outstanding balance amounting to Rs. 1,84,21,042.28	2016
M/s Anivet Health Care v. State of Madhya Pradesh <sup>21</sup>	2010	The proposal of M/s. Anivet Health Care was accepted by the State for the year 2008-09 for the supply of kit to the beneficiaries of the cattle and imparting three days of training. Accordingly, the orders in this regard were issued in favour of M/s. Anivet Health Care.	2013

TABLE 4

Case Name	Year of Claim	Facts	Year of the Award
		Though the kits were supplied and training was imparted but the requisite bill amount was not paid, hence M/s. Anivet Health Care had preferred reference under Section 18 of MP Micro, Small and Medium Enterprises Development Act, 2006 (Act of 2006) before the Facilitation Council constituted under the Act.	
Mazgaon Dock Case <sup>22</sup>	2011	Pursuant to a tender invited by the respondent for the fabrication of hull and superstructure unit of a dredger, a contract was awarded to the claimant. The work under the contract was duly completed and payment was made. Whereas, a dispute arose owing to the difference in rates and calculation of the payment. Therefore, Micro and Small Facilitation Council were approached.	2018
M/s Gulf Oil Corporation v. Jupiter Contech Private Limited <sup>23</sup>	2015	The claimant was awarded certain works contract at Orissa. Subcontracts were entered into and the value of the works contract was revised. The work was completed in all respects and thereafter, a joint reconciliation statement for the work done, store reconciliation was done on 01-07-2011 and	2019

TABLE 4

Case Name	Year of Claim	Facts	Year of the Award
		<p>the final payment amount was arrived at. The full and final payment was made whereas, later a dispute arose owing to a claim of an outstanding payment on the basis that the letter for acceptance of full and final settlement was given under duress.</p> <p>The dispute was referred to the Facilitation Council.</p>	
<p>Reliable Engineering Projects and Marketing v. Alstom <sup>24</sup></p>	<p>February 2015</p>	<p>Reliable Engineering Projects and Marketing Ltd. ("REPM") submitted a quotation for works to Alstom on 02-06-2009. On 23-07-2009, Alstom issued a Letter of Intent to REPM. A purchase order was issued due to being completed in 24 months. Later, owing to a change in Alstom's SAP system, the first purchase order was reissued against the balance works by second purchase order. A dispute arose owing to the amount of work and its related payment caused by a discrepancy in the two orders. Meeting kept on taking place between the parties and meanwhile, REPM registered itself as a "supplier" under the MSMED Act, 2006. Thereafter REPM approached the Facilitation Committee.</p>	<p>November 2015</p>

## ADMINISTRATIVE REFORMS FOR MSMEs

It is also imperative to note that in order to make it easier for the filing of applications, “MSME Samadhaan” portal was launched through which online applications can be filed against the delay of payment by the buyer of goods and services before the concerned MSEFC. Hence, it

becomes crucial to analyse the number of cases filed before the MSEFC “after” the launch of Samdhaan Portal and “before” the launch of Samadhaan Portal along with the amount of cases disposed by the MSEFC in order to determine their efficiency.

**TABLE 5**

Data as per 19-05-2020 <sup>25</sup>	Number of Cases Filed	Number of Cases disposed
Cases Before the launch of MSME-Samadhaan	4913	2939
Cases After the launch of MSME-Samadhaan	13190	3148
Cases directly by MSME	247	104
Total Cases	18353	6191

With a mere 33% conversion rate, the above-mentioned tables clearly indicate that there is a huge gap between the number of cases which are filed and disposed before the facilitation council showing huge pendency of cases. Further, the low rate of disposal defeats the intent behind section 18(5) of the MSMED Act

which mandates 90 days period for disposal of cases. Further, the efficiency with regards to disposal of cases has also not increased post the launch of the MSME Samadhaan Portal. This shows immense lacunae in the system and a possible need for a change in policy resulting into quicker adjudication.

### FACTORS CONTRIBUTING TO INEFFICIENCY

The inefficiency in the system may be owing to the following factors:

- **LACK OF FACILITATION COUNCILS:**

Majority of States in the country have only one Facilitation Council and hence are inadequate to handle the large amounts of cases referred to the councils.<sup>26</sup>

- **FACILITATION COUNCIL IS NOT A**

**JUDICIAL BODY:** The facilitation council lacks judicial powers to enforce its decisions since it is not a judicial body. It is pertinent to note that the provisions of the Arbitration and Conciliation Act, 1996 (Arbitration Act) are applicable to Arbitrations conducted in accordance to the MSMED and hence it may become necessary for the party in whose favour the award is passed to approach the court in order to enforce the award.

- **DELAY CAUSED BY APPEAL:**

In furtherance to the previous point, several corporates do not honour the decision of the council by not making any payment at the outset and file an appeal against the decision. This burden of delay caused by such appeals puts an additional burden on MSMEs who ultimately may choose to drop the claim owing to factors such as cost and/or time.<sup>27</sup> This adds up to the concern of MSMEs regarding the loss of both future and current business.

- **BUSINESS RATIONALE:** Since the bargaining power of the buyer is high, there may be severe delay on the part of the buyer to make the payment, and yet, the MSMEs are hesitant in taking a legal recourse due to the business risk of losing subsequent orders and spoiling their relationship.

- The MSEs have existing work contracts with the large corporates / buyers for which they would have procured goods. Some of the payments may be outstanding, which are billed by MSEs while some are unbilled and are work in progress. The MSEs do not want to jeopardize their payments by adopting a litigation route, rather they wish to settle the matter even if the payments are delayed so that they can execute the entire work.

- The MSEs rely on assurances from these large corporates that their payments would be made. At times, they also receive balance statements from buyers confirming their outstanding amount in writing. So, such MSEs do not want to take the litigation route since they do not want to jeopardize their relationship with such corporates.

- Engaging in litigation requires time, effort and money.

### RECOMMENDATIONS

The followings are recommended to curb such problems:

**• INCREASE IN NUMBER OF FACILITATION COUNCILS:**

The expert committee report of June 2019<sup>28</sup> suggested increasing the number of facilitation councils in the states. Whereas, it may also be noted that only increasing the number of facilitation councils may not be the absolute solution and there may be several structural changes required in the system to address the issue of delay because there is not much of difference in the states regarding a number of cases disposed of by their respective state councils. Maharashtra, which has more number of facilitation councils, has more number of pending cases. Hence, at the cost of reiteration, it is argued that increasing the number of facilitation councils will help but will not completely solve the problem.

**• ENFORCEMENT POWERS WITH FACILITATION COUNCILS:**

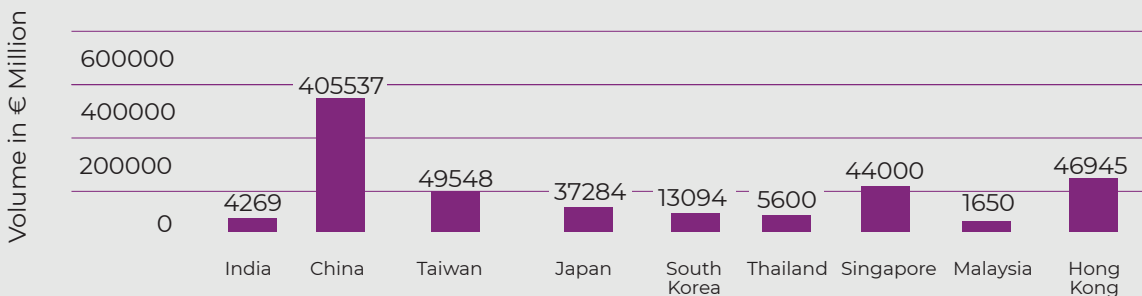
It is necessary to provide enforcement powers with the MSEFC in order to counter the problem of

approaching the courts as stated above. In this regard, the 245<sup>th</sup> standing committee report<sup>29</sup> recommends that amount of award given by Facilitation Council should be realizable as an arrear of land revenue. Another possible recommendation worth exploring, which may be far reaching, is that in case of severe delay in payment by the buyer, the entire amount which shall be paid ultimately by buyer would not be treated as business expense under the taxation statute.

**• AMENDMENTS IN FACTORING ACT:**

The Reserve Bank of India should permit setting up of NBFCs specifically to provide E-Platforms to MSME suppliers which would provide them with the facility for discounting of bills or financing of receivables with the provision of charging interest on delayed payments from the buyers. It can be seen that factoring business has grown after the Factoring Regulation Act, 2011 but is still very less compared to a few other Asian countries.

Chart V - Factoring Volume in Various Countries in 2017



Source: Report of Expert Committee, RBI



Therefore, promotion of factoring business may be helpful for MSMEs in India. It was also reiterated in the expert committee report that widening the scope of financiers by permitting NBFCs other than NBFC factors would possibly lead to discounting of such invoices.<sup>30</sup> A minimum rating may be required for these NBFCs. For the purpose, necessary amendments in the Factoring Act may be considered by Gol.

- **USAGE OF INFORMATION UTILITY:**

Information Utility (IU), is a repository of electronic legal evidence for verifying the claims of financial and operational creditors under IBC. The records of IU have been considered as a prima facie evidence of default.<sup>31</sup> This will be useful for MSEs as it will reduce their burden of proof in the proceedings before the facilitation council. Having all the invoices uploaded, the designated government authority can directly intervene on behalf of MSEs and send communication to the concerned buyer for reminding payment.<sup>32</sup> Further, the notification dated 02.11.2018<sup>33</sup> issued by the Ministry of Micro, Small and Medium Enterprises must also be considered which states that the companies who delay in making payments beyond forty-five (45) days shall submit a half-yearly return to the Ministry of Corporate Affairs, stating the amounts of payments due along with the reason for non-payment. With such systems in place, the possibility of clearance of dues by the corporates may drastically increase and MSME will have a

stronger basis to initiate a claim on non-payment.

- **MANDATORY UPLOADING OF**

**INVOICES:** The MSMEs must mandatorily upload all invoices to IU amounting to a specific figure, say INR 10 lakhs and above. The figure will have to be determined by the government from time to time<sup>34</sup>, taking into account the ground realities. It is pertinent to note that there might be situations when an MSME may itself be unwilling or unable to complain about the default owing to various reasons such as safeguarding the future relations with the defaulting party. Therefore, a designated authority may be notified which shall have the power to request/obtain information on unpaid bills from the concerned party, on its own on the uploading of a bill, after a specified date. The Ministry has already come out with a notification that all companies who has not delayed in making payment to MSMEs must disclose the same in their annual report stating the amount to be paid and the reasons for the delay thereof.

Additionally, if the company has to upload the said invoices which are unpaid coupled with other legislative protections in terms of treatment of such delayed payment under tax statutes etc to ensure such delay is not committed, it should go a long way in reducing the issue of delayed payment.

- **PRESUMPTION OF DEFAULT:** Another way to ease down the burden of proof on

MSEs can be a *prima facie* presumption of default where there is no pre-existing dispute raised by the buyer. Further, the burden of proof to show dispute should be on buyer and it should not be raised as a dilatory tactic. This may reduce the burden of proof of the MSME whereas simultaneously shift the burden of proving the payment of dues on the defaulting party. Needless to mention herein that there must be safeguards built herein that MSME must not resort to frivolous litigation.

• **LIMITED EXAMINATION BY THE COUNCIL:** It can be suggested that arbitration should only be referred to where the buyer has pointed any pre-existing dispute. The dispute regarding payment cannot be raised after the claim has been filed before the facilitation council. This would safeguard the MSEs from bearing the cost of added litigation. Further, an arrangement can be proposed by which the facilitation council would be limited to be required to examine whether the invoices raised by MSEs are genuine and acknowledged by the buyer and whether there was any pre-existing dispute. Accordingly, on satisfaction, the council can pass an order directing

payment of the amount. Subsequently, the buyer would only be able to challenge the order after payment of 75% of the amount. Herein, the required balance of convenience would lie towards the MSEs. Further, cost of litigation in case the award is passed in favor of MSME be borne by the buyer.

Corporates are more likely to clear dues with such measures in place, thereby likely to reduce the number of disputes before facilitation council. Further, such measures will put MSEs in a better position while making a claim for non-payment before the facilitation council.

• **DISALLOWANCE OF DEDUCTION OF REVENUE EXPENSES:** It is pointed that Section 23 of the MSMED Act disallows the deduction of any amount paid or payable by the buyer as interest under the Act. However, it is pertinent to note that in case of revenue expenses, the Income Tax Act, 1961 ("IT Act") allows the deduction of transaction amount also.<sup>35</sup> It is suggested that to further increase deterrence, the whole transaction amount be disallowed from the deduction in case of revenue expenses under the IT Act.



# **OPERATIONAL CHALLENGES FACED BY MSMEs**

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## OPERATIONAL CHALLENGES FACED BY MSMEs

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There are various factors which pose as a hindrance towards the operational performance of the MSMEs. While the issues faced by the MSMEs are very complex and to address these issues would require effective participation from all stakeholders, however, for the sake of simplicity, let's divide the issues faced by MSMEs into: Financial, Regulatory, Technological, Labour and Raw Material specific issues.

- **FINANCIAL:** Pertaining to finance, the key financial variables include a shortage of working capital, high cost of borrowing, unavailability of credit, and mainly the receipt of amount from the debtors.

It is further necessary to refer to the fact that several banks demand MSME's to ensure that a minimum claim period of one year is maintained with respect to bank guarantees ("BG"). A reference in this regard may be made to the Banking Laws (Amendment) Act, 2012 which made an amendment to Section 28 of the Indian Contract Act, 1872 by inserting Explanation III in the Act which fixed the minimum claim period for a BG as one year. Whereas, it is pertinent to note that the Banking Laws (Amendment) Act, 2012 was itself repealed in its entirety vide The Repealing and Amending (Second) Act, 2015. Therefore, the stipulation for having a minimum claim period of one year in a BG may have no legal basis currently the banks are demanding the same.

Further, while issuing a fresh BG or extending an existing one, Banks have increased 'claim period' of minimum one year from the date of expiry of the validity period of the BG and charge accordingly. Therefore, for example, if a BG has a validity period of 6 months, the claim period will un-necessarily be extended for 18 months, which causes a lot of hardships to MSMEs since their working capital is locked to that extent. Such practices by the banks have various adverse effects on the MSME such as follows:

- o Firstly, keeping minimum claim period of one year increases the cost (BG commissions) for the MSMEs and increase the liability of the MSMEs which is causing unnecessary hardships to the MSME.
- o Secondly, there is an increase in working capital requirements as the funds remain locked under margin money for longer tenor.
- o Thirdly, the BG limit gets consumed unnecessarily due to the above-stated requirement. Such conditions are therefore prejudicial to the conduct of operations of the MSMEs supplying to both Government as well as Private agencies. Most, if not all, contracts entered into by MSME with government and private players have a requirement of furnishing a BG and thus, these clauses which have the effect of reducing the BG limit for a contract already executed stalls the growth of the MSMEs.

## OPERATIONAL CHALLENGES FACED BY MSMEs

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It is to be noted that recovery of dues is one of the major obstacle being faced by the MSMEs who typically offer credit to retailers and key end-users such as contractors and such lack of recovery will force such MSMEs into a liquidity crunch.

Therefore, issues concerning BG as stated above must be catered to and thereafter it is imperative to provide practical and feasible mechanisms with MSMEs which can enable them to recover their dues at the earliest in order to safeguard them from facing a liquidity crunch. We also recommend that it is necessary for the Reserve Bank of India to provide a clarification which can authoritatively determine and state that the stipulation for having a minimum claim period of one year is not applicable after the repeal of the Banking Laws (Amendment) Act in whole. •

- **DEMAND CONTRACTION:** The MSME sector is also expected to be hit by the problem of “Demand Contraction” i.e. decrease in demand owing to factors such as delay in performance of the current contracts, termination of existing contracts due to the present crisis and lack of new

contracts. According to a survey conducted by CRISIL<sup>36</sup>, in regard to the cement industry, almost all dealers foresee a 10%-30% drop in demand in the current fiscal year owing to delay or freezing of construction activity caused by the Covid-19 Pandemic. Further, issues concerning the decrease in sales volume will be encountered by the MSME sector, and specific industries such as cement expect the sales volume to decline by more than 20%. The requirement of working capital, hence, increases owing to factors such as abundant pending receivables, lack of demand etc.

- **REGULATORY:** There are also various managerial problems which include government price controls, change in government policies and laws. It is to be noted that there are suggestions to the effect that the Centre should relax price control norms especially in concern to the pharma industry.<sup>37</sup> Thereafter, during the pandemic, the MSMEs are facing problems such as shortage of raw material and allied problems such as rising prices and transportation costs.

## OPERATIONAL CHALLENGES FACED BY MSMEs

• **LABOUR:** It is pertinent to note that 99% of the MSME sector comprises of "Micro Enterprises". The Covid-19 crisis has caused migrant workers to go back to their villages thereby causing labour shortages in such enterprises which employ such labour. It is uncertain whether they will return hence increasing the problems faced by the

MSMEs and specifically Micro Enterprises. Further, there is a lack of skilled workers in the industry which in turn results in low productivity in the industries.

Therefore, some of the general operational problems faced by the MSMEs are as follows:

**TABLE 6**

Operational Problems	Factors in Brief
Financial	Lack of financial resources, excessive collateral security, long claim periods concerning bank guarantee, high cost of borrowing, etc.
Demand Contraction	Lack of Purchasing Power of the Buyer, Termination of contract, etc.
Complicated Regulations	Price Control, Government Policies, complex bookkeeping regulations etc.
Raw Material	Lack of procurement of raw material, an increase in transportation cost, etc.
Labour	Lack of labour, lack of skilled labour, etc.
Unavailability of Affordable and Modern Technology	Access to technology is expensive, Minimal Knowledge of upcoming tech, Lack of funds to support Research and Development



# **CONTRACTUAL RESTRAINTS**

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## CONTRACTUAL RESTRAINTS

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It is also necessary to refer to the contractual provisions of the contracts entered by the MSMEs. A general analysis of the contracts compels the belief that they may be one-sided and prejudicial to the MSMEs. Further, demand contraction, lack of receipt of dues etc. may be owing to the termination of a contract. Therefore, it becomes necessary to analyse the termination clauses of the agreements associated with MSMEs. A termination clause of an agreement involving an MSME has provisions to the extent which gives the right to terminate only to the Government or other private agency and does not give the right to the MSME until it is caused by a Force Majeure event. Further sub-clauses to the termination clauses are to the effect that the MSMEs have no claim to compensation for any loss sustained by it by reason of it purchasing or procuring materials or other such activities which is made even in view of the performance of the contract. The termination clauses also state that the MSME shall not be entitled

to be paid or entitled to recover amounts concerning any work actually performed under the contract until the representative of the other party certifies the performance of such work.

Therefore, such clauses firstly give a sole right to terminate the contract to the party other than the MSME, and thereafter the termination clause increases the problem of the MSME by providing for a condition which requires a certification from the party terminating the contract for its dues of the work which is already done. It can be reasonably assumed that the party terminating the contract may not provide the required certification.

It is to be noted that these clauses may not meet the threshold of being declared as unconscionable in the eyes of the law, but are certainly one-sided against the MSMEs and must be avoided in the contracts in order to cater to the interests of the MSMEs.





# **CONFLICT BETWEEN MSMED ACT AND IBC**

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## CONFLICT BETWEEN MSMED ACT AND IBC

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Goods and services are being provided by the MSMEs to the buyer. Such MSMEs would be categorized as “operational creditors” under the IBC regime if the said buyer is admitted into CIRP process under the IBC regime.

We have already highlighted in the preceding paragraphs that there is an effective legal regime in form of MSMED Act which guarantees the right of MSEs. The MSMEs can invoke their rights against the buyer under the MSMED Act for receiving the principal amount along with interest within a stipulated time frame given under the MSMED Act. It must be noted that the MSMED Act provides that interest shall start accruing no later than 45 days from the appointed day / day of acceptance. However, once an insolvency process is initiated against the buyer under the IBC, there is a moratorium which is imposed, and no actions can be instituted under the MSMED Act against the buyer (corporate debtor). Even the pending proceedings against the corporate debtor are stayed. Further, orders which may have been passed under the MSMED Act against the buyer (who is the corporate debtor) cannot be executed.

Further, once an insolvency process is initiated under the Code, the MSEs (operational creditors) have no role to play since they are not even on the committee of creditors, so there is complete opaqueness in the way their interests are taken care of, if at all. During the insolvency

process, the MSEs must file their claims with the Interim Resolution Professional / Resolution Professional and thereafter, they have to wait for the resolution process to get over. After the entire resolution process is over, these MSEs may have to take a massive haircut at the end wherein they may not even receive the principal amount, leave alone the interest which is statutorily given under the MSMED Act.

### Interests of MSEs diluted under the IBC

1. As mentioned earlier, the MSEs who provides goods and / or services would be considered as “operational creditor”. There is no differentiation which has been under the IBC with respect to the quantum of debt which are owed to such operational creditors and their role thereof. All such creditors are put under the same bracket of operational creditors and are dealt with the same brush.
2. Before proceeding with a discussion on how the rights of MSEs are affected once an insolvency petition is admitted and the insolvency process is ongoing (“CIRP”), it is worthwhile to point out that the insolvency proceedings under the IBC can be initiated in the event of a default of INR 1,00,00,000. Thus, under the aegis of IBC, a perfectly solvent company who may have defaulted in some payments can be put under the CIRP process, and the moratorium would be imposed. There is no requirement of erosion of net worth before a company is declared sick and put on the insolvency route as was the case in erstwhile laws and

## CONFLICT BETWEEN MSMED ACT AND IBC

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regulations.

**3.** Please do note that MSMEs does invest a lot of time, manpower and cost for delivery of services with the underlying principles that monies would be paid in time and in full. Thus, any business model which does not ensure payments in time to MSMEs would render all the said MSMEs under extreme harsh business conditions, leading to questions of survival. It is critical for having an effective framework for protection of the interests of MSEs.

**4.** Once a CIRP is initiated, the following consequences emerge which severely impinges on the right of the MSEs:-

**a.** There is a moratorium which is imposed, and no suits or proceedings can be initiated against the corporate debtor (Section 14 of the IBC). Thus, a MSE cannot institute a proceeding against the buyer / corporate debtor under the MSMED Act.

**b.** A committee of creditors (“COC”) is formed wherein operational creditors have no right of representation (Section 21 of the IBC). This is the case even when the CIRP may be initiated post an insolvency petition filed by the operational creditor itself.

**c.** The COC would decides on the resolution plan without taking inputs from MSEs. Such approved resolution plan may impose haircuts to MSEs. In that regard, their rights of payment which is guaranteed under the MSMED Act would not be paid.

**d.** The approved resolution plan would be

binding on all creditors (including the operational creditors) under Section 31 of the IBC. Thus, the MSEs have no right to recover the unpaid amount under the MSMED Act post the adoption of the resolution plan.

**e.** The only and limited protection under IBC is that the resolution plan so adopted should provide for the repayment of the debts of operational creditors which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53 (Section 30 of the IBC). Under the waterfall mentioned under Section 53 of the Act, the MSEs would be considered as debts (other than financial debt) to unsecured creditors which comes at the very end of the distribution waterfall. Thus, their guaranteed amount is miniscule since all financial creditors would be paid up front.

### RECOMMENDATIONS

Resolution Plan under the IBC must be in conformity with the law for the time being in force.

**1.** Section 30(2)(e) of the IBC provides that the resolution plan so adopted must be conformity with the law for the time being in force. There was also a discussion on this clause in Report by the Insolvency Law Committee wherein it was noted that the resolution plan must be in compliance with RERA since it is a law for time being in force. The same logic would also apply to MSMED Act. Further, similar to RERA,

## CONFLICT BETWEEN MSMED ACT AND IBC

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MSMED also contains clause for delayed actions. It is to be noted herein that MSMED Act has non obstante clause and hence, a resolution plan cannot abrogate the rights which accrue to a MSME under the MSMED Act.

**2.** As noted above, The MSMED Act has provided a vested right in favor of MSME to get their payment of both principal and interest which must be honored under all circumstances. It is also to be noted that MSMED Act has a non-obstante clause, which essentially implies that the rights which have accrued in favor of MSE under the MSMED Act cannot be abrogated under any circumstances whatsoever. Thus, any resolution plan which does not guarantee the payment of MSME (in full) would be in violation of “law” and hence, invalid in terms of Section 30(2)(b) read

with Section 31 of the IBC.

**3.** Thus, while, under the CIRP Regulations, a resolution plan may reduce the amount payable to some creditors, but no deduction can be made to the amounts due to the Applicant because of the statutory protection (non obstante clause) guaranteed to it under the MSMED Act. Thus, it may be argued that any resolution plan which does not consider the payment of CEC of its full amount (principal and interest) would be illegal.

**4.** While these are arguments, the legislature may also look at some changes in the IBC regime to ensure that the interests of MSMEs are taken of if the buyer undergoes CIRP process and consequently, if it goes into liquidation.



# **PROCUREMENT POLICY AND RELATED ISSUES**

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## PROCUREMENT POLICY AND RELATED ISSUES

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In terms of the powers conferred in section 11 of the MSMED Act, the Central Government or the State Government, as the case may be, by Order notify from time to time, preference policies in respect of procurement of goods and services, produced and provided by micro and small enterprises, by its Ministries or Departments, as the case may be, or its aided institutions and public sector enterprises.

Pursuant to the aforesaid, the Central Government notified the Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012 ("**Order, 2012**") w.e.f. 01.04.2012<sup>38</sup>, for facilitating promotion and development of micro and small enterprises. As per Paragraphs 3(i) and 4 of the Order, 2012, a minimum of 20% of the annual value of goods/services of the Central Government and public sector undertakings must be procured from micro and small enterprises (with further reservation of 4% in favour of MSMEs owned by 'backward classes'). The Ministry of MSME further revised this rate of 20% upwards to 25% through the Public Procurement Policy for Micro and Small Enterprises (MSEs) Amendment Order, 2018 dated 09.11.2018.<sup>39</sup>(a minimum 3% reservation for these enterprises owned by women.)

Further, to reduce the transaction cost of doing business, it was proposed that the MSME shall be facilitated by

- A)** providing them tender sets at free of cost
- B)** exempting Micro and Small Enterprises from payment of earnest money,
- C)** adopting e-procurement to bring in transparency in the tendering process and
- D)** setting up a Grievance Cell in the Ministry of Micro, Small and Medium Enterprises.<sup>40</sup>

Lastly, to reduce the competition faced by MSMEs from the foreign competition and to enable maximum procurement from MSMEs, the Central government through the reforms suggested in the Scheme has proposed to disallow Government procurement tenders up to Rs 200 crores. To achieve this, the government through the Department of Expenditure has notified the amendments to present General Financial Rules, 2017<sup>41</sup>. The following clause (b) has been inserted in the existing Clause 161 (iv) of the rules:

*"No global tender enquiry (GTE) however shall be invited for tenders up to Rs 200 Crores or such limit as may be prescribed the Department of Expenditure from time to time."*<sup>42</sup>

### ISSUES FACED BY MSMEs IN PROCUREMENT

Whilst, the government has endeavored to

## PROCUREMENT POLICY AND RELATED ISSUES

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provide the MSMEs with ample opportunities to grow and expand there have always been considerable constraints because of which these enterprises are pulled down way below from their levels of potential growth. This may be owing to the following factors:

- Majority government/PSUs related contracts are complex in nature and have a minimum criterion for eligibility such as Turnover, previous Government Works/ Services that make it more cumbersome for MSMEs to get the mandate for contracts/works. In addition to this, low standards of quality and efficiency in comparison to big Industrial houses/established companies, also results in most of the Services/Works Tender being awarded to being awarded outside the MSME sector.
- Contracts with the MSMEs most of the times have a Performance Security clause which provides a stipulation of issuing an unequivocal BG in favour of the Owner/Service Recipient. This shall have an adverse impact on a large number of MSMEs supplying through tenders both to the Government as well as private agencies as the funds will remain locked under margin money for longer tenor and will result in increased working capital requirements.
- There has also been an issue of high-cost purchase of raw material due to price

fluctuations and lack of any specific incentives for purchasing raw materials. Furthermore, the costs of allied services/operations such as packaging, storage, marketing have crippled the MSMEs and the procurement process even further. Further, there may be limitation in the price escalation clauses which due to the fluctuation in raw material price, may be detrimental to MSMEs.

### RECOMMENDATIONS

In order to counter the above-mentioned problems, the following recommendations can be considered:

- For MSME lacking required experience or proven capacity, they could be provided a trial order, the successful acceptance of which could be deemed to match the eligibility criteria. This would enable the MSMEs to successfully procure such complex government contracts.
- Introduction of options of limited partnership with big industrial houses and factoring i.e. in the form of Cluster Manufacturing. A 'Cluster' is a sectoral and geographical concentration of enterprises (MSMEs) manufacturing same or related products facing common opportunities or threats.<sup>43</sup> The forming of such clusters can give rise to specialized suppliers of raw materials, machinery, product related services etc. with a backing of the government by announcing cluster

## PROCUREMENT POLICY AND RELATED ISSUES

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specific policies/reforms.

- The MSMEs are based on obsolete technology and therefore Industry specific technology upgradations programmes and subsidy in financing such technologies can be considered. MSMEs require lot of government approvals for competition of

works such getting construction permits, enforcing contracts, vendor registration etc. which in turn complicate the entire process making it too cumbersome. Therefore, there is need to simplify entries for such MSMEs to easily procure more and more contracts





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**CONCLUSION**

## CONCLUSION

In this Booklet, we have studied the growth of MSME sector in the recent times, the scope and coverage of the Legal Framework for MSMEs along with a few cases indicating the legislative protection that has been provided to the MSMEs by the Indian Courts over the period of time.

Further, we have highlighted various issues

that are being faced by the MSMEs including but not limited to Procurement, Operational, Administrative, Contractual and have put forth certain recommendations for resolving such issues and for the betterment of MSME sector as a whole. The following table outlines the major issues and their respective recommendations.

**TABLE 7**

MAJOR ISSUES	MAJOR RECOMMENDATIONS
DELAY IN DISPOSAL OF CASES	<ul style="list-style-type: none"><li>• INCREASE IN NUMBER OF FACILITATION COUNCILS</li><li>• ENFORCEMENT POWERS WITH FACILITATION COUNCILS</li><li>• AMENDMENTS IN FACORING ACT</li><li>• USAGE OF IU ALONG WITH MANDATORY UPLOADING OF INVOICES</li><li>• PRESUMPTION OF DEFAULT</li><li>• LIMITED EXAMINATION BY THE FACILITATION COUNCIL</li><li>• PROPER IMPLEMENTATION OF THE NOTIFICATION DATED 02.11.2018 BY THE MINISTRY OF MICRO, SMALL AND MEDIUM ENTERPRISES</li></ul>
MINIMUM CLAIM PERIOD OF ONE YEAR WITH RESPECT TO BANK GUARANTEES ("BG").	ISSUANCE OF CLARIFICATION BY THE RBI
CONTRACTUAL RESTRAINTS	REPHRASING OF THE TERMINATION CLAUSES
LABOUR	STRATEGIC SUSPENSION LIMITED TO ONLY UNNECESSARY LABOUR REGULATIONS

## CONCLUSION

TABLE 7

MAJOR ISSUES	MAJOR RECOMMENDATIONS
PROCUREMENT	<ul style="list-style-type: none"><li>• PROVIDE BETTER TECHNOLOGICAL EXPOSURE</li><li>• LIMITED PARTNERSHIP WITH ENTERPRISES BEYOND MSME SECTOR</li><li>• SIMPLIFICATION OF REGULATORY AS WELL AS CONTRACTUAL REQUIREMENTS</li></ul>

It is certain that the MSME sector of India is of paramount significance for the growth of the entire economy and job creation in India. Therefore, there is a need for the government to take rapid strides to reduce transactions costs of technology up-gradation, modernization of infrastructure etc. along with providing more financial packages/incentives to enable these MSMEs to expand their business operation and meet the required standards in both domestic and international markets. Furthermore, apart from proposing/introducing such schemes, proper implementation of such proposals to ensure that the MSMEs can reap the benefits to the optimum/desired level is a must. Achieving unprecedented excellence in performance by the advancement of the MSMEs along with

efficient steps by the government from time to time should complement to make the MSME regime a booming sector.

Lastly, we can see massive reforms have been made by the government in terms of the Scheme. The revision in definition by introducing turnover as an additional criterion can be seen as a step towards encouraging the existing MSMEs to purchase fresh machinery/ technologies that would help enhance their overall efficiency and furthermore cover new businesses with low turnovers to enable them to come within the scope of MSMEs. Thus, it is imperative that the businesses keep track of any new developments in the MSME Act to re-strategise and deal with the economic hardships caused due to the COVID-19 Pandemic.

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<sup>1</sup> Pg. 28, Annual Report, 2019, Ministry of Micro Small and Medium Enterprises  
<https://msme.gov.in/sites/default/files/Annualrprt.pdf>.

<sup>2</sup> Central Statistics Office (CSO), Ministry of Statistics & Programme Implementation.

<sup>3</sup> Ibid

<sup>4</sup> Pg. 32, Annual Report, 2019, Ministry of Micro Small and Medium Enterprises  
<https://msme.gov.in/sites/default/files/Annualrprt.pdf>.

<sup>5</sup> A corpus fund of INR 10,000 Crores approximately to be utilized by MSMEs having high credit worthiness. The funds goal is to protect MSMEs from the shortages in equity and revenue. The exact criteria for eligibility to avail the benefit of this fund is yet to be defined/notified by the government.

<sup>6</sup> THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT (AMENDMENT) BILL, 2018

[https://www.prsindia.org/sites/default/files/bill\\_files/The%20Micro%2C%20Small%20and%20Medium%20Enterprises%20Development%20%28Amendment%29%20Bill%2C%202018%20Bill%20Text.pdf](https://www.prsindia.org/sites/default/files/bill_files/The%20Micro%2C%20Small%20and%20Medium%20Enterprises%20Development%20%28Amendment%29%20Bill%2C%202018%20Bill%20Text.pdf)

<sup>7</sup> Ibid

<sup>8</sup> <https://economictimes.indiatimes.com/small-biz/sme-sector/cabinet-approves-new-definition-of-msme-turnover-for-medium-enterprise-increased-to-rs-250-crore/articleshow/76132935.cms>

<sup>9</sup> Page 13, Report of the Expert Committee on Micro, Small and Medium Enterprises, June 2019,  
<https://www.rbi.org.in/Scripts/PublicationReportDetails.aspx?UrlPage=&ID=924>

<sup>10</sup> Clause 2 of THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT (AMENDMENT) BILL, 2018

<sup>11</sup> “buyer” means whoever buys any goods or receives any services from a supplier for consideration;

<sup>12</sup> “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. 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 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

<sup>13</sup> “the day of deemed acceptance” means, where no objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services

<sup>14</sup> Ministry of MSME, Notification No. 4415 of 2018, dated November 02, 2018  
<http://egazette.nic.in/WriteReadData/2018/191730.pdf>

<sup>15</sup> Reserve Bank of India, Relief for MSME Borrowers registered under Goods and Services Tax (GST), dated February 07, 2018  
<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/MSME07021753E1582547B3409DBF8D72796D527B4A.PDF>

<sup>16</sup> Reserve Bank of India, Encouraging Formalisation of MSME sector, dated June 06, 2018  
<https://rbidocs.rbi.org.in/rdocs/Notification/PDFs/NOTI186D6EA2E5B750F42ED9B97AC409D092014.PDF>

<sup>17</sup> <https://pib.gov.in/newsite/PrintRelease.aspx?relid=172056>

<sup>18</sup> Section 18 of the MSMED Act.

<sup>19</sup> MSEFC Case No. 10/2011, [http://dcmsme.gov.in/publications/state\\_ut\\_rules/case.html](http://dcmsme.gov.in/publications/state_ut_rules/case.html)

<sup>20</sup> MSEFC Case No. 09/2014, [http://dcmsme.gov.in/publications/state\\_ut\\_rules/MSEFC%20Case.pdf](http://dcmsme.gov.in/publications/state_ut_rules/MSEFC%20Case.pdf)

<sup>21</sup> See The State of Madhya Pradesh vs. M/s. Anivet Health Care 2016 SCC OnLine MP 4875

<sup>22</sup> See Mazgaon Dock Ltd. v. MSIFC, 2018 SCC OnLine Bom 11003.

<sup>23</sup> See Gulf Oil Corporation v. APMSEFC and Jupiter Contech, 2020 SCC Online AP 9.

<sup>24</sup> Kindly also refer to GE T&D INDIA LIMITED Vs. RELIABLE ENGINEERING PROJECTS AND MARKETING O.M.P.(COMM)--76/2016, Delhi High Court

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- <sup>25</sup> Samadhaan Portal [https://samadhaan.msme.gov.in/MyMsme/MSEFC/MSEFC\\_Welcome.aspx](https://samadhaan.msme.gov.in/MyMsme/MSEFC/MSEFC_Welcome.aspx)
- <sup>26</sup> Supra Note 8, Expert Committee Report.
- <sup>27</sup> Shri K.V. Kammath Committee Report established in terms of Notification No. 8/67/2014-IF.II dated September 26, 2014.
- <sup>28</sup> Supra Note 8, Expert Committee Report.
- <sup>29</sup> Two Hundred and Forty Fifth Report On Review The Implementation Of Micro, Small And Medium Enterprises Development Act, 2006 Pertaining To The Ministry Of Micro, Small And Medium Enterprises, Parliament of India, Rajya Sabha, July 2013.
- <sup>30</sup> Pg. 31, Supra Note 8, Expert Committee Report.
- <sup>31</sup> Swiss Ribbons v. Union of India, WP (Civil) No. 99 of 2018.
- <sup>32</sup> Pg. 22-23, Supra Note 8, Expert Committee Report.
- <sup>33</sup> NOTIFICATION, MINISTRY OF MICRO, SMALL AND MEDIUM ENTERPRISES, dated November 02, 2018.<http://egazette.nic.in/WriteReadData/2018/191730.pdf>
- <sup>34</sup> Pg. 22-23, Supra Note 8, Expert Committee Report.
- <sup>35</sup> Section 37, IT Act.
- <sup>36</sup> SURVEY REPORT, CRISIL, May 2020.  
<https://www.crisil.com/en/home/our-analysis/reports/2020/05/cracks-loom-for-cement-dealers.html>
- <sup>37</sup> The Hindu, KTR urges Centre to relax drug price control norms, dated May 06, 2020.  
<https://www.thehindu.com/news/cities/Hyderabad/ktr-urges-centre-to-relax-drug-price-control-norms/article31520968.ece>
- <sup>38</sup> ORDER, MINISTRY OF MICRO SMALL AND MEDIUM ENTERPRISES, March 23, 2012.  
<http://dcmsme.gov.in/notification.pdf>
- <sup>39</sup> ORDER, MINISTRY OF MICRO SMALL AND MEDIUM ENTERPRISES, November 09, 2018.  
<http://www.dcmsme.gov.in/Gazette%20Notification.pdf>
- <sup>40</sup> Para 10 of the Order, 2012.
- <sup>41</sup> GENERAL FINANCIAL RULES, 2017.  
[https://doe.gov.in/sites/default/files/GFR2017\\_0.pdf](https://doe.gov.in/sites/default/files/GFR2017_0.pdf)
- <sup>42</sup> AMENDMENT IN GENERAL FINANCIAL RULES (GFRs), 2017 dated May 15, 2020.  
<http://www.dcmsme.gov.in/Amendment-in-General-Financial-Rules-2017-Global%20Tender%20Enquiry.pdf>
- <sup>43</sup> MSME – DEVELOPMENT INSTITUTE HYDERABAD, CLUSTER DEVELOPMENT FOR MSME GROWTH.  
<http://msmehyd.ap.nic.in/ClustersDevelopment.htm>



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