

# Debt recovery mechanism under Micro, Small and Medium Enterprises Development Act, 2006



## Introduction

The Micro, Small and Medium Enterprises (MSMEs) have surfaced as an integral segment for the progress and development of the Indian economy. In view of the significant role played by the MSMEs towards the socio-economic development of the country, the Government of India has taken various measures in order to safeguard their interests.

Among these measures was the enactment of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'the Act') with the aim of promotion and development of the MSMEs.

## Classification of Enterprises

Section 7 of the Act provides the criteria for classification of an enterprise as Micro, Small and Medium Enterprise, which was amended vide Notification dated June 26, 2020 issued by the Ministry of Micro, Small and Medium Enterprises.

As per the notification, the new criteria, which came into effect from July 1, 2020, is as provided in the table:

Classification of enterprises	Investment in plant and machinery or equipment (In crore)	Turnover (In crore)
Micro enterprise	Does not exceed INR 1 crore.	Does not exceed INR 5 crore
Small enterprise	Does not exceed INR 10 crore	Does not exceed INR 50 crore
Medium enterprise	Does not exceed INR 50 crore	Does not exceed INR 250 crore

## Recovery mechanism under the Act

The Act provides a mechanism for recovery of delayed payments along with penal interest, in order to ensure that the payments are made and received by the buyer and the seller in a time bound manner.

### ➤ Duty of the buyer to make payment:

Section 15 of the Act stipulates that the buyer shall make payment for the goods delivered or services rendered by the supplier on the date agreed between them, in writing.

In case any date has not been agreed, the payment has to be made immediately at the end of 15 days

from the date of acceptance of goods and services. However, if the buyer raises any objection with respect to the goods and services, in writing, within 15 days of the delivery of goods and services, then the payment has to be made at the end of 15 days from the day when such objections have been rectified. The section further clarifies that the period of payment should in no case be more than 45 days.

➤ **Payment of interest for delayed payment:**

If the buyer fails to make the payment to the seller, he would be liable to pay compound interest (with monthly rests), which would be calculated at three times of the bank rate notified by the Reserve Bank of India, along with the amount of payment for goods and services due to the supplier as provided in section 16 and section 17 of the Act.

➤ **Settlement of disputes between the seller and the buyer:**

In case a dispute arises between the seller and the buyer with respect to the amount to be paid to the seller, a reference can be made to the Micro and Small Enterprises Facilitation Council (hereinafter referred to as 'the Council'), in accordance with section 18 of the Act.

Once a reference is received, the Council shall itself conduct conciliation proceedings or seek assistance from any other institution that provides alternative dispute resolution services, as per the

provisions of Arbitration and Conciliation Act, 1996. If the parties do not come to a settlement and the conciliation proceedings are unsuccessful, then the Council shall itself conduct arbitration or seek assistance from any other institution that provides alternative dispute resolution services, as per the provisions of Arbitration and Conciliation Act, 1996. The section clarifies that the reference has to be decided within 90 (ninety) days.

➤ **Appeal against the order of the Council**

In terms of section 19 of the Act, the appellant (who is not the supplier) is required to deposit seventy five percent (75%) of the amount required to be paid as per the award, decree or order passed by the Council before filing an application in a court for setting aside the award, decree or order of the Council. However, the court has a discretionary power to alter the percentage of the amount required to be deposited by the applicant, depending upon the facts and circumstances of each case.

**Conclusion**

One of the major impediments faced by the micro, medium and small scale enterprises in running their business is the default in payment by the buyers. Such payment defaults not only hinder the growth and cause liquidity crunch for the enterprises but also affect the economy as a whole.

Keeping this in mind, the key objective behind the enactment of the Act was to ensure timely payment



to the seller. For ensuring these payments, the Act provides for payment of penal interest on the delayed payments.

Furthermore, the Act also provides a mechanism for speedy and amicable redressal of disputes through conciliation and arbitration proceedings which are to be conducted by the Council constituted under Act.

In order to achieve these objectives, the Ministry of Micro, Small and Medium Enterprises initiated online filing of applications through a [Samadhaan Portal](#), which was launched on October 30, 2017. The portal also helps in tracking the status of pending applications and gives information about the pending payments to the registered MSMEs.

For these reasons, the recovery mechanism under the Act has come out as a promising relief to the MSMEs in comparison to other remedies available to them.

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