

Procedure to Recover Debt- MSME Samadhaan

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A Concise Look into the Mechanism of Debt Recovery for MSMEs

The Micro, Small and Medium Enterprises (MSMEs) are one of the crucial mechanisms of economic growth and for promoting equitable development in all over the world. This sector contributes a major share in generating employment and thus can be considered as the backbone of the country. This article traverses the challenges faced and the detailed procedure for recovery of debt by the MSMEs.

CHALLENGES FACED BY MSME IN THE EVENT OF DELAYED PAYMENT

MSMEs' beneficence is remarkable in the growth of the Indian economy. Concurrently, MSMEs face constraints to sustain their combativeness in the world. Payment delay is an extensive affair for the MSMEs since they do not hold enough capital. Hence, in case of delay in payment, they bear a great dilemma to sustain. Sometimes a buyer of goods or services fails to make payment to the supplier. At times, the period of non-payment for goods and services received by the buyer may exceed 45 days from the day of acceptance of such goods or services. The delay in payment leads to many MSMEs becoming NPAs.

MSMED ACT

In order to settle the issues of delayed payments, the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, has been established that sets out distinct provisions to deal with such cases. Chapter V, Sections 15 to 24 of the MSMED Act[1] deal with the issues of delayed payments to the MSEs by buyers to MSE supplier.

SAMADHAAN PORTAL- MONITORING SYSTEM FOR DELAYED PAYMENT[2]

On October 30, 2017, the Ministry of MSME launched an e-medium to enable the micro and small suppliers to file an online application against the buyer of their goods and services. In order to be eligible for filing the complaint on MSMED Samadhaan, MSME needs to be registered with the national portal, Udyog Aadhaar.

As per Section 16 of MSMED Act, 2006, when a buyer fails to make payment to the supplier, it shall be liable to pay compound interest every month on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, three times of the bank rate notified by Reserve Bank[3].

The Smadhaan portal provides information about pending payments of micro and small enterprises with individual Central Public Sector Enterprises/Central Ministries, state governments, etc. The CEO of the public sector enterprises and secretaries of various ministries concerned are also able to monitor such issues under their jurisdiction and issue necessary instructions to resolve them.

Section 20 of the MSMED Act outlines the establishment of the Micro and Small Enterprises Facilitation Councils (MSEFC). It states that the state government shall, by notification, establish one or more MSEFCs. In such a way, MSEFC is the authority that implements the provisions of the MSMED Act[4].

Section 21 illustrates the constitution of MSEFC. As per this section, MSEFC consists of three to five members to be appointed amongst the categories, namely the director of industries or another officer not below the rank of such director, one or more office bearers or representatives of MSMEs, one or more representative of banks and financial institutions lending to MSEs or one or more persons having special knowledge in the field of industry, finance, law, trade or commerce[5].

MSEFC of the state upon examining the application issues directions to the buyer unit for payment of due amount along with interest. Further, as per Section 18(5) the council has to adjudicate each reference made to it within a period of 90 days from the date of such reference.

Section 19 grants an opportunity for filing an appeal. It states that the appellant (who is not the supplier) can file an appeal by depositing 75% of the award amount. No application for setting aside any decree, award or order made either by council or by alternate dispute resolution centre shall be entertained unless the appellant deposits the above-mentioned amount[6].

STEPS INVOLVED IN FILING ONLINE APPLICATION

STEP 1:

Micro and small enterprises require to visit the online MSMED Samadhaan portal at https://samadhaan.msme.gov.in/MyMsme/MSEFC/MSEFC_Welcome.aspx and click on "Case filing for Entrepreneur / MSE units". It redirects to "Entrepreneur validation" page.

STEP 2:

Once the Entrepreneur validation page appears, the Udyog Aadhaar Number and the mobile number registered on Udyog Aadhaar is required to be filled.

STEP 3:

Post filling of details mentioned above, application for payment recovery is to be filed with the MSEFC. In this step, the application is required to be referred to the council as per its jurisdiction. Important details such as PAN or GSTIN number of the petitioner, the buyers' details against whom the complaint is to be filled are requirements that need strict adherence. Thereafter, work orders and invoice details related to the buyer are required to be uploaded. A maximum of 5 work orders and 5 invoices per buyer or party can be uploaded.

STEP 4:

In the final step, the application is submitted post final review. As per Section 18, once a matter gets referred to the MSEFC of the respective state, an online intimation is given to both parties. An opportunity for mutual settlement is granted through conciliation. The council either itself conducts conciliation or seeks the assistance of any institution or centre providing alternate dispute resolution services. The provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 are applicable to such disputes[7].

On failure or termination of the conciliation without any settlement between the parties, the council either itself takes up the dispute for arbitration or may refer it to any institution or centre providing alternate dispute

resolution services for such arbitration. MSEFC passes a final and binding award. That award is to be communicated to Interim Resolution Professional and Hon'ble National Company Law Tribunal (NCLT) during the insolvency procedure. The execution of such an award is under the Arbitration and Conciliation Act, 1996.

Three notices of the order are given to the respondent, post which a notice gets published. If the buyer remains unresponsive, it is deemed as a confirmation of its liability. The offences of the buyer are tried by the Metropolitan Magistrate or Magistrate of First Class or courts of higher hierarchy.

CONCLUSION

MSMED Samadhaan portal is an effective tool to recover the outstanding dues since this portal aims at empowering micro and small entrepreneurs. Further, the portal promotes the monitoring of delayed payment in an efficient aspect. Statistically, since the commencement of the e-medium in 2017, the total number of cases filed in the MSEFC has been approximately 13190 out of which 3149 are disposed of, granting a total amount of Rs. 598.90 Crore[8]. The information on the portal has been made available in the public domain, thus exerting moral responsibility on the defaulters to ensure payment in time-bound manner. Thus, one could say that this portal promotes the viability of micro and small enterprises.

With recent developments and advancements in the MSMED Act and the Insolvency and Bankruptcy code announced by the Government of India during the outbreak of the COVID 19, the window to MSME favorable future has been created thereby in a way towards protection of the economy in the country.

- [1] The Micro, Small and Medium Enterprises Development Act, 2006
- [2] https://samadhaan.msme.gov.in/MyMsme/MSEFC/MSEFC_Welcome.aspx
- [3] Section 16 of the Micro, Small and Medium Enterprises Development Act, 2006
- [4] Section 20 of the Micro, Small and Medium Enterprises Development Act, 2006
- [5] Section 21 of the Micro, Small and Medium Enterprises Development Act, 2006
- [6] Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006
- [7] Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006

- [8] MSMED Samadhaan portal
https://samadhaan.msme.gov.in/MyMsme/MSEFC/MSEFC_Welcome.aspx

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