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E-Newsletter
Trans India Law Associates
New Delhi
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Notice under MSMED Act, 2006
DELAYED PAYMENTS TO MICRO AND SMALL ENTERPRISES
Procedure under section 18

Problem: *How MSMED Recovery dues and Resolve the disputes?*

Section 18. Reference to Micro and Small Enterprises Facilitation Council.

Sub-Section 1 (Dispute Arise for recovery u/s 17)

(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.

Section 17

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.

Sub-Section 2 (Arbitration and Conciliation)

(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.

Sub-Section 3 (Dispute not Resolved)

(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.

Sub-Section 4 (Jurisdiction)

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small

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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.

Sub-Section 5 (Decision Period)

(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 -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 alternate 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 per cent. 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.

Explanation:

If the Appellant (not being the supplier) wants to file an appeal, no application for setting aside any decree or award by the MSEFC shall be entertained by any court unless the appellant (not being supplier) has deposited with it, the 75% of the award amount. (Section 19)

Section 20 - Establishment of Micro and Small Enterprises Facilitation Council.

The State Government shall, by notification, establish one or more Micro and Small Enterprises Facilitation Councils, at such places, exercising such jurisdiction and for such areas, as may be specified in the notification.

Section 21 - Composition of Micro and Small Enterprises Facilitation Council.

(1) The Micro and Small Enterprise Facilitation Council shall consist of not less than three but not more than five members to be appointed from amongst the following categories, namely:

(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.

(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.

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

(3) 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.

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Section-28. Jurisdiction of courts.

No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

Mechanism under Section 18 of the MSMED Act

A specified dispute resolution under Section 18 is provided which can be explained as below:

- First, there should be an amount due between supplier and buyer.
- Any party can make a reference to the Micro and Small Enterprises Facilitation Council.
- The Facilitation council will first step up a conciliation (either by itself or can refer it to a conciliation centre).
- If the conciliation is successful, matter will be completed there as per the settlement between the parties.
- If the conciliation is not successful, then the facilitation council will initiate arbitration proceedings either by itself or it can refer the matter to an arbitration centre.
- The reference under this section has to be resolved within 90 days.

This section also highlights on the jurisdiction of the facilitation council. As per the section, the facilitation council can act only on those references where supplier is from its jurisdiction whereas buyer need not to be.

Buyers Perspective:

1. Under Section 19 of the Act, the award of the MSME Facilitation Council can be challenged by the Designated Court.
2. Still, the request to set aside the award shall not be entertained by the Court until the applicant has deposited 75 % of the amount awarded by the Council.
3. It is a requirement for accepting and retaining the appeal against the award of the MSME Facilitation Council.
4. It will also be the Court's right to pay the buyer whatever amount it finds appropriate.
5. Sections 20 & 21 stipulate that these Facilitation Councils shall be formed by the Government of the State and shall consist of the Director of Industries

Seller perspective:

Under section 18 Seller can file a complaint with regard to any amount due under section 17:

Section 18: MSME may make a reference to the Micro and Small Enterprises Facilitation Council (“MSEFC”) and MSEFC may initiative on its own, action as it may deed necessary.

Government of India has lunched <https://samadhaan.msme.gov.in> portal, a unique and central point where all the MSMEs can file their compliant.

Step 1: Visit above web portal and look for the option case filing for entrepreneurs/MSE units in the menu bar. After clicking above option enter your UAN and the mobile number which was provided at the time of registration along with the verification captcha. Thereafter, one-time password will be sent to your registered email ID please enter that and click on continue.

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Step II: Now, you will see an option Application entry which will help you to file an application and/or compliant with the appropriate authority, before filling it please keep the details of work orders and/or details of invoices ready or any other document which can prove your claim. You can provide the details over the portal, if it is less than 5 however, in case it is more than 5 then you can combine all invoices in single PDF and upload it over the web-portal and submit it, thereafter one more page will be pop-up for the review and final submission.

Step III: All done now MSEFC will send this application to the concerned respondent and status of your compliant can be seen Entrepreneur Application list, the application will be proceed faster than that of the court, furthermore the concerned officer may ask you to come and advise you in case of any other document and/or information being required by him.

Who can apply?

Any Micro or small enterprise having valid Udyog Aadhar (UAM) can apply.

- Every reference made to MSEFC shall be decided within a period of ninety days from the date of making such a reference as per provisions laid in the Act.
- Under Section 19 of the Act, the award of the MSME Facilitation Council can be challenged by the Designated Court.

For any clarification/information please contact-

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