

# FAQs on MSMEs: Addressing Delayed Payment Tragedies



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Micro, Small and Medium Enterprises Development Act, 2006 (“MSMED Act”) came into force in October 2006 to facilitate the development and competitiveness of micro, small and medium enterprises. It’s main objective is to safeguard the interests of businesses, particularly small-scale enterprises that may have limited financial resources. The MSMED Act is primarily known for its provisions related to delayed payments and has simplified the process of recovery through its portal named MSME Samadhaan.

As per the current statistics, total cases filed on MSME Samadhaan is 77,109 out of which 38,888 have been disposed off aggregating to Rs.7,451.60 crores.

This article elaborates the provisions related to delayed payments under the MSMED Act[1].

### 1.Which enterprises are covered under the MSMED Act?

The classification of enterprises is revised as per the notification dated 1st June 2020[2] as follows:

Classification	Micro	Small	Medium
<b>Manufacturing Enterprises and Enterprises rendering Services</b>	Investment in Plant and Machinery or Equipment: Not more than Rs.1 crore and Annual Turnover; not more than Rs. 5 crore.	Investment in Plant and Machinery or Equipment: Not more than Rs.10 crore and Annual Turnover; not more than Rs. 50 crore	Investment in Plant and Machinery or Equipment: Not more than Rs.50 crore and Annual Turnover; not more than Rs. 250 crore

### 2.How can MSME be registered under the MSMED Act?

Any micro, small and medium enterprise, before starting it’s business, may file a Udyog Aadhaar Memorandum (the “UAM” or “Memorandum”) in Form-I.

[1] The article reflects the general work of the authors and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

[2] [https://msme.gov.in/sites/default/files/MSME\\_gazette\\_of\\_india.pdf](https://msme.gov.in/sites/default/files/MSME_gazette_of_india.pdf)

The UAM may be filed online on the website of the Ministry of Micro, Small and Medium Enterprises, Government of India at <http://udyogaadhaar.gov.in> in order to instantly get a unique Udyog Aadhaar Number (UAN); or a hard copy of the duly filled Form I, shall be submitted to the concerned District Industries Centre (DIC) or to the Office of the Micro, Small and Medium Enterprise-Development Institute (MSME-DI) under the Development Commissioner, MSME. Consequent thereto, an Udyog Aadhaar Registration Certificate in Form II will be generated and mailed to the email address of the enterprise as provided in the UAM.

### **3.Does the MSMED Act lay down a fixed time frame for buyer to make payment?**

Yes. According to Section 15 of the MSMED Act, the buyer is obligated to make payment to MSME registered supplier on or before the date agreed upon in writing or in case there is no agreed date then within 15 days from the Appointed day.

### **4.What does the term "Appointed day", "Day of Acceptance" and "Day of Deemed Acceptance" mean under the MSMED Act?**

The term "Appointed day" refers to the day immediately following the expiry of the stipulated period of (15) fifteen days from the day of acceptance or the day of deemed acceptance of goods or services by a buyer from a supplier.

"The Day of Acceptance" means, the actual day when goods or services were delivered or when the Buyer objects to the acceptance of goods or services in writing within 15 days from the date of delivery and the date on which such objection is removed by the Supplier.

"The Day of Deemed Acceptance" means that the buyer does not object to the acceptance of goods or services within 15 days from the date of delivery then the actual date of delivery of goods or services.

For example, a supplier delivers goods to a buyer on 1st January 2024. If the buyer accepts the goods after the objection is rectified by the supplier on the 7th January 2024, then the "Appointed day" would be January 22nd January 2024, as it is the day immediately following the fifteen-day period from the date of acceptance.

However, if the buyer does not object to the acceptance of the goods within fifteen days from the date of delivery, then the acceptance is deemed to have occurred on the actual date of delivery, in this case, 1st January 2024. Therefore, the "Appointed day" would be 16th January 2024, as it follows the expiry of the stipulated period of fifteen-days from the date of deemed acceptance.

Therefore, the "Appointed day" is the day following the expiry of the fifteen-day period from either the actual acceptance or the deemed acceptance of goods or services, as specified in the terms of the contract between the buyer and the supplier.

### **5. What is the date from which interest is payable under the MSMED Act?**

- If there is no written agreement between the buyer and the supplier, interest becomes payable on the expiry of the 15th day from the date of acceptance or deemed acceptance of goods or services.
- In the case of a written agreement specifying a period within which payment is to be made, and if the agreed period is within 45 days, interest becomes payable upon the expiry of the agreed period.
- If there is a written agreement setting a payment period, but the agreed period exceeds 45 days, interest becomes payable upon the expiry of 45 days from the date of acceptance or deemed acceptance.

### **6. What is the interest rate payable for delayed payment under the MSMED Act?**

The rate of compound interest payable is three times that of bank rate notified by RBI, which may vary from time to time, as per section 16 of the MSMED Act. The interest rate specified in Section 16 prevails over any agreed-upon rate in the buyer-supplier agreement[3]. The interest rate under Section 16 takes precedence over any conflicting interest rate specified in other laws in force.

### **7. Which authority under the MSMED Act can deal with the delayed payment related claims?**

Delayed payment related claims shall be filed before concerned Micro and Small Enterprise Facilitation Council ("MSEFC").

The applications can be filed online through MSME Samadhaan portal by the supplier registered as MSE (Micro and Small Enterprise) unit for the delayed payments.

The State Governments have established MSEFC for settlement of disputes on getting references/filing on Delayed Payments under the provisions of Section 21 of the MSMED Act.

[3] Gujarat State Civil Supplies Corporation Ltd. Vs. Mahakali Food Pvt. Ltd. (para 23 (ii))

Under Section 18 of the MSMED Act, a MSME registered Supplier can refer the dispute to MSEFC along with the following particulars in the application:

- Particulars of the supplier unit
- Status of the supplier unit
- Details of supplied goods or services (including purchase orders)
- Terms of payment
- Actual payment received.
- Date of actual payment received.
- Amount due.
- Interest calculated as per section 16 of the MSMED Act.

### **8. How is the proceeding of dealing with the dispute related to delayed payments held by MSEFC?**

- Conciliation:** Under the provisions of MSMED Act, on receiving the claim related to delayed payment, MSEFC initially conducts a conciliation proceeding or it may seek the assistance of an institution or center providing alternate dispute resolution services by making a reference to such an institution or center for conducting conciliation. The provisions of sections 65 to 81 of the Arbitration & Conciliation Act, 1996 (“Arbitration Act”) apply to such a dispute as if conciliation was initiated under part III of the Arbitration Act.
- Arbitration:** In case the Conciliation proceeding is not successful then MSEFC refers the dispute to the arbitration for adjudication of dispute under the law. The MSEFC can itself take the dispute for arbitration or refer the dispute to any institution or center providing alternate dispute resolution services for such arbitration.

The provisions of the Arbitration Act will apply to the dispute.

### **9. In case the agreement between buyer and MSME registered Supplier has alternative dispute clause and is in conflict with the provisions of the MSMED Act, which provision will prevail?**

MSMED Act provisions prevail over the general dispute resolution mechanisms. This has been clarified by the Apex Court in Ramkrishna Electricals Limited Vs Maharashtra State Electricity Distribution Company Limited & Another[4].

[4][https://main.sci.gov.in/supremecourt/2020/21518/21518\\_2020\\_1\\_1503\\_39396\\_Judgement\\_31-Oct-2022.pdf](https://main.sci.gov.in/supremecourt/2020/21518/21518_2020_1_1503_39396_Judgement_31-Oct-2022.pdf)

The Supreme Court ruled that Chapter-V of the MSMED Act takes precedence over the provisions of the Arbitration Act. This is attributed to the general nature of the Arbitration Act, with the MSMED Act being a specific statute. Therefore, the provisions of the MSMED Act are deemed to override those of the Arbitration Act.

Moreover, the Apex Court clarified that a party involved in a dispute concerning any outstanding amount under Section 17 of the MSMED Act can refer the matter to the MSEFC. This stands true even in the presence of an independent arbitration agreement, as envisaged in Section 7 of the Arbitration Act, between the parties. In light of the determination that Sections 15 to 23 of the MSMED Act supersede the Arbitration Act, the Supreme Court further held that the restriction outlined in Section 80 of the Arbitration Act, which prohibits a conciliator from acting as an arbitrator or representing a party in any arbitral or judicial proceeding related to the conciliation proceedings, is overridden by Section 18 of the MSMED Act. This provision empowers the MSEFC to take up the dispute for arbitration if conciliation efforts prove unsuccessful.

The Supreme Court reiterated that an entity not meeting the definition of a 'supplier' as per Section 2(n) of the MSMED Act at the time of contract formation cannot avail benefits as a 'supplier' under the MSMED Act, 2006. However, the Court acknowledged that if this issue, being jurisdictional in nature, is raised, the MSEFC, acting as an arbitral tribunal under the MSMED Act, can adjudicate upon it.

Another factor to be considered in this scenario is if the MSME entity itself opts for another dispute resolution mechanism, and does not avail the MSME mechanism then the principle of estoppel will apply.

#### **10. Whether the order/ decree passed by Arbitrator under the MSMED Act is appealable?**

Yes, there is room for appeal as per Section 19 of the MSMED Act, if aggrieved party wants to challenge a decision made by the MSEFC or any alternative dispute resolution center, they must deposit 75% of the disputed amount with the Court. However, if the appellant is not the supplier, the Court may decide to release a portion of this deposit to the supplier while the appeal is being considered.

## **11. How does the amendment in section 43B of Income Tax Act 1961 promote timely payment to MSME registered suppliers?**

Section 43B of the income tax act provides a list of expenses allowed as deduction under the head 'Income from business and profession'. Recently, to promote timely payment to MSME registered suppliers, the Finance Bill 2023 inserted Section 43B(h)[5], which stipulates that any sum owed to Micro, Small and Medium Enterprises (MSME) for goods supplied or services given may be deducted in the same year only if it is paid within time limit under Section 15 of the MSME Act. Therefore, in case the payment of outstanding amount is not done within prescribed time then that outstanding amount shall be added to taxable income of buyer and that buyer has to bear Income tax liability on that outstanding amount. This amendment will come into effect from 1st April 2024.

[5] <https://files.caclub.in/wp-content/uploads/goi-notification-dated-31-03-2023-finance-act-2022.pdf>

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