

Micro Small & Medium Enterprises Development Act 2006

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Background

- MSME = Micro, Small & Medium Enterprises
- More popularly known as SMEs or SSIs
- Manufacturing and Service entities with low or medium investment in Plant & Machinery /Equipments of upto 5 crores.
- Number of MSMEs in India are about 3.5 crores. They are the second biggest employers after Agri. - 4.2 Cr
- They contribute 40% to GDP and 30% to exports

But

Biggest hitch for MSME today is longer Credit Periods and Non-access to bank finance.

MSMED Act 2006 Vs. SSI Act 1993

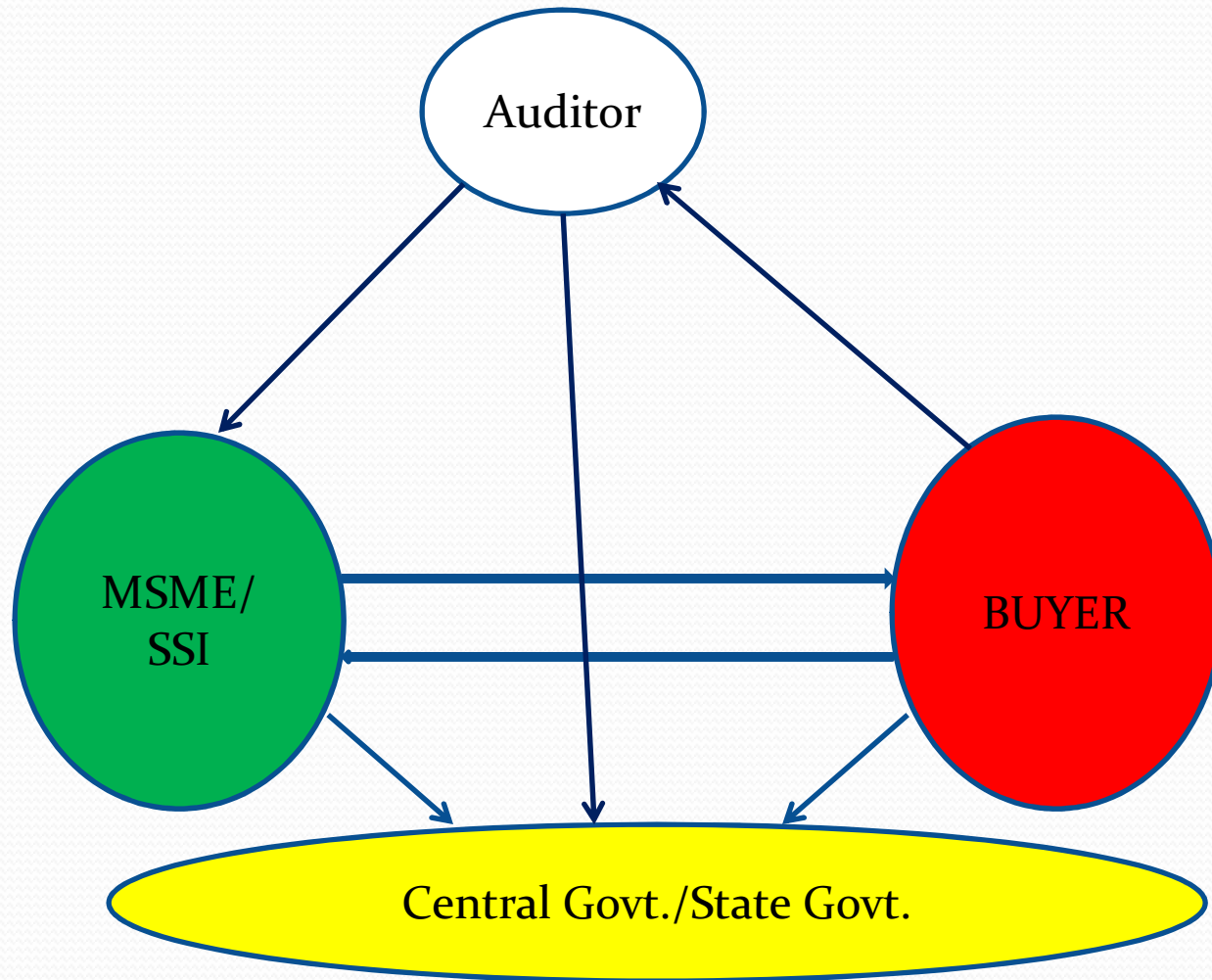
- MSMED Act 2006, came into existence mainly to address the liquidity problems of SMEs and to facilitate their *Promotion, Development* and enhancing the *Competitiveness*.
- Small Scale and Ancillary Industrial Undertakings (SSI) Act, 1993 was *abolished* after introduction of MSMED Act 2006.
- SSI act 1993 had many loopholes – 120 days of credit period, Unclear definition of SSI, legal remedies, etc.

Classification

Entity	Micro	Small	Medium	Large
Manufacturing	Investment* in Plant and Machinery			
	< 25 lks	25 lks to 5 cr	5 cr to 10 cr	> 10 cr
Service	Investment* in Equipments			
	< 10 lks	10 lks to 2 cr	2 cr to 5 cr	> 5 cr

- Gross Value of investments in P&M and Equipments.
- Cost of pollution control, R&D, industrial safety devices excluded.

Parties to MSMED Act



As a consultant

Friend Philosopher Guide



Help the SME to

1. Make him understand the importance of registration
2. Make him understand his rights and duties
3. Strengthen his liquidity position



IMPORTANT PROVISIONS OF MSMED ACT 2006

6 CHAPTERS

32 SECTIONS

49 SUBSECTIONS

Important Provisions

SECTION 15:

Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefore 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***; 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***.

Imp Definitions:

- ***Appointed Day:*** 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
- ***Day of Acceptance:*** the day of the actual delivery of goods or the rendering of services
- 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



Definitions Cont...

- *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;

Definitions and Credit period

Appointed Day, Day of Acceptance, Day of Deemed Acceptance				
SN	Scenario	Deciding date	Payable within (days)	Credit Period
S 1	No agreement, no Query	Day of delivery (deemed acceptance)	15 of delivery	15
S 2	No agreement, but Query	Day of acceptance (15 days from delivery)	15+15 days i.e. 30 days from delivery	30
S 3	Agreement, but no Query	Max 45 days from delivery	45 days of delivery	45
S 4	Agreement & Query	Max 45 Days from deemed acceptance (15 days from delivery)	15 days+ 45 days	60

Provisions conti....

SECTION 16:

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 3 times of the bank rate notified by the RBI. **(8.75% X 3 = 26.25%)**



Provisions conti....

SECTION 17:

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.

SECTION 18(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.

Provisions conti....

Sec 18(2)

The Council shall conduct conciliation, and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 shall apply to such a dispute.

Sec 18(3)

Where the conciliation fails, Council shall take up the dispute for arbitration and the provisions of the Arbitration and Conciliation Act, 1996, shall then apply to the dispute

Sec 18(5)

Every reference made under this section shall be decided within a period of ninety days

Provisions conti....

- **SECTION 19:** No application for setting aside award 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.
- Provided that pending disposal of the application to set aside the award, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable

Provisions conti....

SECTION 20: 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. (Nagpur/ Amravati/ Pune/ Nashik/ Thane)

Provisions conti....

Section 22: Any buyer required to get his accounts audited under any law for the time being in force, such buyer shall furnish the 5 point info in his annual statement of accounts,

SN	PARTICULATS	Principle Amt. RS.	Interest Amt. Rs.
1	Interest & Principle paid beyond due date	800000	100000
2	Interest & Principle o/s	1600000	150000
3	Interest due for principle paid beyond due date	-	80000
4	Balance Interest accrued for principle unpaid	-	70000
5	Status of Interest up to reporting date	-	40000



Provisions conti....

SECTION 23: Notwithstanding anything contained in the Income-tax Act, 1961, the amount of interest payable or paid by any buyer, under or in accordance with the provisions of this Act, shall not, for the purposes of computation of income under the Income-tax Act, 1961, be allowed as deduction.

SECTION 24: The provisions of sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Penalties

SECTION 27

- 1) Whoever contravenes any of the provisions of sub-sec (1) of Sec 8 (Registration) or Sec 26 (Officer/Info) shall be punishable
 - (a) in the case of the first conviction, with fine which may extend to rupees one thousand; and
 - (b) in the case of any second or subsequent conviction, with fine which shall not be less than rupees one thousand but may extend to rupees ten thousand
- 2) Where a buyer contravenes the provisions of section 22, he shall be punishable with a fine which shall not be less than rupees ten thousand.



AS AN AUDITOR

Judicial Pronouncement

- M/S. Eden Exports Company & other vs Union Of India on 20 August, 2010
- Constitutional validity of Sec 15-19 challenged in Madras High court – Dismissed
- HC: The fixing of time limit is to save the Micro and Small Enterprises from going out of existence due to wanton delay in payments by the buyers. To that extent, right to enter into contract can be curtailed. Such curtailment cannot be said to be either arbitrary or unconstitutional.

Judge observes..

- One of the petitioner was Tamil Nadu Medicinal Plant Farms and Herbal Medicine Corporation Limited, which is wholly owned by State of Tamil Nadu, has chosen to challenge not only the proceedings initiated by the Facilitation Council, but also the Constitutional validity of Sections 15 to 19 of the MSMED Act.
- It is rather unfortunate that the State of TN has not filed any counter affidavit to express its stand and allowed Advocate General to represent the corporation.

Clause 17A of 3CD

- Auditor should seek info regarding status of the Entp i.e. whether the same is covered under the MSMED Act, 2006.
- Where the info is available and has been disclosed the same should be reported as such in Form No. 3CD. Where the info is not available the auditor should also mention the same in the 3CD.
- Since Schedule VI and Section 22 of the Micro, Small and Medium Enterprises Development Act, 2006 requires disclosure of information, the tax auditor should cross check the disclosure made in the financial statements.
- Obtain a full list of suppliers of the assessee which fall within the purview of the definition of “Supplier” under section 2(n) of the MSMED Act, 2006. It is the responsibility of the auditee to classify and identify those suppliers who are covered by this Act.
- Review the list so obtained.

Clause 17A of 3CD Conti.....

- Verify from the books of account whether any interest payable or paid to the buyer in terms of section 16 of the MSMED Act has been debited or provided for in the books of account.
- Verify the interest payable or paid as mentioned above on test check basis.
- Verify the additional information provided by the auditee relating to interest under section 16 in his financial statement.
- If on test check basis, the auditor is satisfied, then the amount so debited to the profit and loss account should be reported under clause 17A.

Where the tax auditor, upon due verification, finds that the auditee has neither provided for nor paid any interest payable under the MSME Act, the no amount is inadmissible under section 23 of MSME Act. In such a case 'Nil' can be reported against clause 17A.

Legal Opinion

A listed company has an accumulated provision of Rs. 65 lacs towards interest payable to SMEs in its books of account. Legal opinion sought on whether the company can write back the same by obtaining a no due undertaking from the supplier.

Supreme court advocate opined –

1. Such undertaking may run contrary provisions of Sec 16 and could be held void in law.
2. As the audited financials already state the payables the said undertaking would prove to be false.
3. All provisions are mandatory and aimed at fortifying the SMEs in their transactions with large entities.
4. Writeback or adjustment is not advisable.

Its Interest – TDS??

- 40(a)(ia) - any interest shall not be deducted in computing the income chargeable under the head 'Profits and gains of business or profession', if tax is deductible at source (r.w -194A)
- Bombay High Court, in the case of CIT Vs Vidyut Corporation [2010] The interest payable by the purchaser for delay in payment of purchase consideration of goods, will partake the nature and character of purchase consideration in the hands of the purchaser.



- LOOPHOLES

Corporate Thinking

Corporate *Buyers* have two lines of thinking towards payments to MSME

Considering the importance of MSMEs for the overall economy paying within 45 days is part of Corporate Social Responsibility (CSR)

- Renegotiate the terms with MSMEs and pay them within 45 days
- Provide the interest, build the provision for 3 years and write it off at the end of 3rd year stating it as unclaimed and non payable – this treatment amounts to non-compliance of section 17.

Need of Amendments

- To claim the status of SME and to claim the payment within 45 days the unit is required to send a copy of MSME memorandum to the buyer, So that he classifies the unit as MSME and pays him within 45 days.
- This is used as a tool by the buyer in claiming that they haven't received any such memorandum hence no classification is done no interest payable.
- Instead of this formality the SME data should be made available online, so that once registered under the act, unit get the status of SME, buyer classifies him as SME and SME gets paid within 45 days or for delayed payment get paid with interest



Than Q ?

As part of CSR

- Free health checkup of SMEs?
- Free Registration drives?
- Free consultancy melas?
- Free training programs for SMEs?
- Think out of the box = Connect with the Society?

