MSME-Samadhaan

Lack of awareness amongst the MSMEs about their rights make them suffer on many fronts. Updating oneself by devoting a small amount of time on regular basis and quick decisions will help MSMEs greatly in running a profitable enterprise. With various economic reforms unfolding, with many e-enablers such as GeM and TReDS showing remarkable performance, there is a need for the MSMEs to be more organised and systematic in their day-to-day business. A stitch in time saves nine, fast changing economic scenarios have given everyone a chance rethink about their business strategies, modify them suitably and proceed towards transparency. Read on…

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One such area where greater awareness is the need of the hour and a major area of concern for the MSMEs is 'working capital management'. Extreme delays in customer recovery, disputed receivables, overdue receivables turning into bad debts and write offs literally destroys the working capital cycle of the business. If not controlled on time, this problem impacts the liquidity of the business adversely and starts eroding the profits.

What are the solutions? It's simple, know your rights, be aware about the tools which are available for tackling this problem. There is a solution to every problem, need is to have a resolve and fight with confidence.

The most robust solution is *The Micro, Small and Medium Enterprises Development (MSMED) Act, a welfare legislation for the MSMEs and Samadhaan Portal*, e-initiative of Ministry of MSME, www.samadhaan.msme.gov.in

For better understanding, the topic can be discussed in 3 different sections:

- Salient provisions of the MSMED Act.
- Complete dispute resolution ecosystem.
- The SAMADHAAN - Step-by-process of filing the claim online.

The MSMED Act

- **45 Days:** The act provides for **max time limit of 45 days as credit period** to the buyer for all purchases made from ***Micro and Small Enterprises (MSEs)***
- **Only MSE:** Yes, this benefit is available to ***Micro and Small Enterprises only***, ***Medium not covered***.

Manufacturers & service providers	MICRO	SMALL	MEDIUM
Investments in Plant & Machinery or Equipment	Upto Rs. 1 cr	Upto Rs. 10 cr	Upto Rs. 50 cr
Turnover	Upto Rs. 5 cr	Upto Rs. 50 cr	Upto Rs. 250 cr

- **No Trader:** The benefit is available only to manufacturing and service entities and ***not to trading entities.***
- **Interest:** If the payment is not made within 45 days, the buyer has to pay the MSE supplier **interest at 3 times the bank rate** (i.e., 13.95%, as present bank rate is 4.65%).
- **MSEFC:** If the MSE is neither getting the payment nor the interest despite satisfactory delivery of goods/services, MSE need not go to any court but has to go to the **MSE Facilitation Council (MSEFC).** MSEFC is formed by each state government and sits **at each District/block head quarter** in every state.
- **Time Limit:** MSEFC decides the matter as a conciliator as per the provisions of Arbitration and Conciliation Act 1996 and has the mandate to resolve the dispute **within 90 days** from the date of reference.
- **Supplier:** (MSE) should be registered under Udyam Registration udyamregistration.gov.in
- **Income Tax Angle:** The interest paid by buyer cannot be claimed as expense from his business income, (Non-deductible expense) under Income-tax Act.

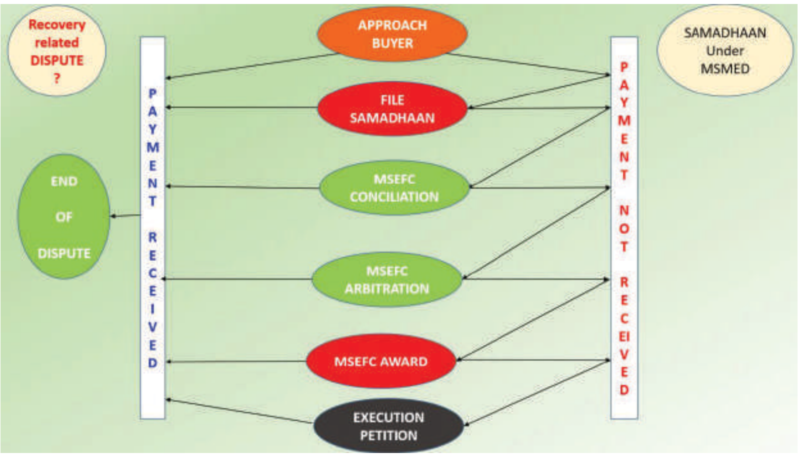
Overall Dispute Resolution Ecosystem

In business, maintaining healthy relation with all stake holders is top priority, especially the customer supplier relations which are very crucial as well as complex. A trust driven, fair and equitable relation between the supplier and customer are the key to success for both the parties. It's a quid-pro-quo relation, however precaution is necessary. Any supplier highly dependent on one single customer is highly avoidable. At the same time, having a nurturing attitude towards all suppliers even a small one, is a welcome corporate policy.

In cases when the supplier ultimately decides that there seems to be no option other than approaching a legal forum for recovery of its long outstanding dues, he needs to approach dispute resolution ecosystem created by MSMED Act.

> The act provides for max time limit of 45 days as credit period to the buyer for all purchases made from Micro and Small Enterprises (MSEs).

- **Existance of Dispute:** When an MSE concludes that there is something wrong with the buyer and time has come to go legal, it has to first approach the buyer through a simple letter on its own letter head, mentioning the basic provisions of MSMED Act.
- **Samadhaan Portal:** If the buyer pays, all is well and good, else the online petition must be filed on Samadhaan Portal, www.samadhaan.msme.gov.in
- **Instant Notice:** As soon as the petition is filed, the buyer gets an auto generated notice



Pic 1

Pic-1 explains the process MSE has to follow to claim the disputed dues, which step by step includes;

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from Ministry of MSME requiring him to pay the dues to his MSE supplier within 15 days, else proceedings of the MSEFC are initiated.

- **Hearing:** If the buyer still doesn't pay the dues, he gets the notice for hearing in MSEFC.
- **Mutual:** At first hearing, the council asks the buyer and supplier to sit together and try to resolve the dispute mutually.
- **Conciliation:** If mutual settlement is not possible, then the council can provide a third party conciliator who guides the parties to come to some conclusion.
- **Arbitration:** If conciliation fails then the case is taken up for arbitration by the council and award is passed based on the merits of the case.
- **Award:** It is a speaking order of the MSEFC to pay the dues along with interest within a time bound matter.
- **Appeal:** Buyer may challenge the award of the council but before that he is required to deposit 75% of the disputed amount in the court and part of such deposited amount is passed on to the MSE supplier.
- **Execution:** If the buyer still doesn't pay as per the award, then the supplier has to resort to execution of award with the help of a local court. Through executive petition, the supplier can get the assets of the buyer attached for recovery of dues. He can also get the buyer arrested till the dues are fully paid.

The Samadhaan - Step-by-Process of Filing the Claim Online

www.samadhaan.msme.gov.in: Completely online, hassle free, cost effective and time saving method of dispute resolution and recovery of dues,

> If parties decide to mutually settle the matter, a signed MOU has to be filed so that the case can be disposed of by the MSEFC and updated online.

> If conciliation fails then the case is taken up for arbitration by the council and award is passed based on the merits of the case.

specifically designed for the MSEs. The procedure of filing the case is very simple. This platform can be used by any MSE supplier, Pan-India.

Prior to the launch of this online platform in **October 2017**, the entire filing process was offline and had a lot of manual intervention. Hard copy submission, manual scrutiny, decision on claim validity, sending manual notice to respondent, this entire manual process is now abolished and is replaced by the SAMADHAAN Portal.

- **Ease:** The initiative has established itself as the best tool to resolve disputed receivables, in a time bound manner and has created real ease in filing as well as resolution of dispute by **savings a time of close to 6+ months** in the entire resolution process.
- **Filing:** Only PO and invoices required for filing of case. If there is no PO, an affidavit to that effect is also sufficient to file the case.

- **Processing:** Application gets converted to case on scrutiny by the concerned authority and hard copy submission is called for. Case can also be rejected at this stage with sufficient reasons.
- **Response:** Buyer may respond by paying the entire dues or he may choose to fight the same by responding to the notice.
- **Settlement:** If parties decide to mutually settle the matter, a signed MOU has to be filed so that the case can be disposed of by the MSEFC and updated online.
- **Success:** The platform has become very popular showing a good flow of cases (table 1)
- **Tracking:** Real time tracking of case status is possible.

Table -1

Details	Appl filed	Appl Pending	Cases Pending	Appl Rejected	Mutually Settled	Appl Disposed
No of Cases	108990	30502	29493	23856	10579	14560
	100%	**28%**	**27%**	**22%**	**10%**	**13%**
Amt Involved Rs.	28161	6775	10383	5146	1465	4392
	100%	**24%**	**37%**	**18%**	**5%**	**16%**

In a nutshell, it is time for MSEs to understand that Liquidity = Profit and hence to strengthen the liquidity position, the following are 5 simple actionable points:

- Register yourself as an MSME online - udyamregistration.gov.in
- Print the MSE registration number on each PO, INVOICE, DC.
- Insist for credit period of not more than 45 days from delivery of goods.
- Know that you are entitled to an Interest @ 13.95% on delayed payments
- Approach the MSE Facilitation Council through ***MSME-SAMADHAAN*** for quick dispute resolution and recovery of dues.

As far as government initiative is concerned, a lot of enabling provisions are evident in the recent past which strengthen the cause of the MSMED Act directly, and has helped in creating awareness amongst the MSEs as well as with other stakeholders such as corporate buyer and the auditor. Few such initiatives are as follows;

- Reporting of purchases from MSEs by every entity to which audit is applicable under any statute in India – Sec 22 of MSMED Act.
- Companies with turnover of > 500cr to be on registered on TReDS platform so that they pay their MSE suppliers instantly - MSME Notification No. 5621 dated 2nd Nov 2018.
- Reporting of dues to MSEs by every 'Specified Company', half yearly through Form MSME-1 – MSME Notification No. 5622 dated 2nd Nov 2018 & MCA Notification No. 368 dated Jan 2019.
- Establishment of 3 TReDS platforms for quick and cost-effective bill discounting of MSEs.
- Consequent responsibility of auditors in verification of

dues to MSEs and reporting of non-compliance.

Still a long way to go

Though the overall awareness about the importance of liquidity and initiatives of the government is growing and empowering the MSEs to a great extent, it can be said that these developments are at its growing stage and requires impetus.

Following further suggestions can be considered in this regard:

- **Fulltime Member with Judicial background:** MSE facilitation council should have at least one fulltime member with judicial background. This will give a boost to the entire process, as being a quasi-judicial forum, it needs a judicial touch and consistency in the final awards. The rest of the composition is seamless.
- **Council to hear cases on daily basis** – Presently, by and large, the hearings at the council are not being held on regular intervals. Hearing happens once in a month and in few places, only few times in a year. Considering the growing number of cases that are getting filed and are helping the MSEs resolve their disputes, it would be ideal situation that the council hears the cases preferably on daily basis, round the year.

> "The MSMED Act is here to protect the interest of MSMEs who are the backbone of our economy.

- **Execution/Recovery powers to be at council only** – Presently, for execution of award of the council, MSE has to approach the local court. Due to inherent delays in present judicial system, the execution and recovery thereof takes years together, thereby defeating the purpose of SAMADHAAN. If a separate mechanism can be created at MSEFC level that will help speeding up the entire process to a great extent.
- **PAN based search of status of supplier** – The Udyam Registration portal (udyamregistration.gov.in) should enable the search of MSE status of any entity based on the PAN number. This will help in two ways. One, the buyer can check the status of all its suppliers and classify them into eligible MSEs and non MSEs, thereby facilitating MSEs getting their payments on time. Secondly, given the requirements of MCA notification on identification of 'Specified company' and half yearly reporting of MSE dues to MCA, the statutory auditor of the buyer entity can also access the status of all suppliers of auditee, thereby enabling him to form an opinion on the level of compliance of MSMED Act.
- **Necessary amendment to MSMED Act to define "supplier"** – The 'Supplier' definition makes it compulsory for the MSE to have Udyam registration before supplies. Yes, registration is always suggested, however, going by the requirements of the MSMED Act, registration under MSMED Act is discretionary for the Micro and Small Enterprises. Due to this contradiction in definition, many MSEs are losing the benefits of resolving the disputed dues, supplies for which were made before its registration, which doesn't seem to be intention of the MSMED Act, which is WELFARE legislation.

The MSMED Act is here to protect the interest of MSMEs who are the backbone of our economy. Thin margins, stretched credit periods on one hand and lack of awareness about MSMED Act and MSME-SAMADHAAN on the other, it's high time that MSMEs create an organised work culture. At the same time, different regulatory requirements discussed in the earlier paras make it necessary for the auditors of buyers to report whether all MSE suppliers have been properly classified or not, amount paid within 45 days or not and whether interest is paid to them or not. *As partners in nation building, continued participation of CA fraternity, in all welcome reforms, will certainly help the nation achieve all its ambitious goals in days to come.*