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## Delayed payment to Micro and Small Enterprise's & its Disclosure

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### Preface

The Micro, Small and Medium Enterprise (MSE) Sector is the spine of Country's economic growth and development and in order to strengthening their position in the current business environment. The Ministry of Micro, Small and Medium Enterprises has taken several initiatives to uplift their present status since it not only plays a crucial role in providing large employment opportunities at comparatively lower capital cost but also encourage entrepreneurial activities in rural and backward areas.

The Ministry from time to time has addressed one of the primary constraints faced by such enterprises in terms of delayed payment from its debtors / customers and resulting to which the classification of MSE's accounts as NPA's in the books of their lender and many of such enterprises have also dragging by its Financial Creditors & Operational Creditors before National Company Law Tribunal in order to initiate insolvency proceedings under Insolvency & Bankruptcy Code, 2016.

Recently, In order to bring some relief for the cash strapped MSME sector amid the Covid-19 pandemic, the threshold limit of Default for triggering Insolvency has raised to Rs. 1 crore from the existing limit of Rs 1 lakh with a view to prevent triggering of insolvency proceedings against such MSEs.

### Ministry's initiative for compulsory Reporting

The Ministry of Micro, Small and Medium Enterprises vide its notification dated 2<sup>nd</sup> November, 2018 exercising its powers conferred under Section 9 of the Micro, Small and Medium Enterprises Development Act, 2006 has directed that all Companies who get supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprise suppliers exceed 45 (forty five) days from the date of acceptance or the date of deemed acceptance of the goods or services as per the provisions of the Act, shall submit a half yearly return to the Ministry of Corporate Affairs stating the (i) amount of payments due; and (ii) the reasons of the delay and in this regards the Ministry of Corporate Affairs vide its notification dated 22<sup>nd</sup> January, 2019 has come up with Specified Companies (Furnishing of

Information about payment to Micro and Small Enterprise Suppliers) Order, 2019 under which the Companies have been directed to report semi- annually vide form MSME-1 details of all outstanding dues to Micro and Small Enterprise suppliers by 31<sup>st</sup> October (for transaction undertaken from April to September) and latest by 30<sup>th</sup> April (for transaction undertaken from October to March) of any year. Whereas the Medium enterprises have been kept outside the purview of this reporting notification.

The Delhi High Court in the matter of M/S Ramky Infrastructure Pvt. Ltd. Vs Micro and Small Facilitation Council and Anr. W.P (C) 5004/2017 has further clarified that, to avail the benefit under the notification, a Micro or Small enterprise supplier must be registered under the MSMED Act, 2006. Apart from such Micro or Small enterprises, those entity(ies) engaged in selling goods produced by Micro or Small enterprises or rendering services provided by such enterprises are also included within the definition of suppliers irrespective of the fact that they have registered themselves under the Act or not.

## **Half-Yearly Reporting instruction from Ministry of Corporate Affairs**

In order to comply with this requirements, the reporting Company is required to file notified Form MSME-1, for which the buyer/ purchaser is required to identify that whether it has dealt in last six months with any

- I. Micro and Small enterprise and whether such enterprise are registered under the MSMED Act, 2006.
- II. Any entity engaged in selling of goods produced by Micro or Small enterprises or rendering services provided by such enterprises.

And if there is / are any delay in making payment to above enterprises which are due for more than 45 days from the Appointed date or any other date as may be agreed upon between buyer and supplier but subject to the provision of Sec. 15 of the Act, then Company is required to furnish the details of such suppliers in Form MSME-1 and the same is required to be submitted with Registrar of Companies with complete details of name of supplier, its PAN, date from which such amount is due, total outstanding amount due reasons for delay in payment and corresponding invoice.

## **Non-Reporting - an Offence under the Companies Act, 2013**

The consequences of furnishing any information statistics which if founds to be incorrect or incomplete, the same shall be punishable under sub section 4 of section 405 of Companies Act, 2013 wherein the Company shall be punishable with fine which may extend to 25,000/- and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 6 months or with fine which shall not be less than 25,000/- rupees but which may extend to 3,00,000/- or with both.

## **Base of such reporting - Due date for making Payment to MSE's**

Where any MSE supplies any goods or renders any services to any buyer/ purchaser, the buyer/ purchaser shall make prompt payment thereof on or before the date agreed upon between

them and in absence of any such agreement, the payment is required to be made before the Appointed Day.

The proviso to Section 15 of the MSMED Act, 2006 also states that 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."

Therefore, in any event the agreed credit period should not be more than 45 days between buyer and seller.

In this connection, the due date shall be calculated from the date of acceptance or deemed acceptance and not the expiry of credit period. Accordingly, the payment (including credit period, if any) to a Micro and Small enterprise has to be made within 45 days of acceptance / deemed acceptance.

Sec. 2(b) "Appointed day" means 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.

"The day of acceptance" as:

(a) The day of the actual delivery of goods or the rendering of services; or

(b) 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;

"The 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.

## **Threefold Interest**

Where any buyer fails to make payment of the amount to the supplier, as required under section 15 of the MSMED Act, 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 three times of the bank rate notified by the Reserve Bank.

## **Reporting under Financial Statements**

Considering the requirement under Sec. 22 of MSMED Act, 2006 the buyer who has availed services or procured goods / materials from MSE' and is required to get his accounts auditor under any act of the time being in force is under obligation to furnish in its financial statements the information with regards to the principal amount and the interest due thereon remaining unpaid to any MSE supplier as at the end of each financial year.

## **Facilitation Council- For delayed payment to MSE's**

The provisions of Sec. 15-24 of the Micro, Small and Medium Enterprise Development (MSMED) Act, 2006 deals with Delayed Payment to Micro and Small Enterprise (MSEs) wherein the State Governments have power to establish Micro and Small Enterprise Facilitation Council (MSEFC) for settlement of payment disputes among buyer and MSE on referring the matter before the Facilitation Council and after examining the application the Facilitation Council directs buyer to make payment along with an interest as per the provisions

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.

If the buyer wants to appeal against any decision taken by the Facilitation Council then no application for setting aside any decree or award by the Facilitation Council shall be entertained by any court unless the appellant has deposited with it, the 75% of the award amount.

## **Debt Restructuring for MSE's**

A viable/potentially viable unit may apply for a debt restructuring if it shows early stage of stickiness. In such cases the banks may consider to reschedule the debt for repayment, consider additional funds etc. A debt restructuring mechanism for units in MSME sector has been formulated and advised to all commercial banks. The detailed guidelines have been issued to ensure restructuring of debt of all eligible MSE's. Prudential guidelines on restructuring of advances have also been issued which harmony the prudential norms over all categories of debt restructuring mechanisms.

## **Final Thought**

The MSMEs contributes approx. 33% percent of India's GDP and close to half of the country's exports but unfortunately the impact of Covid-19 Pandemic in last few weeks has overruled everything and now there is a high certainty that large number of these MSE's might be clogged due to the financial instability, non-receipt of payment, impact of increase in default threshold to initiate IBC proceedings might go against Micro & Small enterprises only for whose interest it was announced and there might be a possibility of perpetual closure of such enterprises. To minimize and rescue such enterprises from post lockdown impact, several initiatives have already been taken and many are under consideration of Govt. of India to minimize the impact of the present situation.

**The authors are from the firm of Company Secretaries based in Ahmedabad which majorly deals in the domain of Corporate Compliances and Litigation Management Practice under the Corporate Law and Insolvency & Bankruptcy Law in India.**