

AS INTRODUCED IN THE RAJYA SABHA  
ON THE 21ST JUNE, 2019

**Bill No. LI of 2018**

THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT  
(AMENDMENT) BILL, 2018

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BILL

*to amend the Micro, Small and Medium Enterprises Development Act, 2006.*

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

**1.** (1) This Act may be called the Micro, Small and Medium Enterprises (Amendment) Act, 2018. Short title and commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

27 of 2006. **2.** In the Micro, Small and Medium Enterprises Development Act, 2006, (hereinafter referred to as the Principal Act)—in section 2, in clause (n), for the words "a micro or small enterprise" the words "a micro, small or medium enterprise" shall be substituted. Amendment of Section 2.

Amendment of heading of chapter V.	<p><b>3.</b> In the principal Act, in Chapter V, for the heading the following heading shall be substituted, namely:—</p> <p>"DELAYED PAYMENTS TO MICRO, SMALL AND MEDIUM ENTERPRISES"</p>	
Insertion of new section 15A.	<p><b>4.</b> In the principal Act after section 15 the following section shall be inserted, namely:—</p> <p>"15A. The refundable earnest money deposit given to any buyer by any supplier for a tender bid shall be refunded back if the bid is unsuccessful, on or before the date agreed upon between buyer and the supplier in writing or, where there is no agreement in this behalf, within 45 days from the day the bid has been rendered unsuccessful."</p>	5
Refund of earnest money deposit.		
Amendment of section 16.	<p><b>5.</b> In the principal Act, in section 16, after the words and figures "as required under section 15", the words and figures or "15A" shall be inserted.</p>	10
Amendment of section 19.	<p><b>6.</b> In the principal Act, for section 19, the following section shall be substituted, namely:—</p> <p>"19. 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 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:</p> <p>Provided that nothing in the section shall apply to any application if the appellant is a supplier.</p> <p>Provided further that pending disposal of the application to set aside the decree award or order, the court shall order that such percentage not lesser than thirty-five percent under any circumstance, 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 should be".</p>	15 20 25
Application for setting aside decree, award or order.		
Amendment of section 21.	<p><b>7.</b> In the principal Act in section 21 in sub-section (3), the following proviso shall be inserted, namely:—</p> <p>"Provided that no act or proceedings of the Micro and Small Enterprises Facilitation Council shall be invalid merely by reasons of—</p> <p>(a) any vacancy in, or any defect in the constitution of, the Council; or</p> <p>(b) any defect in the appointment of a person acting as a member of the Council; or</p> <p>(c) any irregularity in the procedure of the Council not affecting the merits of the case."</p>	30
Insertion of a new section 21A and 21 B.	<p><b>8.</b> In the principal Act, after section 21, the following sections shall be inserted, namely:—</p> <p>"21A. The Micro and Small Enterprises Facilitation Council shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—</p> <p>(i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath,</p> <p>(ii) the discovery and production of any document or other material object producible as evidence,</p> <p>(iii) the receiving of evidence on affidavits, and</p> <p>(vi) any other matter which may be prescribed."</p>	35 5 of 1908. 40 45
Power of the Micro and small enterprises facilitation council.		

5 "21B. Where any amount is due from any person under an order made by the Micro and Small Enterprises Facilitation Council, the person entitled to the amount may make an application to the Micro and Small Enterprises Facilitation Council and such Micro and Small Enterprises Facilitation Council may issue a certificate for the said amount to the Collector of the district (by whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue."

Recovery of amounts due.

9. In the principal Act, in section 27, after sub-section (1) namely:—

Amendment of section 27.

"(2) Where a buyer contravenes the provisions of section 15 or 15A, he shall be punishable—

10 (a) in the case of the first conviction, with fine which may extend to rupees ten thousand;

(b) in the case of second or subsequent conviction, with fine which shall not be less than rupees ten thousand but may extend to rupees one lakh; and

15 (c) The proceeds collected under sub-section (2) shall be transferred to the National Small Industries Corporation."

## STATEMENT OF OBJECTS AND REASONS

Micro, Small and Medium Enterprises (MSMEs) are the bedrock of the Indian economy. After agriculture sector, MSMEs are the largest employment providers in the country and hence form the backbone of the Indian economy. The significance of MSMEs can be underscored by its substantial manufacturing output, accounting for about one-third of the country's total manufacturing output.

The Parliamentary Standing Committee on Industry, Rajya Sabha in its 245th Report, on Review of the Implementation of Micro, Small and Medium Enterprises Development Act, 2006 apprehended that decline in the filing of fresh cases may be due to dwindling faith in the efficacy of the existing mechanism. It also reiterated its earlier recommendation contained in its 176th Report that arrangements should be made to give Councils the powers to enforce their awards. The Committee recommended to the Ministry to assess whether enjoining the Industrial Facilitation Council (IFC) with the provisions of Arbitration and Conciliation Act, 1996, has actually rendered the existing mechanism ineffective and to devise more effective provisions for IFC.

This Bill aims to revitalize the Industrial Facilitation Councils relating to the issue of delayed payments to MSMEs and by equipping them with powers conferred to a civil court. This will help the MSMEs in recovering their dues swiftly.

Hence this Bill.

MAHESH PODDAR

ANNEXURE

EXTRACTS FROM THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006

(27 of 2006)

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**2.** (I) In this Act, unless the context otherwise requires,— Definitions.

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(n) "supplier" means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8, and includes,—

(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956);

(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956);

(iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;

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CHAPTER V

DELAYED PAYMENTS TO MICRO AND SMALL ENTERPRISES

**15.** Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor 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: Liability of buyer to make payment.

Provided 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.

**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 three times of the bank rate notified by the Reserve Bank. Date from which and rate at which interest payable.

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**19.** 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: Application for setting aside decree, award or order.

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.

Composition of Micro and Small Enterprises Facilitation Council.

21. (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; and

(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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CHAPTER VI

MISCELLANEOUS

Penalty for contravention of section 8 or section 22 or section 26.

27. (1) Whoever, intentionally contravenes or attempts to contravene or abets the contravention of any of the provisions contained in sub-section (1) of section 8 or sub-section (2) of section 26 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 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 fine which shall not be less than rupees ten thousand.

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RAJYA SABHA

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further to amend the Micro, Small and Medium Enterprises Development Act, 2006.

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*(Shri Mahesh Poddar, M.P.)*