



सत्यमेव जयते

**Working Group to study
the need for changes in
Micro, Small and Medium Enterprises
Development (MSMED) Act, 2006**

REPORT

Submitted by



Indian Institute of Public Administration
IP Estate, Ring Road, New Delhi

GANDHIJI'S TALISMAN



“I will give you a talisman. Whenever you are in doubt or when the self becomes too much with you, apply the following test:

Recall the face of the poorest and weakest man whom you may have seen and ask yourself, if the step you contemplate is going to be of any use to him. Will it give him any gain anything by it? Will it restore him to a full and healthy life and destiny? In other words, will it lift him out of his misery and spiritually starving millions?

Then you will find your duty and your God. If melting away”

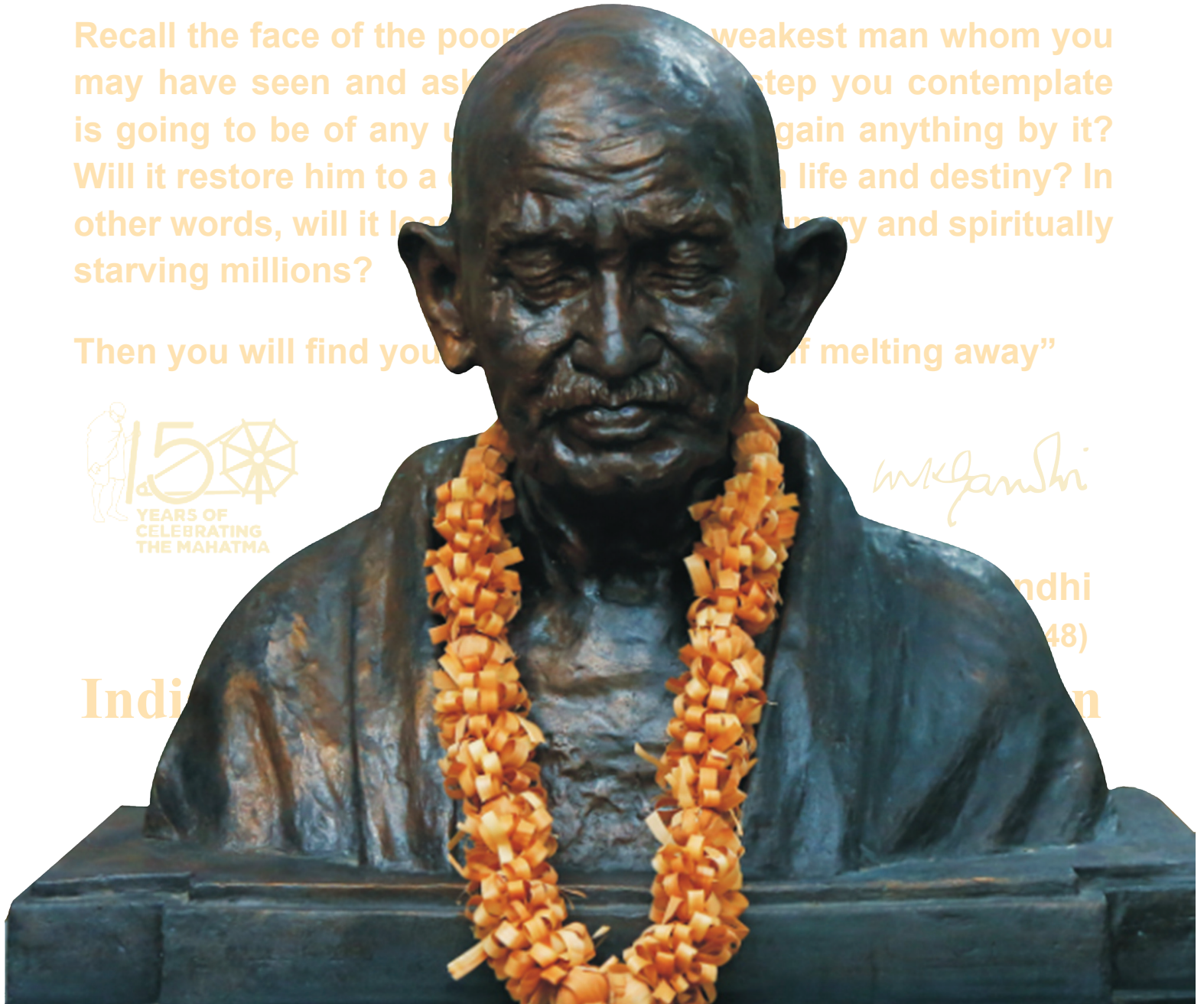


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March 6, 2020

Preface

Micro Small and Medium Enterprises (MSME) sector is the backbone of the Indian economy providing 11 crores employment and 28 percent share in national GDP. Giving due cognizance to its importance, the Government of India, particularly since last six years, has given special focus on promotion of competitiveness in the sector which has yielded positive results. The Government is further expecting the sector to become a torch bearer in the fulfilment of national policy objective to make India a US \$ 5 trillion economy. Accordingly, the Ministry of MSME, Government of India intends to provide an enabling environment to MSME sector to further generate another 50 million jobs and increase total productivity to US \$ 2.5 trillion by the year 2025.

It is in this context, that Ministry of MSME decided to review the Act with respect to higher productivity and competitiveness in the sector and constituted a working group to deliberate on the subject and suggest corrective measures taking into account various reports and studies available on the subject including the most recent report of Shri U.K. Sinha Committee of RBI (Reserve Bank of India).

The working group met twice on 14th January, 2020 and 26th February, 2020 wherein members provided useful insights on the issues and deliberated on the specific measures to be identified for modifications in the Act. In addition, a World Bank mission visiting India on the MSME issues also had detailed discussion at IIPA. Further, I had several meetings with the senior officials in the Ministry, industry leaders and other professionals.

This report presents a comprehensive gist of these combined efforts to brainstorm on the issue and point out areas of modification. These include definition, registration, minimising delayed payment and ease of doing business. I am thankful to each of the members of working group, officials in the Ministry of MSME particularly Dr. A.K. Panda, IAS, Secretary, MSME and Shri Ram Mohan Mishra, IAS, Special Secretary and Development Commissioner, MSME and their senior colleagues, Members of Association of MSMEs who provided their views on the subject. I am sure that this report provides a set of points for modification in the Act and gives the option to the government to firm up its approach on the subject. I am grateful to My IIPA team led by Prof. K.K. Pandey, Prof. Geethanjali Nataraj, Dr. Sachin Chowdhry and Dr. Sapna Chadah for the valuable contribution. The report is an important resource material to further deliberate on the subject.



(S.N. Tripathi)

Director, IIPA

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Introduction

The Ministry of Micro Small & Medium Enterprises (herein after MoMSME) constituted a Working Group to study the need for changes in Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act, 2006) under the chairmanship of Shri S.N. Tripathi, IAS, and to deliberate on MSMED Act, 2006 to address a long pending demand to promote competitiveness among MSME. (Annexure I)

It was noted that MSMED was a comprehensive enactment to promote entrepreneurship culture in the country by promoting enterprises for job creation and gainful employment of a vast majority of skilled and unskilled workers at the lowest possible price. Since 2004 lot of changes have occurred in the manufacturing landscape which compels us to revisit the Act to address the respective issues.

Box-1

MSMED 2006 and its follow up

The Government of India, since the beginning of this century has initiated steps to stimulate productivity of the sector with creation of Ministry of MSME in 2004 and enactment of MSMED Act 2006, the first major step of its kind. The Act brought together the focus on tiny, cottage, traditionally grouped under small scale industries and paved way for investment-based definition of MSME in the manufacturing & services sectors. Government of India has taken several steps to strengthen MSME sector in recent years, which include (i) MUDRA Loans with over US\$ 50 billion disbursement, (ii) online portal for facilitating payment under SAMADHAN and web based MSME data bank, (iii) 50% fee reduction, (iv) financial support for ZERO DEFECT ZERO EFFECT (ZED) manufacturing. Definition of MSMEs, access to finance, global and domestic markets, lack of R&D and modern & affordable technologies, lack of exclusive marketing platform and distribution network, affordable skilled labour and revised labour laws are other key issues which need suitable attention and actions at different levels of government. It is in this context that MSMED Act needs further attention for suitable modification.

It was reinforced by the Ministry that the role of MSME in the Indian Economy is critical and decisive to achieve national objectives of economic development particularly the expansion of economy at US\$ 5 trillion by 2024.

The working group included members of MSME associations and senior functionaries of Ministry of MSME.

The working group deliberated on the subject in the two meetings (first meeting and second meeting held at IIPA on 14th January and 26 February 2020 respectively). The two meetings discussed the reasons causing the need for modifications in the Act and identified points which need suitable modification or addition in the Act.

The working group gave due cognizance to the policy agenda of NDA Government

while suggesting modifications and additions in the Act. IIPA team involved in the working group gave due cognizance to the valuable suggestions and prepared a section-wise break up of modification proposed to be made in MSMED Act, 2006. These recommendations are arranged in next chapter of the report.

The Modifications as per (5) above are in line with Sabka Saath, Sabka Vikas and Sabka Vishwas.

- Sabka Saath – Definition and Registration of enterprise to get MSMEs along with the mainstream economy as part of local and regional value-chains.
- Sabka Vikas-Ease of Doing Business –Extension of suitable opportunities to grow-special role by Sambandh to buy products on a priority basis.
- Sabka Vishwas –Grievance Resolution- Samadhaan portal to be made more efficient and effective.

The three points as above indicate a three-pronged process of REFORM, TRANSFORM & PERFORM. These steps also lead to minimum government and maximum governance.

Proposed Modifications in the MSMED Act are divided in 12 categories. These categories include (i) Classification of Enterprises, (ii) Registration of MSMEs, (iii) National Board for MSME, (iv) Reference to MSEFC (v) Procedure for Clearance (vi) Exemption Clause (vii) Priority in Liquidation Proceedings (viii) Use of Information Utility under IBC (ix) Online Grievance Redressal/Complaint Resolution Mechanism (x) Model Law for States (xi) Institutional Arrangements for Ease of Doing Business and (xii) Knowledge Management.



1st Meeting of the Working Group at IIPA on 14th January, 2020



2nd Meeting of the Working Group at IIPA on 26th February, 2020

Classification of Enterprises

2.1 Present Scenario

Section 7 of MSME Act, 2006 provides for classification of enterprises based on investment. **Section 7 Classification of enterprises** -(1) Notwithstanding anything contained in section 11B of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government may, for the purposes of this Act, by notification and having regard to the provisions of sub-sections (4) and (5), classify any class or classes of enterprises, whether proprietorship, Hindu undivided family, association of persons, co-operative society, partnership firm, company or undertaking, by whatever name called,-

- (a) in the case of the enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), as—
 - (i) a micro enterprise, where the investment in plant and machinery does not exceed twenty-five lakh rupees;
 - (ii) a small enterprise, where the investment in plant and machinery is more than twenty-five lakh rupees but does not exceed five crore rupees; or
 - (iii) a medium enterprise, where the investment in plant and machinery is more than five crore rupees but does not exceed ten crore rupees;
- (b) in the case of the enterprises engaged in providing or rendering of services, as—
 - (i) a micro enterprise, where the investment in equipment does not exceed ten lakh rupees;
 - (ii) a small enterprise, where the investment in equipment is more than ten lakh rupees but does not exceed two crore rupees; or
 - (iii) a medium enterprise, where the investment in equipment is more than two crore rupees but does not exceed five crore rupees.

2.2 Recommendation of Working Group

- (i) Manufacturing and Service sector of MSMEs should be considered at par.
- (ii) Both Turnover and Employment should be taken as criteria in classification of MSMEs. This will encourage employment generation in the MSME sector. However, the Central Government may fix either employment or turnover or both as criteria for different sectors of economy based on labour and capital intensity.
- (iii) Micro-enterprise: Upto 9 employees and up to 5 Crore annual turnover
- (iv) Small enterprise: Upto 49 employees and annual turnover is more than five crore rupees but does not exceed Rs 75 crore
- (v) Medium-sized enterprise: Upto 249 employees and annual turnover is more than seventy-five crore rupees but does not exceed Rs 250 crore.

Table I

Enterprise category	Number of Employees	Turnover
Medium-sized	< 250	≤ 250 crore
Small	< 50	≤ 75 crore
Micro	< 10	≤ 5 crore

- (vi) The ceilings indicated in the table I are to be regarded as maximum values. The Central government may fix lower ceilings for employment or turnover or both for specified sectors. The turnover ceiling refers to enterprises engaged in very different types of economic activity. In order not to restrict unduly the usefulness of applying the definition, it should be updated to take account of changes in both prices and productivity.
- (vii) Additionally, the Central Government may, by notification, vary turnover limits or employee limits or both or add any other criteria like investment in plant and machinery for a sector or a class of sectors as the case may be to promote small business eco-system. However, turnover limits, which shall not exceed thrice the limits specified in Section 7 of the MSMED Act.

2.3 Justification

- (i) The MSMED Act, 2006 has provided the legal framework for identifying the concept of 'enterprise' which includes entities both in manufacturing and service sectors and has categorized the enterprises into three tiers viz., Micro, Small and Medium. Currently, the classification of MSMEs is done based on investment in plant & machinery/equipment in accordance with the provision of Section 7 of MSMED Act, 2006. MSMED Act (Section 7) classifies the Micro, Small and Medium Enterprises (MSMEs) on the basis of investment in plant and machinery for manufacturing units, and investment in equipment for service enterprises. The criterion of investment in plant and machinery stipulates self-declaration which in turn entails verification if deemed necessary and leads to transaction costs.
- (ii) The definition of an enterprise, based on investment limits in plant and machinery/equipment were decided when the Act was formulated in 2006 and does not reflect the current increase in price index of plant and machinery / equipment more over need not be frozen in time for any category of enterprise. Furthermore, MSMEs due to their informal and small scale of operations often do not maintain proper books of accounts and hence find it difficult to get classified as MSMEs even as per the current definition. The price of machineries and equipment has increased substantially over the years.
- (iii) According to the World Bank definition, a business is classified as MSME when it meets two of the three criteria viz., employee strength, assets size, or annual sales. The nature of machineries, the customer quality requirements and environmental and other compliance requirements have become very complex. The latest technologies like robotics, automation and artificial intelligence etc. are very costly.
- (iv) **MSMED (Amendment) Bill, 2018 has Proposed** turnover as the criteria for classification of enterprises. Taking turnover as a criterion can be pegged with reliable figures available e.g. in GST Network and other methods of ascertaining which will help in having a non-discretionary, transparent and objective criteria and will eliminate the need for inspections, make the classification system

progressive and evolutionary, help in overcoming the uncertainties associated with the classification based on investment in plant and machinery/equipment and employment, and improve the ease of doing business.

- (v) In addition, the amendment was supposed to provide flexibility to the Government to fine-tune the classification of MSMEs in response to changing economic scenario without resorting to the amendment of MSMED (Micro, Small & Medium Enterprises Development) Act. The change in the norms of classification will enhance the ease of doing business. The consequent growth will pave the way for increased direct and indirect employment in the MSME sector of the country.
- (vi) Section 7 of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 was accordingly proposed to be amended to define units producing goods and rendering services in terms of annual turnover as follows:
 - (a) A micro enterprise will be defined as a unit where the annual turnover does not exceed five crore rupees;
 - (c) A small enterprise will be defined as a unit where the annual turnover is more than five crore rupees but does not exceed Rs 75 crore;
 - (b) A medium enterprise will be defined as a unit where the annual turnover is more than seventy-five crore rupees but does not exceed Rs 250 crore.
 - (d) Additionally, the Central Government may, by notification, vary turnover limits, which shall not exceed thrice the limits specified in Section 7 of the MSMED Act. Incidentally, the Central Government did enjoy such powers to make suitable changes in the criterion to classify an enterprise engaged in manufacturing or service sector or a village enterprise including tiny ones without requiring legislative sanctions.

2.4 Justification for adopting criteria based on employment and turnover

- (i) For ease of doing business and to prevent stunting the definition of an enterprise needs dynamic and promotional-bias. The MSMED ACT may prescribe a framework for defining an enterprise or a class of enterprises, but the Central Government must have flexibility to suitably modify / add or vary any such criteria to promote entrepreneurship in the country. In the entrepreneurial ecosystem where start-ups are joining global value chains at will, wait and watch limitation may be restrictive and promote stunting of enterprises and may not promote growth by design. The criterion of number of employees remains undoubtedly one of the most important, and must be observed as the main criterion; introducing a financial criterion is nonetheless a necessary adjunct in order to grasp the real scale and performance of an enterprise and its position compared to its competitors. However, it would not be desirable to use turnover as the sole financial criterion, in particular because enterprises in the trade and distribution sector have by their nature higher turnover figures than those in the manufacturing sector.
- (ii) The issue of revision of criteria of defining an enterprise has been carefully studied by various Committee(s) appointed by Government including written suggestions from Banks and Reserve Bank of India. The RBI Expert Committee has favoured the idea of redefining enterprises to promote growth and tackle the bigger

problem of realisation of sale proceeds and delayed payment and credit issues.

- (iii) The non-applicability of certain provisions like delayed payments to medium enterprises even in the MSMED Act is not serving any greater purpose except undesirable exclusion. In almost all cases it's the medium enterprises that do maximum business and have interest in encouraging micro and small enterprises to join regional and/ or sectoral value-chains. The auto sector is an example where the entire value chain has encouraged even tiny, micro and small enterprises to grow 360 degree and both horizontally and vertically as innovation and quick adopting of technology has facilitated it.
- (iv) Some of the sectors are labour intensive like those engaged in providing security services while in some sectors are capital intensive the turnover may be more and employment may be minimal like gems and jewellery sector. Therefore, defining MSMEs on both the criteria becomes important as it takes care sectoral variations.
- (v) Industries (Development and Regulation) Act 1951 do have clear provisions that enable Central Government to classify any class of enterprises by notification only.



3

Registration of MSMEs

3.1 Present Scenario

At present the registration of enterprise, except Medium enterprises engaged in manufacturing, is discretionary. Section 8 of MSMED Act, 2006 provides for legal position w.r.t. registration of enterprises.

Section 8 Memorandum of Micro, Small and Medium Enterprises—

- I. Any person who intends to establish—
 - a) a micro or small enterprise, may, **at his discretion**; or
 - b) a medium enterprise engaged in providing or rendering of services may, at his discretion; or
 - c) a medium enterprise engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), shall file the memorandum of micro, small or, as the case may be, of medium enterprise with such authority as may be specified by the State Government under sub-section (4) or the Central Government under sub-section (3):

Provided that any person who, before the commencement of this Act, established—

- a) a small-scale industry and obtained a registration certificate, may, at his discretion; and
 - b) an industry engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), having investment in plant and machinery of more than one crore rupees but not exceeding ten crore rupees and, in pursuance of the notification of the Government of India in the erstwhile Ministry of Industry (Department of Industrial Development) number S.O. 477(E), dated the 25th July, 1991 filed an Industrial Entrepreneur's Memorandum, shall within one hundred and eighty days from the commencement of this Act, file the memorandum, in accordance with the provisions of this Act.
2. The form of the memorandum, the procedure of its filing and other matters incidental thereto shall be such as may be notified by the Central Government after obtaining the recommendations of the Advisory Committee in this behalf.
 3. The authority with which the memorandum shall be filed by a medium enterprise shall be such as may be specified, by notification, by the Central Government.
 4. The State Government shall, by notification, specify the authority with which a micro or small enterprise may file the memorandum.
 5. The authorities specified under sub-sections (3) and (4) shall follow, for the purposes of this section, the procedure notified by the Central Government under sub-section (2).

3.2 Recommendation of Working Group

Registration of micro, small and medium enterprises. —

- enterprises irrespective of their category should be encouraged to go for registration through online mode based on Aadhar enabled API/ PAN/ Bank Account.
- Electronically-Know Your Entrepreneur (eKYE) should be introduced.
- The form of the registration, the procedure of its filing and other matters incidental thereto shall be such as may be notified by the Central Government.
- The State Government shall, by notification, specify the authority with which a micro/small/Medium enterprise may file the memorandum.

3.3 Justification

- At present, Reliable data in respect of MSMEs continues to pose a challenge. The registration will help in creating a reliable data base of the MSMEs functional in India.
- Registration can be made more attractive, so that unorganized sector can be motivated to move to organized sector. Presently, MSMEs must do multiple registrations with various entities such as Udyog Aadhaar portal, GSTN, NSIC, etc. This leads to cumbersome registration process and duplication of efforts. Benefits of Registration will be that along with MSME registration, enterprise will get a number of other registrations. Following services can be linked with MSME registration and provided in one go:
 - PAN registration
 - GSTN registration
 - IU registration
 - TReDS registration
 - TAN registration
 - Online Loan sanctions from multiple banks/ NBFCs
 - EPF/ESIC registration
 - Shop licenses
 - Factory license
 - Various other portals of compliance and facilitating websites

4

National Board for MSME

4.1 Present Scenario

The Chapter II, Section 3 to Section 6 of the MSMED Act, 2006 provides for establishment of National Board for Micro, Small & Medium Enterprises (NBMSME). The National Board consists of 47 members including Chairman, Vice Chairman and Member Secretary in accordance with the Section 3 (1) of MSMED Act, 2006 and NBMSME Rules, 2006. The Minister in-charge of Ministry of MSME is ex-officio Chairman of the National Board.

Section 3 Establishment of Board —

1. With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Board to be known as the National Board for Micro, Small and Medium Enterprises.
2. The head office of the Board shall be at Delhi.
3. The Board shall consist of the following members, namely: —
 - (a) the Minister in charge of the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises who shall be the *ex officio* Chairperson of the Board;
 - (b) the Minister of State or a Deputy Minister, if any, in the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises who shall be *ex officio* Vice-Chairperson of the Board, and where there is no such Minister of State or Deputy Minister, such person as may be appointed by the Central Government to be the Vice-Chairperson of the Board;
 - (c) six Ministers of the State Governments having administrative control of the departments of small-scale industries or, as the case may be, micro, small and medium enterprises, to be appointed by the Central Government to represent such regions of the country as may be notified by the Central Government in this behalf, *ex officio*;
 - (d) three Members of Parliament of whom two shall be elected by the House of the People and one by the Council of States;
 - (e) the Administrator of a Union territory to be appointed by the Central Government, *ex officio*;
 - (f) the Secretary to the Government of India in charge of the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises, *ex officio*;
 - (g) four Secretaries to the Government of India, to represent the Ministries of the Central Government dealing with commerce and industry, finance, food processing industries, labour and planning to be appointed by the Central Government, *ex officio*;

- (h) the Chairman of the Board of Directors of the National Bank, ex officio;
 - (i) the chairman and managing director of the Board of Directors of the Small Industries Bank, ex officio;
 - (j) the chairman, Indian Banks Association, ex officio;
 - (k) one officer of the Reserve Bank, not below the rank of an Executive Director, to be appointed by the Central Government to represent the Reserve Bank;
 - (l) twenty persons to represent the associations of micro, small and medium enterprises, including not less than three persons representing associations of women's enterprises and not less than three persons representing associations of micro enterprises, to be appointed by the Central Government;
 - (m) three persons of eminence, one each from the fields of economics, industry and science and technology, not less than one of whom shall be a woman, to be appointed by the Central Government;
 - (n) two representatives of Central Trade Union Organizations, to be appointed by the Central Government; and
 - (o) one officer not below the rank of Joint Secretary to the Government of India in the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises to be appointed by the Central Government, who shall be the Member-Secretary of the Board, ex officio.
4. The term of office of the members of the Board, other than ex officio members of the Board, the manner of filling vacancies, and the procedure to be followed in the discharge of their functions by the members of the Board, shall be such as may be prescribed:
- Provided that the term of office of an ex officio member of the Board shall continue so long as he holds the office by virtue of which he is such a member.
5. No act or proceedings of the Board shall be invalid merely by reason of—
- (a) any vacancy in, or any defect in the constitution of, the Board; or
 - (b) any defect in the appointment of a person acting as a member of the Board; or
 - (c) any irregularity in the procedure of the Board not affecting the merits of the case.
6. The Board shall meet at least once in every three months in a year.
7. The Board may associate with itself, in such manner and for such purposes as it may deem necessary, any person or persons whose assistance or advice it may desire in complying with any of the provisions of this Act and a person so associated shall have the right to take part in the discussions of the Board relevant to the purposes for which he has been associated but shall not have the right to vote.
8. Without prejudice to sub-section (7) the Chairperson of the Board shall, for not less than two of the meetings of the Board in a year, invite such Ministers of the State Governments having administrative control of the departments of small scale industries or, as the case may be, the micro, small and medium enterprises, or the Administrators of Union territories and representatives of such other associations of micro, small and medium enterprises, as he may deem necessary for carrying out

the purposes of this Act.

9. It is hereby declared that the office of member of the Board shall not disqualify its holder for being chosen as, or for being, a member of either House of Parliament.

4.2. Recommendation of Working Group

1. The National Board may be renamed as National Council for MSME (NC-MSME) .
2. The structure and function of the National Council for MSME (NC-MSME) need to be reviewed. The following should be included in the Council:
 - (a) All ministers of MSME in States/ UTs -ex-officio Members of National Council for MSME (NC-MSME)
 - (b) As regards the MSME Associations/ Trade Unions are concerned -10 to be nominated by State Government as “special invitees”.
 - (c) Besides RBI, representatives from SIDBI, NABARD and NITI Aayog should be permanent invitee(s).
3. MSME Board’s life is for 2 years and its working is stopped for a few months, due to expiration of 2 years. Hence for uninterrupted working of National Board for MSME, it is suggested that provision should be made that board/council will continue working till notification constituting new Board is made effective by the Government.

For this, at the end of Section 3(4) it will be added:

“Provided that till new council is constituted by the Govt., the old council will continue functioning.”

4. Frequency of meetings of National Council for MSME (NC-MSME) may be need-based but not less than twice a year. (Section 3(6)-Actually, National Board for MSME has never met 4 times in a year. In more than 10 years, 9 meetings of the National Board for MSME have been held.)
5. **Council / Board to be three tier structure** - State Council for MSMEs - The State Government shall establish a Council to be known as the **State Council for MSMEs (SC-MSME)** which shall be headed by the Minister in-charge of MSMEs in the State Government who shall be its Chairman;
6. The State Government shall establish for every district, a board/ council to be known as the **District Council for MSMEs (DC-MSME)** and the DM / Collector of the district (by whatever name called), shall be its Chairman.

4.3. Justification

Including the Minister in-charges of MSMEs in the states and the Industry Associations of the States in the National Board will give due representation to the states who have the major responsibility to promote micro and small enterprises and implement schemes and programmes meant for MSMEs.

5

Reference to MSEFC

5.1 Present Scenario

To cater to the problem of delayed payment, MSMED Act, 2006 provides for the establishment of Micro and Small Enterprises Facilitation Council by the States under Section 20. Under Section 18 a dispute relating to any amount due under Section 17 can be referred to Micro and Small Enterprises Facilitation Council.

Section 18 Reference to Micro and Small Enterprises Facilitation Council

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.
2. On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or center providing alternate dispute resolution services by making a reference to such an institution or center, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.
3. Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or center providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section(1) of section 7 of that Act.
4. Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the center providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.
5. Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.

5.2 Recommendation of the Working Group

- (i) Changes in MSMED Act are needed to provide more powers to MSE Facilitation Councils (FC). Keeping in view the number of cases coming before the FCs more FCs are required to be created. Most of the states are having one FC at the state level which is not adequate to deal with the number of cases being filed and delay and pendency are common feature. To deal with the situation there is need for establishing more FCs and if possible/feasible, an FC should be set up in each district.
- (ii) The liability of buyers to make payments may be expanded to cover earnest money, security deposit, performance guarantee or any deposit made by an enterprise to

- or with the buyer as this and such exclusion become reasons for incipient sickness.
- (iii) The exclusion of medium enterprises from delayed payment provisions does not have any reasonable justification.
 - (iv) With the help of the Facilitation Councils timely disposal of such disputes within prescribed time limits may be reviewed from time to time and Central Government may be empowered to make necessary changes to make the institutional arrangements more effective and efficient.
 - (v) Insert - Section 18 Subsection 5. It is proposed to insert the following provision in the subsection (5) of section 18 that the Central Government shall have the power to decide the time limit for the disposal of such references from time to time.
 - (vi) Chairman of each Micro & Small Enterprises Facilitation Council will send monthly report to the Development Commissioner of MSME of cases remaining pending beyond the period of 90 days, with reason of their remaining pending.

5.3 Justification

- (i) For recovery of any amount due for goods supplied or services rendered by the supplier, the reference has to be made to Facilitation Council (FCs). The existing FCs are strong in only some states, not in others. Therefore, adequate changes in MSMED Act are needed to provide more powers to FCs.
- (ii) The time has come to empower state governments to make Facilitation Councils and enforcement of awards implemented by force of law and with proactive role played by district and sub-district level recovery mechanism of government dues.
- (iii) The awards passed by Facilitation Council may be even recovered as arrears of land revenue to facilitate entrepreneurship and improve the ranking of enforcement of contract as part of ease of doing business development initiative.

6

Procedure for Clearance

6.1 Present Scenario

At present, the Act does not provide any moratorium from seeking approvals/inspections which becomes a barrier in the ease of doing business for MSMEs. There is a need to suitably relax the process. Accordingly, a set of modification is required.

6.2 Recommendation of Working Group– Production First & Permission Later

- (i) To promote Ease of Doing Business (EoDB) the procedure for getting clearances need to be streamlined including additional provisions in Section 8 to “provide exemption from certain approvals and inspections for establishing and running a MSME enterprise.
- (ii) The Government shall prescribe a Combined Application Form, either in physical or electronic format for getting clearances from all concerned departments. All Departments and the Competent Authorities concerned shall accept the Combined Application Form for processing and issue of required clearances.
- (iii) Deemed approval - The Government shall prescribe the clearances in respect of which failure of the Competent Authority to pass final orders on the application within the prescribed time limit or else shall result in deemed approval.
- (iv) The enterprise may proceed to execute the work or take other actions following the deemed approval, without contravening any of the provisions of the Acts, rules, bye-laws, notifications, standing orders, executive instructions, guidelines and the regulations made by the respective Competent Authority concerned for such clearances and as per the self-certification furnished by the enterprise under section 10.
- (v) New section may be added to empower Central Government to make Rules regarding exemptions, inclusions and waivers of regulatory compliances related to MSME sector as per provisions under this Act as also under various Central Acts, Orders, and Notifications and Provisions in vogue and issued from time to time with overriding effect. This may include exemptions from certain approvals, inspections for establishing and operation of an enterprise for a prescribed period with spirit of production first and permission later.

6.3 Justification

- (i) This will promote ease of doing business.

7

Exemption Clause

7.1 Present Scenario

At present there is no provision of exemption from inspection and approval for MSMEs giving intent to initiate business. Some State Legislations like Gujarat Act are having such provision.

7.2 Recommendation of Working Group

Where the Government or any authority under it is empowered to exempt any enterprises from any approval or inspection or any provisions relating thereto under any Central Act, the Government or, as the case may be, any such authority shall, subject to the provisions of such Central Act, exercise such powers to grant such exemption to an enterprise established in the State for at least a period of three years from the date issue of the acknowledgement certificate.

- (i) Any entrepreneur who intends to start an enterprise will apply online for 'Declaration of Intent' and an 'Acknowledgment Certificate' will be issued immediately to the entrepreneur by the Nodal Agency.
- (ii) By putting in place a robust mechanism whereby just filling 'Declaration of Intent' on the portal the entrepreneur will get Acknowledgment Certificate immediately online.
- (iii) The enterprise will be exempted from the approvals and clearances for three years.
- (iv) After expiry of three years, the enterprise shall have to obtain required approvals within six months.

7.3 Justification

The State Governments are committed towards creating an investor friendly atmosphere in the State. Many steps have been taken by the states in the past few years to promote investment and for that it is considered necessary to have a law which shall provide for exemption from certain approvals and inspections for establishment and operation of the micro, small and medium enterprises in the States. For that purpose, it is necessary that legislation (Centre/State) shall have an Exemption clause. This will promote ease of doing business.

8

Priority in Liquidation Proceedings

8.1 Present Scenario

As the current provisions do not provide for a priority on payments to be made to MSMEs. The Act needs suitable modifications in this regard.

8.2 Recommendation of Working Group

- (i) Under the Insolvency and Bankruptcy Code, 2016 MSME dues should be given priority over all other unsecured payments after settling dues of employees when a company goes into liquidation or approaches NCLT.
- (ii) They should be equated to Government dues, and 5 percent allocation under the Code should be made for MSMEs. Adequate provision in this regard may be made under MSMED Act.

8.3. Justification

- (i) In case of liquidation proceedings under IBC the MSMEs being operational creditors are at the lowest rung down in the priority list.
- (ii) As per section 3(10) of IBC 2016 - Creditor means “any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder”.
- (iii) Operational Creditors have been in the forefront availing the benefits under IBC and have filed maximum number of defaults with NCLT.
- (iv) Section 53 of IBC, 2016 has established an ordered of priority among creditors, which will determine the sequence in which outstanding debts will be repaid. This is: -
 - (a) IRP and liquidation costs;
 - (b) Workmen’s dues (for 24 months), and secured dues, if the security has been relinquished;
 - (c) Employees dues (for 12 months);
 - (d) Unsecured financial creditors;
 - (e) Government dues, and unpaid dues to secured creditor, if the security has been realized;
 - (f) Remaining debts and dues (which include, unsecured operational debts);
 - (g) Preference shareholders;
 - (h) Equity shareholders

9

Use of Information Utility

9.1 Present Scenario

MSMED Act, 2006 at present does not contain any provision relating to use of Information Utility.

9.2. Recommendation of Working Group

At present submission of unpaid invoices are optional for MSME (operational creditors) under IBC, 2016. Hence, MSME are not utilizing the Information Utility at the fullest fearing black listing by business houses. If submission of unpaid invoices were made mandatory after certain days or above some particular amount, then this will be part of compliance and MSME would be at ease to upload the unpaid invoices on IU system.

- (i) Objective is to bring credit discipline among business houses, else Information Utility will broadcast the default alert to all other creditors about non-payment (name and shame).
- (ii) As per MCA guidelines, companies are mandated to mention outstanding amounts payable along with interest to MSME. If all MSME are uploading unpaid invoices, MCA/MSME ministry can access the information of companies who are not paying MSMEs.
- (iii) For better governance, MCA/DPE can issue necessary directives to auditors / CAs / CSs of companies to certify that invoices uploaded by operational creditors / MSMEs are being authorized by the company.
- (iv) Authenticated invoices on IU platform can be shared with TReDS for bill discounting.
- (v) Information utility may be used for other relevant uses also.

10

Online Grievance Redressal/ Complaint Resolution Mechanism

10.1 Present Scenario

MSMED Act, 2006 at present does not have any provision for setting up Online Grievance Redressal/Complaint Resolution Mechanism for quick resolution of dispute.

10.2 Recommendation of Working Group

- (i) An electronic/online system is needed where sellers can upload raise grievances / complaint on any related issue. The mechanism of resolution should be in place to resolve that in a specific period.
- (ii) Complainant may authenticate the information or may dispute. Any facilitation council /Adjudicating authority to take decisions on it, can access the authenticated information stored in Information Utility.



11

Model Law for States

11.1 Present Scenario

Many states are having different Laws/ ordinances to regulate and promote MSMEs. There is no uniformity in these States' Laws.

11.2 Recommendation of the Working Group

The Central Govt may prepare a model law and circulate among states. The adoption of the model law by the state will bring uniformity among all states.

11.3 Justification

- Many states like Tamil Nadu, Punjab, Gujarat, H. P have enacted state laws to facilitate MSMEs to carryout business. The Central Govt should prepare model Law based on best practices which can be adopted by all the states.
- States can adopt the Model law to protect and promote MSMEs in line with the overall focus as determined by MSMED Act of India. This will bring uniformity and propagate best practices.

Institutional Arrangements for Ease of Doing Business

12.1 Present Scenario

MSMED Act, 2006 at present does not have any provision for ease of doing business. The working group feels the need to suggest measures needed for promoting ease of doing business.

12.2 Recommendation of Working Group

To provide ease of doing business for MSMEs through:

- a) State level agency for MSMEs to be headed by an officer as may be notified by the state.
- b) The district level nodal agency to be created to work under the overall superintendence, direction and control of the State Nodal agency.
- c) There is also a need to have a code outlining the processes to encourage ease of doing business.

State Nodal Agency

State nodal agency shall:

- a) Coordinate with concerned stakeholders at central and state level,
- b) Coordinate with state agencies, and
- c) Review decisions taken by district nodal agencies.

District Nodal Agency

District nodal agency shall

- have powers as may be assigned by the state nodal agency,
- coordinate with concerned stakeholders within and outside district,
- take up a time bound redressal of grievances, and
- issue certificate of in principle approval of intent received.

Filing of Declaration of Intent

MSME seeking in principle approval shall furnish a declaration of intent in the prescribed format to district nodal agency for:

- In principal approval to be given within 3 working days.
- In principal approval for MSMEs located outside designated areas to be given within 15 days in accordance with the procedures as may be prescribed.

Protection on Action taken in good faith

No suit, prosecution or other legal proceedings shall lie against any officer or other

employee of the Government or the Nodal agencies or any other competent authority, for anything which is done in good faith or intended to be done under the Act for the facilitation of Micro, Small and Medium Enterprises.

Approval Procedure to override other laws

The procedures contained in this Act have an overriding effect on different enactments with regard to

- a) Municipal Act
- b) Municipal Corporation Act
- c) Town and Country Planning Act
- d) Town Planning and Development Act
- e) Factory Building Plan/Act/Rules
- f) Registration of Shop and Estate Act.

Knowledge Management

13.1 Present Scenario

MSMED Act, 2006 at present does not have any provision for knowledge management committee to promote, guide and educate MSMEs.

This is a new area proposed by working group to streamline management of information which includes generation, analysis and dissemination of information for wider use and feedback, and also to enable automated response mechanisms.

13.2 Recommendation of Working Group

The Central Government shall, by notification, constitute a Committee on Knowledge Management consisting of the following members, namely: -

- (i) Development Commissioner, MSME shall be the ex-officio chairperson;
- (ii) Not more than six officers, representing six regions, dealing with MSMEs in their respective states.
- (iii) Not more than six officers from states, representing six regions, possessing necessary expertise in matters relating to Digital India;
- (iv) Not more than three experts, having domain expertise in, Data Management, Cloud, Artificial Intelligence and Data Analytics;
- (v) Two representatives each of the association of micro, small and medium enterprises, members, ex-officio;
- (vi) Joint secretaries to the Government of India dealing with Digital India, Skill India, Start-Up India, Stand-Up India, ex-officio.
- (vii) Joint Secretary to the Government of India in the Ministry of MSME dealing with India Enterprise Portal shall be the Member-Secretary.

13.3 Functions of the Committee

- (i) The Committee shall approve the framework of Knowledge Management and will guide its continuous improvement.
- (ii) It shall meet every six months to assess emerging developments/scenarios and prioritize critical issues for Knowledge Management. The Member Secretary shall maintain and prioritize list of issues to be discussed in the meeting.
- (iii) It shall have overall superintendence over India Enterprise Portal.
- (iv) It shall commission studies from time to time for continuous feedback on issues relating to Knowledge Management.
- (v) It shall also devise a mechanism to take continuous feedback from the states.
- (vi) It shall lay down a procedure for the facilitation mechanism between the Knowledge Portal and the stakeholders.
- (vii) To spread and promote awareness among the enterprises.

It shall appoint and may call Chief Knowledge Officer, in-charge of the Knowledge Portal as and when required.

Annexures

File No. 16(3)/2017-MSME Policy (Pt.III)
Office of the Development Commissioner
(Micro, Small & Medium Enterprises)
(Policy & Governance Division)

Nirman Bhawan, New Delhi-110108

Dated: 08.01.2020

Office Memorandum

Sub: Constitution of a working group to study the need for changes in MSME (Development Act, 2006).

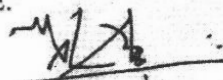
A Working Group is hereby constituted to conduct necessary study and recommend modifications that are required in the MSME Act in order to ensure ease of doing business and sustainable growth & development of MSMEs.

I. Composition:-

1. Shri Surendra Nath Tripathi, Director, IIPA- Chairman
2. Sh. Harsh Shrivastava – CEO, Micro Finance Institutions – Member
3. Sh. Anil Bhardwaj, Secretary General, FISME, Delhi- Member
(Federation of Indian Micro, Small and Medium Enterprises)
4. Sh. Chandrakant Salunke, Founder & President SME- Member
(SME Chamber of India, Mumbai)
5. Sh. Prashant Girbane, Director General – Member
(Maharatta Chamber of Commerce, Industries & Agriculture, Pune.)
6. Sh. Rajive Chawla, Chairman, IamSMEofIndia
7. Co-opted experts
8. Prof. K.K. Pandey – Professor – IIPA – Member Secretary

II. Terms of Reference:

- 1) To conduct necessary study and recommend modifications that are required in the MSME (Development) Act, 2006
- 2) Any other matter related to the above.
- 3) Any other issue that is referred to the Group by the M/o MSME.


(Saifan Mitra)

Addl. Development Commissioner

To:-

1. Shri Surendra Nath Tripathi, Director, IIPA- Chairman
2. Sh. Harsh Shrivastava – CEO, Micro Finance Institutions – Member
3. Sh. Anil Bhardwaj, Secretary General, FISME, Delhi- Member
(Federation of Indian Micro, Small and Medium Enterprises)
4. Sh. Chandrakant Salunke, Founder & President SME- Member
(SME Chamber of India, Mumbai)
5. Sh. Prashant Girbane, Director General – Member
(Maharatta Chamber of Commerce, Industries & Agriculture, Pune.)
6. Sh. Rajive Chawla, Chairman, IamSMEofIndia
7. Prof. K.K. Pandey – Professor – IIPA – Member Secretary.

Copy to:

1. PPS to Secretary.
2. PS to SS & DC.
3. PS to ADC (SM).



Indian Institute of Public Administration

Working Group to study the need for changes in MSME (Development Act, 2006)

Members

Sl. No.	Name	Designation & Address	Contact Number	Email
1.	Shri S.N. Tripathi (IAS-retd)	Chairman and Director, IIPA	011-23468322	directoriiipa9@gmail.com
2.	Shri Injeti Srinivas	Secretary Ministry of Corporate Affairs	23382324	secy.mca@nic.in sridhar.pamarthi@mca.gov.in
3.	Shri S. Raman (IA&AS)	Managing Director and CEO, NeSL- National E-Governance Services Ltd	9833084350	ramanns@nesl.co.in
4.	Dr. M.S. Sahoo	Chairperson, Insolvency and Bankruptcy Board of India		chairperson@ibbi.gov.in
5.	Sh. Harsh Shrivastava	CEO, Micro Finance Institutions Network	9910640404	harsh@mfinindia.org
6.	Sh. Anil Bhardwaj	Secretary, Federation of Indian Micro and Small & Medium Enterprises	9810517884	sg@fisme.org.in
7.	Sh. Chandrakant Salunkhe	Founder and President, SME Chamber of India	022-61509821	president@smechamber.com
8.	Sh. Prashant Gribane	Director General, Mahratta Chamber of Commerce, Industries & Agriculture (MCCIA)	7722071007	dg@mcciapune.com sadhanap@mcciapune.com
9.	Sh. Rajeev Chawala	Chairman, I am SME of India		chairman@iamsmeofindia.com
10.	Shri G.P. Dalmia	President, Jharkhand Small & Tiny Industries Association	7982893521	jstiagpd@gmail.com
11.	Sh. M.M. Gupta	President, Chamber of Indian Micro Small & Medium Enterprises	9811024647	info@indiansmechamber.com
12.	Prof. K.K. Pandey	Member Secretary and Faculty, IIPA	9810154568	kkpandey9236@gmail.com
13.	Prof. Geethanjali Nataraj	Faculty, IIPA	9999484354	geethanjali_n@yahoo.com
14.	Dr. Sachin Chowdhry	Faculty, IIPA	9868619162	sachin.chowdhry@gmail.com
15.	Dr. Sapna Chadah	Faculty, IIPA	9810657989	sapnachadah@yahoo.co.in



Indian Institute of Public Administration

Minutes of the Working Group meeting to study the need for changes in MSME (Development) Act, 2006 (January 14, 2020)

The first Meeting of Working Group set up by Ministry of MSME under the chairmanship of Shri SN Tripathi, IAS, Director, IIPA to study the need for changes in MSME (Development) Act, 2006) was held on 14th January, 2020 at 10:30 am to 02.30 pm at Conference Hall, First Floor at IIPA. The Following members were present:

1.	Shri S.N. Tripathi (IAS)	– Director, IIPA	– Chairman
2.	Dr. Arun Kumar Panda (IAS)	– Secretary, Ministry of Micro, Small and Medium Enterprises	– Member
3.	Sh. Ram Mohan Mishra (IAS)	– Development Commissioner, Ministry of Micro, Small and Medium Enterprises	– Member
4.	Shri S. Raman (IA&AS)	– Managing Director and CEO, NeSL-National E-Governance Services Ltd	– Member
5.	Shri Sridhar P.	– Joint Director, Ministry of Corporate Affairs	– Representative of Secretary of Ministry of Corporate Affairs
6.	Sh. Santanu Mitra	– Additional Development Commissioner, Ministry of Micro, Small and Medium Enterprises	– Member
7.	Sh. Harsh Shrivastava	– CEO, Micro Finance Institutions Network	– Member
8.	Sh. Anil Bhardwaj	– Secretary, Federation of Indian Micro and Small & Medium Enterprises	– Member
9.	Sh. Prashant Gribani	– Director General, Maratha Chamber of Commerce, Industries & Agriculture (MCCIA)	– Member
10.	Sh. Rajeev Chawala	– Chairman, I am SME of India	– Member
11.	Sh. M.M. Gupta	– President, Chamber of Indian Micro Small & Medium Enterprises	– Member
12.	Sh. Anshuman Mohanty	– Director, Ministry of Micro, Small and Medium Enterprises	– Member
13.	Sh. Piyush Agarwal	– Dy. Director (Policy), Ministry of Micro, Small and Medium Enterprises	– Member
14.	Sh. Amit Kumar Tamaria	– Dy. Director, Ministry of Micro, Small and Medium Enterprises	– Member
15.	Kavita	– Assistant Director, Ministry of Micro, Small and Medium Enterprises	– Invitee from Ministry of MSME
16.	Prof. Geethanjali Nataraj	– Faculty, IIPA	– Member
17.	Dr. Sachin Chowdhry	– Faculty, IIPA	– Member
18.	Dr. Sapna Chadah	– Faculty, IIPA	– Member
19.	Prof. K.K. Pandey	– Faculty, IIPA	– Member Secretary

Leave of absence was granted to Dr. M.S. Sahoo, Chairperson, Insolvency and Bankruptcy Board of India and Sh. Chandrakant Salunkhe, Founder and President, SME Chamber of India. They had requested for their leave of absence beforehand.

Deliberations

1. Chairman Shri SN Tripathi while welcoming the participants indicated the historical role of IIPA as a think tank and knowledge centre of Government of India on public policy and administration at Apex level and thanked the Ministry of MSME for giving the task of working group on the issue of special significance. MSMEs, he said, will play a decisive role to stimulate Indian economy towards the goal of US\$ 5 Trillion economy. Shri Tripathi requested members to join eloquent deliberations on MSMED Act of 2006 which was a logical outcome of creation of Ministry of MSME by NDA (National Democratic Alliance) government in 2004. Since then the economic policies and Indian economy have undergone significant changes which need requisite cognizance to promote efficiency & productivity of MSME sector. Chairman also said that sector needs to be viewed in the light of guiding principle of Government of India being inclusive & participatory governance (Sabka- Saath- Sabka- Vishvas) and Minimum Government, Maximum Governance. He emphasized on the need for simpler laws governing the MSME sector and a framework to expedite job creation to have a balance in terms of labour and investment intensive enterprises. He also pointed out decisive role of definition to bring MSMEs within the net of registration system.
2. The discussion was further taken up by Shri Ram Mohan Mishra who indicated that the Act needs to be viewed in terms of its implementation. Second, we need to invest in changing the mindset of people towards result oriented actions covering immediate, medium term and long-term perspective. In this regard, we can also draw from the experience of World Bank and other best practices applied across the countries.
3. Shri A.K. Panda, Secretary MSME further initiated the discussion and raised some pertinent questions points as to why was the Act enacted? Have we got the envisaged outcome? Has the sector responded to the changes occurred since 2005-06 to 2020 particularly with regard to application of GST, expansion of enterprises under a formal setup and technology adaption? Have they been a sources for MSMEs to prosper? Shri Panda also emphasized a need to revisit definition of MSMEs as given under Section 7



of the Act. He also said that the Act has not led to desired facilitation of medium sector enterprises who have important role in driving a value chain. Therefore, time has come to focus on Medium enterprises also. In this regard the role of MSMEs in other countries as indicated in the Economic Survey need special attention. Further, small enterprises need to be encouraged to make investment to graduate to another level. Hence, the threshold of 'Micro' and 'Small' enterprise needs to be reviewed to promote investment in plant and machinery. Accordingly, the rules and regulations deserve suitable modification also taking into account recommendations of feedback from RBI (UK Sinha) Committee.

4. Shri S. Raman pointed out potential use of Information Utility (IU) as a neutral third party to record default by financial creditors and operational creditors. Samadhan portal can be used to identify the defaulting entities. Shri Raman also suggested apps for data base on invoices of MSMEs. It will promote digital documentation and speedy/timely dispute resolution.
5. Shri A.K. Panda, Secretary, intervened on this point and reemphasized on provision to motivate enterprises to graduate from Micro to Small, and Small to Medium, together with employment generating policy and need for a sunset clause to promote expansion of MSMEs.
6. Shri Anil Agarwal (FISME), Prashant Gribane Shri Rajiv Chawala, Shri MM Gupta and Shri Piyush Agarwal also made specific and forceful comments on different aspects of promotion of MSMEs. These include:
 - I. Definition of MSMEs should be based on turnover and employment rather than investment. Employment elasticity of investment is equally important than productivity for a fairly diverse economy like India.
 - II. The definition of MSME has to be different for manufacturing and service sector enterprises. For service sector, investment-based definition may not be appropriate. Similarly manufacturing sector cannot be defined on employment basis alone.
 - III. There is a need to develop investment and inflation based indexation as part of definition for MSMEs to achieve a balance between sustainability and employment opportunities. (If the current definition includes inflation based indexation, half the problems of parallel economy can be resolved) In this regard, a new mechanism would be useful to devise regulation in the line with

Regulatory Impact Assessment (RIA) as done in other sectors to address rationale of law, its justification and the cost.

- IV. Clubbing of investment in different names should be checked to stop financial irregularities and misuse of concessions and rebates. On the other hand, investment by the same enterprise should be encouraged.
 - V. Startups should be duly covered under the Act and its follow up rules and regulations.
 - VI. We need to re-write the Act to cover the contemporary issues more effectively rather than just amending it. New Act may duly cover delayed payments, recovery and a Tribunal to resolve operational issues.
 - VII. Rationalize commercial tax and electricity rates for commercial spaces to bring MSMEs in the economic mainstream.
 - VIII. There is need to devise mechanism on grievance/online redressal and feedback.
 - IX. We should initiate awareness programmes in vernacular language covering Hindi and other languages to sensitise MSMEs about their role and government expectations more effectively.
 - X. Time taken to start a business should be minimized with suitable facilitation and Ease of doing business rules.
 - XI. The role of states in the promotion of MSME is critical and decisive particularly at grass root and functional level. The Act should give due cognizance to the jurisdiction and modalities of state actions.
 - XII. Finance availability for appropriate infrastructure including development of industrial estates need to be revived.
 - XIII. Ease of closing a business should also be included in the Act.
 - XIV. It was felt to also have representation of business owners from different states in further discussions.
7. On the basis of a range of points made by members Shri A.K. Panda suggested specific points to be taken up for further discussions:
- a) Take suitable feedback from MSME Acts of other countries such as Korea, Japan, BRICS, SAARC, Taiwan, Malaysia, Germany etc., and also examine best practices from different states in this regard.
 - b) Deliberate on how to incentivize MSMEs to grow and graduate to another level;
 - c) How can the Act facilitate the graduation from one to other category?

- d) Develop schemes for issues like employment generation, insurance, etc.,
 - e) Act should reflect Ease of Doing Business and Ease of Closure,
 - f) Develop inter-state consensus for a better ecosystem,
 - g) Closely draw lessons from RBI (UK Sinha Committee) report sba.com, and Navigation Portal of Russia.
8. Finally, Chairman announced that IIPA team of faculty will look into specific points suggested by Shri Panda and also requested members to provide their own feedback, reading material and any other information on the respective issues. Members were also requested to suggest specific points for amendment/modification on different sections and clauses of the Act, along with the rationale and the way it can be done. Members were requested to submit their feedback within a period of ten days for further consideration by the working group.
9. Meeting ended with the vote of thanks to the chair.



The Chairman



Member Secretary

Dated . 20 January 2020



Indian Institute of Public Administration

Minutes of the 2nd Meeting of Working Group to study the need for changes in MSME (Development) Act, 2006 (February 26, 2020)

The second Meeting of Working Group set up by Ministry of MSME under the chairmanship of Shri S.N. Tripathi IAS (Rtd.), Director, IIPA to study the need for changes in MSME (Development Act, 2006) was held on 26th February, 2020 at 10:30 am to 01:30 pm at Semksha Hall, First Floor at IIPA. The Following members were present:

1.	Shri S.N. Tripathi (Former Secretary Parliamentary Affairs, GoI)	- Director, IIPA	- Chairman
2.	Shri Chandan Kumar	- Deputy Director, Ministry of Corporate Affairs	- Representative of Secretary of Ministry of Corporate Affairs
3.	Shri Chetan Lulla	- Sr. Manager, NeSL- National E-Governance Services Ltd	- Representative of Shri S. Raman (IA&AS), MD, NeSL
4.	Sh. Harsh Shrivastava	- CEO, Micro Finance Institutions Network	- Member
5.	Sh. Chandrakant Salunkhe	- Founder and President, SME Chamber of India	- Member
6.	Sh. Prashant Gribane	- Director General, Maharashtra Chamber of Commerce, Industries & Agriculture (MCCIA)	- Member
7.	Shri G.P. Dalmia	- President, Jharkhand Small & Tiny Industries Association	- Member
8.	Prof. Geethanjali Nataraj	- Faculty, IIPA	- Member
9.	Dr. Sachin Chowdhry	- Faculty, IIPA	- Member
10.	Dr. Sapna Chadah	- Faculty, IIPA	- Member
11.	Prof. K.K. Pandey	- Faculty, IIPA	- Member Secretary

Leave of absence was granted to (i) Dr. M.S. Sahoo, Chairperson, Insolvency and Bankruptcy Board of India; (ii) Sh. Anil Bhardwaj, Secretary, Federation of Indian Micro and Small & Medium Enterprises; (iii) Sh. Rajeev Chawala, Chairman, I am SME of India;

and (iv) Sh. M.M. Gupta, President, Chamber of Indian Micro Small & Medium Enterprises. They had requested for their leave of absence beforehand.

Deliberations

Shri S.N. Tripathi welcomed the members in the second meeting of working group and thanked them for their valuable suggestions sent earlier to IIPA. Accordingly, a draft report on modification in the Act has been proposed. Shri Tripathi raised some key issues for further deliberation.

- (i) **Registration** (should it be voluntary or mandatory? How should it be done? What should be the benefits that come along with it?)
- (ii) **Re-constitution of the National Board** (The Board doesn't meet regularly without suitable representation to All stakeholders. What should be the composition of Board?)
- (iii) **There is a need to share Best practices on emerging initiatives by states pertaining to:**
 - a) **Delayed Payments** (Eligibility to claim, process of delinking the claim, registration, Time limit, Interest to be charged)
 - b) **Ease of Doing Business** (To be made a right or production first, registration later -like Gujarat, entitlement for social security schemes and promotional benefits to employees)
- (iv) **Indexation of MSMEs for better policy formulation, incentives for data exchange and additional employment.**
- (v) **Appropriate representation to associations at state level council's and decision-making powers of council for realization of unpaid dues.**

Chairman also requested member to give their views in a crisp and pointed manner. Main points noted during the deliberation are:

Definition

- (i) Definition of MSME should be turnover based at the level 10 times than the current figures. Definition of MSMEs should also promotes graduating to another level. Definition should be Indexed Investment.
- (ii) At least two criteria, paid up capital or turnover could be used for definition
- (iii) Employment based definition should be used for MSMEs Employment range for MSME should cover Medium: <250, Small: <50, Micro: <10. All these being direct employees.
- (iv) The act should create segments like: Micro, small, medium and mid corporate those are having turnover of ₹ 250 – 500 crores to convert them as emerging corporates.

These emerging corporates will play important role to compete with China, Japan, South Korea, Germany, USA and Canadian companies. These companies can be the potential partners for joint ventures, technology transfer and contract manufacturing.

- (v) Medium industries should not be a part of MSMEs. Loan limit to MSMEs should be increased

Registration

- (i) Registration should be made compulsory. Registration can help move MSMEs from an unorganized to organized setup or Registration to be made voluntary with additional benefits. One registration gives multiple registration benefits (GST, TAN, etc.)
- (vi) EKYE based registration of MSMEs should be taken up. Link registration to a bank account and income tax number.
- (ii) Registration method should be fixed by national level government.
- (iii) Rating for MSME to be done according to the sector. This rating should enhance the capacity and credibility of the MSME sector not only for banking perspective, but will also benefit the other stakeholders.
- (iv) Once common registration formality to be completed for MSME sector, the sector wise registration to be made mandatory for Pharmaceutical, healthcare, food sector and public services.
- (v) MSME Directorate should be create a platform to certify new entrepreneurs as per their back ground, education, experience, vision, mission, expertise and interest in the particular field, so that these entrepreneurs can be recommended to investors, stakeholders, banks and government agencies for fulfilling each other's requirements.
- (vi) The MSMEs - not related to healthcare, pharmaceutical, food, water, chemical environment and other important segments should be given license or permission for 10 years.
- (vii) Existing entrepreneurs with Aadhar Number linked to Udyog Aadhar, should be allowed to launch Start – Ups and avail benefits announced by the Government.

Ease of Doing Business

- (viii) Process to close a business voluntarily should be defined.
- (ix) There should be a sunset clause at some stage to act as an incentive for companies to grow.
- (x) Each district to have commercial courts to resolve delayed projects.



- (xi) Knowledge portal/bank should be in local languages.
- (xii) A portal to know concerns of MSMEs, receive suggestions/recommendations could developed.
- (xiii) Online grievance redressal/complaint resolution mechanism to be introduced for all departments related to MSME sector

National Council/Board

- (xiv) The National Board for MSMEs should be restructured in the format of GST council, with a permanent secretariat, an interactive portal for online deliberations on the issues under consideration etc. It should be a think tank like NITI Aayog for MSMEs and should have meetings at regular intervals, say, once in a month
- (xv) National level Board should be changed to a National Council with wider representation as regular and invitee members. It should also play role of a Business Development/Promotion Council that should consist of government officials, RBI officials, officials from SIDBI, etc.
- (xvi) National Board should be used as a regulatory body. National Board to also suggest good governance and ethics practices. Each regulatory body should be invited for Board; SEBI, RBI, SIDBI)
- (xvii) National board must meet at least thrice a year & tenure should be 2.5 years.
- (xviii) National board meeting should be organised for full day with specific agenda and with specific presentations from the concerned departments for policy change, implementation and benefits created SME sector. This will be useful platform to market and brand the developments of the ministry to the concerned sector.
- (xix) SSI Board should be restored with a mandate to meet 6/8 times a year.

State Council

- (xx) States should set up MSME development centres.
- (xxi) MSEFCs should be made quasi –judicial bodies with retired judges in Chair.
- (xxii) Along with Small and micro enterprises, delayed payment to Medium Enterprises should also be brought under the purview of MSEFC.

Delayed Payment

- (xxiii) The 'International' word should be restored in Section 18.4 to apply as arbitration award against stakeholders regardless of their location.

- (xxiv) Leverage GST Data to resolve delayed payments.
- (xxv) Samadhan can be made a more effective with detailed timeline in line with IBC, right now it is looked at as an arbitration tool. Samadhan portal can accept Information Utility (or IU) as an evidence to admit a case.
- (xxvi) Section 26 should be strengthened to reduce delayed payments. For Section, Central government should have power to adjudicate penalty beyond 40 days. Act should provide for who will be prosecuted.
- (xxvii) Data from GSTIN and IU should be used to facilitate MSMEs.
- (xxviii) 'Dispute' should be defined quantitatively or qualitatively.
- (xxix) Irrespective of whether supply was made before or after 22.2.1992 or 2.10.2006 and whether contract was made before or after these dates, or whether the cause of action has arisen before or after these dates, provision of this Act will apply. This modification will be with retrospective effect.
- (xxx) Earnest Money, Security Deposit, Penalty, Price Variation should also be included in the Act, so that MSEFC or the Court may give their award and/or decree on these receivables also, if they feel claim of the seller is justified, under MSMED Act.
- (xxxi) Non-payment of paid/unpaid dues should be a part of Director's report for PSUs and other corporates and to give due cognizance at least once a year.

Concessions/Incentives and Infrastructure

- (xxxii) Income tax concession like Corporates would be extended to MSMEs also.
- (xxxiii) Create nationalized mechanism for awareness generation.
- (xxxiv) There should be separate Labour Law Act and Company Act for MSMEs.
- (xxxv) Act to promote women entrepreneurs and manufacturing entrepreneurs with special incentives and concessions.
- (xxxvi) Artificial Intelligence should be used for EoDB.
- (xxxvii) MSME Act should be applicable to all banking and financial service providers to consider seriously as a priority sector to provide timely, affordable and adequate finance for starting business, promotion, development, expansion as well as diversification.
- (xxxviii) State governments should provide more attention on allotting industrial land at concessional cost, to resolve their issues and problems related to infrastructure, labour, environment, water, logistics and power.



(xxxix) If MSME is responsible for creation of more job opportunities, they should be given relief in GST rate and income tax rebate.

(xl) 5% GST rate should be introduced for all professional services applicable to MSME sector and internal business between MSME sector.

Meeting decided to place on record the appreciation of working group to the team of IIPA for coordinating the collection and compilation of information from members.

The meeting ended with a vote of thanks to the chair.



The Chairman



Member Secretary



Thank You!

We are grateful to SHRI Arun Kumar Panda, I.A.S, Secretary, Ministry of Micro, Small and Medium Enterprises and Shri Ram Mohan Mishra, I.A.S, Special Secretary & Development Commissioner, MSME for inviting National E-Governance Services Limited (NeSL) to the part of the working committee for the amendment of MSME Act 2006.

Brief about Insolvency and Bankruptcy Code

The Government of India is committed to bringing the benefits of the IBC to creditors in the economy and help growth in their business. It mandates financial creditors to submit information to an IU and encourages Operational creditors to submit information to an IU.

As per section 3(10) of IBC 2016 - Creditor means "any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder".

Operational Creditors have been in the forefront availing the benefits under IBC and have filed maximum number of defaults with NCLT. Out of the total number of 2542 cases, resolution processes triggered as at the end of Sep 2019, Operational Creditors have triggered 1232 cases (almost 48%) and in many cases the unpaid invoices settled on submission of file in NCLT and before admission of the case.

Brief about Information Utility

National E-Governance Services Ltd (NeSL) is registered as a Union Government Company, and licensed by IBBI and the first Information Utility (IU) under Insolvency and Bankruptcy Code 2016 (IBC). Several leading banks and public institutions are the equity holders in the company. The primary role of IU is to serve as a repository of electronic legal evidence pertaining to any debt/d claim as submitted by a financial or operational creditor. This is verified and authenticated by parties to the debt using digital signatures, thereby causing the information to be non-repudiable or prima facie evidence.

Suggestions for changes in MSME Act, 2006 - Immediate

- Change of Definition of MSME -
The MSME Act, 2006 may be amended to categorize MSMEs based on turnover of business, since this may be reliably undertaken using digital systems like GSTN, ITR, Account Aggregator. E.g this could be stated in terms of 'above Rs 300 crore average turnover' cannot be an MSME.

But having seen the lending of banks to commercial entities NeSL is of the view that level of borrowing could also be a criterion to determine the differentiation between the M, S and M sub-categories since level of borrowing indicates health of a commercial unit and its access to funds. Lenders are diligent before they allow further credit facilities and watch the overall credit facilities enjoyed by a unit. Illustratively, borrowing of greater than say Rs 25 lakh should make a micro unit move to the category of a small unit.

Further, a minimum lending of even say Rs 25,000 may be pre-sanctioned to a micro unit at the time of on-boarding of the entity as a customer to a bank.

- Registration / Udyog Aadhaar Memorandum (UAM):
 - PAN should be made mandatory for UAM, this will help to retrieve turnover of enterprise from GSTN
- Resolution on Delayed payments –
Resolution process should have strict timelines (in line with IBC, 2016). For admission of case, proceedings should have deadlines. There should be a MSME tribunal and Appellate tribunal for quick resolution instead of going to other Tribunals or civil court. Use of electronic evidence of IU like Record of default and record of dispute can facilitate quick disposal of cases. Online portal of cases and cause list should be made available so MSME/Citizens can refer them.
- Use of Information Utility under IBC –
At present submission of unpaid invoices are optional for MSME (operational creditors) under IBC, 2016. Hence, MSME are not utilizing the Information Utility at the fullest fearing blacklisting by business houses. If submission of unpaid invoices were made mandatory after certain days or above some particular amount then this will be part of compliance and MSME would be at ease to upload the unpaid invoices on IU system.
 - Objective would be to bring credit discipline among business houses, else Information Utility will broadcast the default alert to all other creditors about non-payment (name and shame).
 - As per MCA guidelines, companies are mandated to mention outstanding amounts payable along with interest to MSME. If all MSME are uploading unpaid invoices, MCA/MSME ministry can access the information of companies who are not paying MSMEs.
 - For better governance, MCA can issue necessary directives to auditors / CAs / CSs of companies to certify that invoices uploaded by operational creditors / MSMEs are being authorized by the company.
 - Authenticated invoices on IU platform can be shared with TReDS for bill discounting.

Suggestions for changes in MSME Act, 2006 - future

- Rating for MSME –
 - Ministry should provide ratings to the MSME on the basis of
 - Industry type
 - Turn over
 - Employment
 - Compliances
 - Borrowings / source of funds
 - Presence different locations
 - Rating will motivate enterprise to graduate towards large corporate
 - Banks/NBFCs should give better deals or incentive loans for good rated MSME
 - It will help in listing of MSMEs in stock exchanges
 - This will bring competition among the MSMEs
- Registration Benefits
 - Registration for UAM can be made more attractive, so unorganized sector can be motivated to move to organized sector.
 - Following services can be provided in one go
 - PAN registration

- GSTN registration
 - IU registration
 - TReDS registration
 - TAN registration
 - Online Loan sanctions from multiple banks/ NBFCs
 - EPF/ESIC registration
 - Shop licenses
 - Factory license
 - Various other portals of compliance and consulting websites
- Online grievance redressal / complaint resolution mechanism for invoices.
 - ◊ An electronic/online system is needed where sellers can upload unpaid invoices details and buyer can raise grievances / complaint against the quality/quantity or any other issue. The mechanism of resolution should be in place to resolve that in specific period.
 - ◊ As Information Utility is two way online communication portal where seller in capacity of operational creditor may upload the information of unpaid invoices against the buyer. Buyer may authenticate the information or may dispute. Any facilitation council / Adjudicating authority to take decisions on it, can access the authenticated information stored in Information Utility.

Suggestions in line with U K Sinha Committee

Recommendations	Suggestions
<p>3. MSEs face problems of delayed payments and hesitate to enforce the legal provisions available to them under the MSME Act due to their low bargaining power. As timely payments to MSEs is of least priority to the buyers, the solution must be necessarily designed around the buyers. The Committee recommends amendment to the MSME Act requiring all MSMEs to mandatorily upload all their invoices above an amount to be specified by Government, from time to time, to an Information Utility. Further, a monitoring authority should be set up under DCMSME and should be notified under IBBI IU Regulation No. 23. While this mechanism will entail automatic display of the names of the defaulting buyers, it will also act as a moral suasion on the buyers to release payment to MSE suppliers. Further, majority of the States have only one MSE Facilitation Council (MSEFC) which is not adequate to cater to delayed payment cases arising in the entire State. Hence, there is a</p>	<p>a) MSMEs shall upload unpaid invoices in Information Utility after due date and buyers should be asked to authenticate.</p> <p>b) NESL will broadcast default alert to other lenders of defaulter buyers. This will bring name and shame and credit discipline among business fraternity.</p> <p>c) Banks / NBFCs should be asked to deal strictly with the customers who are defaulting with the operational creditors</p> <p>d) MSME DC can get access of information IU portal</p>

<p>need to increase the number of Facilitation Councils particularly in larger States.</p>	
<p>24. In order to provide loan portability in a seamless manner to MSMEs, the Committee recommends that RBI should come out with measures on portability of MSME loans with a lock in period of one year.</p>	<p>a) RBI task force on Secondary market of Corporate Loans recommended to do standardization of loan agreements and then use the authenticate information submitted on Information Utility.</p>
<p>27. The Committee recommends for creation of Digital Public Infrastructure that will have the potential to reduce loan operating costs significantly. Furthermore, it will address information asymmetry that improves credit access and overall quality in the lending space. Under the Digital Public Infrastructure, deployment of E- Liens will lock the future incoming cash flows and would lead to better repayment rates.</p>	<p>b) IBA is working on standardization of agreement for corporate loans. They should also consider common agreement / documentation for MSMEs loan</p> <p>c) NeSL is working Digital Document Execution. This will help Banks / NBFCs and MSMEs for executing agreements online with online stamp duty.</p> <p>d) Inline to secondary market for corporate loans, loans of MSMEs should be allowed to trade. This will serve the loan portability and MSME can get better interest rate in price discovery.</p>

-----End of Document-----

RECOMMENDATIONS FOR CHANGES IN THE MSMED ACT 2006, FROM MCCIA PUNE

A) RECOMMENDATION FOR REVISIONS IN MSME DEFINITIONS

The need :

<ul style="list-style-type: none">• The definitions were revised in 2006 i.e. about 13 years ago.
<ul style="list-style-type: none">• The prices of machineries and equipments have increased substantially over the years.
<ul style="list-style-type: none">• The nature of machineries, the customer quality requirements and environmental & other compliance requirements have become very complex. The latest technologies like Robotics, Automation, and Artificial Intelligence etc. are very costly.
<ul style="list-style-type: none">• The existing limits are grossly insufficient.

Our Recommendations :

Type of Enterprise	Investment in Plant and Machinery		Investment in Equipments		Turnover Limit (both for Mfg. and Service Enterprises)	
	Manufacturing Ent.		Service Enterprises		Present	Proposed in Cr.
	Present	Proposed	Present	Proposed		
Micro	Up to 25 Lakhs	Up to 3.0 Cr.	Up to 10 Lakhs	Up to 50 Lakhs	NA	5.0
Small	25 L to 5.0 Cr.	3.0 Cr. to 25.0 Cr.	10 L to 2.0 Cr.	50.0 L to 5.0 Cr	NA	75.0
Medium	5.0 Cr. to 10.0 Cr.	25 Cr. to 75.0 Cr.	2.0 Cr. to 5.0 Cr.	5.0 Cr. to 15.0 Cr.	NA	250.0

Conditions :

<ul style="list-style-type: none">• The MSME Ministry has proposed to change the definitions to Turnover basis. It is recommended that BOTH criteria should be made applicable. The type of enterprise will change when the enterprise will cross either the investment limit or the turnover limit.
<ul style="list-style-type: none">• These definitions need to be linked to the inflation index and should be revised every 5 years.
<ul style="list-style-type: none">• Declaration of the investment and turnover should be made mandatory for MSMEs by filing Udyog Aadhaar Memorandum and by revising it every year within 30 days from the date of filing the return under Income Tax Act. This will enable upward or downward registration depending on the actual turnover.

Other Recommendations for amendments in the MSMED Act

1. Amendment in Section 19 - The provision - that - No court should entertain any petition / appeal about dispute against Decree by Facilitation Council unless an amount equal to 75 % of dues to MSME is deposited, should be strictly implemented.
2. Amendment in Section 23 - Split Clause 23 in to a - with present text unchanged and add Sub Clause b - In case the delay is more than 90 days from appointed day - in addition to interest, the Principal Amount also should be disallowed under Income Tax act 1961 - for computation of Income.

B) SPECIAL RECOMMENDATION : ALLOW STANDARD DEDUCTION FOR MSMEs IN TAXABLE INCOME

Proposal :

MSMEs should be provided a Standard Deduction from taxable income as follows –

<ul style="list-style-type: none">• 35% for Micro Enterprises; 25% for Small Enterprises; 15% for Medium Enterprises.
<ul style="list-style-type: none">• All types of enterprises like Proprietary firms, Partnership firms, Private Limited Companies, LLPs and HUF should be eligible for this deduction.
<ul style="list-style-type: none">• 89% of the MSMEs are non corporate neither is it feasible for them, nor is it critical for the economy, to convert them to corporate entities. Hence benefit should be extended to all types of entities.

Rationale :

<ul style="list-style-type: none">• Cash Crunch is a day to day phenomenon
<ul style="list-style-type: none">• Delayed payments from OEMs and Government Organizations
<ul style="list-style-type: none">• MSMED Act 2006 has not proved effective in receiving the dues in time
<ul style="list-style-type: none">• Higher Rate of Interest Charged by Banks vis-à-vis Large Scale companies
<ul style="list-style-type: none">• High Cost of Raw Materials and Equipments due to scale of operations.
<ul style="list-style-type: none">• Huge Inventory due to JIT to Customers / OEMS
<ul style="list-style-type: none">• Aggressive global and domestic competition
<ul style="list-style-type: none">• Unable to reinvest and grow
<ul style="list-style-type: none">• Lack of support to withstand the global competition or even to survive

Expected Benefits :

<ul style="list-style-type: none">• Increase in reinvestment of profits by MSMEs in their business which will further enable business growth
<ul style="list-style-type: none">• Increase in new domestic investment as well as foreign investment in Indian MSMEs
<ul style="list-style-type: none">• Our Hon'ble PM wants increase of Jobs from manufacturing sector from 16% at present to 25%. The MSME sector is providing 80% of the manufacturing jobs; hence, support to MSME's in form of Standard deduction will help to achieve this target.
<ul style="list-style-type: none">• This will help in achieving the target set MSME Ministry to increase GDP share by MSME from 25% to 50%. Also ultimately direct tax revenue will increase both due to MSME growth as well as increase in tax-base.

RECOMMENDATIONS FOR CHANGES IN THE MSMED ACT 2006, FROM MCCIA PUNE

Conditions :

<ul style="list-style-type: none">• Option should be given to MSMEs to either opt for the Standard Deduction or to opt for the other schemes of the Ministry of MSME.
<ul style="list-style-type: none">• Existing MSMEs should amend their existing UAM by selecting the appropriate option and the new MSMEs should select the option while filing the new UAM. Once the Option is selected then the MSMEs should not be allowed to change the option for next 5 years.
<ul style="list-style-type: none">• This rule should not be made applicable with retrospective effect

**C) RECOMMENDATIONS FOR MAKING USE OF GST PORTAL TO ENSURE
TIMELY PAYMENT TO MSMEs**

- There is a legislation (MSMED Act 2006) to pay MSME units within 45 days of receipt of material, which is not adhered to by the industry at large and MSMEs find it difficult to address this issue. The Facilitation council mechanism has not been proved effective as there is a fear of loss of business.
- In the GST regime, GSTN Portal (GSTR-1 Outward sale and Debit Notes and GSTR-3B) is the unified source of information / database of all the outward and inward transactions which are being carried out by the registered individuals / businesses.
- One of the fundamental features of GST is the seamless flow of Input Tax Credit (ITC) across the chain across the country from the Manufacturer / Services / Trade till it is consumed. Now with introduction of GSTR 2A (Eligible ITC to be claimed) businesses can now see their Purchase data as well.

This unified source of information / database on the GST Portal would be helpful for the MSMEs to get their receivables at the earliest, as detailed hereinafter.

- For registered assesses there should be a facility to register/add Udyog Aadhaar Memorandum Number, which will enable the system to tag and track the MSMEs.
- Once the assesses (buyers) avail the eligible ITC against a particular invoice or a debit note as per the ITC rules, they will have to pay to the seller MSME within 180 days for the same. (as per ITC rules; else the credit will have to be reversed).
- A Unique Transaction Number (UTR) should automatically get generated while uploading the GSTR-1 by the MSMEs.
- The seller MSME should upload the payment terms on the portal which are mutually agreed between the MSMEs and the buyer.
- While making payment to the MSMEs the buyer should link payments details using the UTR Number which will automatically tag the invoice raised by the



RECOMMENDATIONS FOR CHANGES IN THE MSMED ACT 2006, FROM MCCIA PUNE

MSME. Such payment information should be made available for the seller MSMEs on the Portal.

- The GSTN portal will thus help appropriate authorities (a dedicated cell at the MSME Ministry) to track delays and take appropriate measures to ensure MSMEs get paid on time based on the mutual contract between the buyer and seller (the MSME).
- The GSTN Number of the buyer may be blocked for non-compliance.
- MSMEs should file the GSTR-1 on Monthly Basis due to following reasons –
 - Presently, most of the MSMEs file the GSTR 1 on quarterly basis. Hence, invoices issued in first month are reflected on the GST portal of the recipient in the 4th month, which allows them to take the ITC in that month only (as per the new rule). With this system, the invoice will get appeared for the buyer in the 4th month and hence, the tracking of the invoices and payments will get delayed by 90 days.
 - In order to avoid this delay, it is recommended that all MSMEs should file the GSTR-1 on monthly basis (similar to GSTR-3B). This will help every business to reconcile eligible ITC and avail the same on monthly basis. This will also facilitate tracking of the invoice and the payments without any gap / delay.

RECOMMENDATIONS FOR CHANGES IN THE MSMED ACT 2006, FROM MCCIA PUNE

D] Other Recommendations :

1. In online registration form NIC Code is exhaustive and is ambiguous hence it should be replaced by HSN Code.
2. Amendments in Section 24 - Provision should be STRICTLY implemented. Even under Insolvency and Bankruptcy Code, 2016, , MSME dues should be given priority over all other unsecured payments after settling dues of employees when a company goes into liquidation or approaches NCLT .

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SME CHAMBER OF INDIA

Empowering SMEs for Global Competitiveness

03rd February, 2020

Shri S.N. Tripathi
Director
Indian Institute of Public Administration
IP Estate, New Delhi 110002

Dear Sir,

Sub: Suggestions and recommendations

SME Chamber of India would like to submit the following recommendations and suggestions for the empowerment and competitiveness of MSME sector.

- Rating for MSME to be defined according to the sector. This rating should enhance the capacity and credibility of the MSME sector not only for banking perspective, but should be for the other stake holders
- Online grievance redressal / complaint resolution mechanism to be introduced for all departments related to MSME sector.
- MSME definition should depend on turnover basis for manufacturing industry and employee based in service sector and other allied sectors or all one format
- National board must meet at least thrice a year & tenure should be 2.5 years
- National board meeting should be organised for full day with specific agenda and with specific presentations from the concerned departments for policy change, implementation and benefits created SME sector. This will be useful to market and brand the developments of the ministry to the concerned sector
- All state governments should set up MSME development center in each district
- MSME board should consist of national, regional and state level organisation who are working in rural areas especially in the manufacturing industry
- One common registration formalities to be completed for MSME sector and the sector wise registration to be mandatory for pharmaceutical, healthcare, food sector and public services
- MSME should be given more importance in ease of doing business

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- MSME DI should create a platform to certify new entrepreneurs as per their back ground, education, experience, vision, mission, expertise and interest in the particular field, so that these entrepreneurs can be recommended to investors, stakeholders, banks and government agencies for fulfilling each other's requirements.
- MSME act should be applicable to all banking and financial service providers to consider seriously as a priority sector to provide timely, affordable and adequate finance for starting business, promotion, development, expansion as well as diversification.
- State governments should provide more attention on allotting industrial land at concessional cost, to resolve their issues and problems related to infrastructure, labour, environment, water, logistics and power.
- The act should create segments like: Micro, small, medium and mid corporate those are having turnover of Rs 250 - 500 crore to convert them as emerging corporates. These emerging corporates will play important role to compete with China, Japan, South Korea, Germany, USA and Canadian companies. These companies can be the potential partners for joint ventures technology transfer and contract manufacturing.
- The new solutions and concepts to be defined to encourage young generation to start manufacturing units either alone or in groups
- The policy should be beneficial to the manufacturers to expand their activities not only for Indian markets, but also for international markets.
- The MSMEs those who are not functioning related to healthcare, pharmaceutical, food, water, chemical, environment and other important segments should be given license or permission for 10 years.
- If MSME is responsible for creation of more job opportunities, they should be given relief in GST rate and income tax rebate.
- 5% GST rate should be introduced for all professional services applicable to MSME sector
- 5% GST to be introduced for internal business between MSME sector

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Empowering SMEs for Global Competitiveness

- District MSME development council - collector should be in charge for this council and bimonthly meetings to be conducted and he should be in charge of resolving the issues related to MSME sector. In case he is not completing his duties, he should be penalized for the same.
- Company act: The new MSME company act should be introduced.
- Labour act: The new MSME labour act should be introduced.
- Common purchase (procurement) agreement to be introduced to all corporate, MNCs, PSUs, mid corporates in favour of MSME sector with proper terms and conditions of payment
- Exclusive banking service eco system with concessional charges to be introduced
- One representative from each regulatory bodies to be included as the member of MSME board
- To review all the rules and regulations and terms of all regulatory bodies in favour of MSME sector
- All ministry should set up MSME division in their particular segment, such as: Agriculture, food processing, fertilizer, chemicals etc. for encouraging entrepreneurship and to promote the facilities and benefits of the ministry of the MSMEs.
- MSME act should focus and give more importance to entrepreneurs who are turning their business from the rural areas. This will give boost to expand industrialisation in rural areas
- Women entrepreneurs should be encouraged for setting up for various businesses with specific advantages and incentives.

We hope that the above suggestions can be considered by the working group to strengthen MSME sector to compete at national and international level.

Kind Regards,

Chandrakant Salunkhe
Founder & President
SME Chamber of India
+ 919820088377



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JHARKHAND SMALL & TINY INDUSTRIES ASSOCIATION

SHAHID ASHRAM ROAD, BAIDYANATH-DEOGHAR-814112
(DIST : DEOGHAR, JHARKHAND)

5977/722/2020

20th January, 2020

Sri S.N. Tripathi, IAS
Director, Indian Institute of Public Administration
IP Estate, Ring Road, New Delhi-110002
E-mail ID: contact_us@iipa.org.in,
hostel.iipa@iipa.org.in

Dear Sir,

Sub: Working Group constituted on 08.01.2020 to study the need for changes in MSME Development Act, 2006 under your Chairmanship.

1. As desired we are enclosing our Note No. 5976/722/2020 dt. 18.01.2020, suggesting changes in this Act. I had written our views in Column No. 4 of my note.

2. Govt. of India had constituted Working Group on MSMEs Growth for 12th Five Year Plan under Chairmanship of the MSME Secretary. Many Sub-committees were constituted by MSME Ministry to assist the Working Group.

3. 10th Sub-Group was on 'Institutional Structure' and DC, MSME was chairman of the Sub-Group. I was included as a member in this 10th Sub-Group.

4. On the basis of suggestions received from various Organisations and Individuals from throughout the country, office of MSME compiled list of 18 points for amendment in the Act. These 18 points were circulated among members of the Sub-Group and their view was solicited. All the non-official members supported 18 suggestions.

5. After that, MSME Ministry added 3 more points from their side and finalized these, in total 21 points. This Association does not agree with these three points, due to reasons mentioned in our note, against point No. 19, 20 & 21.

6. I will be thankful, if this Working Group considers the 18 points compiled by Sub-Group-10 and our comments there on. If any more information or clarification is required, we will be happy to provide the same.

Thanking you,

Yours faithfully,



(G.P. Dalmia)

President &

Ex-Member, National Board for MSME

List of 21 amendments in Delayed Payment Act suggested by office of DC, MSME, under signatures of Sri P.K. Sinha the then Dy. Director (Policy), vide his e-mail dt. 20.07.2011 to members of 10th Sub-Group. The DC, MSME was Chairman of Sub-Group 10 named "Institutional Structure" and Additional Development Commissioner, (MSME Policy) was Convener of this Sub-Group of "Working Group on Micro, Small & Medium Enterprises growth for 12th Five Year plan (2012-17)" under Chairmanship of Secretary, MSME Ministry.

Jharkhand Small & Tiny Industries Association (JSTIA), Industries Association of Uttarakhand, Federation of Small & Medium Industries, West Bengal (FOSMI), Tamil Nadu Small & Tiny Industries Association (TANSTIA) were non-official members of this Sub-Group.

A Note by G.P. Dalmia, President, Jharkhand Small & Tiny Industries Association, Shahid Ashram Road, B-Deoghar-814112 (Jharkhand) Mob. No. 7982893521, 9312563229, Email. ID: jstiagpd@gmail.com regarding MSMED Act, 2006

S. No.	Amendment identified, recommended and circulated by office of DC, MSME to MSME Associations vide e-mail dt. 20.07.2011	Views of MSME Associations, including our Associations	Remarks
A	B	C	D
1	In definition, Section 2(F 1) will be added as below: "Penalty, price-variation, earnest money and security deposit, by whatever name called, shall be under jurisdiction of Micro &	All non-official members had supported this suggestion.	(i) NSIC has also requested to MSME Ministry vide their letter No. NSIC/LAW/MINI/MSMED/ 2011/4542 dt.23.02.2011 supporting this point. (ii) Department related Parliament Standing Committee on industry has also recommended it in their 245th Report and they have also supported this point. (iii) Recommendation No. 1 and No. 15 are overlapping. It is suggested that both should be clubbed together and following

	small Enterprises Facilitation Council and of this Act.”		<p>recommendation should be sent :-</p> <p>“It is suggested that the law should be clarified. It should be specially provided that penalty, price-variation, earnest money and security deposit will also be covered by the Act with retrospective effect and IFC will be entitled to order refund of penalty, price-variation, Earnest Money and Security Deposit with compound interest @ 3 times of bank rate.”</p>
2	<p>Last portion of Subsection 2(N), the following should be deleted.</p> <p>“Which has filed a memorandum with the authority referred to in Subsection (1) of Section 8.”</p>	<p>Jharkhand Small & Tiny Industries Association (JSTIA) and Federation of Small & Medium Industries, West Bengal (FOSMI) supported this.</p>	<p>There are many factories which have closed down, due to delay in payment or due to any other reason. Now they are not registered as MSE. But while they were working, they were registered with Director of Industries and they had suffered due to delay in payment. They should also be entitled to claim and get interest due to delay in payment, when they were working and they were registered.</p> <p>Hence, it is suggested that those factories which were registered with Industries Department earlier, should also get benefit of interest on delayed payment.</p> <p>I also had discussions with Sri R.K. Mathur, the then Secretary, MSME Ministry (at present Lieutenant Governor of the union territory of Ladakh). He immediately agreed that these MSEs should also be made eligible to claim principal amount and interest through MSEFC, even though their factory is closed or now, non-existent. He told that after the Standing Committee submits its report, the Ministry will consider amendment in Law and this point will be included in the amendment.</p>

3	Benefit of this Act will also be available to units registered with Khadi Board and coir Board.		
4	<p>At the end of Section 2(P) a new Subsection 2(Q) will be added as below:</p> <p>“Irrespective of whether supply was made before or after 22.2.1992 or irrespective of whether contract was made before or after this date, or whether the cause of action has arisen before or after this date, provision of this Act will apply. This Act will be with retrospective effect.”</p>	<p>(i) <u>We could convince Hon’ble MSME Minister Mr. Gadkari that this Act should be with retrospective effect. Vide Note dt. 16.08.2019 (Annex-1). Sri R.N. Dixit, Addl. PS to Minister has written to Secretary, MSME and to DC, MSME that the Act should be amended as below:-</u></p> <p><u>“At the end of Section 2 (P) a new Subsection 2(Q) will be added as below:-</u></p> <p><u>“Irrespective of whether supply was made before or after 22.9.1992 or 2.10.2006, irrespective of whether contract was made before or after these dates, or whether the cause of action has arisen</u></p>	<p>Earlier, High Courts were allowing interest @ 21 to 25% compound interest since 23.9.1992. This had become settled Law, due to many judgments.</p> <p>The Supreme Court, in judgment between Assam Small Scale Industries Development Corporation Ltd. Vrs. J. D. Pharmaceuticals delivered on 7.10.2005 (AIR 2006 SC 131) has decided that for purchase orders received before 23.09.1992, simple interest @ 9% will be paid, as the Act of 1993 and Act of 2006 are not with retrospective effect.</p> <p>This 9% simple interest is confiscatory for MSEs. Rs. 100/- in say 20 years @ 9% simple interest will become Rs. 280/-. With 22% compound interest, it will become Rs. 7,827/-. MSEs had actually paid higher interest every month to Banks and have actually paid Rs. 7,827/- as interest. In India, litigation takes normally 20 years. Only if he is paid Rs. 7,827/- i.e. compound interest, MSEs will be saved from being out of pocket.</p> <p>MSME ministry, who had got enacted Delayed Payment Act, 1993 was always under impression that this Act was with “retrospective effect”. In Writ Petition No. 10179 to 10183, MSME Ministry filed an Affidavit in Andhra Pradesh High Court in A.P. Transeo Vrs. Sri Durga Conductors Pvt. Ltd. that the Act of 1993 is with retrospective effect. But by their judgments Hon’ble Supreme Court has held that the Act is</p>

		<p><u>before or after these dates, provision of this Act will apply. This Act will be with retrospective effect.”</u></p> <p>(ii) All non-official members had supported this suggestion.</p>	<p>prospective.</p> <p>This difference in perception of Delayed Payment Act is causing havoc. This amendment in the Act is intended to rectify the error. NSIC got an award on 31.1.2002 from West Bengal IFC in which Rs. 1,72,29,994/- was principal amount and Rs. 6,80,78,005/- was interest total Rs. 8,53,07,999/-. With interest, the amount has become about Rs. 30 crores by now. If this amendment with “retrospective” effect is enacted, NSIC will receive about Rs. 4 crore more immediately. The matter is pending in the Supreme Court and NSIC is defendant.</p>
5	<p>After Subsection 2(Q) the following Subsection 2(R) will be added: “In the State of Jammu & Kashmir, res-judicata will not apply and all the cases where final payment of principle amount and/or of interest has not been received by MSEs, this Act will apply irrespective of all past Arbitrations and Legal Proceedings.</p> <p>Irrespective of whether supply was made before or after 2.10.2006 or irrespective of whether</p>	<p>All non-official members had supported this suggestion.</p>	<p>This law has been extended to J&K by Act of 2006 only. In earlier Act of 1993, it was specifically provided in Section 1 (2) “it extends to the whole of India, except the State of J&K.”</p> <p>The result was that SSIs were going to Court of Law as there was no IFC. Cases are pending in Court at different levels like Sub-judge, District Judge, High Court etc. They cannot go to IFC under Act of 2006. It is barred by res judicata.</p> <p>It is suggested that special provisions should be made in law for J&K. If any amount is still receivable by SSI under normal laws of (i) Contract Act, (ii) Arbitration Act etc., (iii) any Degree or (iv) Award etc. and the case is not fully closed by final payment, the seller SSI can go to MSEFC under Act of 2006. His entitlement should be considered under Act of 2006. Whatever amount he has already received will be adjusted and he will get from MSEFC Award for balance amount.</p>

	contract was made before or after this date, or whether the cause of action has arisen before or after this date, provision of this Act will apply in the State of Jammu & Kashmir.”		<p>I had discussions with Secretary-MSME Sri Madhav Lal, IAS. He was furious against politicians of J&K. He told, only due to their ego, Act of 1993 was not implemented in J&K.</p> <p>But politicians will not suffer. If this amendment is not made, only MSEs will suffer.</p>
6	At the end of Section 2(R) a new Subsection 2(S) will be added: “This Act is a Social Welfare Legislation.”	All non-official members had supported this suggestion.	
7	At the end of Section 3(4) it will be added: “Provided that till new Board is constituted by the Govt., the old Board will continue functioning.”	All non-official members had supported this suggestion.	<p>MSMED Board’s life is for 2 years and its working is stopped for a few months, due to expiration of 2 years. Earlier SSI Board also worked in this “stop go stop” way.</p> <p>The ways of working of the Govt. will remain same and reconstitution of MSMED Board is likely to be delayed in future also. At present also, there is no National Board for MSME. The Board was constituted on 17.01.2017 for two years by SO No. 338(E). Hence, life of last Board had expired on 16.01.2019. The Board has not yet been reconstituted.</p> <p>Hence for uninterrupted working of National Board for MSME, it is suggested that it will continue working till notification constituting new Board is made effective by the Govt. It will be in the same way as any Director of State Bank of India (whose terms are normally for 3 years) continues to work as Director, till</p>

			new Director is appointed in his place.
8	At the end of Section 18(4) or at the end of Section 24, the following will be added: "Limitation Act, 1963 and Sick Industrial Companies (Special Provisions) Act, 1985 shall not supersede any provisions of this Act."	All non-official members had supported this suggestion.	<p>The seller cannot go to MSEFC, till he receives orders from the Purchaser, due to fear of loosing business. But by the time business relationship is snapped, his (seller's) right to get interest becomes time-barred, due to 3 years' limitation. Only after business relationship is snapped, the MSE wants interest for whole period and it is legitimate demand.</p> <p>The MSME Ministry was under impression that as limitation Act, 1963 and Sick Industrial Companies (Special Provisions) Act, 1985 were enacted before the special Act, Delayed Payment Act of 1993, the Act of 1993 will supersede these 2 Acts of 1963 and 1985.</p> <p>In Writ Petition No. 10179 to 10183 MSME Ministry filed Affidavit in Andhra Pradesh High Court in A.P. Transco Vrs. Sri Durga Conductors Pvt. Ltd. that the Limitation Act, 1963 does not apply on Delayed Payment Act of 1993.</p> <p>But Court of law disagreed. Courts have decided that Limitation Act, 1963 supersedes Delayed Payment Acts. Courts have also decided that SICA Act of 1985 Act supersedes Act of 1993 and Act of 2006.</p> <p>Dr. P.C. Rao, the then Law Secretary, Govt. of India, had written to the then MSME Secretary vide his Note No. 6301-I dt. 24.03.1992 as below:-</p> <p>"I have grave doubts about the efficacy of the proposed legislation. In view of the weak negotiating position of the small scale undertakings, in practice, parties accepting goods and</p>

		<p>services from them would be in a position to dictate terms to them with regard to Delayed Payments. Be that as it may, we have no constitutional or legal objection to the proposal made in the draft Note for the Cabinet.”</p> <p>This will also not be novelty. There are many Acts of India Govt., on which Limitation Act, 1963 does not apply like P.F. Act, Gratuity Act, the Foreign Trade (Development & Regulation) Act, 1992 etc.</p> <p>At present, as per judgment in Jay Engineering Works Ltd. Vs. Industry Facilitation Council, as decided by Hon’ble Supreme Court (2006-AIR (SC)-0-3252) awards of MSEFC cannot be enforced on units in BIFR. Large number of large industries had purchased from MSEs and then, have gone to BIFR. MSEs are left high and dry in such situations. As SICA Act is of 1985 and is of earlier date than Act of 2006, Act of 2006 should supersede it.</p> <p>At present dues of labourers are not covered by SICA Act of 1985. Similarly, we want that awards of MSEFCs should also be beyond mischief of SICA Act, 1985.</p> <p>NSIC is also feeling this pinch and have recommended this amendment in the Act of 2006 vide their letter No. NSIC/LAW/MINI/MSMED/2011/4542 dt.23.02.2011 reading as below:-</p> <p>“In most of the cases for want of limitation period, Micro & Small units may not be in a position to refer the matter to Industrial Facilitation Council within a period three years. Therefore, it is suggested that if the supplies are made through</p>
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			<p>its nodal agency/supplier under section 2(n), such claims may be considered to be covered under the provision of section 112 of Limitation Act and it may be treated as a government recovery for the purpose of computing limitation under the provisions of limitation act while making reference under section 18 of the MSME Act 2006.”</p> <p>We only differ on one point. If the facility is to be given, it should be given to all MSEs. The facility should not be confined to “if the supplies are made to its nodal agency/supplier....”.</p>
9	<p>From Section 18(4) the following will be deleted: “A buyer located anywhere in India”.</p> <p>Thus, the amended Section 18(4) will read as below:</p> <p>“(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this Section in a</p>	<p>All non-official members had supported this suggestion.</p>	<p>Earlier, export sale were also under Act of 1993. There was no provision in the Act of 1993 that this Act will not apply on foreign buyers. But in Act of 2006, it has been specifically excluded.</p> <p>In Act of 2006, in Sec.18 (4) it is written that it will apply on “Buyer located anywhere in India.” This is a new thing inserted in Act of 2006.</p> <p>In Civil Procedure Code, the recital is similar as in Act of 1993. Under the Civil Procedure Code and Act of 1993, SSI was going to Court for disputes regarding Export Sale. Under amendment by Act of 1998, MSEs were going to MSEFCs. Similarly, this definition of “Buyer located anywhere in India” should be deleted.</p> <p>Awards given by Micro Small Enterprises Facilitation Council under Chairmanship of Director of Industries are also ‘Awards’ under The Arbitration & Conciliation Act, 1996. 156 Countries, including India, Bangladesh, Nepal, Pakistan, Bhutan etc. are</p>

	dispute, if the supplier is located within its jurisdiction.” This was the situation before 2.10.2006 and status quo ante should be restored.		signatory of Recognition and Enforcement of Foreign Arbitral Awards. According to this, arbitration award in one country is enforceable in another country. Hence award of MSEFC will be effective in these countries also.
10	At the end of Section 18(5) it will be added: “Chairman of each Micro & Small Enterprises Facilitation Council will send monthly report to the Development Commissioner of MSME of cases remaining pending beyond period of 90 days, with reason of their remaining pending.”	All non-official members had supported this suggestion.	
11	At the end of 1 st para of Section 19, it should be	All non-official members had supported this suggestion.	In Act of 2006, Sec. 19 condition has been made more stringent. “Appeal”, the word used in Act of 1993, has been replaced by “Application” in Act of 2006 i.e. before any application is filed

	<p>added:</p> <p>“No Court will waive in Court-proceeding or in writ-jurisdiction, provision of pre-depositing 75% amount.”</p>		<p>by the buyer against award of MSEFC, 75% of award amount is to be deposited in Court.</p> <p>Filing Writ is also filing applications. <u>But unfortunately, High Courts do not agree with this view and for filing Writ, 75% prior depositing of award amount is not necessary. Hence, most of the buyers file Writ in High Court.</u> After say 5 years, even if the Writ is dismissed, this time used in “Wrong Court” is allowed to the buyer, over and above 120 days allowed in Sec. 34 of the Arbitration and Conciliation Act, 1996. Some provision should be made in the MSMED Act, 2006 for the difficulty and depositing 75% of Award amount with interest, should be required to be deposited by the buyer to avoid harassing Writ applications being filed by the buyers.</p>
12	<p>At the end of Section 23, following para should be added:</p> <p>“Non-disclosure of the information will be punishable by penalty upto Rs.10,000/- and/or imprisonment for upto 6 months. If the buyer is Limited Company, Chief Executive of the Company, if it is partnership concern, partners of the concern and if it is proprietorship</p>	<p>All non-official members had supported this suggestion.</p>	<p>According to Sec. 22 of MSMED Act, 2006, it is essential that any buyer, whose accounts are audited under any law, are required to show amount due to MSEs. Most of the buyers do not disclose this information. For example, after bifurcation of State Electricity Board, about 80 companies have been formed under Companies Act. None of these are showing their liability to MSEs in their balance sheets.</p> <p>Most of the Companies write in their Annual Report that they do not know, which supplier is MSE. The auditors also tamely agree. Thus, they conceal information of delay in payment as well as the interest amount is not added back in their income.</p> <p>It should be mandatory for CAs to clearly list out MSEs and other suppliers in the balance sheet and they fail to do so then all</p>

	concern, proprietor will be punishable.”		be considered as MSEs and benefits be given at the buyer company cost.
13	At the end of Section 24 a new Section will be added: “The Micro & Small Enterprises Facilitation Council will, on complain received from MSEs, will decided whether any buyer is harassing any MSE due to his making application before the Council and shall pass orders as deemed fit. Such order shall be binding on the purchaser.”	All non-official members had supported this suggestion.	(i) NSIC has also requested to MSME Ministry vide their letter No. NSIC/LAW/MINI/MSMED/ 2011/4542 dt.23.02.2011 supporting this point. (ii) Department related Parliament Standing Committee on industry has also recommended it in their 245 th Report has also supported this point. They have written :- “In case a buyer is found harassing a MSE supplier, provision should be made for a reference to be made to IFC (Industries Facilitation Council, now called as MSEFC). If the IFC finds the reference to be true, it should pass the appropriate order. The IFCs should be a watchdog to prevent undue harassment by bigger buyers.”
14	At the end of proposed Section 22, a new Section will be added as Section 23: “Amount of award given by Industries Facilitation Council should be realizable as arrear of land revenue (Govt. revenue recoverable	All non-official members had supported this suggestion.	Besides getting realized the amount of award of MSEFC through normal legal channels, the amount should also be realizable, as alternate remedy through Collector of the District as Arrear of Land Revenue. Madhya Pradesh, Bihar, Jharkhand etc. have made it possible. Hon’ble Nitin Gadkari is keen that such provisions should also be made in other States. To make things easier, such uniform provision may be made in Delayed Payment Act itself. Addl. PS to Minister has sent note dt. 16.08.2019 to Secretary, MSME Ministry and DC, MSME. Copy is enclosed as (Annex-2).

	under Public Demands Recovery Act)”)		
15	Refund of earnest money and securities deposit It is suggested that the law should be clarified. It should be specially provided that security deposit and earnest money will be covered by the act retrospective effect and IFC will be entitled to order refund of Earnest Money and Security Deposit with compound interest @ 3 times of bank rate.	All non-official members had supported this suggestion.	(i) NSIC has also requested to MSME Ministry vide their letter No. NSIC/LAW/MINI/MSMED/ 2011/4542 dt.23.02.2011 supporting this point. (ii) Department related Parliament Standing Committee on industry has also recommended it in their 245th Report and they have also supported this point. (iii) Recommendation No. 1 and No. 15 are overlapping. It is suggested that both should be clubbed together and following recommendation should be sent :- “It is suggested that the law should be clarified. It should be specially provided that penalty, price-variation, earnest money and security deposit will also be covered by the Act with retrospective effect and IFC will be entitled to order refund of penalty, price-variation, Earnest Money and Security Deposit with compound interest @ 3 times of bank rate.”
16	“After 2(b), new Sec.2(b)(iii) may be added “if the MSE makes advance payment for purchase of raw material or for any reason, the time period upto 45 days, as prescribed in Section 15 with Sec.2(b) will apply”.	All non-official members had supported this suggestion.	This will give relief to many MSEs.

	After Sec.15, one Section 15(a) shall be added "if any MSE gives advance payment for purchase of raw materials or for any reason, the supplier will supply goods or services within 45 days; or otherwise, it will be liable to pay interest as per Chapter 5 of this Act."		
17	If any Govt. Department or Corporation takes from any MSE any amount due to Tax, Levy, Surcharge etc. by what ever name called and ultimately the amount becomes refundable to MSE, interest will be paid as prescribed in Chapter V of this Act.	All non-official members had supported this suggestion.	<p>Some of the Govt. officers demand bribe and if their demands are not met, exorbitant tax etc. are assessed and demanded. Instead of say Rs. 50,000/- Tax, Rs. 10 lakhs are assessed. If the assessee is lucky, after say 10 years, it may be found that most of the demand of tax was inflated and instead of Rs.10 lakhs as demanded and paid under protest, actual demand should be say Rs.50,000/- only. The MSE gets refund of Rs.9.50 lakhs. But the refund is only after spending Rs.5lakhs in expenses of litigation in 10 years. Is it justice?</p> <p>Nothing happens to the dishonest officer. Rs. 9.50 lakhs of 10 years ago is worth now Rs.2 lakhs only, due to inflation. As the refund order itself proves that initial demand of Rs.10 lakhs was exorbitant and illegal, by this amendment, this Association want that MSE should at least get compound interest, at the rate prescribed in Chapter-V of Act of 2006, through MSEFCs, so that he is partially compensated.</p>

18	<p>In Central Excise Dept., Govt. of India claims of large number of MSEs are pending or will arise in future. It is suggested that Doctrine of Unjust Enrichment should not be applied on MSEs. MSEs cannot manipulate the market etc. Following amendments should be made in the Act:</p> <p>“(A) After Sec.2(b)(iii), new Sec.2(b)(iv) may be added “for refund claims of MSEs for Central Excise Duty, Doctrine of Unjust Enrichment shall not be applied on MSEs.”</p>	<p>All non-official members had supported this suggestion.</p>	<p>MSEs were often required to pay more than the required amount payable by them as Central Excise Duty, due to demand notices issued by Central Excise Authorities. Hence, he pays the amount and subsequently, when the problem is resolved, claims refund of the excess Excise amount paid. Earlier, if he had to pay excess amount, it was refunded to him.</p> <p>On 12.08.1991, the then Finance Minister Dr. Manmohan Singh introduced a Bill “THE CENTRAL EXCISES AND CUSTOMS LAWS (AMENDMENT) BILL, 1991” in Lok Sabha. This Bill was subsequently passed by both Houses of Parliament and the President of India gave assent. The Bill amended Central Excise Act, 1944 retrospectively and became a part of the Central Excise Act, 1944. By this amendment, Hon’ble Finance Minister did the following two things:-</p> <p>(A) He created a “fiction of law” that wherever the assessee is entitled to get refund, the refund amount will not be given to him. The amount will be credited in a fund called “Consumer Welfare Fund” established under Section 12 C. Only exception was that if refund was to be given to the assessee due to reasons stated in Section 11B (2), the amount will be paid to the assessee. Otherwise, he will have to prove that he or his buyer had not realized the amount from public. The conditions are difficult and rarely any body gets refund.</p> <p>(B) This Bill and sending money to “Consumer Welfare Fund” was implemented with retrospective effect. Thus in all cases, where money was refundable, the assessee lost the amount.</p> <p>It was also told in Rajya Sabha on 13.9.1991 – “The fact is that</p>
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		<p>decided that the illegal amount collected from them should be refunded by Govt., the money goes to Consumer Welfare Fund established under Section 12 C.</p> <p>Thus, some Officers of Central Excise Department blackmail MSEs to grease their palm. Otherwise, they will have to pay more and the Excise amount paid by them will never be received back.</p> <p>Though the large industries also are subject to same law, they have their Legal Department. They can also spend money in consulting eminent lawyers and ex-judges of Supreme Court and High Court and obtain "written opinion". In face of written legal opinion of a retired judge of Supreme Court, the Officer of Excise Department immediately withdraws his demand notice. Hence, unscrupulous Central Excise Officers cannot blackmail them so easily. Thus, mainly MSEs suffer by this amending Act, which is actually a fiction created by law.</p> <p>To protect vulnerable MSEs, it is suggested that those MSEs should not be subject to "unjust enrichment in Central Excise cases". If ultimately it is decided that money collected from them was illegally collected, instead of the amount going to Consumer Welfare Fund established under Section 12 C, the refund amount should be paid back to MSEs with interest @ prescribed in Chapter-V of MSMED Act, 2006.</p>
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19	Frequency of meetings of NBMSME to be reduced to twice a year – Section 3(6)	<p>No non-official members had supported this suggestion.</p> <p>Recommendation No. 19, 20 and 21 were not circulated among members of the Sub-Group. Officers, unilaterally added these 3 points in the recommendations later.</p>	<p>Actually, National Board for MSME has never met 4 times in a year. This Association was member of first Board. In 2 years, 6 meetings were held. After that, 7th meeting was held on 07.04.2010 and last 16th meeting was held on 26.02.2018. Thus, in more than 10 years, 9 meetings of the National Board for MSME has been held.</p> <p>We want that present periodicity of quarterly meeting should be retained in statute books. Though not properly implemented, it creates a little pressure on Govt. to convene the meeting.</p> <p>We suggest, this suggestion should not be implemented.</p>
20	The defined limit of investment in plant and machinery for classifying the micro, small and medium enterprises may be deleted from the MSMED Act, 2006 and should be replaced with as notified – Section 7(1).	<p>No non-official members had supported this suggestion.</p> <p>Recommendation No. 19, 20 and 21 were not circulated among members of the Sub-Group. Officers, unilaterally added these 3 points in the recommendations later.</p>	<p>We suggest, this suggestion should not be implemented. Otherwise, Govt. will go on increasing plant value for definition purpose at interval of every 2/3 years.</p> <p>Some people want to define Micro, MSEs and Medium Industries on the basis of turnover. I submit, turnover basis should not be accepted. Plant value basis is time tested. As turnover changes from year to year, some units may be micro unit in one year, small unit in another year, medium industry in 3rd year and again micro industry in 4th year. For example, zinc sheet rolling unit need very little plant and machinery and main need of the factory is order for finished goods and working capital. Zinc sheet is used mainly by battery manufacturers. Change from micro to medium and then again to micro unit will be frequent in this industry and similar many other industries like copper sheet rolling, barbed wire manufacturing, properzy mills for manufacturing aluminium wire rods of say 2 MT each coils, steel rolling mills, ferrous & non-ferrous wire drawing</p>

		<p>etc.</p> <p>I submit, the definition should be based on machinery value. No increase in machine value is also called for.</p> <p>Regarding plant value, earlier, in say 1960, value of land, building, plant & machinery was all included for definition and ceiling was Rs. 5 lakhs. Let us presume land and building value to be 30% in SSI. Thus, ceiling was actually Rs. 3.5 lakhs for plant & machinery. Inflation in cost of plant & machinery has not been 142 times in last 60 years.</p> <p>If due to change in technology and/or inflation, now production of any item is not possible (i) by Micro units, let it be manufactured by MSEs, (ii) by MSEs, let it be manufactured by Medium Industries and (iii) by Medium Industries, let it be manufactured by large industries. Why we should try to increase plant value to enable MSEs or medium industries to manufacture Railway Engine also? Let Railway Engine be manufactured in large sector.</p> <p>The image of MSMEs is of "poor men". Late Manubhai Shah, the then Minister for Commerce & Industry was father of Small Scale Sector in India. He told in one meeting of the SSI Board that Lord Lever once went to him with a few samples of bad quality soap. Lord Lever told him that in India, same soap is used both for washing cloths and taking bath. Skin of Indians will be affected, if they use such bad quality soap. He wanted permission for Hindustan Lever to produce more soap. As the expansion in capacity was banned and washing soap was reserved for SSI, Lord Lever wanted washing soap to be</p>
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		<p>dereserved.</p> <p>Sri Manubhai replied that his family was poor and when he was a child, he did not get even such bad quality soap. He had to use mud to clean his body. He suggested to Lord Lever that manufacture of washing soap should be left to poor people in SSI and Lord Lever should start manufacturing some sophisticated item. He assured, Govt. will help Lord Lever.</p> <p>When Sri Atal Bihari Bajpayee was Prime Minister, he ordered that definition of SSI be reduced to plant value of Rs. 1 crore from Rs. 3 crores. Later Govt. increased plant value to Rs. 5 crore since 02.10.2006. This has badly dented image of small scale industries as "sector of poor people".</p> <p>If plant value is not increased in 10/15 years, the MSME sector will regain its image of poor people.</p> <p>In my opinion, if they want to grow and expand from (i) Micro to SSI (ii) SSI to medium industries and (iii) from medium industries to large industries because within Rs. 5 crore machine value that sophisticated item cannot be manufactured, he should be encouraged to migrate to medium sector. It is natural process of growth.</p> <p>Some items which could be taken-up in SSI sector within Rs. 5 crore plant & machinery 10 years back, can be taken-up now in medium scale only due to inflation and technological change. Similarly, some items, which could be manufactured within Rs. 10 crore machine values in 2006, will be requiring machine value of say Rs. 25 crore in 2025. Let those items be</p>
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			<p>manufactured in large scale sector. This also is natural process. We should not want that railway engines also should be manufactured in medium sector.</p> <p>Some MSME units also want the definition to be increased, so that they may remain say in micro sector, as well as may grow. This is quite unreasonable. Instead of trying to get the definition changed, they should choose to remain in micro sector or to expand and become a small industry or medium industry.</p> <p>Officers in MSME Ministry have biggest vested interest in getting plant value increased. They may find that targets of credit disbursement, number of units financed, increase in credit, increase in production and employment, increase in share of MSME in GDP from 8% to 10% etc. are not achievable soon. Hence, they want to get the machinery-value increased. If units upto Rs. 1 crore plant-value are considered micro industries and upto Rs. 25 crore are considered SSI, all the set targets will be achieved, without any effort and without even single new unit being started. This will be statistical jugglery.</p> <p>But this will not be hitting the target. It will be just firing and where ever bullets hit, putting circle to show that target has been hit. If MSME Ministry is permitted to change the ceiling of machine value by notification, in no way MSME Ministry can be deterred and they will change and increase the plant value at interval of every 2/3 years, so that instead of having to make efforts for achieving targets, they will show all rosy picture. In this bargain, units in MSE sector will be worst hit.</p>
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			One example is treating medium industry also as priority sector for the purpose of credit. Govt. repeatedly and at various forums gave categorical assurance that credit to medium industries will not be treated as priority sector advance. But silently, notification was issued and even most of the members of National Board also, never knew the change or its bad effect on MSEs.
21	Revising upward the defined investment limit in plant and machinery in respect of MSMEs- Section 7(1)	--DO-- --DO-- Same as in 20 above	--DO-- --DO-- Same as in 20 above

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JHARKHAND SMALL & TINY INDUSTRIES ASSOCIATION

SHAHID ASHRAM ROAD, BAIDYANATH-DEOGHAR-814112
(DIST : DEOGHAR, JHARKHAND)

5994/722/2020

27th February, 2020

Sri S.N.Tripathi, IAS
Chairman, Working Group to study the need for
changes in MSMED Act, 2006; and Director IIPA,
New Delhi.

Dear Sir,

**Sub: Amendment in MSMED Act, 2006 which has been accepted by
Ministry of MSME and Hon'ble Minister for MSME Sri Nitin Gadkari.**

1. We met Hon'ble Minister Sri Nitin Gadkari, who had with him Officers of MSME Ministry also. We submitted to him our representation No.5900/722/2019 dt. 12-8-2019 (**Annex – "A"**) and requested him to add Sec.2(Q), a new sub-section in the MSMED Act, 2006.

Hon'ble Minister had discussions with his Officers also and he accepted this suggestion. The matter was further examined. A direction was issued on 16-8-2019 (**Annex-"B"**) to the Secretary, MSME and the AS & DC, MSME, by Hon'ble Minister under signature of Sri R.N.Dixit, Addl. P.S. to Minister, as below :-

"At the end of Section 2 (P) a new Subsection 2 (Q) will be added as below :-

"Irrespective of whether supply was made before or after 22.2.1992 or 2.10.2006 irrespective of whether contract was made before or after these dates, or whether the cause of action has arisen before or after these dates, provision of this Act will apply. This Act will be with retrospective effect".

You were kind enough to assure that whatever amendment in the Act has been accepted by Hon'ble Minister and/or MSME Ministry, will be included in the Report as recommendation of the Working Group.

We will be thankful, if this accepted amendment is included in report of this Working Group, as its recommendation.

2. We requested you that Earnest Money, Security Deposit, Penalty, Price Variation should also be included in the Act, so that MSEFC or the Court may give their award and/or decree on these receivables also, if they feel claim of the seller is justified, under MSMED Act.

We will be thankful, if this suggestion is also considered. We have explained this point in our Note No.5976/722/2020 dt.18-1-2020 as point No.1, and it has been included in agenda papers for the meeting dt.26-2-2020 as annexure.

Thanking you,

Yours faithfully,


(G.P. Dalmia)

Consultation with Industry Associations by FISME on the amendments to be sought in the Micro, Small and Medium Enterprises Development (MSMED) Act 2006

Viewpoints of Participants -

Chapter I

Titles, definitions and explanations of terms (Sec 1-2)

Registration of MSMEs under the MSMED Act 2006 should be made compulsory	Chairman
Like the previous E M procedure, registration should be in part –I and part – II. Part – II should be based on Know Your Entrepreneur as per KYC model	Chairman, AIMEA
Existing Entrepreneur linked with Udyog Aadhar should be allowed to set up Start – Ups for different activities / ventures.	eMERG

Chapter II

National Board for MSMEs: constitution & functions (Sections 3-6)

National Board for MSME should be restructured in the format of GST council with all state Minister of MSME as members and should be appropriately empowered.	Chairman
All leading Federations of MSMEs should be made permanent members of MSME Board.	FISME, LUB, COSIA, BIA

Chapter III

Classification of Enterprises (Criteria Manufacturing, Services investment limit), Advisory Committee and Memorandum of Micro, Small and Medium Enterprises (Sections 7-8)

Classification should be based on Turnover and number of Employees. There may be no need for separate categorisation of Manufacturing; Service MSMEs.	Chairman ITMA, HCCI, FSIA, BIA
Investment in plant and machinery should be a compulsory criteria for defining MSMEs to encourage manufacturing.	LUB, CEPC
Existing criteria for defining Micro, Small and Medium Enterprises on the basis of investment in plant and machinery is adequate for development and growth of MSMEs	LUB
Classification of MSMEs should be based on Turnover as followed in most countries. Feasibility of stipulating additional criteria like no. of employees, investment in Plant and Machinery may also be studied.	FISME IDMA
Traders should be barred from obtaining Udyog Aadhar online	COSIA
There should be a provision for entering the activity manually in the Udyog Aadhar format, if appropriate nomenclature is not available in the dropdown menu.	COSIA
Definition of MSMEs should be Turnover based and as per the following criteria ; Micro :upto Rs. 5 crore; ii. Small: between Rs. 5 Crore To Rs.25 Crore; Medium : between Rs. 25 Crore to Rs.75 Crore.	COSIA

Number of persons employed should also be taken into account to bar registration of Traders as Service Enterprises.	COSIA
Activities under 'Service' Enterprises need to be broad based and elaborated item wise as often issue of Udyog Aadhar is denied due to ambiguity about whether an activity is Service or Trade.	HCCI
Existing entrepreneurs having Udyog Aadhar should be allowed to launch 'Start Up' venture and avail the facilities for Start Ups.	eMERG

Chapter IV

Measures for Promotion, Development and enhancement of competitiveness (Sec 9-13) :

Infrastructure Development Institutes should be established under a new scheme in State /Districts / Cluster level towards promotion of MSMEs and providing technical support, marketing assistance etc.	Chairman, HCCI
Under Public Procurement Policy 25% of total procurements by Government departments and PSUs be mandated from manufacturing MSMEs	COSIA
Under Public procurement, Bank Guarantees should not be insisted from MSME suppliers as this has a significant cost burden. Else bank guarantee should be slashed from 10%, as generally asked, to 5% of the contracted amount.	COSIA, CIU, ITMA, AICOSMIA
In no case Bank Guarantee duration should be extended beyond the original tenure. This causes complete choking of working capital flow besides enhancing cost of supply.	CIU
List of items reserved for purchase by Government from micro and small enterprises need to be reviewed periodically.	CIU
Procurement by Government departments and PSUs by brand / supplier name should be strictly banned. Also import of items, made indigenously by MSMEs should not be allowed.	CIU, FSIA
Electricity generation and distribution companies of states should also be compulsorily registered under TReADS to provide relief to MSME suppliers from huge Delayed payments	ITMA
PSUs have been mandated by the Government to register on TReADS platform. Railways, Defence and other departments with a large MSME supplier base should also be asked to register.	AICOSMIA

Chapter V

Delayed payment related provisions for Micro & Small enterprises (15 ~ 19), setting up of Facilitation Councils by State Govts, their constitution, procedures etc (Sec 20~25)

Along with Small and micro enterprises, Delayed payment to Medium Enterprises should also be brought under the purview of MSEFC	Chairman
MSEFCs should be made quasi-judicial bodies with retired judges in Chair.	HCCI
To overcome unnecessary delays, decisions of MSEFCs to be announced within 90 days and all meetings discussions for Arbitration be completed within that period as mandated under Clause (5)	COSIA HCCI, ITMA, AIMA

With the availability of GST Network, the Bill wise payment status to MSMEs be tracked and for any delayed payment, input credit against the pending bill be denied.	LUB, CIU
Para 19 of the Act stipulates that if the buyer files a case in a court of law to set aside the award of the MSEFC; 75% of the awarded amount must be deposited in the court. This should be strictly implemented.	HCCI
For Arbitration under MSEFC to address delayed payment, multi member Arbitration Board should be allowed.	FSIA
Para 24 stipulates that Paras 15 to 23 of the Act, have overriding effects to any law in force. So Limitation Act should not be applicable to MSEFC awards so that delays in submission claims or implementation of awards are not time barred.	PHD
To ensure timely implementation of MSEFC awards, steps like, freezing of bank account, recovery proceedings under land Revenue Act, should be considered.	COSIA
Buyers be mandated to not specify contract and arbitration clauses in the Purchase Orders to MSMEs in contravention of the Paras 15 to 23 of the Act, which, para 24 stipulates have overriding effects to any law in force.	HCCI
If the buyer moves to Insolvency / Bankruptcy process, the pending awards of MSEFC should be dealt as secured loans and the affected MSME as a secured creditor.	COSIA
If the buyers goes for Insolvency / Bankruptcy proceeding, at least the amount of tax paid by the MSE supplier should be recoverable on priority basis.	CIU
There should be provision for uploading multiple invoices against one buyer in SAMADHAN portal.	HCCI

Chapter VI

Miscellaneous: Appointment of officers & penalties for contravention: filing of memorandum, delayed payments and appointments (Sec 26, 27), Jurisdiction of Courts (28), For Rules empowers Central Govt (Sec 29) & State Govts (Sec 30) which must be put before the Parliament and Assemblies respectively for specified period and power to remove difficulties (sec 31) and to repeal of delayed payment Act 1993 (sec 32).

There should be a separate section in the Act. On Ease of Doing Business under which MSMEs should be under a single clearance system under all relevant statutes	Chairman
Exit provision should be available for entrepreneurs for winding up un-successful enterprises	Chairman
MSMEs should be allowed to file all statutory returns on self –certification basis as implemented by Rajasthan Government	RIA

Other Issues raised:

- (i) The existing subsidy on ESI / PF contributions for new workers for 3 years should be extended. (ITMA)
- (ii) Second dose of CLCSS subsidy should be available to micro and small enterprises after 5 years (RIA).
- (iii) Government should create land bank for immediate allotment for approved projects (AICOSMIA)
- (iv) There should be systematic nursing of sick enterprises; it should not be left

to banks only. Also the NPA should be declared after 180 days default, not after 90 days. (HCCI, AIMEA)

- (v) NIC code should be revised to cover all important activities and be available in the drop down menu during Udyog Aadhar registration (BIA, HCCI)
- (vi) DICs need to be strengthened for providing grassroots support to MSMEs.
- (vii) One Time Settlement should be allowed immediately if requested by the entrepreneurs (HCCI).
- (viii) There should be a separate promotional package for Women entrepreneurs.
- (ix) To overcome cash crunch, MSMEs should be allowed to upload invoices on GST portal without charging GST. The buyers should pay the GST on reverse charge basis and claim input tax credit for the same. (LUB, CIU, RIA)
- (x) GeM should facilitate supply by MSMEs. The present registration system is cumbersome and difficult to register (FSIA).
- (xi) There may be a separate B2B portal under GeM (Chairman).
- (xii) Selling of industrial real estate for setting up a new industry should be exempted from capital gains under Income tax Act (PHD).
- (xiii) MSMEs registered with Udyog Aadhar, should be exempted from multiple registration with NSIC and other PSUs for Government /PSU supplies. (CIU).
- (xiv) The rules under Insolvency Bankruptcy Code for partnership and proprietary should be notified at the earliest for the benefit of large majority of MSMEs (BIA, FISME).
- (xv) Government should enable efficiency in marketing organisations of central departments and States for efficient marketing of MSME products. (CIU).
- (xvi) The existing RBI stipulation to banks for compulsory third party rating of borrowers for loans above Rs. 5 Crore should be immediately withdrawn and instead, the banks should be allowed to do their in house rating of borrowers. (FISME, CIU, ITMA)

Abbreviations:

Chairman - Mr. S. N Tripathi, Director, IIPA and Chairman of the committee constituted for recommending amendments required in the Micro, Small and Medium Enterprises Development (MSMED) Act 2006.

AICOSMIA – All India Confederation of Small and Medium Enterprises

AIMA – All India Manufacturers' association

AIMEA – All India Manufacturers' and Exporters' association

BIA – Badli Industrial Area Entrepreneurs' Association

CEPC – Carpet Export Promotion Council

COSIA – Chamber of Small Industry Association

CIU – Chamber of Industries, Udyog Vihar, Gurgaon

HCCI – Haryana Chamber of Commerce and Industry

eMERG – Engineering Manufacturing Entrepreneurs' Resource Group

FISME – Federation of Micro, Small and Medium Industries Associations



FSIA – Faridabad Small Industries Association
IDMA – Indian Drug Manufacturers’ Association
ITMA – Indian Transformer manufacturers’ Association
LUB – Laghu Udyog Bharati
PHD – PHD Chamber of Industry and Commerce
RIA – Rajasthan Industries Association

Consultation with Industry Associations by FISME Chapterwise On 4th February, 2020, on the amendments to be sought in the Micro, Small and Medium Enterprises Development (MSMED) Act 2006

Summary of Chapter- wise Recommendations:

Chapter I

Titles, definitions and explanations of terms (Sec 1-2)

Registration of MSMEs under the MSMED Act, should continue to be voluntary and option be left to the entrepreneurs to register and derive the benefits under the Act.

Classification of MSMEs should be based on Turnover as followed in most countries.

The present categorisation of MSMEs under the Act, viz., Industry, Service etc. may be continued to deliver benefits under sector specific policies and programs.

Existing entrepreneurs with Aadhar Number linked to Udyog Aadhar, should be allowed to launch Start – Ups and avail benefits announced by the Government.

Chapter II

National Board for MSMEs: constitution & functions (Sections 3-6)

The National Board for MSMEs should be restructured in the format of GST council, with a permanent secretariat, an interactive portal for online deliberations on the issues under consideration etc. It should be a think tank like NITI Aayog for MSMEs and should have meetings at regular intervals, say, once in a month.

Chapter III

Classification of Enterprises (Criteria Manufacturing, Services investment limit), Advisory Committee and Memorandum of Micro, Small and Medium Enterprises (Sections 7-8)

Section 7 of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 be amended to define units producing goods in terms of annual turnover as follows:

A micro enterprise be defined as a unit where the annual turnover does not exceed 5 crore rupees;

A small enterprise be defined as a unit where the annual turnover is more than 5 crore rupees but does not exceed Rs. 75 crore;

A medium enterprise be defined as a unit where the annual turnover is more than 75 crore rupees but does not exceed Rs. 250 crore.

For Enterprises rendering services the different categories may be defined, in terms of turnover as follows:

A micro enterprise be defined as a unit where the annual turnover does not exceed 2.5 crore rupees;

A small enterprise be defined as a unit where the annual turnover is more than 2.5 crore rupees but does not exceed Rs. 40 crore;

A medium enterprise be defined as a unit where the annual turnover is more than 40 crore rupees but does not exceed Rs. 150 crore.



Chapter IV

Measures for Promotion, Development and enhancement of competitiveness (Sec 9-13) :

Government should earmark funds for demand driven activities for development of MSMEs.

Under Public procurement, Bank Guarantees should not be insisted from MSME suppliers as these have significant cost burdens. While allowing guarantees provided by insurance companies will be an ideal solution, one time Lump Sum BG can also be considered.

Government should announce a public procurement policy at the earliest, removing (a) LI system of tender approval, (b) encouraging supplies by multinationals with the plea of Made in India and other conditionalities favouring the public procuring agencies.

In no case Bank Guarantee duration should be extended beyond the original tenure. This causes complete choking of working capital flow besides enhancing cost of supply.

Procurement by Government departments and PSUs by brand / supplier name should be strictly banned. Also import of items, made indigenously by MSMEs should not be allowed.

Electricity generation and distribution companies of states should also be compulsorily registered under TReDS to provide relief to MSME suppliers from huge Delayed payments.

PSUs have been mandated by the Government to register on TReDS platform. Railways, Defence and other departments with a large MSME supplier base should also be asked to register. Corporates should also be compelled as they are avoiding registration on TReDS on the one hand and using it for trading own Bills on the other?

Chapter V

Delayed payment related provisions for Micro & Small enterprises (15 ~19), setting up of Facilitation Councils by State Govts, their constitution, procedures etc (Sec 20~25)

MSEFCs should be made quasi-judicial bodies with retired judges in Chair.

Along with Small and micro enterprises, delayed payment to Medium Enterprises should also be brought under the purview of MSEFC.

To overcome unnecessary delays, decisions of MSEFCs on delayed payments, to be announced within 90 days and all meetings, discussions for Arbitration be completed within that period as mandated under Clause (5). Also the time taken by Facilitation Councils in deciding each issue be monitored at DC, MSME level. National MSME Board should also review delays and go into the root causes.

Post award process and the agencies involved, need to be studied to address huge delays in getting decrees and eventual recovery.

With the availability of GST Network, the Bill wise payment status to MSMEs be tracked and for any delayed payment, input credit against the pending bill be denied.

In line with ICAI asking for powers of punishment for faulty accounts /audit, the existing provisions in the Act of giving details in the Balance Sheets of amount due to SMEs and suo-moto providing interest on delays can be used effectively.

To ensure timely implementation of MSEFC awards, steps like, freezing of bank account, recovery proceedings under land Revenue Act, should be considered.

If the buyer moves to Insolvency / Bankruptcy process, the pending awards of MSEFC should be dealt as secured loans and the affected MSME as a secured creditor.

Chapter VI

Miscellaneous: Appointment of officers & penalties for contravention: filing of memorandum, delayed payments and appointments (Sec 26, 27), Jurisdiction of Courts (28), For Rules empowers Central Govt (Sec 29) & State Govts (Sec 30) which must be put before the Parliament and Assemblies respectively for specified period and power to remove difficulties (sec 31) and to repeal of delayed payment Act 1993 (sec 32).

There should be a separate section in the Act. On Ease of Doing Business under which MSMEs should be under a single clearance system under all relevant statutes.

Exit provision should be available for entrepreneurs for winding up un-successful enterprises



PUNJAB
BILL NO - _____ OF 2020
THE PUNJAB RIGHT TO BUSINESS ACT, 2020
AN
ACT

to provide for ease of doing business for the newly incorporated Micro, Small and Medium Enterprises through an enabling ecosystem for self-declaration, exemptions, speedier approvals and inspections to establish and operate in the State of Punjab and matters connected therewith or incidental thereto.

BE it enacted by the Legislature of the State of Punjab in the Seventieth Year of the Republic of India, as follows: -

Short title and commencement.

1. (1) The Act may be called the Punjab Right to Business Act, 2020.

(2) It shall come into force on and with effect from the date of its publication in the Official Gazette.

Definitions.

2. In this Act, unless the context otherwise requires, -

- (a) 'Approval' means acknowledgment, no objection certificate, consent, registration, permission, license and such other similar instrument by whatever name called, required under any Punjab law with regard to the establishment or operations of an enterprise in the State of Punjab;
- (b) "Approved Industrial Park" means an Industrial Area, Industrial Focal Point, Industrial Estate, Mixed-use Industrial Park, Special Economic Zone (SEZ), Textile Park, Biotech Park, Information Technology (IT) Park, Industrial Township, Growth Centre, Food-Processing Park or any other similar project approved by the Competent Authority of the Government or the Central Government, as the case may be;
- (c) "Certificate of In Principle Approval" means an approval referred to in section 8 of this Act;
- (d) "Competent Authority" means any department or agency of the Government or a local authority, Statutory body, State owned corporation or Board, Urban Development Authorities or any other authority or agency constituted or established by any Punjab law or under administrative control of the Government which is entrusted with the powers or responsibilities to grant or issue approvals for the establishment or operation of an enterprise in the State;

- (e) "Declaration of Intent" means submission of relevant and accurate information, by an enterprise under any Punjab law for the purpose of availing of the benefit under this Act;
- (f) "Deemed Approval" means an approval deemed to have been given on the expiry of a period specified under sub-section (3) of section 10 of this Act;
- (g) 'District Bureau of Enterprise' means the bureau established under section 3 of this Act;
- (h) "Enterprise" means a micro, small or medium enterprise, as defined in clause (e) of section 2 of the Micro, Small and Medium Enterprise Development Act, 2006;
- (i) "Government" means the Government of the State of Punjab;
- (j) "Nodal Agency" means the nodal agency referred to in section 5 of this Act;
- (k) "prescribed" means prescribed by rules made under this Act;
- (l) "Punjab law" means any law enacted or adopted by the Legislature of the State of Punjab;
- (m) "Scrutiny Committee" means the committee referred to in Section 9 of this Act; and
- (n) "State" means the State of Punjab.

Establishment of District Bureau of Enterprise.

3. (1) In order to strengthen and support the Micro, Small and Medium Enterprises at the district level, the State shall establish District Bureau of Enterprise in all Districts of the State consisting of the following, namely: -

- (i) The Deputy Commissioner Chief Executive Officer
of the district concerned;
- (ii) The General Manager, District Additional Chief
Industries Centre Executive Officer
- (iii) Other Members as may be notified by the Government from time to time.

(2) The respective District Industries Centre shall be the secretariat for the District Bureau of Enterprise.

Powers and Functions of District Bureau of Enterprises.

4. Subject to the superintendence, direction and control of the Government, the District Bureau of Enterprise shall have the following powers and perform the following functions, namely: -

- (i) to facilitate the process of filing the Declaration of Intent and issuance of Certificate of In Principle Approval;
- (ii) to redress grievances of the Micro, Small and Medium Enterprises;

- (iii) to create awareness and capacity building of all stakeholders including the officials of the Government; and
- (iv) any other function so assigned by the Government for facilitation and promotion of Micro, Small and Medium Enterprises in the State.

Nodal Agency.

5. (1) There shall be a State Nodal Agency at the State level which shall be headed by the Director, Industries & Commerce consisting of such other members as may be notified by the Government from time to time. It shall work under the overall superintendence, direction and control of the Government.

(2) The District Bureau of Enterprise shall be the District Nodal Agency which shall work under the overall superintendence, direction and control of the Government through the State Nodal agency.

Powers and Functions of Nodal Agencies.

6. (1) The State Nodal Agency shall have the following powers and perform the following functions, namely: -

- (a) to monitor, supervise and review the overall functioning of the district nodal agency;
- (b) to coordinate and liaise with the concerned departments at State and Central level; and
- (c) to review and take a decision on the appeal filed under clause (a) of Section 12 against the orders of District Nodal Agency and ensure time bound redressal of grievances.

(2) The District Nodal Agency shall have the following powers and perform the following functions, namely: -

- (a) to assist and facilitate Micro, Small and Medium Enterprises in the State;
- (b) to maintain a record of 'Declaration of Intent' as may be received and to issue a Certificate of In Principle Approval, under this Act;
- (c) to review and decide the appeal filed under clause (b) of Section 12 and ensure time bound redressal of grievances; and
- (d) to coordinate with the other departments of the Government at the district level.

(3) The Government may assign such other powers and functions to the nodal agencies as it may deem fit for giving effect to the provisions of this Act.

Filing of Declaration of Intent.

7. A new Micro, Small and Medium Enterprise, willing to avail the Certificate of In Principle Approval and intending to set up its business in the State, shall furnish to the District Nodal Agency a

Effect of the
Certificate of In
Principle Approval.

Declaration of Intent in the format and in the manner as may be prescribed.

8. (1) A Certificate of In Principle Approval shall act as an approval, as defined in clause (a) of Section 2 for the regulatory services under the Acts specified in Section 18, for a period of three years and six months from the date of its issuance.

(2) During the validity of Certificate of In Principle Approval, no competent authority shall undertake any inspection for the purpose of, or in connection with, any approval as defined in clause (a) of section 2, except on the basis of complaints as specified in sub-section (6) of section 8.

(3) A Certificate of In Principle Approval may be issued under section 10 to a new Micro, Small and Medium Enterprises being set up in the State on receipt of a Declaration of Intent complete in all respects in the prescribed format.

(4) The provision of a Certificate of In Principle Approval shall be optional and an enterprise may choose to avail the regular approvals from the concerned departments at any point of time.

(5) A Certificate of In Principle Approval shall not entitle a person to use a piece of land in deviation of the land use or any stipulations specified in the notified master plan or notified Local Planning Area notified under the provisions of the Punjab Regional & Town Planning and Development Act, 1995. The applicant shall also adhere to the siting guidelines for setting up of industries issued by various departments.

(6) (a) In the case of complaints of serious nature, only the Head of the concerned authority alone may order inspection after recording reasons in writing for such an inspection.

(b) The Inspecting Officer or the team of inspecting officers (not below the rank of Joint Director) shall be selected by a randomized computerized system.

(c) The inspection report shall be made available online to the enterprise and the concerned department within forty-eight hours after the inspection.

(7) During the course of validity of the Certificate of In Principle Approval, the enterprise shall at any time but not later than three years from the date of issue of the Certificate, apply to obtain all applicable regular approvals from the concerned departments through the single window system of Punjab Bureau of Investment Promotion (PBIP).

Scrutiny Committee. 9. To examine and decide upon the applications received under sub-section (2) of section 10, there shall be Scrutiny Committee for each district in the State which shall consist of the Deputy

Commissioner concerned and such other members as may be prescribed. The Scrutiny Committee before making its decision, may jointly or severally make a site visit, if so required with prior notice to the applicant.

Applicability of this Act on proposed location of enterprise.

10. (1) For new enterprises being set up in Approved Industrial Park(s), the nodal agency, upon receipt of a Declaration of Intent, shall forthwith, issue a Certificate of In Principle Approval to an enterprise within three working days.

(2) For new enterprises being set up outside the approved Industrial Park(s) and on areas, approved under the relevant Master Plan, the decision to issue a Certificate of In Principle Approval shall be taken by the District Nodal Agency within a period of fifteen working days in accordance with the procedure as may be prescribed.

(3) In case the decision to issue the Certificate of In Principle Approval is not taken within the stipulated period specified in sub-sections (1) and (2), the same shall be deemed to have been issued by District Nodal Agency.

Revocation of A Certificate of In Principle Approval.

11. (1) In the case of any willful submission of false and fraudulent information in the application or violation of any provisions of the relevant rules, the Certificate of In Principle Approval shall be revoked by the Nodal Agency after giving an opportunity of being heard.

(2) In addition to any action that may be taken for violation under any law or rules for the time being in force, any unauthorized construction shall either be demolished by the owner or by the concerned Authority at the risk and cost of the owner.

Appeal.

12. Any eligible enterprise, which has applied or has been issued a Certificate of In Principle Approval under this Act, may file –

- (a) an appeal within a period of thirty days from the date of rejection of application or any other cause referred to in clause (b) to the State Nodal Agency if a Declaration of Intent filed for grant of the Certificate of In Principle Approval has been rejected by the competent authority; and
- (b) Subject to the action taken in pursuance of the provision of sub-(6) of section 8, if an enterprise having a valid Certificate of In Principle Approval under this Act is being enquired or inspected or being compelled for submission of documents for its establishment and/or operation of its business, file an application for redressal of grievances, if any, before the District Nodal Agency.

Protection of Action Taken in Good Faith.	<p>13. No suit, prosecution or other legal proceedings shall lie against any officer or other employee of the Government or the Nodal agencies or any other competent authority, for anything which is in good faith done or intended to be done under the Act for the facilitation of Micro, Small and Medium Enterprises.</p>
Power to Make rules.	<p>14. (1) The Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.</p> <p>(2) Every rules made by the Government under this Act, shall be laid, as soon as may be, after it is made, before the House of the State Legislature, while it is in session, for a total period of ten days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, the House agrees in making any modification in the rule, or the House agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, however, any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.</p>
Power to remove difficulties.	<p>15. If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, not inconsistent with the provisions of this Act, remove the same:</p> <p>Provided that no such order shall be made after the expiry of a period of two years from the commencement of this act.</p>
Exemption.	<p>16. When the Government or any authority under it is empowered to exempt any enterprise from any approval or inspection or any provisions relating thereto under any Central Act, the Government or, as the case may be, any such authority shall, subject to the provisions of such Central Act, exercise such powers to grant such exemption to an enterprise established in the State for at least a period of three years and six months from the date of issue of the Certificate of In Principle Approval.</p>
Savings.	<p>17. Nothing in this Act shall be construed as exempting any enterprise from the application of the provision of any Punjab law for the time being in force, or any regulatory measures and standards prescribed there-under, except to the extent expressly provided in the Act.</p>
Act to override other Laws.	<p>18. (1) Notwithstanding anything inconsistent therewith contained in any other Punjab laws, for the time being in force, the provisions of this Act shall have an overriding effect.</p> <p>(2) The following enactments and the provisions of these enactments shall be deemed to have been amended if so required to conform with the provisions of this Act insofar as these are necessary to implement the provisions of this Act, namely:-</p>

Serial No	Act	Services
1.	Building Plan, Completion cum occupancy certificate issuance of new trade license under the Punjab Municipal Act, 1911 and the Punjab Municipal Corporation Act, 1976	1. Sanction of Building Plans 2. Issuance of Completion/Occupation Certificate for Buildings 3. Registration of Trade License
2.	Building Plan and change of land use under the Punjab Regional and Town Planning and Development Act, 1995	1. Sanction of Building Plans 2. Issuance of Completion/Occupation Certificate for Buildings 3. Change of land use.
3.	Provisional Fire No Objection Certificate and Fire No Objection Certificate under the Punjab Fire Prevention and Fire Safety Act, 2004	Application for Fire No Objection Certificate
4.	Factory Building Plan and Factory License under the Punjab Factory Rules, 1952	Approval of Factory Building plan (except for industries involving hazardous process as per First Schedule of Factories Act, 1948)
5.	Registration of Shop or Establishment under Punjab Shops and Commercial Establishment Act, 1958	Registration of Shop or Establishment

Fees.

19. The statutory application fee, inspection fee or any other fees chargeable under any Punjab law, notified from time to time, in respect of actions, services and approval as referred in section 18 shall be payable online to all the relevant authorities at the time of filing of Declaration of Intent and before the issue of the "Certificate of In Principle Approval" by the applicant.

Dated, Chandigarh,
the

GOVERNOR OF PUNJAB.

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