The Micro, Small and Medium Enterprises Act, 2006: A step towards reformation in micro, small and medium enterprises

The Micro, Small and Medium Enterprises Act, 2006: A step towards reformation in micro, small and medium enterprises by Akshat Srivastava* and Anusha Bajpai*  

Cite as: (2011) PL June 52 India is the one of the fastest growing economies of the world. Small-scale industries have been the backbone of the industrial sector of country’s economy and have always been a major area of concern for the Government. The micro, small and medium enterprises sector comprises 50% of India’s total manufactured exports, 45% of India’s industrial employment, and 95% of all the industrial units in the country. After agriculture, the micro, small and medium enterprises sector provides the maximum opportunities for both self-employment and jobs in the country. The small enterprises sector in India holds great potential for further expansion and growth in the future. In fact, the employment potential of the sector is unmatched by any other sector of the economy.

Background The small-scale industries constitute an important segment of Indian economy in terms of their contribution to the country’s industrial production, exports, employment to people. The Government established the Ministry of Small-Scale Industries and Agro and Rural Industries on 14-10-1999 as the nodal Ministry for the formulation of policies and the Central sector programmes/schemes, their implementation and related coordination, to supplement the efforts of the States for promotion and development of these industries in India. The Ministry of Small-Scale Industries and Agro and Rural Industries was bifurcated into separate Ministries on 6-9-2001, namely, (i) Ministry of Small-Scale Industries, and (ii) Ministry of Agro and Rural Industries.

Micro, Small and Medium Enterprises Development Act, 2006 The Central Government decided to bring into India, the concept of small and medium enterprises in place of small-sector as per the suggestions by the western giants through WTO. The Micro, Small and Medium Enterprises Development Act, 2006 inter alia, provides the first legal framework to facilitate the promotion and development of micro, small and medium enterprises which comprises both manufacturing and service entities.

The Micro, Small and Medium Enterprises Development Act, 2006 received the assent of the President on 16-6-2006. Subsequently, the notifications defining the authorities under the Act and for classifying various categories i.e. micro, small or medium were made on 29-9-2006 and 30-9-2006 respectively. The provisions of the Act came into force with effect from 2-10-2006.

The Micro, Small and Medium Enterprise Development Act, 2006 (MSMEDA) was the product of a consultative process involving over 300 industrial associations, government bodies, and multiple stakeholders across India. The Act accomplishes many long-standing goals of the Government and stakeholders in the micro, small and medium enterprises sector.

Definition of micro, small and medium enterprises In accordance with the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMEDA) the micro, small and medium enterprises (MSME) are classified into two classes:

(a) Manufacturing enterprises: 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. The manufacturing enterprises are defined in terms of investment in plant and machinery.

(b) Service enterprises: The enterprises engaged in providing or rendering of services and are defined in terms of investment in equipment.

The new categorisation is as follows:

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<tr>
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<th>Manufacturing Sector Enterprises</th>
<th>Service Sector Enterprises</th>
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</thead>
<tbody>
<tr>
<td>Investment in plant and machinery</td>
<td>Micro Enterprises</td>
<td>Does not exceed twenty-five lakh rupees</td>
</tr>
<tr>
<td></td>
<td>Small Enterprises</td>
<td>More than twenty-five lakh rupees but does not exceed five crore rupees</td>
</tr>
<tr>
<td></td>
<td>Medium Enterprises</td>
<td>More than five crore rupees but does not exceed ten crore rupees</td>
</tr>
</tbody>
</table>
Investment in equipments

Micro Enterprises
Does not exceed ten lakh rupees

Small Enterprises
More than ten lakh rupees but does not exceed two crore rupees

Medium Enterprises
More than two crore rupees but does not exceed five crore rupees

Objects of the Micro, Small and Medium Enterprises Development Act, 2006
The Micro, Small and Medium Enterprises Development Act was framed with the following objects:
(1) To facilitate the promotion and development of micro, small and medium scale enterprises;
(2) To enhance the competitiveness of micro, small and medium enterprises;
(3) To concentrate on the related matters of micro, small and medium enterprises;
(4) To extend the scope of benefits from small-scale industries undertaking and ancillary industries to micro, small and medium enterprises.

Salient features of the Micro, Small and Medium Enterprises Development Act, 2006
(1) Establishment of a statutory National Board for micro, small and medium enterprises;
(2) Filing of memorandum;
(3) Measures for protection, development and enhancement of competitiveness of micro, small and medium enterprises;
(4) Credit facilities;
(5) Provisions related to delayed payments to micro, small and medium enterprises.

National Board for Micro, Small and Medium Enterprises Development Act, 2006
The Act establishes the necessary structure for overseeing and regulating the development of micro, small and medium enterprises in India. The entire structure and composition of the National Board for Micro, Small and Medium Enterprises are clarified in the Act. The Board’s duties and long-term objectives “managing cluster development, training entrepreneurs, developing infrastructure and promoting financial access” is clearly stated in the Act. The Act ensures that diverse representatives from the Government, industry, financial, and civil society interests sit on the Board and Advisory Committees.

Section 20 and Section 21 of the Micro, Small and Medium Enterprises Act, 2006 provide that it shall be mandatory for the States to constitute Micro and Small Enterprises Facilitation Council in their respective States comprising of minimum 3 members and maximum of 5 members consisting of the Director of Industries, MSE Association, bank and persons with special knowledge in industry, finance, etc.

The Micro and Small Enterprises Facilitation Council may utilise the services of any institution or Centre for conciliation and alternative dispute resolution services. Reference made to the Council is to be decided within 90 days from the date of reference [Section 18(5)].

The outshining feature of Micro, Small and Medium Enterprises Act, 2006—Application for setting aside decree, award or order under Section 19 Section 19 of the Micro, Small and Medium Enterprises Act, 2006 provide that no application for setting aside any decree, award or other order made either by the Council itself or by any institution or Centre providing alternative dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant has deposited with it 75% of the amount in terms of the decree, award or, as the case may be, the other order directed by such court.

The point was further affirmed by Chatterjee, J. of the Supreme Court in Snehadeep Structures (P) Ltd. v. Maharashtra Small Scale Industries Development Corpn. Ltd.1 where it is observed that:
47. The requirement of pre-deposit of interest is introduced as a disincentive to prevent dilatory tactics employed by the buyers against whom small-scale industry might have procured an award, just as in cases of a decree or order. Presumably, the legislature intent behind Section 7 was to target buyers, who, only with the end of pushing off the ultimate event of payment to the small-scale industry undertaking, institute challenges against the award/decree/order passed against them. Such buyers cannot be allowed to challenge arbitral awards indiscriminately, especially when the section require pre-deposit of 75% interest even when appeal is preferred against an award, as distinguished from an order or decree.2
Interim relief to supplier As per Section 19, pending disposal of the application to set aside the decree, award or order, the court shall order that the pre-deposit amount shall be paid to the supplier, as it considers reasonable under the circumstances of the case subject to such conditions as it deems necessary to impose.

The conditions which the court generally put are direction to furnish bank guarantee for whole or part of the amount paid out of pre-deposit. The provisions of Sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for time being in force.

Conclusion The Act marks a milestone in the development of India’s micro, small and medium enterprises sector. It is the latest initiative taken by the Government for promoting small-scale industries. The Act confers not only certain privileges upon the micro, small and medium enterprises but also cast certain obligations on the person buying the products and services from the enterprises. The Micro, Small and Medium Enterprises Development Act, 2006 is a very dynamic and fertile Act. It has given a new dimension to the micro and small enterprises, to grow and flourish much more than ever before.

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- Ibid., 51, para 47.