

Shri Samarendra Sahu  
 Additional Development Commissioner  
 Office of DC MSME  
 Ministry of MSME  
 Nirman Bhawan, 7<sup>th</sup> Floor, A wing  
 New Delhi

### **Subject: Proposed amendments in MSMED ACT 2006**

Dear Sir,

Indian Industries Association (IIA) is a member of Institutional Structure Sub-Group of MSME Growth Working Group. It is learnt that the meetings of this Sub-Groups are being held but we did not get any information about the date & timings of the meetings. However in order to make the MSMED ACT 2006 more objective oriented for the promotion and development of MSMEs, we suggest modifications in the relevant sections of the Act as under. The modifications are marked in bold, italic & underlined in the right hand side column of the table below.

### **PROPOSED MODIFICATIONS IN MSMED ACT 2006**

<b>Provision as per MSMED Act 2006</b>	<b>Modifications Suggested</b>
<b>Section 1</b> (i)This Act may be called the Micro,Small & Medium Enterprises Development Act 2001 (2)It shall come into force on such date as the Central Govt may by notification appoint; & different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.	(i)This Act may be called the Micro, Small & Medium Enterprises Development Act 2001 <b><u>(2)The provision in the act is a social welfare legislation and will be applicable to even those transactions which have taken place before the promulgation of the Interest on Delayed Payments to Small Scale And Ancillary Industrial Undertakings Ordinance 1993</u></b> (3)It shall come into force on such date as the Central Govt may by notification appoint; & different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act

	shall be construed as a reference to the coming into force of that provision.
<p><b>Section 2 (n)</b>  “supplier” means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section(1) of section 8 and includes-(i)the NSIC,being a company, registered under the Companies Act,1956;  (ii)the SIDC of a State or a UT by whatever name called being a company, registered under the Companies Act,1956;  (iii)any company,cooperative society,trust or body by whatever name called,registered or constituted under any law for the time being in force and engaged in selling goods produced by MSEs and rendering services which are provided by such enterprises</p>	<p>“supplier” means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section(1) of section 8 <b><u>before making a reference under Section 18.</u></b> and includes-(i)the NSIC,being a company, registered under the Companies Act,1956;  (ii)the SIDC of a State or a UT by whatever name called being a company, registered under the Companies Act,1956;  (iii)any company,cooperative society,trust or body by whatever name called,registered or constituted under any law for the time being in force and engaged in selling goods produced by MSEs and rendering services which are provided by such enterprises  <b><u>(iv)Any Factoring company , by whatever name called for the bills of MSME factored</u></b></p>
<p><b>Section 15</b>  <b><u>Liability of buyer to make payment</u></b>  Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him &amp; the supplier in writing or where there is no agreement in this behalf before the appointed day: Provided that in no case the period agreed upon between the supplier &amp; the buyer in writing</p>	<p>Where any supplier supplies any goods renders any services to any buyer, or any security deposit, earnest money and <b><u>advance of any kind that may be receivable by a MSME from its buyer/customer, supplier</u></b>  the buyer shall make payment therefor on or before the date agreed upon between him &amp; the supplier in writing or where there is no agreement in this behalf before the appointed day: Provided that in no case the period agreed upon between the supplier &amp; the buyer in writing shall exceed 45 days from the day of acceptance or the day of deemed acceptance</p>

<p>shall exceed 45 days from the day of acceptance or the day of deemed acceptance</p>	
	<p><b><u>New Section 15 A</u></b></p> <p><b><u>If any Govt. Department or Corporation takes from any MSE any amount due to as Tax, Levy, Surcharge etc. by whatever name called and ultimately the amount becomes refundable to MSE, interest will be paid as prescribed in Chapter V of this Act. Doctrine of Unjust Enrichment shall not be applied on MSEs.”</u></b></p>
<p><b>Section 18 (3)</b> Where the conciliation initiated under sub-section (2) is not successful &amp; 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 centre providing alternate dispute resolution services for such arbitration &amp; the provisions of the Arbitration &amp; Conciliation Act 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.</p>	<p><b>Section 18 (3)</b> Where the conciliation initiated under sub-section (2) is not successful &amp; 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 centre providing alternate dispute resolution services for such arbitration &amp; the provisions of the Arbitration &amp; Conciliation Act 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. <b><u>and the Limitation Act 1963 shall not apply for any proceedings before the facilitation council.</u></b></p>
	<p><b><u>NEW Section</u></b> <b><u>RBI to issue necessary statutory instructions that Banks/ Financial Institutions while scrutinizing the quarterly returns filed by any organization SHOULD CLEARLY INDICATE THE outstandings to MSME for that quarter and accordingly should freeze that quantum of credit facility for the next quarter or till the payment is</u></b></p>

	<b><u>liquidated.</u></b>
	<b><u>New Section</u></b>  <b><u>Tender Notices issued by Central/ State Government or Corporation or by any organization should mandatorily indicate the applicability of MSME Act.</u></b>
	<b><u>New Section</u></b>  <b><u>The award of the facilitation council shall be recoverable as arrears of land revenue.and the facilitation council should be authorized to issue the recovery certificate.</u></b>
<b>Section 32</b> 1) The Interest on Delayed Payments to Small Scale & Ancillary Industrial Undertakings Act 1993 is hereby repealed (2) Notwithstanding such repeal, anything done or any action taken under the Act so repealed under sub-section (1) shall be deemed to have been done or taken under the corresponding provisions of this Act.	1) The Interest on Delayed Payments to Small Scale & Ancillary Industrial Undertakings Act 1993 is hereby repealed (2) Notwithstanding such repeal, anything done or any action taken under the Act so repealed under sub-section (1) shall be deemed to have been done or taken under the corresponding provisions of this Act. (3) <b><u>Make further improvements in the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 and making that enactment a part of the proposed legislation and to repeal that enactment .</u></b>

Submitted for kind consideration.

Yours truly

Anil Gupta  
Immediate Past president