

The Interest On Delayed Payments To Small Scale And Ancillary Industrial Undertakings Act, 1993

UNION OF INDIA

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Act 32 of 1993

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14.

/691Statement of Objects and Reasons.-A policy statement on small scale industries was made by the Government in Parliament. It was stated at that time that suitable legislation would be brought to ensure prompt payment of money by buyers to the small industrial units.² Inadequate working capital in a small scale or an ancillary industrial undertaking causes serious and endemic problems affecting the health of such undertaking. Industries in this sector have also been demanding that adequate measures be taken in this regard. The Small Scale Industries Board, which is an apex advisory body on policies relating to small scale industrial units with representatives from all the States, governmental bodies and the industrial sector, also expressed this view. It was, therefore, felt that prompt payments of money by buyers should be statutorily ensured and mandatory provisions for payment of interest on the outstanding money, in case of default, should be made. The buyers, if required under law to pay interest, would refrain from withholding payments to small scale and ancillary industrial undertakings.³ An Ordinance, namely, the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Ordinance, 1992, was, therefore, promulgated by the President on the 23rd September, 1992.⁴ The Bill seeks to replace the said Ordinance and to achieve the aforesaid objects.Amendment Act 23 of 1998-Statement of Objects and Reasons.-The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 regulates the procedure for payment of interest on delayed payments to small scale and ancillary undertakings. Though the Act has been in operation for a period of five years, the problem of delays in payment of outstanding dues to the small scale industrial units continues unabated. There have been widespread discussions on the provisions of the Act among the various interest groups

including the Departments of State Governments dealing with industries, banks and Small Industry Associations. The general consensus emerged from such discussions is that certain amendments to the Act are necessary in order to make it more effective so that the aims and objectives of the Act are achieved.² The existing Act is not applicable to the Central or State public sector undertakings, such as, the National Small Industries Corporation (NSIC) and the State Small Industries Development Corporations (SSIDC). Since both the aforesaid Corporations have been playing an important role in marketing of SSI products, it is proposed to amend the definition of "supplier" so as to bring within the scope, the aforesaid Corporations.³ Section 3 of the Act stipulates that a buyer is required to make payment on or before the agreed date to small scale supplier of goods or services. Where the credit period is not specified in the agreement, the payment is to be made within 30 days from the date of the acceptance of goods or services. It has been noticed that buyers tend to prescribe a credit period of 240-360 days. This defeats the purpose of the Act. It is, therefore, proposed to amend Section 3 of the Act by specifying a period of 120 days as the maximum period of credit.⁴ Section 4 of the Act states that buyers shall be liable to pay interest to the suppliers on outstanding dues beyond the appointed day at a rate which is five per cent. points above the floor rate. The Reserve Bank of India, in its new credit policy, has changed the system of prescribing floor rates for the purpose of lending by banks for the loans exceeding Rs. 2 lakhs. The banks are now free to fix the Prime Lending Rate for loans. This change in interest rate policy has necessitated a change in determining the penal rate of interest in the Act. It is proposed to fix the penal rate of interest at one and a half times of the Prime Lending Rate of the State Bank of India.⁵ Under section 6 of the Act, the outstanding amount together with the interest is recoverable (in case of dispute) by way of a civil suit. It is proposed to provide an alternative mechanism of arbitration and conciliation apart from section 6 to resolve the disputes under the Act. For this purpose, State Governments are proposed to be authorised to set up one or more "Industry Facilitation Councils" for the purpose of arbitration and conciliation. These Councils shall act as arbitrators or conciliators for settling disputes between SSI suppliers and buyers. This aims at facilitating resolution of disputes between the two parties amicably.⁶ The Bill seeks to achieve the above objects.[2nd April, 1993]Received the assent of the President on 2.4.1993 and published in the Gazette of India, Extraordinary, Part II, Section 1, dated 3.4.1993.An Act to provide for and regulate the payment of interest on delayed payments to small scale and ancillary industrial undertakings and for matters connected therewith or incidental thereto.Be it enacted by Parliament in the Forty-fourth Year of the Republic of India as follows:-

1. Short title, extent and commencement

.- (1) This Act may be called The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993. (2) It extends to the whole of India, except the State of Jammu and Kashmir. (3) It shall be deemed to have come into force on the 23rd day of September, 1992.

2. Definitions

.- In this Act, unless the context otherwise requires, - (a) "ancillary industrial undertaking" has the meaning assigned to it by clause (aa) of section 3 of the Industries (Development and Regulation) Act, 1951 (65 of 1951); (b) "appointed day" means the day following immediately after the expiry of the period of thirty days from the day of acceptance or the day of deemed acceptance of any goods or

any services by a buyer from a supplier; Explanation.-For the purposes of this clause,-(i)"the day of acceptance" means,-(a)the day of the actual delivery of goods or the rendering of services; or(b)where any objection is made in writing by the buyer regarding, acceptance of goods or services within thirty days from the day of the delivery, of goods or the rendering of services, the day on which such objection is removed by the supplier;(ii)"the day of deemed acceptance" means, where no objection is made in writing by the buyer regarding acceptance of goods or services within thirty days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services;(c)"buyer" means whoever buys any goods or receives any services from a supplier for consideration;(d)"goods" means every kind of movable property other than actionable claims and money;(e)"small scale industrial undertaking" has the meaning assigned to it by clause (j) of section 3 of the Industries (Development and Regulation) Act, 1951 (65 of 1951);(f)"supplier" means an ancillary industrial undertaking or a small scale industrial undertaking holding a permanent registration certificate issued by the Directorate of Industries of a State or [Union territory and includes,- [Substituted by Act 23 of 1998, Section 2, for " Union territory" (w.e.f. 10.8.1998).](i)the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956)];(ii)the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956).

3. Liability of buyer to make payment

.-Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:[Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed one hundred and twenty days from the day of acceptance or the day of deemed acceptance.] [Inserted by Act 23 of 1998, Section 3 (w.e.f. 10.8.1998).]

4. [Date from which and rate at which interest is payable [Substituted by Act 23 of 1998, Section 4, for Section 4 (w.e.f. 10.8.1998).]

.-Where any buyer fails to make payment of the amount to the supplier, as required under section 3, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay interest to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at one and a half time of Prime Lending Rate charged by the State Bank of India. Explanation .-For the purposes of this section, "Prime Lending Rate" means the Prime Lending Rate of the State Bank of India which is available to the best borrowers of the bank.]

5. Liability of buyer to pay compound interest

.-Notwithstanding anything contained in any agreement between a supplier and a buyer or in any law for the time being in force, the buyer shall be liable to pay compound interest (with monthly

interests) at the rate mentioned in section 4 on the amount due to the supplier.

6. Recovery of amount due

.- [(1)] [Section 6 renumbered as sub-Section (1) thereof and sub-Section (2) inserted by Act 23 of 1998, Section 5 (w.e.f. 10.8.1998).] The amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of sections 4 and 5, shall be recoverable by the supplier from the buyer by way of a suit or other proceeding under any law for the time being in force.(2)[Notwithstanding anything contained in sub-section (1), any party to a dispute may make a reference to the Industry Facilitation Council for acting as an arbitrator or conciliator in respect of the matters referred to in that sub-section and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such dispute as if the arbitration or conciliation were pursuant to an arbitration agreement referred to in sub-section (1) of section 7 of that Act.] [Section 6 renumbered as sub-Section (1) thereof and sub-Section (2) inserted by Act 23 of 1998, Section 5 (w.e.f. 10.8.1998).]

7. Appeal

.-No appeal against any decree, award or other order shall be entertained by any Court or other authority unless the appellant (not being a supplier) has deposited with it seventy-five per cent. of the amount in terms of the decree, award or, as the case may be, other order in the manner directed by such Court or, as the case may be, such authority.[7-A. Establishment of Industry Facilitation Council [Inserted by Act 23 of 1998, Section 6 (w.e.f. 10.8.1998).]-The State Government may, by notification in the Official Gazette, establish one or more Industry Facilitation Councils at such places exercising such jurisdiction and for such areas, as may be specified in the notification.

7.

-B. Composition of Industry Facilitation Council.-(1) The Industry Facilitation Council shall consist of one or more members to be appointed from amongst the following categories:-(i)Director of Industries by whatever name called or any other officer not below the rank of such Director, of the State Government;(ii)representatives of banks and financial institutions;(iii)office bearers or representatives of State Industry Associations; and(iv)persons having special knowledge in the field of Industry, Finance, Law, Trade and Commerce.(2)The person appointed under clause (i) of sub-section (1) shall be the Chairperson of the Industry Facilitation Council.(3)The composition of the Industry Facilitation Council, the manner of filling vacancies among, and the procedure to be followed in the discharge of their functions by, the members shall be such as may be prescribed by rules by the State Government.

7.

-C. Laying of rules before State Legislature.-Every notification issued and every rule made by the State Government under this Act shall be laid, as soon as may be after it is issued or made, before

the State Legislature.]

8. Requirement to specify unpaid amount with interest in the annual statement of accounts

.-Where any buyer is required to get his annual accounts audited under any law for the time being in force, such buyer shall specify the amount together with the interest in his annual statement of accounts as remains unpaid to any supplier at the end of each accounting year.

9. Interest not to be allowed as deduction from income

.-Notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), the amount of interest payable or paid by any buyer, under or in accordance with the provisions of this Act, shall not, for the purposes of computation of income under the Income-tax Act, 1961 (43 of 1961), be allowed as deduction.

10. Overriding effect

.-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

11. Repeal and saving

.-(1) The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Ordinance, 1993 (Ord. 4 of 1993) is hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act.