

Assam Micro And Small Enterprises Facilitation Council Rules, 2018

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Rule

ASSAM-MICRO-AND-SMALL-ENTERPRISES-FACILITATION-COUNCIL of 2018

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Assam Micro And Small Enterprises Facilitation Council Rules, 2018Published vide Notification No. CI.218/2006/399, dated 2.4.2019Last Updated 12th February, 2020No.CI.218/2006/399. - In exercise of the power conferred by sub-section (1) and (2) of section 30 of the Micro, Small and Medium Enterprises Development Act, 2006 (Act No.27 of 2006), the Governor of Assam is hereby pleased to make the following rules for facilitating the working of Micro and Small Enterprises Facilitation Council/s (MSEFC/s), namely :

1. Short title and commencement.

(1)These rules may be called the Assam Micro and Small Enterprises Facilitation Council Rules, 2018.(2)They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.

- In these rules, unless the context otherwise requires, -(a)"Act" means the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006);(b)"Arbitration and Conciliation Act" means the Arbitration and Conciliation Act, 1996 (26 of 1996);(c)"Council" means the Assam Micro and Small Enterprises Facilitation Council, established by the Government under section 20 of the Act;(d)"Chairperson" means the Chairperson of the Council appointed under clause (i) of sub-section (1) of section 21 of the Act;(e)"Government" means the Government of the State of Assam, in the Department of Industries and Commerce;(f)"Institute" means any institution or centre providing alternate dispute resolution service referred to in sub-sections (2) and (3) of

section 18 of the Act;(g)"Member" means a member of the Council;(h)"MSE" unit means a micro or small enterprise as per the provisions of Act;(i)"section" means a section of the Act;(j)The words and expressions used and not defined in these rules, but defined in the Act shall have the same meanings, respectively assigned to them in the Act.

3. Setting up of the Council.

(1)The Government shall establish at least one Micro and Small Enterprises Facilitation Council ('MSEFC') in the State by notification issued under section 21 of the Act:Provided that if the work so demands, it may also set up more Councils exercising such jurisdiction and for such areas as may be specified in the Notification.(2)The Government may also give secretariat assistance to the Council so appointed. It may also designate some official of the Secretariat to work as the Secretary to the Council who can be empowered by the Council to issue notices or orders on behalf of the Council.(3)The Government may provide a legal expert to assist the Council.(4)Court fee stamp of Rs. 100 only is to be affixed along with all applications filed before the Council.(5)The Secretariat for Council may have its own seal.

4. Manner of appointment of Chairperson.

- The Government shall appoint the Commissioner, Industries and Commerce, Assam, as the Chairperson of the Council.

5. Constitution of the Council.

(1)The Council shall consist of five members to be appointed by the Government by notification in the Official Gazette. The members of the Council shall be appointed from the categories as follows, namely -(a)The Commissioner, Industries and Commerce, Assam to be appointed by the Government Chairman;(b)Two office bearers or representatives of associations of MSEs in the State, who shall be nominated by the Commissioner, Industries and Commerce, Assam and endorsed by Development Commissioner (MSME) Members;(c)One representative of Bank and Financial Institutions lending to MSEs, who shall be nominated by Regional Director, RBI (Guwahati) Members;(d)One person having special knowledge in the field of Industry, Finance, Law, Trade or Commerce, who shall be nominated by the Government in the Industries and Commerce Department Member.(2)(i)A member appointed under clauses (ii), (iii) and (iv) of sub-section (1) of section 21 shall cease to be a member of the Council if he or she ceases to represent the category or interest in which he or she was so appointed.(ii)A member other than the Chairperson shall hold Office for a period not exceeding two years from the date of his appointment.(iii)When a member of the Council dies or resigns or is deemed to have resigned or is removed from office or becomes incapable of acting as a member, the Government may appoint another person to fill that vacancy.(iv)Any member of the Council may resign from the Council by tendering one month's notice in writing to the Government.(v)The Government may remove any member from the office, -(a)if he is of unsound mind and stands so declared by a competent court; or(b)if he becomes bankrupt or insolvent or suspend payment to his creditors; or(c)if he is convicted of any offence which is punishable under the Indian Penal Code (Act 45 of 1860); or(d)if he abstains

himself /herself from three consecutive meetings of the Council without the leave of the Chairperson, and in any case from five consecutive meeting; or(e)if he acquires such financial or other interest as is likely, in the opinion of the Government, to affect pre-judicially his functions as a member.

6. Honorarium to the Members of the Council.

- No remuneration, honorarium or fees and any allowances shall be paid to the members of the Council.

7. Procedure to be followed in the discharge of functions of the Council.

- (i) An aggrieved MSE unit under Chapter V, sections 15, 16, 17 and 18 of the Act, can move a reference to the Council having jurisdiction of the area in the format provided in Schedule I of these rules. The reference must have the Udyog Aadhar Memorandum (UAM) number/ registration No. under Procurement Preference Policy, Assam, 2015, mobile number and email address of aggrieved MSE unit as provided in Schedule I.(ii)Such references should be attached with fee or processing charges as notified by the Government from time-to-time and with an undertaking from aggrieved MSE unit that it has not moved a reference before the Civil Court on the same dispute.(iii)Upon receipt of references from the supplier MSE unit, the Secretariat of the Council shall enter the data in the web portal created for this purpose.(iv)After entering the data, acknowledgement of the receipt of reference shall be issued by the Secretariat to the applicant-MSE unit through email where the reference/application is received by registered post, its receipt shall be acknowledged on the same day.(v)The Council may examine the reference at preliminary stage to check regarding the fee or competency of MSE unit to file the reference.(vi)In case, if the reference or the particulars entered in it are not found to the satisfaction of Council, it may return the reference.(vii)The Chairperson of the Council may require any petitioner to provide further particulars of the claim or any relevant documents in support of the claim as he may consider necessary for the purpose of the proceedings. If the petitioner fails or omits to do so within fifteen days of receipt of such communication or within such further time as the Chairperson may, for sufficient cause, allow, the Council may terminate the proceedings without prejudice to the right of the petitioner to make fresh reference if he is otherwise entitled so to do. The petitioner shall also simultaneously send a copy of the reference to the buyer or buyers against whom the reference is directed.(viii)The Chairperson shall cause the buyer to furnish his detailed response to the reference within fifteen days of receipt of the reference by the buyer or within such further time not exceeding fifteen days, as he may for sufficient cause, allow.(ix)The Council shall either itself conduct conciliation in the matter or seek the assistance of any institute for conducting the conciliation and if it decides to do so, shall refer the parties to the institute or centre providing alternate dispute resolution services by making a reference to such an institution or centre for conducting conciliation. The provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 shall apply to such a reference as if the conciliation was initiated under Part III of that Act.(x)On receipt of a reference under section 18 of the Act, the Chairperson of the Council shall cause the reference and the buyers response there to be examined and, on being satisfied with the reference making a prima facie case of delayed payment, cause the reference to be placed before the Council at its next immediate meeting for consideration.

The Chairperson shall also ensure that each reference received within two weeks of the date of the last preceding meeting of the Council is examined and, if found in order, is placed for consideration of the Council at its next immediate meeting.(xi)The Council or the institute to which it has been referred for conciliation shall require the supplier and the buyer concerned to appear before it by issuing notices to both parties in this behalf. On the appearance of both parties, the Council or the institute shall first make efforts to bring about conciliation between the buyer and the supplier. The institute shall submit its report to the Council within fifteen days of reference from the Council or within such period as the Council may specify.(xii)When such conciliation does not lead to settlement of the dispute, the Council shall either itself act as an arbitrator for final settlement of the dispute or refer it to an institute for such arbitration, in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The supplier or the buyer may, either in person or through his lawyer registered with the court, present his case before the Council or the institute during the arbitration proceedings. The institute shall submit its report to the Council within such time as the Council may stipulate.(xiii)The Council shall make an arbitral award in accordance with section 31 of the Arbitration and Conciliation Act 1996 and within the time specified in sub-section (5) of section 18 of the Act. The award shall be stamped in accordance with the relevant law in force. Copies of the award shall be made available within seven days for filing an application.(xiv)The Chairperson or any other Officer authorized by the Chairperson shall forward the proceedings of every meeting of the Council including annual progress report of the Council to the Member-Secretary of the Advisory Committee constituted under sub-section (2) of the section 7 of the Act.(xv)The Institute to which the issue is referred makes efforts to bring about conciliation and it shall submit its Report to the Council as soon as possible, usually within 15 days from reference to the Council.(xvi)When the matter is referred to the institute, the institute shall arbitrate the issue as per the provisions of Arbitration and Conciliation Act, 1996 and refer the award to the Council.(xvii)The Council after finalizing the award or receiving the award from the institute shall consider the case and pass appropriate final orders in the matter.

8. Meeting of the Council and quorum.

(1)The meeting of the Council shall ordinarily be held after giving seven days notice. In case of urgency it may be called at such short notice as the Chairperson may find suitable.(2)All the notices/communication for the meeting shall be informed to the petitioners through SMS and e-mail.(3)The Council shall hold regular meetings, at least once in a month.(4)The quorum of meeting shall be two in case if the number of members is three or four, and it shall be three, if the number of members is five.

9. Decisions of the Council.

(1)Any decision of the Council shall be made by a majority of its members present at the meeting of the Council.(2)Every reference made under section 18 to the Council shall be decided within a period of ninety days from the date of making such a reference as per sub-section (5) of section 18 of the Act.(3)The Secretariat shall upload the proceedings of every meeting of the Council on the web portal created for the purpose.(4)No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute

resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court.

10. Progress Report.

(1)The Council shall upload the basic information including the annual progress report of the Council on the web portal created for the purpose.(2)The Council shall provide information to the Member-Secretary of the National Board for Micro, Small and Medium Enterprises as provided in the Act in the manner and form required from time-to-time.

11. Removal of difficulties.

(1)All the proceedings initiated as per earlier rules shall continue unabated.(2)If any difficulty arises during the course of implementation of these rules, the same shall be clarified by the Central Government.

Schedule 1

Format for Reference on delayed payment to MSEFC
To The Chairperson Micro and Small Enterprises Facilitation Council
Reference : U/S 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED)
I am authorised representative of M/s.....This firm is a micro small unit as per provisions of MSMED Act, 2006. This unit has supplied the goods to M/s..... but it has not been paid as per provisions of Section 15 of the MSMED Act, 2006. I, therefore, aggrieve with this unit, wish to file a reference. The information pertaining to the case is as under:

1. Udyog Aadhaar No./Registration No. under Procurement Preference Policy, Assam, 2015 (Note - MSME unit can register Udyog Aadhaar on udyogaadhaar.gov.in)

(<http://udyogaadhaar.gov.in>):

2. Date of Filing Application (DD/MM/YYYY):

3. Details of aggrieved MSE Unit

3.1Name of Authorized representative:(authorization to be attached)3.2Name of the Unit:3.3Address (including Pin Code):3.4State:3.5District:3.6Mobile number:3.7Email:3.8Type of aggrieved MSE

Micro Small

4. Name of respondent (buyer):

4.1Address (including Pin Code):4.2State:4.3District:4.4Mobile number:4.5Email:4.6Category of respondent (buyer) [CPSU/State PSU/]:

5. Principal Amount Payable (Rs.):

6. Interest claimed as on :

7. Fee paid, if any :

7.1Amount:7.2Methodology :

8. Documents enclosed in support of claim in respect of supply of goods supply or services rendered as referred above :

(1).....(2).....(3).....(4).....I hereby declare that information given above is true to the best of my knowledge.Any information that may be further required, shall be provided immediately before the concerned authority. I further declare that I have not filed /preferred any appeal before any court on the same dispute.Signature
.....Name:

Date: (Authorized Signatory on behalf of aggrievedMSE)