

Andhra Pradesh Micro and Small Enterprises Facilitation Council Rules, 2007

ANDHRA PRADESH

India

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Rule

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- Published on 15 March 2007
- Commenced on 15 March 2007
- [This is the version of this document from 15 March 2007.]
- [Note: The original publication document is not available and this content could not be verified.]

Andhra Pradesh Micro and Small Enterprises Facilitation Council Rules, 2007Published vide Notification No. G.O. Ms. No. 52, Industries and Commerce (SSI. A2), dated 15.03.2007Last Updated 25th September, 2019No. G.O. Ms. No. 52. - In exercise of the powers conferred by Section 30 read with sub-section (3) of Section 21 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006), the Government of Andhra Pradesh hereby makes the following rules, namely:-Preliminary

1. Short title and commencement.

- These rules may be called "the Andhra Pradesh Micro and Small Enterprises Facilitation Council Rules, 2007".

2. Definition.

- In these rules, unless the context otherwise requires-(a)"Act" means the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006);(b)"Section" means a section of the Act;(c)"Arbitration and Conciliation Act" means the Arbitration and Conciliation Act, 1996 (26 of 1996);(d)"Council" means the Micro and Small Enterprises Facilitation Council established by the Government of Andhra Pradesh Under Section-2"(e)"Institute" means any institution or centre providing alternate dispute resolution services referred to in subsections (2) and (3) of Section 18,(f)"Chairperson" means the Chairperson of the Council appointed under clause (i) of sub-section (1) of Section 21 of the Act.(g)"Member" means a member of the Council;(h)"Government" means

the Government of Andhra Pradesh;(i)The words and expressions used and not defined, but defined in the Act shall have the meanings assigned to them in the Act.

3. Manner of appointment, etc.

(a)The Government shall appoint the representatives, specified in clauses (ii), (iii) or (iv) of sub-section (1) of Section 21, as member of the Council;(b)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 by notification in the official gazette appoint a person to fill that vacancy.(c)A member, other than the Chairperson, shall hold office for a period not exceeding two years from the date of his appointment;(d)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 ceases to represent the category or interest from which he was so appointed.(e)Any member of the Council may resign from the Council by tendering one month's notice in writing to the Government. The power to accept the resignation of a member shall vest in the Government.(f)The Government may remove any member from office:-(i)If he is of unsound mind and stands so declared by a competent court; or(ii)If he becomes bankrupt or insolvent or suspends payment to his creditors; or(iii)If he is convicted of any offence which is punishable under the Indian Penal Code (Act XLV of 1860); or(iv)If he absents himself from the three consecutive meetings of the Council without the leave of the Chairperson, and in any case from five consecutive meetings; or(v)acquires such financial or other interest as is likely in the opinion of the Government, to affect prejudicially his functions as a member.

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

- (i) The Council shall meet atleast once a month;(ii)At least seven days' notice shall ordinarily be given for any meeting. However, in case of urgency a meeting may be called at such shorter notice as the Chairperson may consider sufficient;(iii)The Council may appoint/or engage the services of one or more experts in terms of Section 26 of the Arbitration and Conciliation Act, 1996.(iv)The Council, or a party to the dispute with the approval of the Council, may apply to the Court under Section 27 of the Arbitration and Conciliation Act, 1996, for assistance in taking evidence.(v)The reference/application of the aggrieved micro or small enterprises supplier shall contain full particulars of the supplier and its status, supplied goods or services, terms of payment, if any, agreed between the supplier and buyer, actual payment received with date, amount due and the interest duly calculated under Section 16 of the Act, supported by an affidavit, with necessary court fee stamp affixed thereon. 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 rights 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.(vi)The reference/application shall be acknowledged forthwith if it is delivered at the Office of the Council. Where the reference/application is received by registered post, its receipt shall be acknowledged on the same day. 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.(vii)On receipt of a reference under Section 18 of the Act, the Chairperson of the Council shall cause the reference and the buyers response thereto 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 proceeding meeting of the Council to examine and if found in order, it place for consideration of the Council at its next immediate meeting.(viii)The Council shall either itself conduct conciliation in each reference placed before it or seek the assistance of any institute or centre providing alternate dispute resolution services by making 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.(ix)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 acceptance of both parties, the Council or the institute shall first made efforts to bring about conciliation between the buyer and the supplier. The institute shall submit its report to the Council with in fifteen days of reference from the Council or with in such period as the Council may specify.(x)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 layer registered with may court, present his case before the Council or the institute during the arbitration proceedings. The institute shall submit its report to the Council with in such time as the Council may stipulate.(xi)Any decision of the Council shall be made by a majority of its members present at the meeting of the Council.(xii)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 of filing of an application.(xiii)The provisions of Sections 15 to 23 of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.(xiv)The Chairperson or any other officer authorised 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 (3) of Section 7 of the Act.

5. Remuneration and Allowances of Members.

- The remuneration, honorarium or fees and any allowances, that allowances, that may be paid to the members, shall be at such rates as the Government may by order specify.

6. Reference to be by statement of claim.

(1)A reference to the Council shall be made by way of a statement of claim in Form 1 accompanied by such documents and facts supporting his claim enclosing the requisite number of copies together

with an initial share deposit towards costs of an amount of rupees five hundred by way of a demand draft in the name of the Council.(2)If any reference contains any claim in respect of the matters other than those referred to in sub-section (1) of Section 6 of the Act, the Council shall return the claim to the claimant for deletion of the matters extraneous to that section.(3)The Council may require any claimant to provide any better statement or particulars of claim or any further documents in support of the claim as it may consider necessary for the purpose of the proceedings and if the claimant fails or omits to do so within thirty days of receipt of any such communication or within such further time as the Council may, for sufficient cause, allow, the council to terminate the proceedings without prejudice to the right of the claimant to make any fresh reference if he is otherwise entitled ,80 to do.

7. Challenge of member.

(1)On receipt of a statement of claim, every member shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality and any such disclosure shall be sent to the parties along with the notices in Form 2 calling for a statement of defence and thereafter, the requirements of sub-section (2) of Section 12 of the Arbitration and Conciliation Act shall apply.(2)The grounds for challenge of a member and the procedure for challenge shall be in accordance with Sections 12 and 13 of the Arbitration and Conciliation Act.(3)On a successful challenge, the Council shall cease to proceed with the reference and transfer the case to such other Council having alternate or concurrent jurisdiction over the dispute and such other Council shall thereafter proceed with the reference afresh or as it may deem fit having regard to the stage of proceedings completed in the former Council.

8. Statement of Defence.

(1)The Council shall if it is satisfied that, on the facts stated therein, it has jurisdiction to proceed with the reference and that the claimant is entitled under the Act to make a reference, cause a copy of the statement of claim to be sent by registered post to the respondent along with the copies of the attached documents and issue notice in Form 2 to the respondent asking him to furnish within fifteen days a statement of defence in Form 3 with such documents and facts in support of his defence or having a bearing on the matter under reference together with his half share of deposit for costs in such manner as may be specified therein and within the time allowed to the respondent for furnishing his statement of defence.(2)A copy of the notice in Form 2 shall also be sent by registered post to the claimant along with a notice in Form 4 calling upon the claimant to pay a further amount after adjusting the initial deposit made by him towards his half share of deposit for costs in such manner as may be specified therein and within the time allowed to the respondent for furnishing his statement of defence.(3)The Council may, on an application made by the respondent showing sufficient cause, allow such further time for the statement of defence as it may consider fit, but not exceeding thirty days from the date of receipt by the respondent of the notice under sub-rule (i).

9. Hearings and written proceedings.

(1) On receipt of the statement of defence and if the amount of deposits be paid by the parties, the Council shall send a copy of the statement of defence to the claimant and fix a date for appearance and hearing of the parties and issue notice by registered post in Form 5. (2) If the respondent fail or omit to send a statement of defence within the stipulated time given to him, the council shall proceed to fix a date for the appearance and hearing of the and issue notice by registered post in Form-5. Provided that if the respondent failed or omitted to pay his share of the deposit the Council shall call upon the claimant to pay that share also within fifteen days of receipt of the notice. Provided further that if the claimant has not paid the aforesaid share, the Council may suspend or terminate the proceedings. (3) At the first hearing, the Council shall not proceed to enter upon the merits of the subject matter in dispute till it has decided on any challenge to jurisdiction or any challenge to any of its members. (4) The Council shall decide whether to hold oral hearings for the presentation of evidence or for argument, or whether proceedings shall be conducted on the basis of documents and other materials. Provided that the Council shall hold oral hearings at an appropriate stage of the proceedings, on request by a party, unless the parties' have agreed that no oral hearing shall be held. (5) All Statements, documents or other information supplied to, or applications made to the council by one party, shall be communicated to the other party, and any expert report or evidentiary document on which the Council may rely in making its decision shall be communicated to the parties. (6) Where without cause: (a) the claimant fails to communicate his statement of claim in accordance with these rules and Section 23(1) of the Arbitration and Conciliation Act, 1996 the Council shall terminate the proceedings. (b) The respondent fails to communicate the statement of defence in accordance with these rules and Section 23(1) of the Arbitration and Conciliation Act, 1996 the Council shall continue the proceedings without treating that failure in itself as an admission of the allegations made by the claimant. (c) A party fails to appear at an oral hearing or to produce documentary evidence, the council may continue the proceedings and make the arbitral award on the evidence before it. (7) The Council may with the agreement of the parties, at any time during the proceedings, use mediation, conciliation or other procedures to encourage settlement of the dispute under Section 30 of the Arbitration and Conciliation Act, 1996. (8) The Council shall conduct its proceedings at such place as the Government may specify in the notification. (9) The Council, on such terms as it may think fit at any stage for reasonable or sufficient cause, adjourn the hearing from time to time but it shall so conduct the proceedings that that the decision is given as far as possible within ninety days of the first date of hearing. (10) At any stage of the proceedings, if the parties jointly mutually apply to the Council that the proceedings be terminated, then the Council shall terminate the proceedings.

10. Decision by Council.

(1) Where the Council is composed of three members, any decision of the Council shall be by a majority of all its members. (2) Notwithstanding any thing contained in sub-rule (1) if authorized by the parties or all the members of the Council, questions of procedure may be decided by the Chairperson.

11. Deposits.

(1) In fixing the deposits or supplementary deposits as an advance for costs and in determining the costs and expenses of the arbitration referred to in Section 31(8) of the Arbitration and Conciliation Act, 1996 the Council shall comply with any scale or scheme of fees and expenses that the government may, by order, specify and all the provisions of Section 38 of the Arbitration and Conciliation Act, shall be complied with. (2) In any case where the proceedings are terminated before making of an award, the Council shall adjust its costs and expenses from any of the deposits as it may deem fit and proper in the facts and circumstances of the case and refund the balances of deposits, if any, to the respective parties.

12. Award.

(1) The Council shall make an award in accordance with Section 31 of the Arbitration and Conciliation Act. (2) The award shall be stamped in accordance with the relevant law in force.

13. Interpretation of Rules.

- Notwithstanding anything contained in these rules, the arbitral proceedings shall be governed by the Arbitration and Conciliation Act and these rules shall be interpreted and applied so as to be consistent with and supplementary to and not in derogation of the arbitration and Conciliation Act, 1996.