

The *Micro, Small and Medium Enterprises Development Act, 2006* (the Act) is a beneficial legislation which aims to facilitate the promotion and development of micro, small and medium enterprises (MSMEs).

In order to ensure speedy recovery of dues, the Act prescribes a two-stage mechanism - comprising conciliation and arbitration - for settling the claims of micro and small enterprises.

Recently, the Central government *vide* Notification S.O. 2119(E), which came into force on July 1, issued a new composite criteria for classifying MSMEs, which comprises both 'investment in plant and machinery/equipment' and 'turnover'. Also, significant changes have been introduced in the registration procedure, with the aim to facilitate transparency and to eliminate the misuse of the MSME mechanism.

However, due to certain ambiguities in the Act, some of these enterprises are unable to avail of the benefits under the Act. In recent years, the Indian courts have pronounced numerous judgments to give clarity to the Act and to ensure that the Act is implemented in its true sense.

Here are 40 landmark judgments delivered by the Indian courts on the *Micro Small Medium Enterprises Development Act, 2006*:

Section 2(n)

Whether a Micro/Small Enterprise, which has not registered itself under Section 8, falls under the definition of 'Supplier' given under Section 2(n)?

[1. Uttar Haryana Bijli Vitran Nigam Ltd v. PM Electronics Ltd](#) [Judgment dated February 26, 2020]

The Allahabad High Court upheld the judgment of the lower court, which had placed reliance on a 2007 Government of India circular, to hold that it is not mandatory for an enterprise to file the memorandum under Section 8. Under this circular, it was clarified that filing of memorandum is discretionary and there is no limit of 180 days for such filing.

[2. GE T&D India Limited v. Reliable Engineering Projects and Marketing](#) [Judgment dated February 15, 2017]

The Delhi High Court held that an enterprise which does not register itself as a supplier does not cease to be one, as the purpose of registration under Section 8 is only to make it easier for the micro/small enterprises to derive the benefits of the Act. Further, it held that since the enterprise continued to supply to the buyer after registration under Section 8, it would be entitled to avail the benefits under the Act. [See Para 32, 40]

This judgment was relied on by the Division Bench of Delhi High Court in [Chief General Manager \(Contracts\) Neyveli Lignite Corporation Limited v. Driplex Water Engineering Limited](#) [Judgment dated September 2, 2019] and recently, in [Godwin Construction Pvt. Ltd. v. Tulip Contractors](#) [Judgment dated February 5, 2020]

[3. Ramky Infrastructure Private Limited v. Micro and Small Enterprises Facilitation Council](#) [Judgment dated July 4, 2018]

The Delhi High Court observed that the definition of 'supplier' under Section 2(n) consists of four categories and is exhaustive in nature. The respondent is a company and the services provided by respondent are clearly services rendered by a micro/small enterprise and, therefore, the respondent - being engaged in supply of services rendered by a micro/small enterprise - would fall within the fourth category of entities that are included as a "supplier". The Court concluded that it is not necessary for such entities to have filed the Memorandum under Section 8(1) of the Act. Also, Section 2(n)(iii) not only includes entities which sell goods produced by a micro/small enterprise or supply the services rendered by a micro/small enterprise, but also those micro/small enterprises which source the goods or services from their own undertaking. [See Para 17, 26, 27]

4. Indur District Cooperative Marketing Society Ltd. v. Microplex (India), Hyderabad [Judgment dated October 27, 2015]

The Court held that since Section 8 of the Act itself gives discretion to the micro/small enterprises to file the memorandum, such registration is not mandatory. In view of the object of the Act, it held that the requirement of filing memorandum is only qualifying in nature and does not limit the scope of the term 'supplier'. Therefore, the registration under Section 8(1) is not a pre-requisite to fall under the definition of 'supplier'. [See Para 27-29]

5. M/s Hameed Leather Finishers v. M/s Associated Chemical Industries Kanpur Pvt. Ltd. [Judgment dated October 11, 2013]

The Court held that the use of the word "includes" under Section 2(n) clearly indicates that the intention of the Legislature was to enlarge the meaning of the term 'supplier'. [See Para 22]

6. Scigen Biopharma Pvt. Ltd. v. Jagtap Horticultuer Pvt. Ltd [Judgment dated November 21, 2019]

The Court held that as per Section 8 read with Section 2(n), the Act cannot have retrospective application. Further, an enterprise which had filed the memorandum after entering into a contract with the buyer, would not fall within the definition of 'supplier'. [See Para 30, 34]

Similar view was taken in **Easun Reyrolle Limited v. Nik San Engineering Pvt. Ltd.** [Judgment dated January 18, 2019]

Section 18

Whether the dispute resolution mechanism under Section 18 of the Act overrides the arbitration agreement between the parties?

7. Principal Chief Engineer v. M/S Manibhai And Bros (Sleeper) [Order dated July 5, 2017]

The Supreme Court upheld the Gujarat High Court's judgment on the interpretation of Section 18. The High Court held that since the Act is a special legislation and has an overriding effect, the parties governed by it are bound to follow the mechanism

provided under Section 18 of the Act. Similar view has been taken by the High Courts in the following cases:

8. [**Mackintosh Burn Limited v. Micro and Small Enterprises Facilitation Council**](#) [Judgment dated February 10, 2020]

9. [**Ved Prakash v. P. Ponram**](#) [Judgment dated January 23, 2020]

10. [**Chief General Manager \(Contracts\) Neyveli Lignite Corporation Limited v. Driplex Water Engineering Limited**](#) [Judgment dated September 2, 2019]

11. [**Bata India Ltd. v. AVS International Pvt. Ltd**](#) [Judgment dated August 9, 2019]

12. [**Union of India v. Industrial Engineering Instruments**](#) [Judgment dated August 6, 2019]

13. [**Mangalore Refinery & Petrochemicals Ltd. v. MSEFC**](#) [Judgment dated January 24, 2019]

14. [**Gujarat State Petronet Ltd v. MSEFC**](#) [Judgment dated August 6, 2018]

15. [**GE T&D India Limited v. Reliable Engineering Projects and Marketing**](#) [Judgment dated February 15, 2017]

16. [**Bharat Heavy Electrical Limited v. MSEFC**](#) [Judgment dated September 18, 2017]

17. [**Paper & Board Convertors, Agra v. Uttar Pradesh State Micro & Small Enterprises Facilitation Council, Kanpur**](#) [Judgment dated April 29, 2014]

18. [**Welspun Corp. Ltd. v. MSFEC, Punjab**](#) [Judgment dated December 13, 2011]

In all the above mentioned cases, jurisdiction of the Council was invoked by making a reference under Section 18(1).

19. [**M/s. Porwal Sales v. M/s. Flame Control Industries**](#) [Judgment dated August 14, 2019]

The Court observed that sub-section (1) of Section 18 should be read with sub-section (4). It held that Section 18 is only attracted when the jurisdiction of the Council is invoked by a party for an amount due under Section 17. Further, the jurisdiction clause under Section 18(4) does not create a bar on seeking the appointment of an arbitrator under Section 11 of the Arbitration Act. Since the word “may” has been used under Section 18(1), it is not mandatory for the supplier or buyer to initiate proceedings under Section 18. However, the Court also held that in cases where a reference has already been made to the Council, the application for the appointment of an arbitrator is not maintainable. [See Para 25-28]

20. [**M/s Steel Authority of India and Anr. v. MSEFC**](#) [Judgment dated August 27, 2010]

The Court held that there is no inconsistency between an arbitration undertaken as per Section 18 and the one conducted under the arbitration clause, as both are governed by the provisions of Arbitration Act. Thus, the non-obstante clause under Section 24 is

inapplicable as it only overrides the things which are inconsistent with Sections 15 to 23. Further, it was held even though Section 18 provides a forum for arbitration, it will not render the independent arbitration agreement ineffective. [See Para 11]

Section 18

Whether the Facilitation Council can act both as a conciliator and an arbitrator under Section 18?

21. [Gujarat State Petronet Ltd v. MSEFC](#) [Judgment dated August 6, 2018]

The Court observed that by virtue of sub-sections (2) and (3) of Section 18, Section 80 of the Arbitration Act, which bars a conciliator from acting as an arbitrator in the same dispute, is applicable to the proceedings initiated under Section 18. On the basis of a harmonious reading of both these provisions, the Court held that the Council cannot act as both and it may refer the matter to any centre or institution which provides alternate dispute resolution services. [See Para 20-22]

Similar decision was given by the Court in [M/S. Pal Mohan Electronics Pvt. Ltd. v. The Secretary](#) [Judgment dated March 27, 2019]

22. [Reliance Communications Limited v. State of Bihar](#) [Judgment dated June 19, 2018]

The Court held that there is no inconsistency between Section 80 of the Arbitration Act and Section 18(3) and the overriding clause is only applicable in case there is any inconsistency. Also, the deeming fiction under Section 18(3) does not imply that the parties have agreed that a conciliator will also be competent to act as arbitrator. Thus, once the Council conducts conciliation in a dispute, it is prohibited to act as an arbitrator in the same dispute. [See Para 19]

23. [The Best Towers Private Limited v. Reliance Communications Limited](#) [Judgment dated February 2, 2019]

The Court held that the overriding effect given to Section 18(3) in terms of Section 24 of the Act, clearly overrides any bar under Section 80 of the Arbitration Act. The Legislature clearly intended that the Council can act as an arbitrator and conciliator. [See Para 20]

The Courts have taken a similar view in the following cases:

24. [M/s Mahvir Transmission Udyog Pvt. Ltd. v. Paschimanchal Vidyut Vitran Nigam Ltd. & Anr.](#) [Judgment dated May 22, 2018]

25. [Refex Energy Limited v. Union of India](#) [Judgment dated June 2, 2016]

26. [Welspun Corp. Ltd. v. Micro and Small, Medium Enterprises Facilitation Council](#) [Judgment dated December 13, 2011]

27. [Eden Exports Company v. Union of India](#) [Judgment dated November 20, 2012]

28. [M/S Cummins Technologies India Private Limited v. Micro And Small Enterprises Facilitation Council](#) [Judgment dated March 3, 2020]

The Court observed that since the bar under Section 80 is subject to a contrary agreement between the parties, the principle laid down under it is not absolute in nature. While laying emphasis on the jurisdiction of the Council under Section 18(4) and the overriding clause under Section 24, the Court held that the Council can act as both.

Also, the purpose behind such prohibition is to eliminate the incidence of personal bias in the Arbitral Tribunal. However, the Court observed that since the Council is a statutory body, comprising of three to five members, the chance of such bias or prejudice is absent and therefore, there is no need for the bar under Section 80. [See Para 60 to 63]

The Court took a similar view in the later judgment of [TBED \(India\) Transformer Private Limited v. UP Micro And Small Enterprises & Anr.](#) [Judgment dated April 22, 2020]

29. [Ved Prakash v. P Ponram](#) [Judgment dated January 23, 2020]

The Court held that the Council is not barred from proceeding to arbitration under Section 18(3) after conducting conciliation under Section 18(2). However, it shall ensure that the same member who acted as a conciliator previously does not sit as an arbitrator, unless the parties voluntarily agree to it. [See Para 8.7]

Section 18(4)

Whether the jurisdiction of Facilitation Council under Section 18(4) decides the 'seat' or 'venue' of arbitration?

30. [Indian Oil Corporation Ltd. v. FEPL Engineering \(P\) Ltd.](#) [Judgment dated September 26, 2019]

The Court held that the jurisdiction of the Facilitation Council under Section 18(4), which is decided on the basis of location of the supplier, only determines the 'venue' and not the 'seat' of arbitration. Thus, if the parties have entered into an agreement on the 'seat' of arbitration, it will not cease to be in effect due to Section 18(4). [See Para 23]

Whether the Limitation Act, 1963 is applicable to the claims made under the Act?

31. [Delton Electricals v. Maharashtra State Electricity Distribution Company Limited](#) [Judgment dated August 31, 2017]

The Court rejected the contention that by virtue of Section 43 read with Section 2(4) of the Arbitration Act, the Limitation Act is not applicable to statutory arbitrations. Taking into consideration that the limitation laws have a beneficial purpose, it held that an interpretation which allows the Council to make an award on time barred claims cannot be taken by the Court. Further, it was held that such awards should be set aside on the ground of violating public policy. [See Para 60, 66, 67, 76]

Relying on the aforesaid decision, a similar view was taken by the Court in [Shah & Parikh, Engineers & Contractors v. Urmi Trenchless Technology Pvt. Ltd.](#) [Judgment dated February 25, 2019].

Section 19

Whether Section 19 is constitutionally valid?

32. [**The Managing Director, KSRTC v. Union of India**](#) [Judgment dated December 1, 2009]

The Court observed that the intention behind Section 19 is to benefit and help the micro/small enterprises and a legislation cannot be challenged on the ground of such inequities. Further, it was held that under Section 19, since the differential treatment of buyers and sellers is on valid grounds, the provision for pre-deposit is not violative of Article 14 of the Constitution. [See Para 9,13]

Relying on this decision, the Court in [**Eden Exports Company v. Union of India**](#) [Judgment dated November 20, 2012] upheld the constitutional validity of Section 19.

Whether pre-deposit of 75% is a mandatory requirement?

33. [**Goodyear India Ltd. v. Norton In tech Rubbers Private Ltd**](#) [Judgment dated March 15, 2012]

The Court held that under Section 19, the requirement of depositing 75% of the amount of the award/decreed/order is mandatory and the Court has no discretion to waive off or reduce the said amount. However, due to the expression “*in the manner directed by such court*” under Section 19, the Court can allow the pre-deposit to be made in instalments, if felt necessary. [See Para 10,11]

Whether the pre-deposit has to be made at the admission stage or at the time of hearing of the matter?

34. [**Snehadeep Structures Private Ltd. v. Maharashtra Small-Scale Industries Development Corporation Ltd**](#) [Judgment dated January 5, 2010]

While dealing with the predecessor legislation i.e. the Interest Act, 1993, the Apex Court held that the deposit under Section 19 has to be made before filing the application under Section 34 of the Arbitration Act. [See Para 55]

35. [**M/s. ICSA \(India Limited\) v. M/s. Swastik Wires**](#) [Judgment dated November 25, 2016]

The Court held that the deposit has to be made while filing the application under Section 34, otherwise the application will not be maintainable. [See Para 26,27]

36. [**Ravindranath GE Medicate Associate Private Limited v. Clean Coats Private Limited**](#) [Judgment dated July 20, 2016]

The Court held that by reading the terms “*with it*” and “*entertained by any Court*” together under Section 19, it is clear that the amount has to be deposited with the Court at the time of hearing and not along with the application filed under Section 34. [See Para 34 and 35]

Similar view was taken by the Court earlier in [**E-Square Leisure Pvt. Ltd. v. K.K. Dani Consultants and Engineers Pvt. Ltd.**](#) [Judgment dated February 1, 2013]

Whether Section 19 is applicable in cases of contractual arbitration?

[37. AVR Enterprises v. Union of India](#) [Judgment dated May 8, 2020]

The Court observed that if Section 19 was to apply to every decree, award or order, then there was no need for the Legislature to provide the expression “*made either by the Council, or any institution or centre providing alternate dispute resolution services to which reference has been made by the Council*”.

Further, unlike Section 6 of the Interest Act, 1993, which provided for filing of recovery suit, Section 18 only contemplates a reference to the Council. Therefore, it held that Section 19 would apply only to proceedings initiated under Section 18 of the Act and not in cases of private arbitration. [See Para 40 to 44]

Similar view was taken in [Bharat Heavy Electrical Limited v. MSEFC](#) [Judgment dated September 18, 2017].

[38. JMC Projects \(India\) Ltd. v. Mechtch Engineers](#) [Judgment dated January 10, 2011]

The Court observed that Section 19 uses the term ‘decree’. However, neither the Council nor any institution or centre to which reference is to be made by the Council passes a decree, which makes this term redundant. Taking into consideration the legislative intent of the Act, it held that Section 19 is applicable to all cases where the buyer challenges an award or order for the payment of dues, made in the favour of the supplier. [See Para 15-17]

[39. Saryu Plastics Pvt. Ltd. v. Gujarat Water Supply and Sewerage Board](#) [Judgment dated September 11, 2017]

The Court concurred with the view taken in **JMC Projects**. Additionally, it observed that if the applicability of Section 19 is only limited to the award passed under Section 18, buyers can insist that micro/small enterprises to undertake independent arbitration, which will deprive the micro/small enterprise from availing the benefit of Section 19. Thus, it was held that a narrow interpretation to Section 19 would defeat the very purpose of the Act. [See Para 16]

Whether the deposit can be made in modes of payment other than cash?

[40. Uttarakhand Power Corporation Limited \(UPCL\) v. Mahaveer Transmission Udyog Pvt. Ltd.](#) [Judgment dated July 31, 2018]

Relying on the judgment in **Goodyear India Ltd.**, the Court held that the deposit under Section 19 has to be only made in cash and that it has no discretion to allow the deposit to be made in any other mode such as bank guarantee or other security. Further, the Court held that the proviso to Section 19, which requires the Court to order some percentage of the deposited amount to be paid to the supplier, makes it clear that the Legislature intended to have the deposit by way of cash only, as otherwise the requirement under this proviso cannot be fulfilled. [See Para 13-16, 20]

The piece has been co-authored by Tariq Khan, Principal Associate at Advani & Co. and Nehreen Mehra, final year student at Amity Law School, Delhi (GGSIPU).