

LEGAL ASPECTS IN MSME

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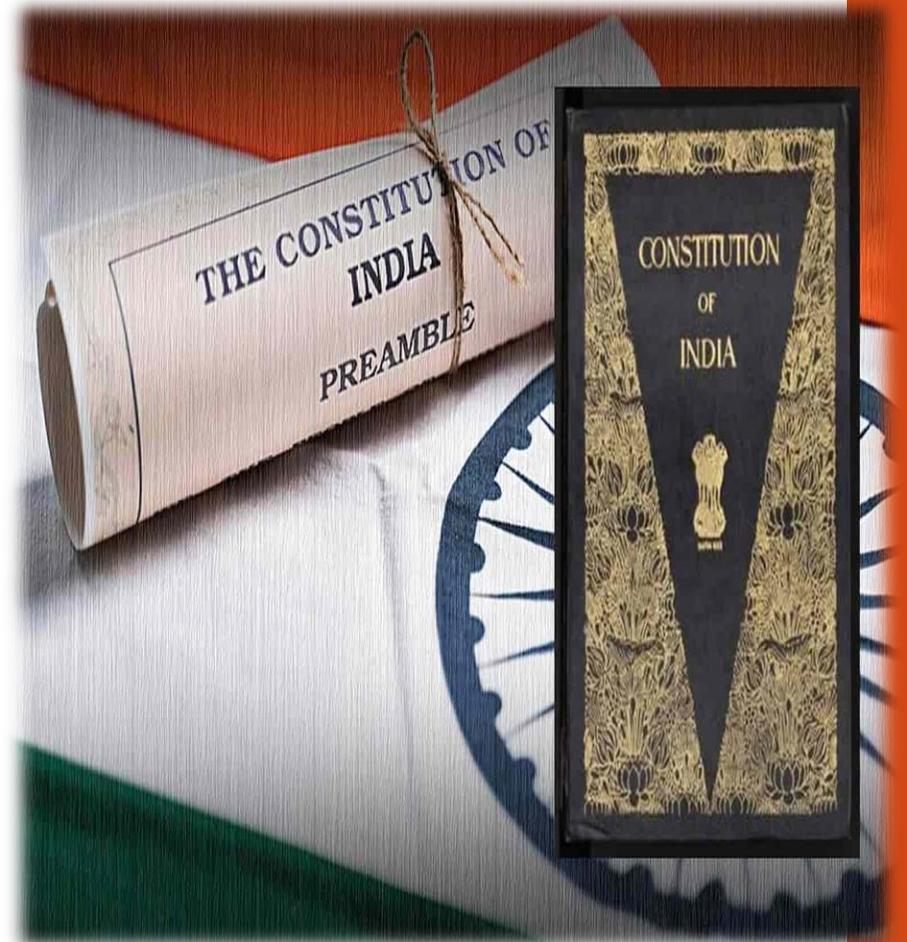


ARTICLE 39 OF THE INDIAN CONSTITUTION

- The State shall, in particular, direct its policy towards securing-

(b) that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;



WE IN INDIA, ARE VERY
GOOD AT PASSING THE LAWS
BUT VERY BAD AT
IMPLEMENTING THEM...?



STRUCTURE OF BUSINESS



UDYAM REGISTRATION IS MANDATORY

MSME AND LEGAL ISSUES



- Choosing the right business structure
- Registration and licensing requirements
- Labour Laws
- Tax obligations
- Industry Specific Regulations
- Intellectual property rights
- Data protection and privacy laws
- Legal disputes
- Government schemes and incentives for MSME
- Banking
- Succession planning
- Merger and acquisitions

Choosing the right business structure

- Nature of Business
- Long term goal
- Risk tolerance
- Tax implications



REGISTRATION AND LICENSING REQUIREMENT

- MSME Registration (subsidy, no interest loans, start up funding and tax rebates)
- GST registration
- Local Municipal Licenses



LABOUR LAWS



- Minimum wages Act
- Payment of wages Act
- Industrial Disputes Act
- Employees Provident Fund & Miscellaneous Provisions Act
- State Insurance Act
- Sexual Harassment of Women at work place Act

DRAFTING EMPLOYMENT CONTRACTS

- Job title and description
- Compensation and benefits
- Working hours and leaves
- Confidentiality and non compete clauses
- Termination conditions



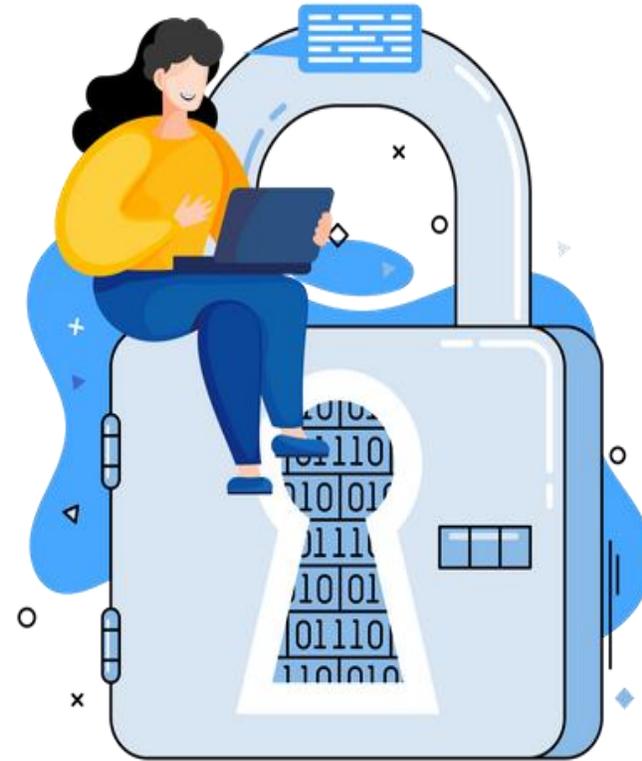
INTELLECTUAL PROPERTY RIGHTS



- Trademark
- Patent
- Copy right
- Trade secrets

DATA PROTECTION AND PRIVACY LAWS

- Information Technology Act 2000
- Digital Personal Protection Act, 2023



LEGAL DISPUTES



- Contract disputes
- Recoveries
- Employment disputes
- Intellectual property infringements
- Regulatory compliance issues

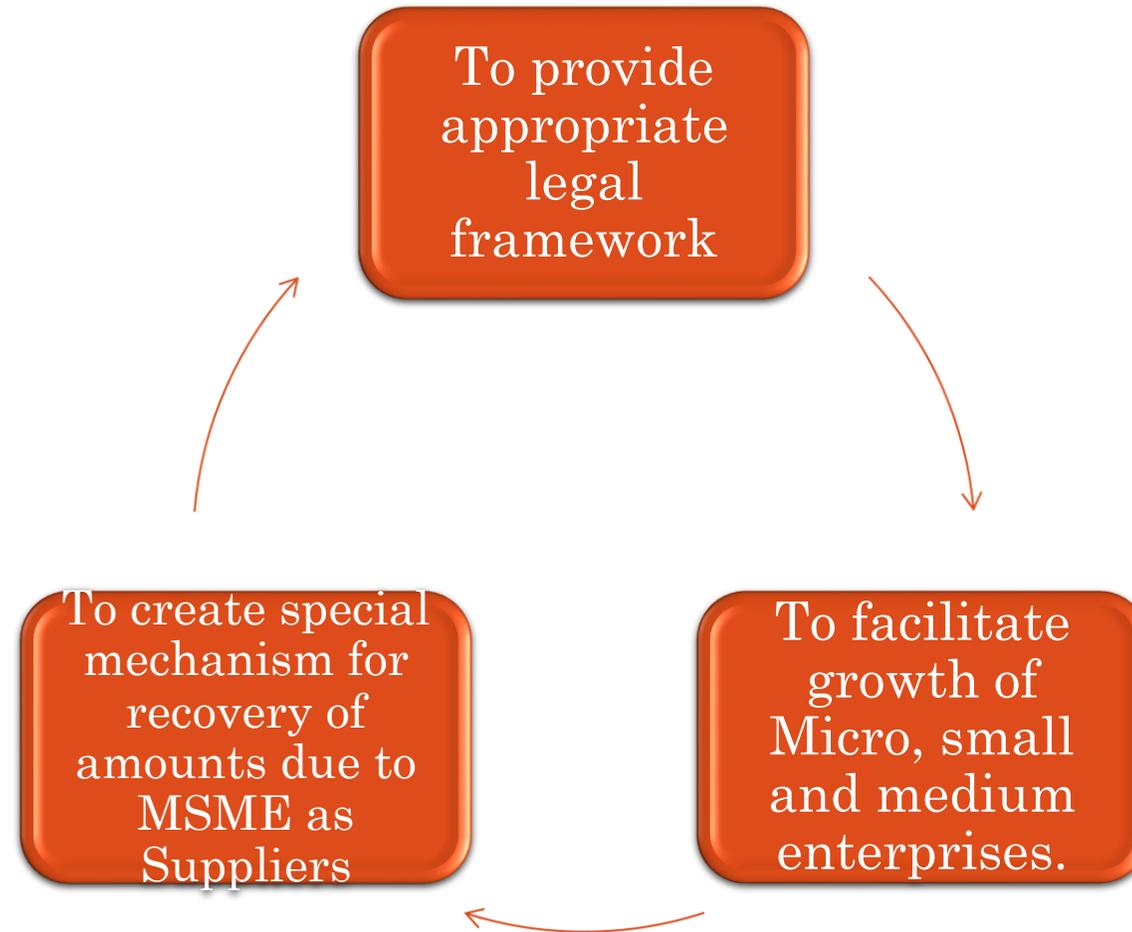
STEPS TO HANDLE LEGAL DISPUTES

- Protection is better than cure
- Proper documentation
- Seek legal advice
- Attempt amicable resolution (negotiation, mediation, arbitration)
- Litigation



THE MICRO, SMALL AND MEDIUM ENTERPRISES ACT, 2006

- Object:-



BENEFITS OF BEING CLASSIFIED AS MSME

- Collateral-Free Loans
- Lower Interest Rates & Priority Lending:
- Government Subsidies & Incentives
- Preference in Procurement
- Protection Against Delayed Payments
- Tax & Compliance Benefits
- Credit Rating & Easier Access to Capital Markets
- Skill Development & Training Program



IMPORTANT DEFINITIONS :-

- **BUYER**:-“buyer” means whoever buys any goods or receives any services from a supplier for consideration;
- **SUPPLIER**:- “supplier” means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8



- **Enterprise-**“enterprise” means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951) or engaged in providing or rendering of any service or services;



MECHANISM OF RECOVERY OF PAYMENT- (CHAPTER V)

- Disputes to be referred to MSME facilitation council
- Only Micro and Small enterprises can approach the Facilitation Council



INTEREST PAYMENT

(Most important)



- The buyer is liable to pay compound interest with monthly rest to the supplier at 3 times the bank rate as notified by the Reserve Bank of India.

ACCOUNTS AND INCOME TAX

- Requirement to specify the unpaid amount with interest in the annual statement of accounts which need to be audited.
- Interest due not allowed as deduction from income.



Interest

THE MEDIATION ACT, 2023

- MSME Facilitation Council will first try Mediation.
- If Mediation fails the Council shall adopt the provisions of Arbitration and Conciliation Act, 1996.



COMPOSITION OF THE COUNCIL

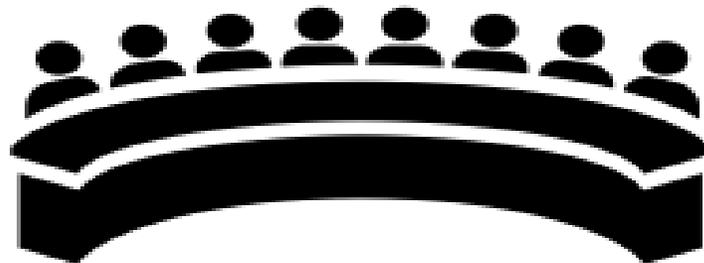
- Three to five members.

i) Director of Industry State Government or any officer not below such Director.

ii) one or more office-bearers or representatives of associations of micro or small industry or enterprises in the State; and

(iii) one or more representatives of banks and financial institutions lending to micro or small enterprises; or

(iv) one or more persons having special knowledge in the field of industry, finance, law, trade or commerce.



DECISION



- The award passed by the Facilitation Council is final and binding as if it is decree by the Civil Court

- CHALLENGES TO THE AWARD :- (most important provision)

Deposit of 75% of decreed amount in the Court and its disbursal subject to conditions



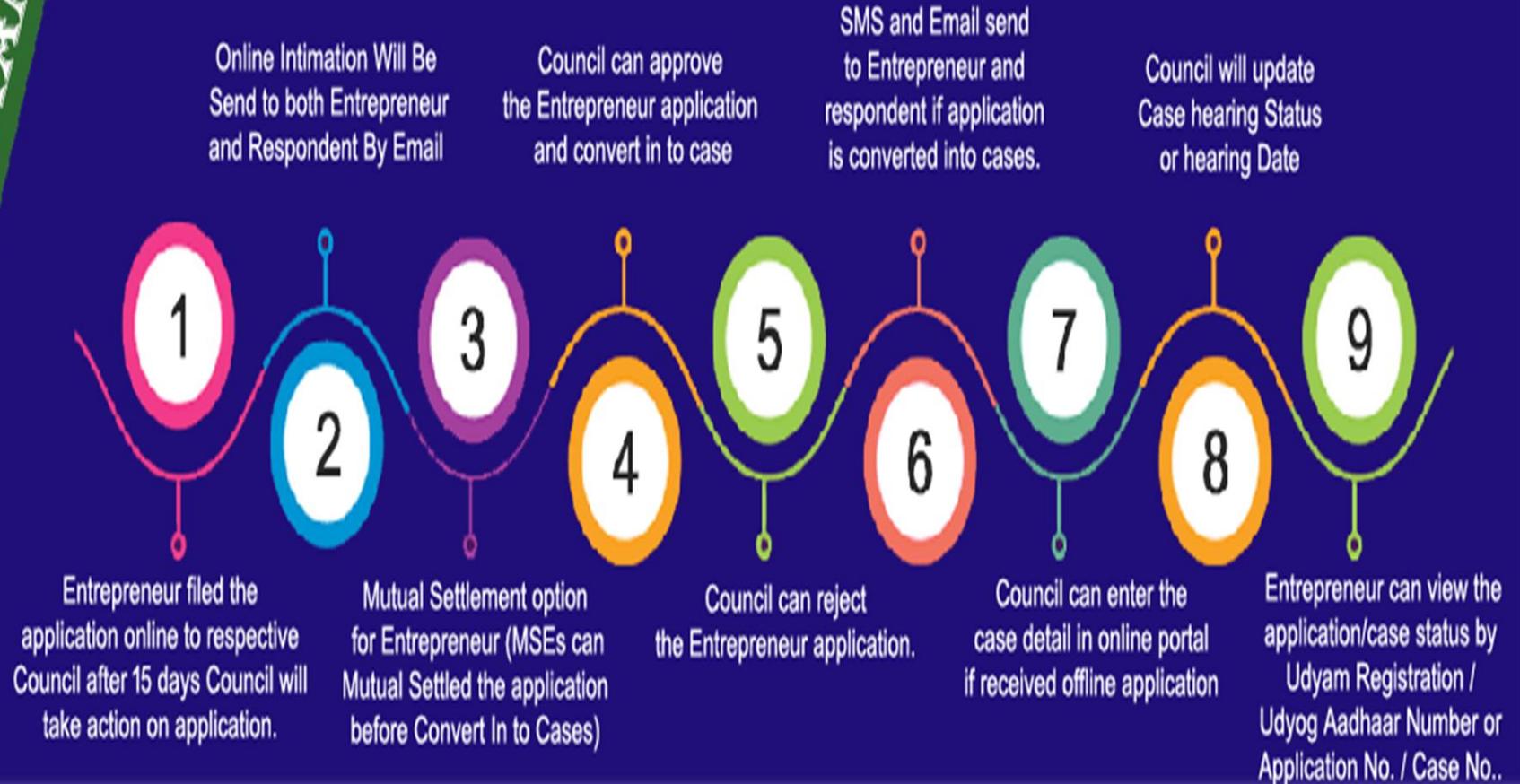
• MSME SAMADHAN WAS LAUNCHED ON 30TH OCTOBER 2017



Ministry of Micro, Small
and Medium Enterprises
Government of India

सत्यमेव जयते

MSME SAMADHAN

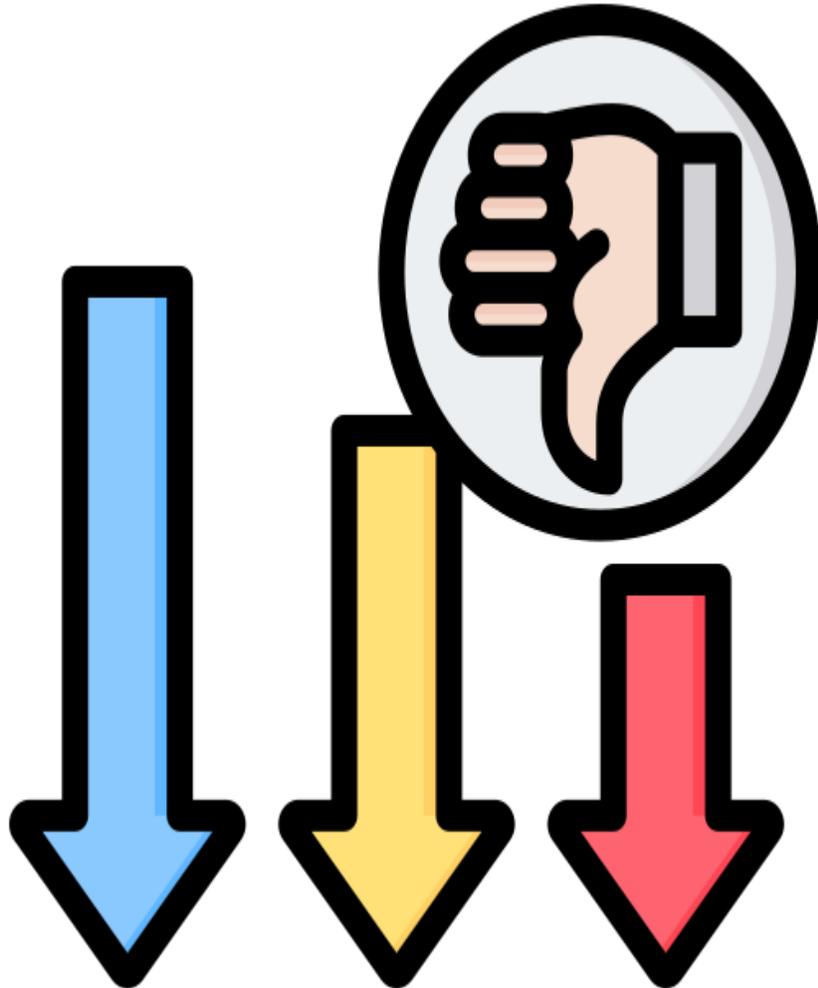


ADVANTAGES

- Speedy recovery
- The buyer is liable to pay compound interest with monthly rest to the supplier at 3 times the bank rate as notified by the Reserve Bank of India
- No court fees payable.
- Easy procedure.
- Real time tracking of application status.
- Jurisdiction at the place of the supplier against any buyer any where in India.



DISADVANTAGES



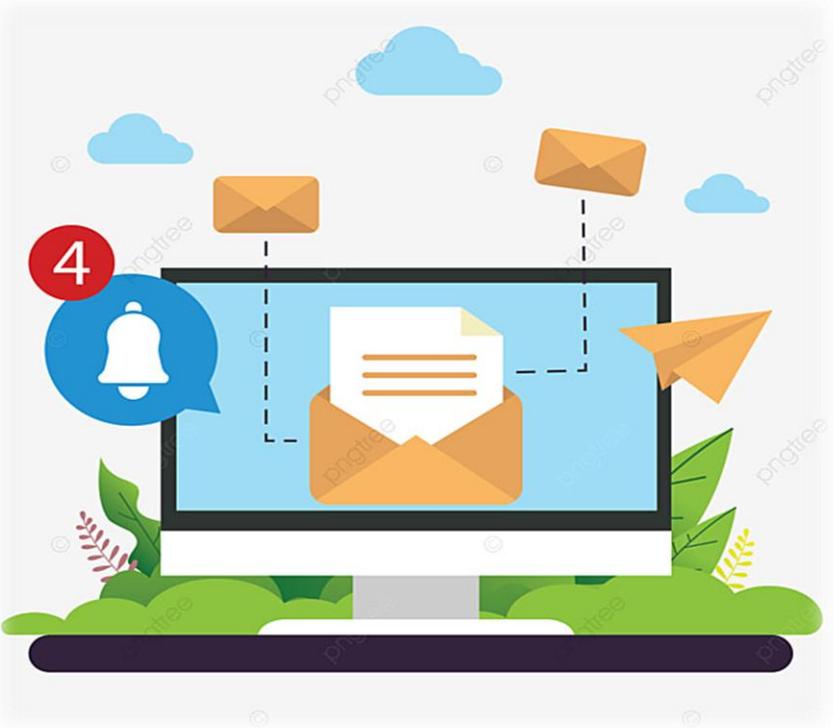
- Pendency of the matters
- Geographical constraints.
- Facilitation Council lacks Judicial standards.
- Vacancies in Facilitation Council
- 90 days time limit is removed by 2023 amendment.

IMPORTANCE OF DOCUMENTATION

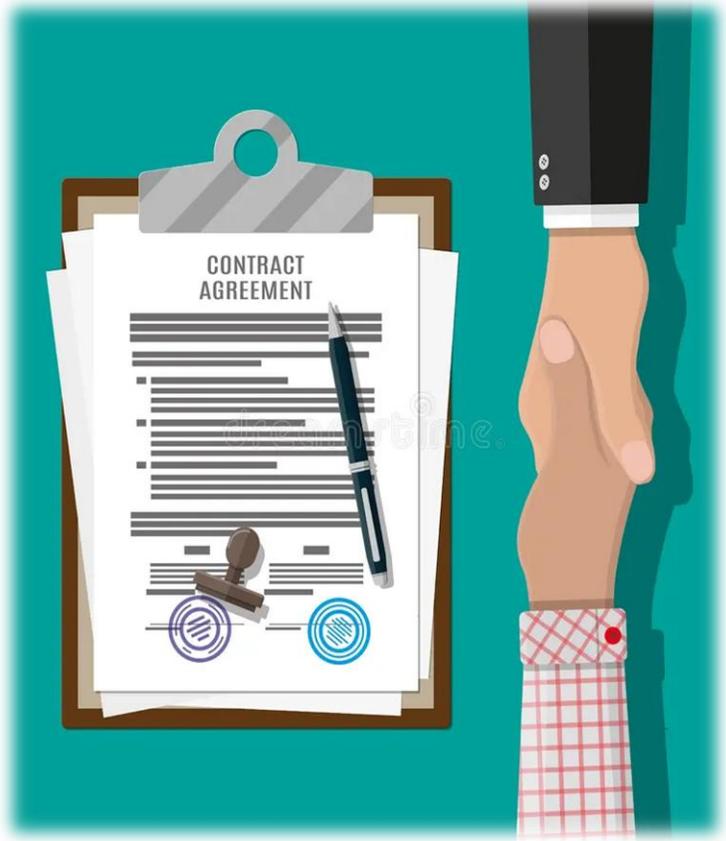
- Facilitation Council entertains the matter only if there are proper documents.



E-MAILS, E-INVOICES, E-SIGNS ARE NOW RECOGNISED



AGREEMENT BETWEEN BUYER AND SUPPLIER



- Object of agreement
- term,
- order and delivery,
- price and payment,
- supply and inspection,
- warranties,
- confidentiality,
- termination,
- force majeure,
- Arbitration governing laws and
- Jurisdiction.

IF NO AGREEMENT

- Alternatively, if there is no express agreement is to be entered into –
- proper quotation,
- purchase order,
- invoice,
- delivery challan with proper terms and conditions relating to payment, delivery should be include.



ALTERNATIVES TO FACILITATION COUNCILS

- Civil Summary Suits
- Private Arbitration.



OTHER ALTERNATIVES

- Take advance payments.
- Post dated cheque.
- Letter of credit through bank.



CHALLENGES ON THE GROUND



1. Access to credit, Banks still requires collateral for loans
2. Prepayment closure charges
3. No co-ordination between government and banks
4. Benefit of all government schemes does not reach MSME
5. Regulatory burden-Shops and Establishment Act, Factories Act, Companies Act, Employees State Insurance and Provident Funds Act, GST, Gratuity Act.
6. References by Facilitation Council to outside mediator or arbitrator.
7. Need for more Facilitation Councils

CASELAWS

GUJARAT STATE CIVIL SUPPLY CORPORATION

VS

MAHA KALI FOODS PRIVATE LTD

(2023) 6 SCC 401

- MSME act will have precedence over the Arbitration and Conciliation Act, 1996
- However if a party does not invoke MSME Act and if Arbitration is invoked prior to MSME Act the same shall continue.

SHRISTI INFRASTRUCTURE DEVELOPMENT

VS

SCORPIO ENGINEERING PRIVATE LTD

2025 SCC Online DEL 2985

- Interest under Section 16 of the MSMED Act, 2006 can be claimed in Arbitration.

SILPI INDUSTRIES

VS

KERELA SRTC

(2021) 18 SCC 790

Q. Whether the law of limitation are applicable to MSME cases....?

A. Limitation Act, 1963 is applicable. However there is no provision in the Act clarifying the same.

Q. Whether counter claim by buyer is maintainable....?

A. Yes, it is maintainable.

“Winston Churchill”



“Courage is what it takes to stand up and speak. Courage is also what it takes to sit down and listen.”

NEW
Beginning

