

[Home](#) › [Experts Corner](#) › **Msme Quarterly Digest: April-June 2025**

MSME Quarterly Digest: April-June 2025

by Abhisaar Bairagi*, Milind Sharma** and Ausaf Ayyub***

Published on August 8, 2025 - By Editor



Advertisement



The Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act)¹ has emerged as a significant legislation for protecting the interests of micro, small and medium enterprises (MSMEs), particularly in disputes relating to delayed payments. As the involvement of the MSME entities in the economy continues to grow, so does the complexity of issues surrounding the interpretation of the MSMED Act, particularly in relation to its interaction with other legal frameworks like the Arbitration and Conciliation Act, 1996², Limitation Act, 1963³, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)⁴ and the Insolvency and Bankruptcy Code, 2016 (IBC)⁵.

In the second quarter of 2025, the Indian courts delivered several noteworthy rulings that resolved some of the long-standing issues with respect to the MSMED Act. These decisions range from allowing conciliation even in time-barred matters for MSME claims⁶ to whether statutory benefits apply in purely contractual arbitrations and also cover Section 9⁶ of the Arbitration and Conciliation Act, 1996 can be invoked before a reference is made under Section 18(3)⁷ of the MSMED Act, these decisions reflect a deeper judicial engagement with the MSMED framework.

**EN**

3

This article aims to consolidate these key judgments and examine how courts are applying the provisions of the MSMED Act in practical and real-world scenarios, often involving overlaps with other legal frameworks.

Whether an MSME entity seeks conciliation under Section 18 of the MSMED Act even for time-barred claims?

This issue fell for consideration before the Supreme Court in its recent judgment in *Sonali Power Equipments (P) Ltd. v. Maharashtra SEB*⁸, wherein it was held that an MSME entity can seek conciliation under Section 18(2)⁹ of the MSMED Act even for its time-barred claims. It held that there is no provision either under the Arbitration and Conciliation Act, 1996¹⁰ or under the MSMED Act that extends limitation to conciliation proceedings, which are non-adjudicatory in nature and are not governed by the Limitation Act, 1963¹¹. However, the Court clarified that the law of limitation would apply to arbitrations under Section 18(3)¹² of the MSMED Act, therefore, those claims cannot be referred to arbitration but can only be conciliated under Section 18(2)¹³ of the MSMED Act.

Whether an MSME entity is automatically entitled to the benefits of the rehabilitation and revival framework of the Reserve Bank of India (RBI) without disclosing its status as an MSME entity to the bank?

This issue fell for consideration before the Supreme Court in its recent judgment in *Shri Shri Swami Samarth Construction & Finance Solution v. NKGSB Co-operative Bank Ltd.*¹⁴ wherein it was held that an MSME entity which failed to disclose its status as an MSME entity registered with Udyam portal to the bank cannot later challenge the recovery proceedings by the bank under the SARFAESI Act¹⁵ on the ground that it is protected under the rehabilitation and revival framework of the RBI. It held that borrowers cannot remain passive through the recovery process only to turn around later and challenge the validity of the bank's action on undisclosed grounds.

Whether the provisions of the MSMED Act also apply to a non-statutory arbitration wherein an MSME entity is a party?

This issue fell for consideration before the Delhi High Court in its recent judgment in *Shristi Infrastructure Development v. Scorpio Engg. (P) Ltd.*¹⁶ ¹⁷16 of the MSMED Act, which provide for penal interest on delayed payments to the MSME entity, would also apply to a contractual arbitration wherein an MSME entity is a party. The Court held that merely because the MSME entity did not specifically invoke the dispute resolution mechanism under the MSMED Act, the same would not make the beneficial provisions of the MSMED Act non-applicable to an arbitration invoked otherwise by the MSME entity. The Court upheld an award of 6% interest per annum.



EN

Whether the Bar to an even number of arbitrators under Section 10 of the Arbitration and Conciliation Act, 1996 applies to arbitration under the MSMED Act?

This issue fell for consideration before the Calcutta High Court in its recent judgment in *BESCO Ltd v. Hindcon Chemicals (P) Ltd.*¹⁸ wherein the High Court was called upon to answer on the validity of an award passed by the Micro and Small Enterprises Facilitation Council (MSEF Council) consisting of 4 members. The Court held that the provision of Section 10(1)¹⁹ of the Arbitration and Conciliation Act, 1996, which prohibits a tribunal consisting of an even number, does not strictly apply to an arbitration under the MSMED Act. It held that the provision is meant for arbitrations wherein the Tribunal is constituted by the parties and would not apply to a tribunal/council constituted under a statute.

Whether the mandate of the MSEF Council automatically terminate upon its failure to conclude proceedings within 90 days?

This issue fell for consideration before the Delhi High Court in its recent judgment in *MDD Medical Systems (India) (P) Ltd. v. Delhi International Arbitration Centre*²⁰, wherein the Court held that the 90-days period provided under Section 18(5)²¹ of the MSMED Act does not provide the time-limit for the Arbitral Tribunal to conclude the arbitral proceedings rather it provides the time-limit for the Council to make a reference to arbitration. Moreover, it held that even if it is assumed that the 90 days' time-limit is for the Arbitral Tribunal, the same is only directory and not a mandatory provision since it does not provide for any consequence in case of non-adherence unlike Section 29-A²² of the Arbitration and Conciliation Act, 1996 which provides for termination of the mandate of the Tribunal in case of non-adherence.

Whether the rigours of Section 9(3) of the Arbitration and Conciliation Act, 1996 also apply to arbitration under the MSMED Act?

This issue fell for consideration before the Calcutta High Court in its recent judgment in *Lakhotia Metalizers (P) Ltd. v. Matashree Snacks (P) Ltd.*²³, wherein Court held that once the arbitration commences under Section 18²⁴ of the MSMED Act, the provisions of the Arbitration and Conciliation Act, 1996²⁵ starts governing such an arbitration, therefore, the rigours of Section 9(3)²⁶ of the Arbitration and Conciliation Act, 1996, which bars an application under Section 9²⁷ of the Arbitration and Conciliation Act, 1996 seeking interim protection after the Tribunal is constituted unless exceptional circumstances are shown, are also applicable to an arbitration under the MSMED Act. It held that an application under Section 9(1)²⁸ of the Arbitration and Conciliation Act, 1996 would not be maintainable even in an arbitration under the MSMED Act where no exceptional circumstances are shown, rendering the application under Section 17²⁹ of the Arbitration and Conciliation Act, 1996 non-efficacious.



EN

Whether interim relief under Section 9 of the Arbitration and Conciliation Act, 1996 can be sought prior to the reference of the dispute to arbitration

under Section 18(3) of the MSMED Act?

This issue fell for consideration before the Calcutta High Court in its recent judgment in *Dhananjai Lifestyle Ltd. v. Sanvie Retail (P) Ltd.*³⁰ wherein the Court held that remedy under Section 9³¹ of the Arbitration and Conciliation Act, 1996 cannot be availed by an MSME entity prior to invocation of arbitration under Section 18(3)³² of the MSMED Act, as it is only at this stage that the Arbitration and Conciliation Act, 1996³³ starts applying to an arbitration under the MSMED Act, and not before i.e. during the conciliation stage. It held that Section 77³⁴ of the Arbitration and Conciliation Act, 1996 which applies to conciliations under the MSMED Act, bars any judicial proceedings during the conciliation stage except under exceptional circumstances, therefore, permitting recourse to Section 9³⁵ of the Arbitration and Conciliation Act, 1996 would defeat the purpose of Section 77³⁶ of the Arbitration and Conciliation Act, 1996.


Whether a dispute involving a works contract is arbitrable under the MSMED Act?

This issue fell for consideration before the Calcutta High Court in its recent judgment in *Board of Major Port Authority for the Syama Prasad Mukherjee Port v. Marinecraft Engineers (P) Ltd*³⁷ wherein the Court held that there is no prohibition under the MSMED Act on extending its benefits to a works contract. It held that Section 2(m)³⁸ of the MSMED Act which provides for the definition of the “enterprise” covers both manufacturing and service entities, therefore, taking within its ambit an entity which may be engaged in both and executing works contract. It held that Section 39 of the MSMED Act, which provides for dispute resolution, is an impartial provision that squarely applies even to a works contract.

Whether interest that accrued prior to registration under the MSMED Act can be considered operational debt under the IBC?

This issue fell for consideration before the National Company Law Tribunal, Mumbai in the recent case of *Skoda Auto Volkswagen India Private Limited v. Susee Automotive Private Limited*⁴⁰, wherein the Tribunal held that interest that accrued during the period prior to the registration under Section 8⁴¹ of the MSMED Act cannot be utilised towards operational debt under Section 11⁴² of the IBC. It held that the MSMED Act does not operate retrospectively to allow claims of interest for periods prior to the registration.

Conclusion

The judgments examined in this article are important developments in the continuous evolution of the understanding and application of the MSMED Act. The courts have consistently leaned towards a purposive interpretation of the statute, protecting MSME  EN t procedural inequities, delayed payments, and exploitative contracting behaviour.

At the same time, the decisions also reaffirm that with the growing interaction between the MSMED Act and other legislations, the MSME entities cannot remain oblivious of practical realities and not comply with procedural requirements and claim protection under the statute.

***Partner, Khaitan & Co.**

****Principal Associate, Khaitan & Co.**

*****Associate, Khaitan & Co.**

1. Micro, Small and Medium Enterprises Development Act, 2006.
2. Arbitration and Conciliation Act, 1996.
3. Limitation Act, 1963.
4. Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
5. Insolvency and Bankruptcy Code, 2016.
6. Arbitration and Conciliation Act, 1996, S. 9.
7. Micro, Small and Medium Enterprises Development Act, 2006, S. 18(3).
8. 2025 SCC OnLine SC 1467.
9. Micro, Small and Medium Enterprises Development Act, 2006, S. 18(2).
10. Arbitration and Conciliation Act, 1996.
11. Limitation Act, 1963.
12. Micro, Small and Medium Enterprises Development Act, 2006, S. 18(3).
13. Micro, Small and Medium Enterprises Development Act, 2006, S. 18(2).
14. 2025 SCC OnLine SC 1566.
15. Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
16. 2025 SCC OnLine Del 2985.
17. Micro, Small and Medium Enterprises Development Act, 2006, S. 16.
18. 2025 SCC OnLine Cal 5628.
19. Arbitration and Conciliation Act, 1996, S. 10(1).
20. WP (C) No. 10850 of 2019, decided on 25-4-2025
21. Micro, Small and Medium Enterprises Development Act, 2006, S. 18(5).
22. Arbitration and Conciliation Act, 1996, S. 29-A.

- 23. AP-COM No. 129 of 2025, decided on 23-4-2025
- 24. Micro, Small and Medium Enterprises Development Act, 2006, S. 18.
- 25. Arbitration and Conciliation Act, 1996.
- 26. Arbitration and Conciliation Act, 1996, S. 9(3).
- 27. Arbitration and Conciliation Act, 1996, S. 9.
- 28. Arbitration and Conciliation Act, 1996, S. 9(1).
- 29. Arbitration and Conciliation Act, 1996, S. 17.
- 30. AP-COM No. 980 of 2024, decided on 20-5-2025
- 31. Arbitration and Conciliation Act, 1996, S. 9.
- 32. Micro, Small and Medium Enterprises Development Act, 2006, S. 18(3).
- 33. Arbitration and Conciliation Act, 1996.
- 34. Arbitration and Conciliation Act, 1996, S. 77.
- 35. Arbitration and Conciliation Act, 1996, S. 9.
- 36. Arbitration and Conciliation Act, 1996, S. 77.
- 37. 2025 SCC OnLine Cal 4836.
- 38. Micro, Small and Medium Enterprises Development Act, 2006, S. 2(m).
- 39. Micro, Small and Medium Enterprises Development Act, 2006, S. 18.
- 40. 2025 SCC OnLine NCLT 4055
- 41. Micro, Small and Medium Enterprises Development Act, 2006, S. 8.
- 42. Insolvency and Bankruptcy Code, 2016, S. 11.

Tags : Arbitration and Conciliation Act 1996 | IBC | Limitation Act 1963 | Micro | MSME Quarterly | MSMED Act | MSMED framework. | MSMEs | Reserve Bank of India | SARFAESI Act | Small and Medium Enterprises Development Act 2006 (

MOST READ

24 hours

7 days

All time

