

## Remedy Available to Operational Creditors having outstanding dues between Rs. 1Lakh to Rs. 1Crore



Pursuant to Section 4 of the Insolvency and Bankruptcy, Code 2016 (“IBC”) the minimum amount for default is specified as Rs. 1,00,000/-.

However, w.e.f. 24<sup>th</sup> March, 2020, the Government of India, in exercise of its powers under Section 4 of the IBC Code, by way of a notification S. O. 1205(E) has raised minimum amount of default from Rs. 1 Lac to Rs. 1 Crore.

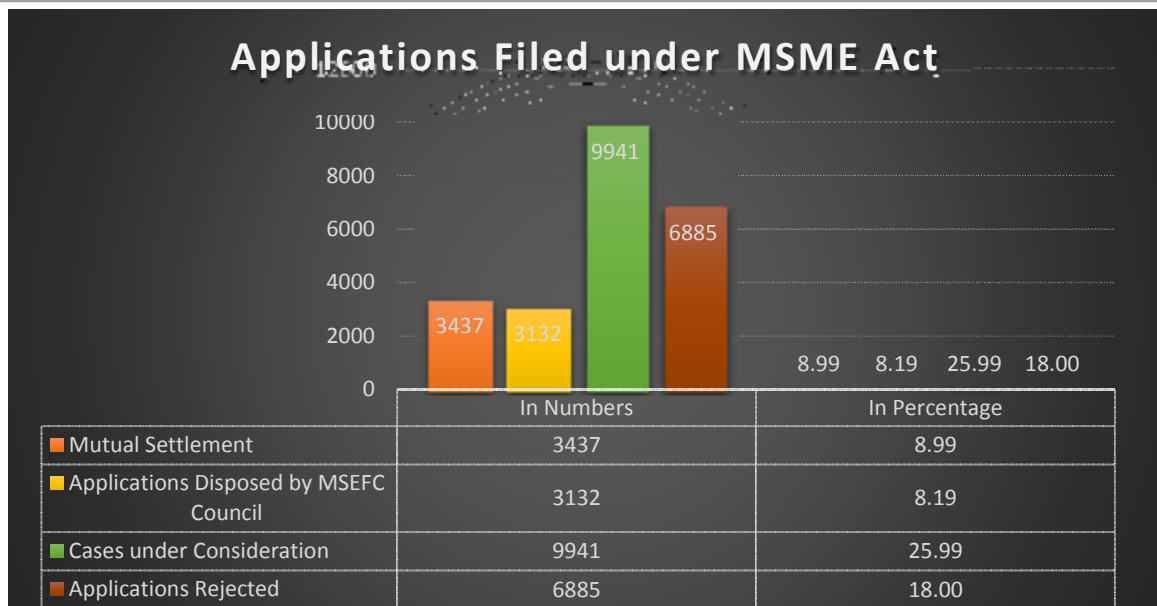
### WHY THIS AMMENDMENT?

- Due to the emerging financial distress faced by most companies on account of the large-scale economic distress caused by COVID-19;
- To help small companies (especially MSMEs) facing the threat of defaults due to coronavirus-related lockdown;
- Default amount of Rs. 1 Lac, being a minimal sum is likely to give an opportunity for misuse of this provision, in these testing times for all, by the Operational Creditors;
- Based on our past experience, almost 40% of the total number of cases currently pending at the doors of NCLT, Mumbai bench involves default amount which ranges between Rs. 1 Lac to Rs. 1 Crore. As such, the Government does not want to open flood gates for more number of cases within this category of default and put more pressure on the administration as well as crucial sector of the Indian economy i.e. MSMEs.

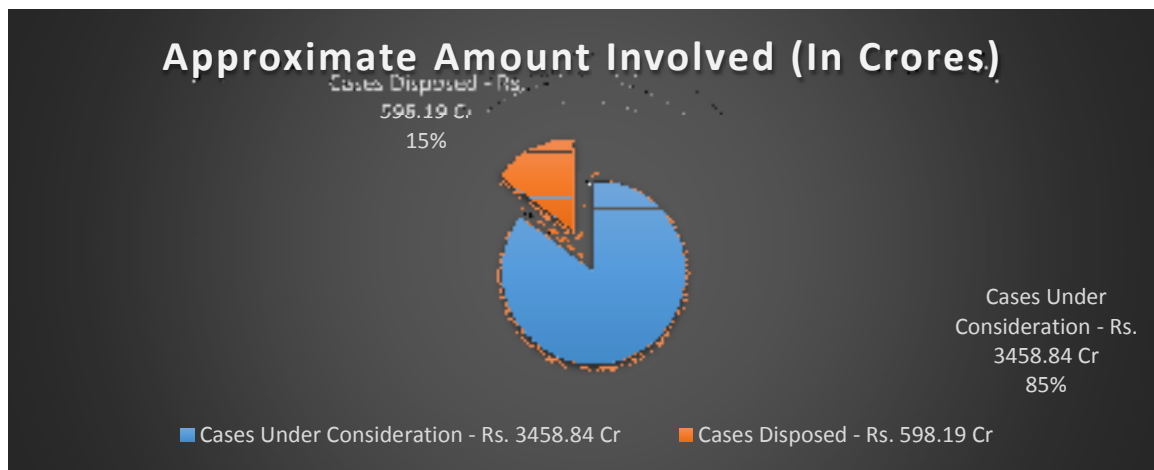
### **ANY ALTERNATE REMEDY AVAILABLE FOR DUES FALLING BETWEEN RS. 1 LAC TO RS. 1 CRORE?**

YES... Claim for recovery of dues falling between Rs. 1 Lac to Rs. 1 Crore can be filed under the MSMED Act on **MSME SAMADHAAN** by filing an application before the concerned Micro and Small Enterprise Facilitation Council (“MSEFC”).

STATISTICS OF APPLICATIONS FILED UNDER MICRO, SMALL AND MEDIUM  
ENTERPRISE DEVELOPMENT (MSMED) ACT, 2006



### STATISTICS OF THE AMOUNT INVOLVED IN THE CASES DISPOSED OFF UNDER MSME SAMADHAN SCHEME



Out of the total case filed by Micro or Small Enterprises (“MSE”), only **8.99%** cases have gone into settlement.

Statistics suggests that, it is beneficial to file application under MSME Act where value of the claim amount is low typically upto Rs. 50 Lacs; coz under MSME Act claims of lower value/money is being disposed of sooner as compared to the claims with higher value.

### PROCEDURE OR BENEFITS OF CASES FILED WITH MSEFC?

- After a detailed scrutiny of each filed case, the **MSEFC arrives at a verdict that is either in the favour of the supplier or the buyer**. When the verdict is in the favour of the supplier or Operational Creditor, an “**award**” (formal order) is issued mandating the buyer to make the payment (unpaid dues plus interest) to the supplier within the stipulated time;

- *However, in many cases, despite the issuance of the award from the MSEFC, buyers delay in making the payment to the MSME Units. To prevent this never-ending circle of payment delays, the MSME Ministry has now interlinked the Samadhaan portal with National E-Governance Service Ltd. (NeSL)'s Information Utility (IU);*
- Under the new initiative, all that an MSME has to do when registering its case on the Samadhaan is *give its consent to share the same information with NeSL*. Once NeSL receives this information, it gets in touch with the MSME and guides it to register on the NeSL IU portal and upload all unpaid invoices along with the concerned buyers' details;
- Upon successful upload of the unpaid invoices, NeSL IU automatically **generates** a '**Demand Notice**' and *sends it to the buyer on behalf of the MSME*. **Three reminders** are also sent to the buyer to ensure that the *Demand* Notice is confirmedly delivered to the buyer who then may accept or dispute the concerned MSME's claim of unpaid dues;
- *If the buyer fails to respond to the Demand Notice within 14 days of receiving the 'Demand Notice Authentication Request', NeSL IU automatically generates a 'Record of Default' and triggers a 'Default Alert' that is broadcasted to all lenders of the concerned buyer;*
- The '**Default Alert**' includes the name of the defaulting buyer, the name of the MSME that has suffered the default by the buyer, the total default amount and the date from which the amount is defaulted. *Every single lender who has active loans with the buyer gets the 'Default Alert' that seriously impacts the creditworthiness of the defaulting buyer or Debtor;*
- Apart from **naming and shaming** the defaulting buyer, the MSME (supplier or Operational Creditor) can use the 'Record of Default' document as a legal piece of evidence to initiate bankruptcy proceedings against the buyer under IBC, 2016 (as and when default limit comes down from Rs. 1 Crore to Rs. 1 Lac);
- MSME Unit can file case with MSME Samadhaan for recovery of interest payment irrespective of the fact that original or principal dues have been recovered from the buyer or Operational Creditor;
- During these proceedings, silence of buyer is treated as a confirmation of liabilities upon him/it.

**Please feel free to reach out to us to know more.**

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Thanks and Regards  
Team ~ K. Bagla & Associates  
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