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"MSME FACILITATION COUNCIL AS A STATUTORY ARBITRATION TRIBUNAL: LEGAL AND PRACTICAL CHALLENGES"

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Abstract

Micro, Small and Medium Enterprises (MSMEs) are among the most vital contributors to India's economy, yet they have long suffered the crippling effects of delayed payments from buyers. The Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act) responded to this crisis by establishing the MSME Facilitation Council under Section 18—a statutory body empowered to resolve payment disputes through conciliation and arbitration. While this was a landmark legislative step, the Council's functioning as a statutory arbitration tribunal has opened up a web of legal and practical difficulties that continue to strain the system. This paper, divided into two chapters, examines the statutory framework governing the Council and the substantive challenges that have emerged in its operation. Drawing on judicial decisions, constitutional principles, and comparative international experience, it argues for meaningful reform to make the Council a truly effective and fair dispute resolution forum.

Keywords: *MSME, Facilitation Council, Statutory Arbitration, MSMED Act 2006, Delayed Payments, Dispute Resolution, Section 18, Pre-deposit, Jurisdictional Conflict, Natural Justice.*

CHAPTER I: THE STATUTORY FRAMEWORK AND THE RISE OF MSME ARBITRATION

1.1 The Problem That Made a Law Necessary

India's MSME sector is, by any measure, the engine that keeps the country's productive economy running. According to data from the Ministry of MSME, the sector contributes approximately thirty percent of India's Gross Domestic Product, accounts for over forty-five percent of total exports, and employs more than 110 million people—making it the second largest employer after agriculture.[1310] Yet for decades, MSMEs have operated under the shadow of a problem that no amount of entrepreneurial resilience could fully overcome: buyers, particularly large corporations, public sector undertakings, and government departments, routinely delayed payments to small suppliers, sometimes for months, sometimes for years.[1311]

The consequences of these delays were never abstract. A small enterprise that cannot

[1310] Ministry of Micro, Small and Medium Enterprises, Annual Report 2022–23, at 4 (Gov't of India 2023).

[1311] Report of the Committee on MSME: Credit, Marketing, Technology and Skill Development ¶ 3.2 (T.K.A. Nair Committee, Gov't of India 2010).

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collect its receivables cannot pay its workers, repay its loans, or purchase raw materials for the next order. Unlike large corporates, MSMEs rarely have the financial cushion to absorb such shocks. They lack the legal muscle to pursue drawn-out civil litigation. And they often depend on the very buyers who owe them money for their next contract, making assertive legal action a commercial risk as much as a legal one.

The legislature had recognised this problem even before the MSMED Act came into force. The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 was the first attempt to address it, creating a statutory entitlement to interest on overdue payments.[1312] But the 1993 Act had a fundamental weakness: it created a right without a reliable remedy. There was no dedicated enforcement authority, and small enterprises were still left to navigate the slow and expensive machinery of civil courts.

It was against this backdrop that Parliament enacted the Micro, Small and Medium Enterprises Development Act, 2006.[1313] The Act was not merely a codification of existing rights; it was a structural intervention, designed to give MSMEs something they had always lacked: a fast, accessible, and legally enforceable avenue for resolving payment disputes.

1.2 The MSMED Act and the Architecture of the Facilitation Council

The most significant institutional innovation of the MSMED Act is the MSME Facilitation Council, established under Section 20 of the Act by State Governments.[1314] Each State is required to set up one or more such Councils within its territory, and the Council is composed of between three and seven members nominated by the State Government from among persons with experience in commerce, industry, finance, and law. The Chairperson is typically the Director of MSME for the State.

Before the Council can be approached, the payment protection provisions of Sections 15 to 23 of the Act must be understood.[1315] Section 15 imposes an obligation on buyers to make payment by the agreed date, or before what the Act calls the 'appointed day'—which falls immediately after the expiry of fifteen days from the date of acceptance of goods or services, if no date has been agreed.[1316] Section 16 provides for compound interest on delayed payments at three times the bank rate notified by the Reserve Bank of India.[1317] At the bank rate prevailing in recent years, this translates to a rate of approximately twenty percent per annum compounded monthly—a powerful financial disincentive for buyers who might otherwise treat delayed payment as a cost-free exercise.

Section 22 requires buyers to disclose outstanding MSME dues in their annual financial statements. Section 23 denies income tax deductions on interest payable under the Act, adding a fiscal dimension to the deterrence framework.[1318] Together, these provisions create a layered system of obligation and penalty designed to change payment behaviour, not merely compensate for its failure.

The dispute resolution mechanism itself is housed in Section 18. When a buyer fails to make payment and the matter cannot be resolved informally, the MSME supplier may make a reference to the Facilitation Council. The Council first attempts conciliation, conducting proceedings in accordance with Part III of the

[1312]Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, Act No. 23 of 1993 (India). The Act was widely criticised for the absence of a dedicated enforcement authority. See Rajesh Kumar Bhatia, Micro, Small and Medium Enterprises: Legal Framework and Policy Challenges 87 (LexisNexis 2019).

[1313]Micro, Small and Medium Enterprises Development Act, 2006, Act No. 27 of 2006, § 18 (India) [hereinafter MSMED Act]. The Act received presidential assent on 16 June 2006 and came into force on 2 October 2006.

[1314]MSMED Act § 20.

[1315]MSMED Act §§ 15–23.

[1316]MSMED Act § 15. The 'appointed day' is defined in § 2(b) of the Act as the day immediately following the expiry of fifteen days from the day of acceptance or deemed acceptance of the goods or services.

[1317]MSMED Act § 16. As of 2023, with the Reserve Bank of India bank rate at 6.75 per cent, the statutory interest rate under the Act translates to approximately 20.25 per cent per annum, compounded monthly.

[1318]MSMED Act §§ 22–23.

Arbitration and Conciliation Act, 1996. If the parties reach a settlement, it is recorded in writing and treated as an arbitral award on agreed terms—final, binding, and enforceable as a decree of court.[1319]

If conciliation fails, Section 18(3) empowers the Council to either take up the dispute itself as an arbitral tribunal, or refer it to any institution or centre providing arbitration services.[1320] Either way, the provisions of the Arbitration and Conciliation Act, 1996 apply to the subsequent arbitration, subject to the specific provisions of the MSMED Act. An award made by the Council has the same legal force as an arbitral award under the Arbitration Act: it is enforceable as a decree of court, and a party seeking to challenge it must do so under Section 34 of the Arbitration Act.[1321]

1.3 Statutory vs. Contractual Arbitration: A Fundamental Distinction

Understanding the nature of the MSME Facilitation Council's arbitral jurisdiction requires appreciating a distinction that runs through much of the case law in this area: the distinction between statutory arbitration and contractual arbitration. Classical arbitration, as understood under the Arbitration and Conciliation Act, 1996, is a consensual process. It rests on an arbitration agreement voluntarily entered into by the parties, who retain broad autonomy over the choice of arbitrators, the procedure, the seat of arbitration, and the scope of disputes to be referred.[1322] Party autonomy is, in this framework, not merely a practical consideration but a constitutional value.

Statutory arbitration, by contrast, does not depend on consent. It is created by statute, operates by force of law, and cannot be opted out of by private agreement. An MSME supplier has the right to approach the Facilitation Council simply by virtue of being an MSME with an unresolved payment claim—there is no requirement for an arbitration clause in the underlying commercial contract, and the existence of such a clause does not bar the Council's jurisdiction.

This character of the Council's jurisdiction was definitively established by the Supreme Court in *Jharkhand Urja Vikas Nigam Ltd. v. State of Rajasthan,* where a three-judge bench held that the statutory jurisdiction of the MSME Facilitation Council overrides private contractual arbitration clauses.[1323] The Court reasoned that the MSMED Act is a special beneficial legislation enacted to protect a class of economically vulnerable enterprises, and this protective purpose would be fundamentally compromised if buyers could use contractual clauses to channel disputes away from the Council. This position was affirmed and elaborated in *Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods Pvt. Ltd.,* where the Court held that the Act must be interpreted purposively and liberally in favour of MSME suppliers.[1324]

The principle of *lex specialis*—that a special law prevails over a general law—underpins this approach. Where the MSMED Act conflicts with the Arbitration Act on a particular point, the MSMED Act governs.[1325] This has important consequences for the interplay between the two statutes, and it is a principle that the courts have consistently applied in interpreting the Council's powers.

[1319]MSMED Act § 18(1)–(2); Arbitration and Conciliation Act, 1996, Act No. 26 of 1996, §§ 62–81 (India) [hereinafter A&C Act]. A settlement reached in conciliation is recorded under A&C Act § 74 and has the same legal status as an arbitral award.

[1320]MSMED Act § 18(3)–(4). The provisions of the A&C Act apply to every arbitration conducted under the MSMED Act, subject to the special provisions of the latter.

[1321]A&C Act § 36; Sundaram Finance Ltd. v. Abdul Samad, (2018) 3 SCC 622, ¶ 19 (India).

[1322]O.P. Malhotra, The Law and Practice of Arbitration and Conciliation in India 112–15 (3d ed., LexisNexis 2014).

[1323]Jharkhand Urja Vikas Nigam Ltd. v. State of Rajasthan, (2021) 4 SCC 306, ¶ 31 (India).

[1324]Gujarat State Civil Supplies Corp. Ltd. v. Mahakali Foods Pvt. Ltd., (2023) 6 SCC 401, ¶¶ 38–45 (India).

[1325]The lex specialis principle in the context of the MSMED Act and the A&C Act was authoritatively stated in Jharkhand Urja Vikas Nigam, (2021) 4 SCC 306, ¶ 27, and affirmed in Gujarat State Civil Supplies, (2023) 6 SCC 401, ¶ 34.

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1.4 Pre-Deposit, Enforcement, and the Registration Requirement

One of the most distinctive features of the MSME arbitration framework is the mandatory pre-deposit requirement under Section 19. No application to set aside a Facilitation Council award can be entertained by any court unless the challenging party has first deposited 75 percent of the awarded amount.[1326] The Supreme Court in *M/s Brilliant Alloys Pvt. Ltd. v. S. Mohan* made clear that this requirement is absolute: courts have no discretion to waive or reduce the pre-deposit, regardless of the merits of the challenge or the financial circumstances of the challenger.[1327]

The legislature's intention was straightforward. Without such a condition, buyers with superior financial and legal resources could deploy Section 34 challenges as a delaying tactic, defeating the very purpose of the fast-track statutory remedy. By making a 75 percent deposit a condition for challenging an award, the Act ensures that the MSME supplier receives at least partial relief while the challenge is pending.

Courts have also addressed the question of when an enterprise must be registered as an MSME to benefit from the Act's protections. In *Silpi Industries v. Kerala State Road Transport Corporation,* the Supreme Court held that the enterprise must have been registered at the time of supplying the goods or services, and not merely at the time of filing the application before the Council. Registration at a later stage does not retrospectively confer the Act's protections on earlier transactions.[1328]

On the question of limitation, *Silpi Industries* also resolved a major uncertainty by holding that the Limitation Act does not apply to proceedings under Section 18 of the MSMED Act. The Court reasoned that the MSMED Act is a self-contained code for the resolution of payment disputes, and importing the Limitation Act's strict time bars into this framework would frustrate the Act's protective objectives.[1329] This ruling removed a defence that buyers had frequently deployed to defeat MSME claims on purely technical grounds.

1.5 The Historical Arc: From 1993 to 2006 and Beyond

It is worth pausing to appreciate the legislative journey that culminated in the MSMED Act, because that journey explains both the Act's strengths and some of its limitations. The 1993 Act on delayed payments was the product of a planning-era mindset: it recognised a problem and created an entitlement, but did not build the institutional machinery to make that entitlement real. The MSMED Act represented a more sophisticated approach, acknowledging that rights without remedies are largely symbolic and that small enterprises needed a dedicated institutional forum, not just a statutory right.

The recommendations of the Second Narasimhan Committee, the Kapur Committee, and various Planning Commission working groups, combined with sustained advocacy from MSME associations, provided the intellectual and political momentum for the 2006 legislation.[1330] The Act's revised classification of enterprises—updated in 2020 under the Aatmanirbhar Bharat package to introduce composite investment-and-turnover criteria—brought a much larger number of enterprises within the Act's protection.[1331]

Under the current classification, a micro enterprise is one with investment up to one

[1326]MSMED Act § 19.

[1327]M/s Brilliant Alloys Pvt. Ltd. v. S. Mohan, (2022) 1 SCC 642, ¶¶ 18–23 (India). The Court categorically held that courts possess no inherent discretion to waive or reduce the mandatory pre-deposit.

[1328]Silpi Indus. v. Kerala State Road Transp. Corp., (2021) 18 SCC 790, ¶ 42 (India). The Court held that MSME registration at the time of supply is a jurisdictional prerequisite for invoking the Facilitation Council.

[1329]Silpi Indus., (2021) 18 SCC 790, ¶¶ 46–53. The Court reasoned that applying the Limitation Act, 1963 would frustrate the protective object of the MSMED Act.

[1330]Report of the Committee on Financial System (Second Narasimhan Committee) (Gov't of India 1998); Planning Commission of India, Report of the Working Group on MSME for the Twelfth Five Year Plan 47 (Gov't of India 2011).

[1331]Ministry of MSME Notification dated 1 June 2020, published in the Gazette of India Extraordinary, pt. II, § 3(ii) (26 June 2020). See also Ministry of MSME, Annual Report 2022–23, supra note 1, at 12–15.

crore rupees and annual turnover up to five crores; a small enterprise up to ten crores investment and fifty crores turnover; and a medium enterprise up to fifty crores investment and 250 crores turnover. It is worth noting, however, that the payment protection provisions of Sections 15 to 23 apply only to micro and small enterprises, not to medium enterprises[1332]—a distinction that has been criticised as arbitrary and which continues to leave a significant class of enterprises without the Act's most powerful remedies.

CHAPTER II: LEGAL AND PRACTICAL CHALLENGES IN THE COUNCIL'S FUNCTIONING

2.1 The Dual Role Problem: Conciliator Turned Arbitrator

If one were to identify the single most intellectually challenging problem in the institutional design of the MSME Facilitation Council, it would be what scholars have come to call the dual role problem. The MSMED Act requires the Council to first conduct conciliation proceedings and, if these fail, to then take on the role of an arbitral tribunal in the same dispute. The same body—and potentially the same individual members—thus performs two very different functions, with very different procedural and ethical implications.

A conciliator, in the course of facilitating settlement discussions, receives confidential information from both parties. Parties in conciliation are encouraged to speak frankly and make concessions, with the express understanding that such disclosures cannot be used against them if conciliation fails. Section 80 of the Arbitration and Conciliation Act, 1996 expressly prohibits a conciliator from subsequently acting as an arbitrator in the same dispute.[1333] Section 81 further provides that evidence of conduct or statements made in conciliation proceedings is not admissible in subsequent arbitral or judicial proceedings.[1334] The purpose is clear: parties should be able to negotiate freely without fearing that their concessions will be used against them if conciliation fails.

Yet the MSMED Act effectively mandates exactly this arrangement. The Council that has conducted conciliation is the same Council that, upon failure of conciliation, proceeds to arbitrate. In Ananya Chakraborty's detailed analysis of the dual role problem, she identifies concrete scenarios in which information shared during conciliation—such as admissions about the quality of goods or concessions about disputed quantities—could materially influence the Council's arbitral decision-making, consciously or otherwise.[1335] The constitutional challenge that flows from this observation is grounded in the *nemo judex* principle: no person should be a judge in a matter where they have a conflicting interest or prior involvement.

Some State Facilitation Councils have adopted the informal practice of having different members conduct the conciliation and arbitration stages, but this is neither legally mandated nor uniformly observed. A statutory fix—requiring structural separation of the two functions—is the only reliable solution.

2.2 Jurisdictional Conflicts and Forum Shopping

The mandatory and overriding nature of the MSME Facilitation Council's jurisdiction, while legally clear in principle, has generated a significant amount of litigation in practice. The most common scenario is one in which a commercial contract between an MSME supplier and a buyer contains an arbitration clause naming a specific arbitrator, institution, or seat of arbitration. When the MSME supplier later approaches the Facilitation Council, the buyer typically resists on the ground that the

[1332]MSMED Act § 2(n). Medium enterprises are expressly excluded from the 'supplier' definition for the purposes of §§ 15–23.
[1333]A&C Act § 80.
[1334]A&C Act § 81.
[1335]Ananya Chakraborty, Dual Role of the MSME Facilitation Council: A Critical Appraisal Under Natural Justice, 15 Nalsar L. Rev. 22, 28–35 (2022).

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parties' contractual arrangement must be respected.[1336]

As discussed in Chapter I, the courts have largely resolved this question in favour of the Council's statutory jurisdiction. But this resolution has not eliminated the litigation that precedes it. Buyers routinely file writ petitions or applications under Section 9 of the Arbitration Act seeking to restrain the Council from proceeding, and these challenges—even when ultimately unsuccessful—can delay the Council's proceedings by months or years.

A related problem is simultaneous proceedings, which arise when a buyer, upon receiving notice from the Facilitation Council, initiates arbitration under the contractual arbitration clause and seeks a stay of the Council's proceedings. Courts have adopted differing approaches to this problem, and the absence of a clear statutory provision specifically addressing simultaneous proceedings is a significant lacuna in the current framework. The Law Commission's Report No. 246 on Amendments to the Arbitration Act flagged this issue, but no legislative response has followed.[1337]

Forum shopping is another dimension of the jurisdictional challenge. Because the general principle allows a supplier to approach the Facilitation Council of the State where the supplier is registered, a supplier with operations in multiple States can potentially choose the Council most favourable to its interests. Conversely, buyers complain that they are required to participate in proceedings in geographically remote States, adding to their costs and making it practically difficult to present an effective defence.

2.3 Constitutional Questions Around the Pre-Deposit Requirement

The pre-deposit requirement under Section 19 has attracted constitutional scrutiny from multiple High Courts, and the questions raised are not without substance. The central challenge is framed under Articles 14 and 21 of the Constitution of India. The Article 14 argument runs as follows: ordinary civil litigants who wish to challenge a judgment on appeal are not required to deposit any portion of the decretal amount as a condition for being heard. Section 19 singles out buyers in MSME disputes for this exceptional treatment, imposing a financial burden not borne by litigants in any other category of civil dispute.

Courts that have upheld Section 19—including the Delhi High Court in *M/s Rishi Roop Diamonds v. Union of India*—have responded by invoking the legislature's wide latitude to make reasonable classifications in the service of legitimate policy objectives.[1338] The analogy drawn is with pre-deposit requirements in tax law, which the Supreme Court has consistently upheld on the ground that such conditions serve the legitimate purpose of preventing the abuse of appellate processes. The protective purpose of the MSMED Act provides, in the courts' view, a proportionate basis for the classification.

The Article 21 argument is arguably more difficult to dismiss. When a Facilitation Council award includes compound interest at three times the bank rate over several years of delay, the total awarded amount can be enormous. In such cases, a 75 percent pre-deposit might exceed the liquid assets of even a relatively large buyer, effectively making the challenge impossible. A provision that is intended to prevent abuse of process might, in such cases, operate as an absolute bar to access justice—a very different and far less defensible outcome.[1339]

[1336]K.S. Rajgopal, MSME Facilitation Council and the Jurisdiction Conundrum: Party Autonomy vs. Statutory Protection, 5 Indian L. Rev. 112, 118–24 (2021).

[1337]Law Commission of India, Report No. 246: Amendments to the Arbitration and Conciliation Act, 1996, ¶ 5.3 (2014).

[1338]M/s Rishi Roop Diamonds v. Union of India, 2021 SCC OnLine Del 3765, ¶¶ 31–39 (Del. High Ct. 2021) (India).

[1339]Vivek Krishnamurthy, Access to Justice and Pre-Deposit Requirements: Constitutional Limits on Legislative Design, 14 NUJS L. Rev. 67, 78–88 (2021).

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A Supreme Court ruling that definitively settles the constitutional status of Section 19 would be a significant contribution to the development of this area of law. In the interim, the legislature would do well to consider amending Section 19 to introduce a degree of judicial discretion, particularly in cases involving very large award amounts.

2.4 Enforcement: The Gap Between Award and Payment

Even when an MSME Facilitation Council award is legally valid, not subject to any pending challenge, and properly served on the buyer, the practical enforcement of that award can be a deeply frustrating process. The first and most common impediment is the buyer's financial condition. When buyers against whom awards are made are themselves in financial distress, the MSME supplier may obtain a legally perfect decree but find there is nothing meaningful to execute against.

The interaction between MSME Facilitation Council awards and insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 creates a particularly acute enforcement problem. Once a Corporate Insolvency Resolution Process is initiated against a company, Section 14 of the IBC imposes a moratorium that prohibits the execution of judgments and decrees against the company's assets.[1340] MSME Facilitation Council awards are caught within this moratorium, leaving the MSME supplier with the limited and uncertain remedy of filing a claim before the Insolvency Resolution Professional—a process in which MSME creditors are classified as operational creditors and ranked below secured financial creditors in the distribution waterfall.[1341]

Cross-State enforcement presents a different kind of challenge. The Facilitation Council that makes an award is a State-level institution, but the buyer may have assets in multiple States. The award holder must navigate the procedural requirements for enforcement in each State where execution is sought, adding time and cost to a process that has already been costly enough.

The MSME Samadhaan portal, launched by the Government of India in 2017, has been a positive step towards transparency and accountability. By publishing the names of buyers against whom applications have been filed and the amounts claimed, the portal creates a measure of reputational pressure that may itself encourage settlement.[1342] But the portal is not an enforcement mechanism; it is a monitoring tool. The enforcement gap remains.

2.5 Institutional Weaknesses and the Quality of Council Proceedings

Beyond the specific legal challenges, there is a broader institutional problem that underlies all of them: the MSME Facilitation Councils across India are, in the main, under-resourced, under-staffed, and staffed by persons who may not have the specialised legal and arbitration expertise that complex commercial disputes require. The Council is typically chaired by a serving State Government official—the Director of MSME for the State—who carries numerous other administrative responsibilities and may have limited time and expertise to devote to the demands of a statutory arbitral tribunal.[1343]

The result is that proceedings before many Facilitation Councils are slow, procedurally inconsistent, and occasionally of questionable legal quality. Parties—particularly buyers who are compelled to participate in Council proceedings without prior expectation of doing so—sometimes raise legitimate concerns about the fairness of the process and

[1340] Insolvency and Bankruptcy Code, 2016, Act No. 31 of 2016, § 14 (India) [hereinafter IBC].

[1341] IBC §§ 14, 53. MSME suppliers are classified as operational creditors under § 5(20) of the IBC and rank below secured financial creditors in the distribution waterfall under § 53.

[1342] Ministry of MSME, MSME Samadhaan Portal: Statistical Overview (Gov't of India 2023). As of March 2023, over 1.2 lakh applications had been filed on the portal with amounts in dispute exceeding ₹25,000 crore.

[1343] MSMED Act § 21. The composition requirements have been criticised for not mandating at least one legally qualified arbitration professional. See Rajgopal, supra note 27, at 124–27.

the adequacy of the opportunity to present their case.

The contrast with the institutional quality of commercial arbitration in comparable jurisdictions is striking. The United Kingdom's statutory adjudication scheme for construction contracts—operating under the Housing Grants, Construction and Regeneration Act, 1996—features professionally qualified adjudicators, strict timelines of twenty-eight days from referral to decision, and a principle of 'pay now, argue later' that makes awards immediately enforceable subject to limited challenge.[1344] Australia's Small Business and Family Enterprise Ombudsman separates the advocacy function from the adjudicatory function, avoiding the dual role problem that besets the Indian Council.[1345] Singapore's investment in high-quality dispute resolution infrastructure has made its arbitration and mediation institutions internationally respected.[1346]

2.6 A Reform Agenda

The challenges identified above are serious, but they are not insurmountable. The reform agenda that emerges from this analysis can be organised around five broad priorities.

The first and most fundamental is institutional reform. The Facilitation Councils need to be reconstituted as permanent, professionally staffed adjudicatory bodies with dedicated facilities, a permanent secretariat, and a panel of trained arbitrators selected through a transparent, merit-based process. Minimum qualifications should be legislatively prescribed. Governance arrangements should insulate the Council from State Government influence, and adequate funding from both Central and State Governments must be guaranteed.

The second priority is resolving the dual role problem through structural separation of the conciliation and arbitration functions. This can be achieved either by creating separate panels for each stage within the Council system, or by requiring that if conciliation fails, arbitration must be referred to an external independent arbitral institution.[1347] Pending such structural reform, procedural safeguards—including mandatory recusal of members who participated in conciliation—should be adopted as an interim measure.

The third priority is targeted legislative amendment. The MSMED Act should be amended to expressly provide that MSME Facilitation Council arbitration is the mandatory and exclusive remedy for covered payment disputes, removing any residual ambiguity about the relationship with contractual arbitration clauses. Section 19's pre-deposit requirement should be revised to introduce judicial discretion to reduce the percentage in exceptional circumstances, with specific criteria to guide that discretion. The interaction between MSME awards and IBC proceedings should be addressed through specific legislative provisions, potentially classifying MSME suppliers as a priority sub-category of operational creditors.

The fourth priority is enforcement reform. A fast-track execution mechanism allowing MSME award holders to enforce awards in any district court in any State where the debtor has assets, without the current procedural complexity of cross-State enforcement, would dramatically improve outcomes.[1348] The creation of dedicated fast-track commercial courts for MSME award enforcement, combined with a nationally accessible award database, should be seriously considered.

[1344] Housing Grants, Construction and Regeneration Act 1996, c. 53, pt. II (UK). The scheme has been widely praised for its effectiveness; see Srikrishna Deva Rao, Alternative Dispute Resolution for MSMEs in Emerging Economies: A Comparative Study, 38 J. Int'l Arb. 389, 403–09 (2021).

[1345] Australian Small Business and Family Enterprise Ombudsman Act 2015 (Cth) pt. 2 (Austl.). The ASBFEO Annual Report 2021–22 notes that over 90 per cent of disputes were resolved through assisted mediation without formal adjudication.

[1346] Singapore Mediation Act, No. 1 of 2017 (Sing.); Ministry of Law Singapore, Review of the Singapore Mediation Act: Consultation Paper (2019). See also Deva Rao, supra note 35, at 413–20.

[1347] Law Commission of India, Report No. 246, supra note 28, ¶ 5.3. The recommendation was also endorsed in several Madhya Pradesh High Court decisions challenging the dual role arrangement.

[1348] Anuj Sharma, Enforcement of MSME Awards: Challenges and Solutions, 9 Corp. L.J. 34, 58–63 (2022).

The fifth and final priority is digitisation and modernisation. An integrated online case management system, electronic filing, and video conferencing hearings would reduce time and cost burdens for all parties, particularly in cross-State disputes.[1349] The experience of Indian courts during the COVID-19 pandemic demonstrated that online hearings are not merely technically feasible but can in many cases improve efficiency and access.

2.7 Balancing Protection with Fairness

A recurring theme in this paper has been the tension between the protective objectives of the MSMED Act and the principles that govern fair and effective arbitration. This tension is real and it cannot be resolved by simply declaring one set of values superior to the other. MSMEs genuinely need protection from the structural power imbalances of their commercial relationships. But the principles of party autonomy, due process, and natural justice that underpin a sound arbitration framework are not merely procedural niceties—they are the foundation on which the enforceability and legitimacy of any arbitral award ultimately rests.[1350]

The experience of jurisdictions like the United Kingdom, Singapore, and Australia demonstrates that these values are not mutually exclusive. It is possible to design dispute resolution mechanisms that are fast, accessible, and practically effective for small businesses, while also being procedurally fair, professionally staffed, and consistent with the rule of law. The MSME Facilitation Council, as currently constituted, falls short of this ideal—but the gap is not unbridgeable.[1351]

What is required is political will, institutional investment, and legislative attention. The millions of real people who run small enterprises across India, and who depend on timely payment for their survival, deserve a dispute resolution system that actually works. The legal architecture exists; it needs, now, to be made to function as it was always intended to.

CONCLUSION

The MSME Facilitation Council represents one of the most significant—and most underappreciated—institutional innovations in Indian commercial law. Created to address a systemic failure that had impoverished millions of small enterprises over decades, it has the potential to be a genuinely transformative instrument of economic justice. But that potential has not been fully realised. The dual role problem, jurisdictional conflicts, constitutional questions around pre-deposit, enforcement failures, and institutional weaknesses collectively impair the Council's effectiveness and undermine confidence in its awards.

The reform agenda outlined in this paper is not radical; it is corrective. It does not call for dismantling the existing framework but for strengthening it—making it more professional, more procedurally fair, and more practically effective. The judicial decisions of the Supreme Court and various High Courts have clarified much of the law, but judicial interpretation alone cannot substitute for the legislative and institutional reforms that are now clearly necessary. The MSME sector, which contributes thirty percent of India's GDP and employs over 110 million people, deserves a dispute resolution system worthy of that contribution.

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