

CHAPTER–III

REGULATORY FRAMEWORK FOR MSMEs

In the previous chapter a review of related literature in the area of Micro, Small, Medium enterprises was presented. It was observed that the legal policies on small scale industries had a very great impact on their functioning. Therefore it is pertinent to look into the legal and regulatory framework for the micro, small and medium enterprises in India which also covers the state of Karnataka. This chapter is significant because any policy that is framed should be within the ambit of law and the Constitution. In other words any policies framed should not be *ultra vires* the Act and the Constitution. Besides, the legal framework defines the boundaries within which Micro, Small and, Medium enterprises shall have to function.

The legal framework for an organisation is the boundary within which the organisation functions. The growth of Industry has invariably raised a lot of questions with regard to the rights of the employer as well as the employees. The rights are followed by the obligations of each other and the government had to strike a balance between the various issues by enacting several Laws. The definition of 'Industry' has invited various interpretations and has also led to the growth of the Industrial Law.

The definition uses the most elastic and overlapping terms as its constituents and been a matter of judicial interpretations which is the ultimate conjecture of the Court. The definition of Industry was given a very wide scope in a decision rendered by the Honorable Supreme Court in the *BWSSB Vs A. Rajappa* (1978).¹

The decision has opened a series of discussions and interpretations by the Courts. The concept of Industry does not merely confine itself to the definition of

¹ Labour Law Journal, 1978, vol.1 p.349.

Industries; as such the term Industry also takes along with it a bag full of enactments and policies which are relevant and mandatory in nature.

The Industrial Policies that we have today is the dream concept of our 1st Prime Minister late Pandit Jawaharlal Nehru. It was indeed Mr. Nehru who laid the foundation of Modern India. It was his dream that India as a country should have a strong, diversified and independent industrial base. The basis on which the policies were laid was on rapid agricultural and industrial development of the country, rapid expansion of opportunities for gainful employment, progressive reduction of social and economic disparities, removal of poverty and attainment of self-reliance. The Government policies are dictated by the belief that any industrial policy whether laid before or present or which would be laid in the future should contribute to the realisation of the goals and objectives laid down but at an accelerated pace.

3.1 IMPORTANCE OF INDUSTRIALISATION :

The importance of Industrialisation in promoting the economic growth was felt in India as it was done by most of the other countries since it attained independence. It has been a key growth objective of India's planned economy, with heavy investments being made in this sector. The manufacturing industries have major labour productivity and this has contributed in raising national income at a faster pace. It has become a precondition for agricultural development and it influences development in other sectors also.

As it is a known fact that the industrialisation in economic development is crucial for a growing economy in a country like India, prosperity through industrialisation has been a long-term strategy for the Indian government. Being more reliant on agriculture and having a large population base has made India impoverished, and hence industrialisation acts as a means to conquer poverty. Its main objective being to provide employment, improve the standard of living of the masses

and thereby have a larger impact on the economy and the GDP of the country. It was a result of various Industrial policies which were framed time and again to provide a course of action to industries, be it large scale or small scale Industries. These policies act as guidelines or framework within which the industries have to function and are regulatory in nature.

3.2 BRIEF HISTORY OF INDUSTRIAL POLICIES :

The Government of India framed Industrial Policies immediately after attaining independence. The 1st industrial policy was framed on 6th April 1948. This policy emphasized the role of the small scale industries in the economy of the country. It also created place for the co-operative enterprises, various associations of guilds in the villages etc. This policy outlined the approach to industrial growth and development. It emphasised the importance of securing a continuous increase in production and ensuring its equitable distribution. After the adoption of the Constitution in January and the Planning Commission in March 1950, the Industrial (Department and Regulation) Act was also laid in 1951 with the primary objective of empowering the Government to take necessary steps to regulate the pattern of industrial development through licensing. The Industrial Policy Resolution of 1948 paved the way for the Industrial Policy Resolution of 1956 which was modified from time to time through statements in 1973, 1977 and 1980.

The Industrial Policy Resolution of 1956 had, as its objective, the acceleration of the rate of economic growth and the speeding up of industrialisation as a means of achieving a socialistic pattern of society. Hence, the 1956 Industrial Policy Resolution gave primacy to the role of the State to assume a predominant and direct responsibility for industrial development. It also classified the industries into three categories. The first category included those industries, the future development of which was the exclusive responsibility of the States. The second category included progressively State

owned industries and areas in which the States had to take initiatives to establish new undertakings, though the private participants were also expected to supplement the Government efforts. The third category included all the remaining industries with the responsibility of the private sector for their development.²

The Industrial Policy statement of 1973, had, identified high-priority industries where investment from large industrial houses and foreign companies would be permitted. It was under this policy that within the Small Scale Sector, a tiny sector was defined with the investment in machinery and equipment upto Rs. 1 lakh and situated in towns with a population of less than 50,000 according to 1971 census figures. Under this policy the list of industries exclusively reserved for the small scale sector was expanded from 180 items to more than 500 items.

The Industrial Policy Statement of 1977 laid emphasis on decentralisation and on the role of small-scale, tiny and cottage industries. In order to boost the development of small scale industries, the investment limit in the case of tiny units was enhanced to Rs.2 lakh. In case of Small scale units it was enhanced to Rs.20 lakh and with regard to ancillaries it was raised to Rs.25 lakh.

The Industrial Policy Statement of 1980 focused attention on the need for promoting competition in the domestic market, technological upgradation and modernisation. The policy laid the foundation for an increasingly competitive export based market and for encouraging foreign investment in high-technology areas. A number of policies and procedural changes were introduced in 1985 and 1986 which aimed at increasing productivity, reducing costs and improving quality. All these policies created a climate for rapid industrial growth in the country. During this period

² www.dcmsme.gov.in/policies/policies.html.

a broad-based infrastructure was built up. A high degree of self-reliance in a large number of items - raw materials, intermediates, finished goods was achieved.

The next Industrial Policy that paved the new outlook was the Policy of the year 1991. The year 1991 saw a lot of changes in the economic scenario of the country with the 'Globalisation' and 'Liberalisation' of economy being introduced for the free flow of technologies, products etc., and which had a great impact on the economy and the GDP of the country. In this Industrial Policy, the Government provided enhanced support to the small-scale sector and wanted it to flourish in an environment of economic efficiency and continuous technological upgradation. In pursuit of this objective, the Government decided to take a series of initiatives in respect of the policies relating to the Industrial Licensing, Foreign Investment, Export and Import Policies etc. India, being a developing country, its progress largely depends upon the increase in the economy and the economy on the other hand depends upon the development of industries. Small and Medium Enterprises have always represented the model of Socio-Economic Policies of the Government of India. During this era many economists doubted on the very survival of the small scale industries, but all their doubts were proved wrong by the small sector. They showed unison in their approach and with lot of difficulties coming their way, a lot of apprehensions together with non-support from various areas made them even stronger in their survival.

Since 1990's there has been a sea change in the Industrial Policy of India. The overprotective Indian Market was opened to foreign companies and investors. Thus Indian Industry registered an impressive growth during this period. Though the main occupation has been agriculture for the bulk of the Indian population, it was realized that India would become a prosperous and a modern state only with industrialisation. Therefore different programs were formulated and initiated to build up an adequate infrastructure for rapid industrialisation and improve the industrial scenario in India.

The 2001-2006 Industrial Policy incorporated the various features reflected in the liberalised Economic Policy of the Government of India to give an impetus to industrial growth, to attract investments in identified sectors and also to ensure uniform dispersal of industries more particularly in the backward areas of the State. During this period, separate bodies were framed which worked exclusively towards the investment approvals of projects by the State High Level Clearance Committee (SHLCC) and large & medium projects by the State Level Single Window Agency (SLSWA),³ which is discussed in detail in Chapter VI – The Growth of MSMEs.

The development of the government policy frame work and support measures can be broadly grouped into three periods which are as follows:

1948-1991:- During this period recognition was given to the micro and small enterprises and they were considered as an effective tool to expand and generate employment opportunities, facilitate effective mobilization of skills and resources of private sector and help to ensure equitable distribution of national income, in all the policy resolutions of the government. The Micro, Small and Medium Enterprises (herein referred to as MSMEs) Development Organisation earlier termed as Small Industries Development Organisation (SIDO) was set up in 1954 as an apex body for sustained and organised growth of micro, small and medium enterprises. Within the next two years, the National Small Industries Corporation, the Khadi and Village Industries Commission and the Coir Board were also set up. The era provided supportive measures that were required to nurture MSEs, in the form of reservation of items for their exclusive manufacture, access to bank credit on priority through the Priority Sector Lending Programme of commercial bank, excise exemption, reservation under the Government Purchase Programme and price preference in purchases, infrastructure development and establishment of institute for entrepreneurial Service

³ www.dcmsme.gov.in/policies/policies.html.

and Institute for entrepreneurial and skill development. MSME- Development Institute earlier known as Small Industries Service Institutes (SISI) were set up all over India to train youth in skill/ entrepreneurship and tool Rooms were established with German and Danish assistance for providing technical service essential to MSEs as also for skill-training. At the state level, District Industries Centers (DICs) were set up all over the country.

1991-1999:- From August 1991 under the new policy for small, Tiny and Village Enterprises framework for government support was laid in the context of liberalisation, which sought to replace protection with competitiveness in order to bring about more vitality and growth to MSEs in the face of foreign competition and open market. Supportive measures concentrated on improving infrastructure, technology and quality. Testing Centers were set up for quality certification and new tool Rooms as well as Sub-Contracting Exchange were also established. The Small Industries Development and Modernisation Fund were created to accelerate finance and technical service to the sector. A Delayed Payment Act was enacted to facilitate prompt payment of dues to MSEs and an Industries Infrastructure Development (IID) scheme was launched to set-up a mini industrial estate for small industries.

1999 onwards:- From the year 1999 onwards the ministry MSME earlier known as Ministry of Small Scale Industries and Agro & Rural Industries (SSI & ARI) came into being to provide specific attention to the promotion and development of the sector. The new Policy Package announced in August 2000 sought to address the persisting problems relating to credit, infrastructure, and technology and marketing more effectively. A Credit Linked Capital Subsidy Scheme was launched to encourage technology upgradation in the MSE sector and a Credit Guarantee Scheme was started to provide collateral free loans to micro and small entrepreneurs, particularly, the first generation entrepreneurs. The exemption limit for relief from payment of Central

Excise duty was also increased and a Market Development Assistance Scheme for MSEs was introduced. At the same time, consultations were on with stakeholders and the list of products reserved for production in the MSE sector was gradually reduced each year. In 2006, the long awaited enactment for this sector finally became a reality with the passage of the **Micro, Small Medium Enterprises Act 2006**. In March 2007, a third Package for the Promotion of Micro and Small Enterprises was announced which comprises the proposals/schemes having direct impact on the promotion and development of the micro and small enterprises, particularly in view of the fast changing economic environment, wherein to be competitive is the key to success.

3.3 IMPACT OF INDUSTRIAL POLICY:

The key element of the liberalised industrial policy is the fresh approach towards foreign investment and technology tie ups. The policy changes are designed to attract significant capital flows. A number of significant policy changes have been undertaken to make investment in India an easier and more rewarding proposition. It is seen that Foreign Direct Investment (FDI) including NRI investment plays an important role in the development process of the country. It has the potential of making a contribution to development through the transfer of financial resources, technology and improved management techniques. It facilitates marketing the exports of the country. Apart from generating employment, foreign exchange and taxable incomes it also raises the productivity of the locally owned firms.⁴ As already mentioned the liberalised Economic Policy formulated by the Government of India aims at rapid and substantial economic growth and integration with the global economy in a harmonised manner. It has greatly contributed to the rapid industrial

⁴ P.K Muthappan. "Non-Resident Indian Investments in India: With Special Reference to NRI Industrial Investment in Tamil Nadu" (Unpublished Ph.D. Thesis, Alagappa University, 1996).

growth in the private sector. The Industrial Policy reforms have reduced the industrial licensing requirements, removed restrictions on investment and expansion, and facilitated easy access to foreign technology and foreign direct investment (FDIs) as already mentioned. The Government has pledged to launch a reinvigorated struggle for social and economic justice, to end poverty and unemployment and to build a modern, democratic, socialistic, prosperous and forward-looking India. "The Central Government is considering further liberalisation of the FDI Policy to channel funds into the Country's infrastructure"- according to the Finance Minister Mr. Pranab Mukherjee.⁵ While Government will continue to follow the policy of self-reliance, there would be greater emphasis placed on building up our ability to pay for imports through our own foreign exchange earnings. The Government is also committed to development and utilisation of indigenous capabilities in technology and manufacturing as well as its upgradation to world standards.

It is felt that there is a need to pursue a sound policy framework encompassing encouragement of entrepreneurship, development of indigenous technology through investment in research and development, bringing in new technology, dismantling of the regulatory system, development of the capital markets and increasing competitiveness for the benefit of the common man. The Government of India with the support of the various State Governments will provide enhanced support to the small-scale sector so that it flourishes in an environment of economic efficiency and continuous technological upgradation. It has taken various steps to abolish the monopoly of any sector or any individual enterprise in any field of manufacture, except on strategic or military considerations and open all manufacturing activity to competition. It will also ensure that the public sector plays its rightful role in evolving the socio-economic scenario of the country and runs on profitable business lines.

⁵ The Economic Times, 5th March, 2011, P.1.

The major objectives of the new industrial policy package will be to build on the gains already made, correct the distortions or weaknesses that may have crept in, maintain a sustained growth in productivity and gainful employment and attain international competitiveness. All sectors of industry whether small, medium or large, belonging to the public, private or cooperative will be encouraged to grow and improve on their past performance. The growth of the industrial sector at a higher rate and on a sustained basis is a major determinant of a country's overall economic development. In this regard, the Government of India has issued various industrial policies, from time to time, to facilitate and foster the growth of Indian industry and maintain its productivity and competitiveness in the world market. Since independence, as stated above the Government of India has formulated a total of six Industrial Policy Resolutions /Statements with a view to promote industrial growth in the country.

All these policies have also covered the small-scale sector, in general. To attain higher growth in SSI sector, various incentives pertaining to financial, fiscal and infrastructure related measures were designed and extended to SSI units. These policies have been devised to guard the SSIs against competition from the large scale sector. Later, on the lines of economic liberalisation, it was decided to have a plan towards the reservation policy with the objective of enhancing the potential of SSI sector in their export orientation and enable them to be competitive.

In view of the considerations outlined above, the Government has decided to take a series of measures to regulate the Indian industrial economy which includes enactment of a Special Act concerning Micro, Small and Medium Enterprises known as Micro Small and Medium Enterprises Development Act, 1996 (MSMED Act for short) . Before studying the various measures taken by the Government of India it is appropriate to peruse certain important relevant provisions of the MSMED Act 2006.

In order to streamline the functioning of the micro, small and medium enterprises, the Central Government has come out with various industrial policies and programmes. Several legislations have been enacted and amended from time to time in response to the changing environment. The most important for the study is the **Industries (Development and Regulation) Act, 1951 (IDRA)**, which was enacted in pursuance of the Industrial Policy Resolution 1948. The Act was formulated for the purpose of development and regulation of industries in India.

The main objectives of the Act were: (i) to take necessary steps for the development of industries; (ii) to regulate the pattern and direction of industrial development and (iii) to control the activities, performance and results of industrial undertakings in the public interest. The Act applies to the 'Scheduled Industries' listed in the First Schedule of the Act. The Act comprises 32 sections out of which only two sections i.e., Sec 11B and Sec 29B relate to Small scale industrial undertaking.

Sec 11 B of the said Act relates to the power of the Central Government to specify the requirements which shall be complied with by small scale industrial undertakings. It states that the Central Government may, with a view to ascertaining which ancillary and small scale industrial undertakings need supportive measures, exemptions or other favourable treatment to enable them to maintain their viability and strength so as to be effective in promoting in a harmonious manner the industrial economy of the country, easing the problem of unemployment and securing that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good.

Sec 29B of the said Act relates to the powers of the Central Government to exempt in special cases. This section states that the Central Government by notifying in the Official Gazette shall exempt certain industries having regard to the smallness of the number of workers employed or to the amount invested in any industrial undertaking or to the desirability of encouraging small undertakings generally or to the

stage of development of any scheduled industry, that it would not be in the public interest to apply all or any of the provisions of this Act. The exemption shall be from the applicability of the provisions of this Act or any Rule or Order made there under. ⁶

There was no special Act governing the micro, small and medium sectors except the above mentioned provisions of the IDRA Act 1951. There was a need for a comprehensive Central Law to provide an appropriate legislation for the sector to facilitate its growth, development and competitiveness. The emergence of a large service sector assisting the small industries also warrants a composite and comprehensive legal view over the previous Act which was not competitive to the present system of globalisation and liberalisation. Therefore, the Government of India presented a Bill in 2005 in Parliament ie., known as the Micro, Small and Medium Enterprises Development Bill, 2005. This Bill was passed by both the Houses of the Parliament and took the assent of the President of India on 16th June, 2006 and became a law governing Micro, Small and Medium Enterprises Development in India.

3.4 MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT 2006

Preamble: “An Act to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto.”

3.5 The Objective of the Act is to seek the following:

- To provide for statutory definitions of “small enterprise” and “medium enterprise”;

⁶ Deepak Arora, Seema sahani, The Civil Court manual (Central Acts), Industries (Development and Regulation Act) Chennai Law Journal Office, Chennai, 1951, 12th edition, page 300 and 339,

- To provide for the establishment of a National Small and Medium Enterprises Board, a high-level forum consisting of stakeholders for participative review of and making recommendations on the policies and programmes for the development of small and medium enterprises;
- To provide for classification of small and medium enterprises on the basis of investment in plant and machinery or equipment and establishment of an Advisory Committee to recommend on the related matter;
- To empower the Central Government to notify programmes, guidelines or instructions for facilitating the promotion and development and enhancing the competitiveness of small and medium enterprises;
- To empower the State Government to specify, by notification, that provisions of the labour laws specified in clause 9(2) will not apply to small and medium enterprises employing upto 50 employees with a view to facilitating the graduation of small enterprises to medium enterprises;
- To make provisions for ensuring timely and smooth flow of credit to small and medium enterprises so as to minimize the incidence of sickness among and enhancing the competitiveness of such enterprises, in accordance with the guidelines or instructions of the Reserve Bank of India;
- To empower the Central and State Governments to notify Preference Policies in respect of procurement of goods and services, produced and provided by small enterprises, by the Ministries, Departments and public sector enterprises;
- To empower the Central Government to create a Fund or Funds for facilitating promotions and development and enhancing the competitiveness of small enterprises and medium enterprises;

- To empower, to prescribe harmonised, simpler and streamlined procedures for inspections of small and medium enterprises under the labour laws enumerated in clause 15, having regard to the need to promote self-regulations or self-certification by such enterprises;
- To prescribe for maintenance of records and filing of returns by small and medium enterprises with a view to reduce the multiplicity of often-overlapping types of returns to be filed;
- To make further improvements in the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 and making that enactment a part of the proposed legislation and to repeal that enactment.

The Micro, Small and Medium Enterprises Development Act, (MSMED) 2006 is divided into six chapters. Each chapter is identified for a particular function:

- “Chapter-1 Preliminary with short title, definitions etc.,
- Chapter-2 National Board for Micro, Small and Medium Enterprises
- Chapter-3 Classification of Enterprises, Advisory Committee and Memorandum of Micro, Small and Medium Enterprises;
- Chapter-4 Measures for promotion, Development and Enhancement of Competitiveness of Micro, Small and Medium Enterprises;
- Chapter-5 Delayed Payments to Micro, and Small Enterprises;
- Chapter-6 Miscellaneous, such as appointment of the officers and other employees, jurisdiction of courts, power to make rules etc.”

The MSMED Act 2006 has in its 1st chapter defined certain terms which should have had a clear definition. These definitions have been given in the first chapter under

the heading ‘conceptual definitions.’ In its 3rd chapter the Act has given a clear classification of the Small and Medium enterprises which is shown as follows.

3.6 CLASSIFICATION OF ENTERPRISES:

Section 7 of the MSMED Act 2006, classifies any class or classes of enterprises, whether proprietorship, Hindu undivided family, association of persons, co-operative society, partnership firm, company or undertaking etc., into two parts.

I. On the basis of the enterprises engaged in the manufacturing or production

Micro Enterprise	Where investment in Plant and Machinery does not exceed 25 lakh rupees;
Small Enterprise	Where investment in Plant and Machinery is more than 25 lakh rupees and less than 5 crore rupees;
Medium Enterprise	Where investment in Plant and Machinery is more than 5 crore rupees and less than 10 crore rupees;

Note :

- a. It is very clearly mentioned in the Act that in calculating the investment in plant and machinery, the cost of pollution control, research and development, industrial safety devices and such other items is excluded.
- b. The reservation of items given in Sec 29 B of the Industries (Development and Regulation) Act is applicable to micro and small enterprises only.

II. On the basis of the enterprises engaged in providing or rendering of Services

Micro Enterprise	Where investment in equipment does not exceed 10 lakh rupees;
Small Enterprise	Where investment in equipment is more than 10 lakh rupees and less than 2 crore rupees;
Medium Enterprise	Where investment in equipment is more than 2 crore rupees and less than 5 crore rupees;

Chapter-4 of the MSMED Act deals with the measures for promotion, development, and enhancement of competitiveness of micro, small and medium enterprises. It is relevant to note certain important provisions of the said Act which are culled out as under:

Sec 9 of the Act : Measures for promotion and development:

The Central Government may, from time to time, for the purposes of facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises, particularly of the micro and small enterprises, by way of development skill in the employees, management and entrepreneurs, make provisions for technological upgradation, marketing assistance or infrastructure facilities and cluster development of such enterprises with a view to strengthening backward and forward linkages. The Government also may specify by notification, such programme, guidelines or instructions, as it may deem fit.

Sec 10 of the Act: Credit facilities

The policies and practices in respect of credit to the micro, small and medium enterprises, shall be progressive and such as may be specified in the guidelines or instructions issued by the Reserve Bank, from time to time, to ensure timely and smooth flow of credit to such enterprises, minimize the incidence of sickness among and enhance the competitiveness of such enterprise.

Sec 11: Procurement preference policy:

For facilitating promotion and development of micro and small enterprises, the Central Government or the State Government may, by order notify from time to time, Preference Policies in respect of procurement of goods and services, produced and provided by micro and small enterprises, by its Ministries or departments, as the case may be, or its aided institutions and public sector enterprises.

Sec 12, 13 and 14 of the Act deals with the funds granted by the Government every now and then, any other grants by the Central Government and the administration and utilization of funds.⁷

3.7 POLICIES IN GENERAL APPLICABLE TO SMALL SCALE UNDERTAKINGS:

The Department of Industrial Policy and Promotion, Ministry of Commerce and Industry clearly states that the registration of an undertaking will not be necessary if an undertaking:

- Is a small scale industrial undertaking; or
- Is otherwise exempt from the licensing/registration provisions of the Act; Or

⁷ The Micro, Small and Medium Enterprises Development Act. 2006, (Bare Act), commercial Law Publishers (India) Pvt. Ltd., Delhi

- Where the undertaking concerned does not satisfy the definition of the term 'factory' under the Act. As per the Act, it clearly states that where the number of workers employed is less than 50 where power is used or, less than 100 where no power is used, it would not be considered to be a factory under the Act and consequently, it would not be an 'industrial undertaking' for the purposes of this Act.⁸

The Small scale units can get registered with the Directorate of Industries/District Industries Center in the State Government concerned. These units can manufacture any item including those notified as exclusively reserved for manufacture in the small scale sector. Small scale units are also free from locational restrictions.

If a small scale manufacturing unit, exceeds the investment ceiling in plant and machinery by virtue of natural growth, needs to apply for and obtain a Carry-on-Business (COB) license. No export obligation is fixed on the capacity for which the COB license is granted. However, if the unit expands the capacity for the small scale reserved item(s) further, it needs to apply for and obtain a separate industrial licence. ⁹

It is very clear that all industries except those reserved for the public sector and those retained under compulsory licensing, engaged in the manufacture of items reserved for the small scale sector and if located in the restricted area according to their locations, are exempt from the requirements of obtaining Industrial license. The industrial undertakings which are exempt from obtaining an industrial licence are required to file an Industrial Entrepreneur Memorandum (IEM) with the Secretariat of Industrial Assistance (SIA), Department of Industrial Policy. The IEM has replaced the

⁸ http://india.gov.in/sectors/commerce/ministry_commerce.php.

⁹ The Institute of Company Secretaries of India. Economic, Labour and Industrial Laws, Intermediate Course, Study Material, paper 7, P.7-22.

two stage registration process (provisional registration and permanent registration). The MSMED Act makes it mandatory the filing of EM for a medium scale manufacturing enterprises and it is optional in case of other enterprises.¹⁰

The entrepreneurs are required to obtain Statutory clearances relating to Pollution Control and Environment for setting up an Industrial project. The Environment Protection Act 1986, states that any item reserved for the small scale sector with investment of less than Rs. 10 million is exempt from obtaining environmental clearance from the Central Government. Powers have been delegated to the State Government for grant of environmental clearance.¹¹

The Industrial undertakings are free to select the location of a project. However, in the case of cities with population of more than one million (as per the 1991 census), the proposed location should be at least 25 km away from the Standard Urban Area limits of that city unless, it is to be located in an area designated as an “industrial area” before 1991. Industries related to electronics, computer software and printing (and any other industry which may be notified in future as “non polluting industry”) are exempt from such locational restriction. ¹²

The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act 1993 is “an Act to provide for and regulate the payment of interest on delayed payments to small scale and ancillary industrial undertakings and for matters connected therewith or incidental thereto.” Sec 32(1) of the MSMED Act has repealed the “The Interest on Delayed Payments to Small Scale and Ancillary Industrial

¹⁰ Srinivasan Anand G. “Law and Practice Relating to Micro, Small and Medium Enterprises, 3rd Edition, (New Delhi: Taxmann Publication (P) Ltd.), 2008, p.11.

¹¹ S. Krishnamurthi. “Guide to Micro, Small and Medium Enterprises (Small Scale Industries) Policy, Rules and Regulations”, 3rd Edition, (Allahabad: Orient Publishing Company, 2008), Pp.196-198.

¹² http://dipp.nic.in/inv_opp/manul.pdf

Undertakings Act, 1993”. This repeal is effective from the date notified by the Central Government i.e., 2-10-2006.¹³

However, according to the section 32(2) of the MSMED Act “ not withstanding such repeal, anything done or any action taken under the Act so repealed under sub sec(1) shall be deemed to have been done or taken under the corresponding provisions of this Act.”

The reason behind this repeal is that the provision under the Act was found inappropriate to the present market scenario and the working of the small and medium enterprises. It is known that the delayed payment from customers is one of the problems faced by the micro, small and medium enterprises. Therefore, the MSMED Act endeavours to incorporate more effective provisions to address this problem and also to provide a comprehensive legislative framework and policy to promote the development of small and medium enterprises.

¹³ Srinivasan Anand G. “Law and Practice Relating to Micro, Small and Medium Enterprises, 3rd Edition, (New Delhi: Taxmann Publication (P) Ltd.), 2008, Pp.36-39.

3.8 PRESENT POLICY FRAMEWORK – MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006

The MSMED Act, 2006 is meant to encourage the development of the enterprises and also enhance their competitiveness. As already mentioned above it provides the first- ever legal framework for recognition of the concept of “enterprise” which comprises both manufacturing and service entities. It defines medium enterprises for the first time and sees to integrate the three segments, namely, micro, small and medium. The Act also provides for a statutory consultative mechanism at the national level with balanced representation of all sections of stakeholders, particularly the three classes of enterprises, and with a wide range of advisory functions. Under the Act specific funds are maintained for the promotion, development and enhancing competitiveness of these enterprises and notification of schemes/ programs for this purpose are issued every now and then. Progressive credit policies and practices such as giving preference to the procurement of products and services of the micro and small enterprises, finding more effective mechanisms for mitigating the problems of delayed payments to micro and small enterprises and assurance of a scheme for easing the closure of business by these enterprises are implemented.

The Ministry of Micro, Small and Medium Enterprise has been continuously scrutinising the policy framework, the various schemes introduced and the various incentives and concessions given to the MSME sector in the country. The Ministry has identified the key areas which are in focus and they are the credit/finance sector, technology, quality control and certification, marketing, export promotion etc. The various State Governments on par with the Ministry of MSME have been providing schemes, incentives, subsidies, concessions, grants to the micro, small and medium enterprises in order to boost their economy, the Government of Karnataka is not behind in this regard.

Thus, the MSMED Act 2006 has given a clear cut bifurcation to the categories of the enterprises and all the general laws applicable to the small scale industries giving a clear picture starting right from the registration formalities to their functioning which have been discussed in this chapter. To implement these policies the Central Government as well as the Government of Karnataka have started various agencies to benefit the entrepreneurs with regard to finance, marketing, training and development research etc. This is discussed in the next chapter under the heading “the Institutional support for MSMEs”