



Builders' Association of India

(All India Association of Engineering Construction Contractors and Builders)

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www.baionline.in

Ref.: 53/A/2025-2026 dated 7th April, 2025

Shri Pradeep Ojha

Joint Director & Head of Office

MSME Development and Facilitation Office

Ministry of MSME, Govt. of India

MSME Tower, Near CIMS Hospital

Sola – Science City Road

Sola, Ahmedabad-380060

Email :dcdi-ahmbad@dcmsme.gov.in

Subject: Policy-level Intervention Requested for Enabling Access to MSME Protections for Registered Contractors Executing Works Contracts.

Respected Sir,

Builders' Association of India (BAI) is an apex all India body of Engineering Construction Contractors and Real Estate Companies with more than 23,000 business entities as members through its 230 plus Centres (Branches) throughout the country. Regional Associations affiliated to BAI form indirect membership of more than 1,50,000. The fundamental aim of the Association is to bring about all round improvement to the construction sector while striving towards resolution of operational as well as policy level problems faced by the construction industry.

We write this representation to bring to your urgent attention a critical anomaly that directly impacts the construction contracting sector's inclusion under the **Ease of Doing Business** framework. The matter pertains to **contractors executing "works contracts"** (which involve a composite supply of goods and services), who, despite being **duly registered under UDYAM as MSMEs**, are being **systematically denied access to the dispute resolution mechanisms under the MSMED Act, 2006**, by certain courts and state-level MSEFCs.

Background:

1. As per the MSME Act 2006, Chapter V, Section 15, under says- ***"Where any "Supplier" supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day: Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance."***
2. The **"Supplier"** means ***a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8, and includes,—.....***
3. **"Enterprise"** means ***an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (55 of 1951) or engaged in providing or rendering of any service or services;***

...ContdP2...

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BAI Centres at :

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4. Initially there was no specific list of “services” for the registration purpose and any enterprise providing any types of services were eligible to register under MSMED act.
5. As per the DO. No: 2(3)/1/2007-MSME POL dt 16-11-2007 , Sri Sanjeev Koushal IAS, Joint Secretary & Additional Development commissioner of MSMED issued a detailed list of services eligible for filing the Memorandum under MSMED Act.

As per the above, All the “**Construction and Related Engineering Services** “under 5 groups are classified as “Services”.

6. In 2020, MSME Department launched the “**Udyam Registration**” system, mandating that all MSME registrations be aligned with the **NIC 2008 classification**. NIC code is also used for GST and Registrar of Companies (ROC). In “Udyam Portal” All the Construction Activities classified under ‘manufacturing’ and there are 39 specific activities under the drop down menu.
7. While the **MSMED Act, 2006** is intended to protect enterprises engaged in “**supply**” of goods or rendering of “**services**”, certain High Court judgments have interpreted that entities engaged in “**works contracts**”—which involve a **composite supply of both goods and services**—do not fall clearly under either category. These interpretations point to the absence of a specific clause in the Act addressing such hybrid supply models.
8. As a result, several **Courts, MSEFCs**, and even **government departments** have taken the view that **construction activities**, being categorized as **works contracts**, are **not eligible** under the MSMED Act for registration or for invoking protections such as dispute resolution—despite being permitted under Udyog Aadhaar and now Udyam Registration.
9. The term “**Works Contract**” is a broader classification primarily developed for **dual taxation purposes** to governing **VAT and Service Taxes** in contractual agreements in the construction and other services sectors and does not find a place in international product classification systems. Accordingly, the **NIC Code 2008**—which forms the basis for activity classification under the Udyam Registration framework— does not include "Works Contract" as a specific category. Instead, it provides a **more granular classification** of construction-related activities. In NIC Code 2008, construction activities- generally referred to as works contracts- are classified under **Section F**, which includes **39 distinct categories**, each corresponding to a specific type of construction activity.

10. **MSME Ministry Clarification:**

Ministry of MSME, via its letter dated **04 January 2023** (Ref: F. No. 5/2(6)/2022/E-P&G/Policy), has categorically clarified that construction contractors executing combined supply and service activities (works contracts) are **eligible for UDYAM registration**, as per NIC 2008 classification of economic activities.

11. **Contradictory Judicial Interpretation:**

Despite the above, various **MSEFCs and High Courts** (notably in *P.L. Adke v. Wardha Municipal Council* and *Sterling Wilson Pvt. Ltd. v. UOI*) have taken the view that **works contracts are outside the purview of the MSMED Act**, thus disallowing registered contractors from accessing timely dispute resolution under Section 18 of the Act.

12. **Pending Supreme Court Case:**

The matter is currently pending before the Hon’ble Supreme Court of India in **SLP (C) No. 4970 of 2021**. It is regrated to inform that the Hon'ble Justice Indira Banerjee (who heard the matter) has retired. As a result, the case may take more time to be disposed.

13. **Recent order by the Regional MSEFC, Kerala.**

Recent MSEFC Order: In OA No. 33/2023 (KKD), the **Regional MSEFC, Kozhikode**, dismissed a legitimate claim by **M/s A.K.R. Constructions (UDYAM-KL-08-0000979)** citing that it pertains to a works contract and therefore lies outside the Council's jurisdiction.

Key Concerns:

- **Legal Uncertainty:** Contractors duly registered as MSMEs are being denied protections due to the legal classification of their work as "composite contracts."
- The **MSME Ministry clarification** is **policy-based** and administrative in nature.
- However, **courts interpret legal definitions and jurisdiction** under the MSMED Act.
- **Delayed Payments:** Denial of access to MSEFCs removes a vital recourse for addressing chronic payment delays from public sector clients.
- **Violation of EoDB Principles:** This contradiction between registration eligibility and actual benefit undermines the very objective of MSME promotion and Ease of Doing Business initiatives.
- **Stunted Access to Finance:** Ineligible claims and pending dues directly impact working capital availability and credit ratings of MSME contractors.

Our Humble Submissions:

We respectfully request the Department to consider the following for urgent implementation:

1. Issue a "**Clarificatory Notification with retrospective effect,**" making it abundantly clear that all construction activities whether it is supply / Service / both , mentioned under the MSME Registration portal / NIC Code are fully entitled to seek redress under the MSMED Act irrespective of the composite nature of their contracts."
2. **Direct the MSME Ministry to Issue Operational Circulars to All MSEFCs:** Ensuring **uniform interpretation** and stopping arbitrary rejections of registered contractors' claims.
3. **Incorporate the Clarification into the EoDB Action Plan:** So that MSME contractors are not penalized by definitional gaps, and receive full policy and legal support.

We believe that such a clarification will remove ambiguity, streamline compliance, and provide immediate relief to thousands of small and Medium contractors nationwide thereby strengthening India's infrastructure delivery ecosystem.

Sir, we earnestly request you to kindly grant us an appointment to meet your good self, at your office on day and time convenient to you, to enable us to discuss these matters in details.

We look forward to your kind attention and positive action on this matter.

Thanking you,

Yours faithfully,



RAJENDRA SINGH KAMBOH
PRESIDENT
BUILDERS' ASSOCIATION OF INDIA



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Builders' Association of India

(All India Association of Civil Engineering Construction Contractors and Builders)

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Ref.: 15/A/2025-26 dated 3rd April 2025

Smt Nirmala Sitharaman Ji
Hon'ble Minister of Finance,
Government of India
Rom No. 134, North Block,
New Delhi – 110001

Shri Pankaj Chaudhary Ji
Hon'ble Minister of State for Finance,
Ministry of Finance,
Room No. -138, North Block,
New Delhi – 110001

Subject: Request for Uniform Treatment of MSME Registered Contractors.

Respected Madam,

The Builders Association of India (BAI) is the apex All-India body of engineering construction contractors and real estate companies founded in the year 1941 with more than 25,000 business entities as its members through nearly 230 plus branches across the country. The association is a registered body established with the objective of encouraging trade, industry and profession of construction works and all other ancillary and allied trades and industries amongst others.

We wish to bring to your kind attention a pressing issue affecting Micro, Small, and Medium Enterprises (MSMEs) registered contractors. The government in last year Budget added a new clause under Section 43B of the Income Tax Act, mandates clients of registered MSME suppliers/manufacturers to make payments within 45 days, failing which the Income Tax Department disallows the amount as expenditure.

However, MSME-registered contractors face a significant challenge in complying with this regulation. Despite being required to pay their vendors, manufacturers, and suppliers within 45 days, they often do not receive timely payments from government departments. This discrepancy puts MSME-registered contractors in a difficult position, and we request that the government consider them equally, regardless of whether they are manufacturers, suppliers, or government contractors.

To address this issue, we propose possible solutions:

- **Restrict government departments to make payments within 45 days:** This would enable contractors to comply with the rules and make timely payments to their vendors.
- **Remove the restriction on contractors to pay their vendors within 45 days:** If government departments are unable to make payments within the specified timeframe, contractors should not be penalized for delayed payments to their vendors.

Respected Madam, we earnestly request you to kindly grant us an appointment to meet your good self, at your office on day and time convenient to you, to explain more about taking necessary steps to protect the interests of MSME-registered contractors. Your intervention would go a long way in promoting the growth and development of the MSME sector, which is critical to India's economic progress.

Thanking you in positive anticipation.

Yours sincerely

RAJENDRA SINGH KAMBOH
PRESIDENT
BUILDERS' ASSOCIATION OF INDIA

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Ref.: 877/M/2025-26 dated 25th March, 2025

To,
Shri Manmeet Kaur Nanda, IAS
Joint Secretary
Government of India
Ministry of Social Justice & Empowerment
Department of Empowerment of Persons with Disabilities (Divyangjan)
Pt. Deendayal Antyodaya Bhawan,
CGO Complex, Lodhi Road,
New Delhi 110003

Dear Sir,

Sub.: Request to solve Issues affecting the Construction and Building Industry.

We would like to extend our sincere gratitude to the Government for taking such initiative by constituting the Task Force on Deregulation and Compliance Burden, with objective 'Ease of Doing Business'.

Also, we would like to thank you for organising a Meeting regarding Task Force on Deregulation and Compliance Burden under the Chairmanship Shri Rajesh Aggarwal, Secretary, DEPWD on 18th March 2025 through video conferencing.

Sir, during the meeting, we have discussed key issues affecting the construction and building industry and would like to bring the following for your kind perusal and favorable consideration:

1. MSME and Work Contract :-

Inclusion of Works Contracts under MSME/UDYAM Registration remains unresolved and has worsened over time. While the Udyam registration portal recognizes construction activities under 39 distinct categories, issuing unique registration numbers, certain MSEFCs and courts have been rejecting petitions by categorizing our services as Works Contracts.

- i. Denial of Benefits under MSME Act.** - Contractors are allowed to register with MSME for all construction activities as classified under Service Sector as per the MSME Act. Accordingly contractors register with UDYAM portal under Section F-Construction. - with 39 different sub classes that cover all types of Construction activities like, Buildings, Railways, Roads, Bridges, Plumbing, electrical, Air-conditioning, Finishing works and all other specialized jobs.

However, some of the Govt. Departments/PSUs/PWDs. are not considering the Construction Contracts under the "MSME" and deny such benefits to the MSMEs. It is also to mention here that some of the states have also not implemented the benefits available to contractors and denying facilities available under MSME Act. It is, therefore requested that necessary instructions may please be issued to all states to extend the benefits of MSME Act, in letter and spirit, to the construction industry also.

- ii. **Works Contract” Confusion** - Most of the construction activities are listed in Sec F and all of us are getting registration as per the same. However, there are a few instances, where justice and MSME benefits are being denied to many on the ground that Works contract is not covered/ listed in MSME list of services. This probably could be a hangover of the erstwhile VAT and Service tax regime where the phrase “Works Contract” was commonly used. It could also be because of the fact that construction is not pure service, as material transfer is also involved.

Departments are also referring to certain High Court judgements especially one from Delhi High court wherein the court termed a construction activity or a contract as “Works Contract” which according to the Court is not specifically categorized in the MSME list of services.

It is, therefore, requested that in order to avoid confusion, related litigation and also to deliver justice as contemplated in the Act, necessary clarificatory order including Works Contract in the list of services may please be issued from your esteemed office.

- iii. **Restrict government departments to make payments within 45 days:** This would enable contractors to comply with the rules and make timely payments to their vendors.
- iv. **Remove the restriction on contractors to pay their vendors within 45 days:** If government departments are unable to make payments within the specified timeframe, contractors should not be penalized for delayed payments to their vendors.

2. MahaRERA :-

The Real Estate Sector is among the large contributors to the country’s GDP and the second-largest employer in the country with more than 450 industries right from manufacturing to services. Any incentive extended to real estate would also stimulate all the ancillary industries.

Shri Anand Gupta has emphasized the need for better coordination between the Real Estate Regulatory Authority (RERA) and Government authorities. This would help streamline processes, reduce confusion, and promote transparency

- The compliance work to be divided in the Divisional Offices (Region wise) for i.e. Western Maharashtra – Pune Division Office, Vidarbha and Marathwada – Nagpur Division Office and MMR Region – Mumbai Office, for smooth functioning and time bound compliance.
- SOP should be formed and implemented for the successful completion of MahaRERA lapsed projects in Maharashtra under strict supervision of MahaRERA. Presently, under the definition of ‘Lapsed Projects’ are piling up and confidence of customer, financial institution are shaking up.
- Stalled projects as a major hindrance to industry growth. They are working with government agencies to find solutions to revive these projects and get them back on track.
- Simplification of building permissions, which are currently complex and multifaceted. This would help reduce delays and costs associated with obtaining necessary permits.

We request you to kindly include the name of a senior member of BAI in the Central Advisory Council of RERA, so that the Housing and Real Estate Industry could make its view points for consideration.

3. Labour Welfare Cess Utilization :-

Construction industry is badly affected due to the non-availability of Skilled Construction Workers. The low productivity of construction workers in India has resulted delay in completing the project as also the quality of the construction.

Further, he brought to attention that most of the States are not following the directive of Government of India, Ministry of Labour & Employment, **directing State Boards shall spend every year at least 20% of the balance cess amount at the beginning of the financial year, on activities related to skill development of registered workers and their dependents.**

Therefore, request of utilising labour welfare cess solely for skilling purposes as this would help upskill workers, improve productivity, and enhance the overall quality of construction.

4. Reimbursement of TAX from VAT to GST and difference from 12 to 18 %.

Shri Anand Gupta informed that BAI Members working in various State's are facing issue regarding TAX Reimbursement related to VAT to GST and Tax regime difference in GST from 12% to 18 %. The Contractors are facing the extra burden instantly which locks the working capital of the contractors for an unreasonable period, the increased tax should be paid to the contractors on submission of bill basis and need not be a reimbursement.

- New tender which are been floated and awarded are being awarded as per the existing GST rules applicable time to time, i.e. 12% or 18% whichever is applicable at the time of billing.

However, those works which had been allotted earlier, that is before GST Tax was implemented are facing difficulty as the department is not providing the Reimbursement of VAT to GST difference and the difference in Slab regime from 12 to 18 %.

- During the VAT Regime in the PMAY projects, service tax was exempted but in GST Regime, no exemption was provided to contractors and 12 % GST was levied on PMAY projects which was later revised to 18 % GST, resulting on heavy burdens on contractors who were already executing the projects & mostly all the contractors have individually approached the concerned department & done the necessary correspondence also in the matter but, nothing has been heard from the Government department side on this matter till today.

Proper guidelines/instructions in this regard will be a great relief to the Contractors for getting their long outstanding dues and also it will ease them from the financial crisis.

5. Review of SRA Schema as present scheme is increasing slum instead of reducing slum.

The Slum Rehabilitation Authority (SRA) scheme was initiated to provide housing to slum dwellers and improve their living conditions. However, a review of the current scheme reveals that it may be inadvertently increasing the number of slums instead of reducing them.

6. Royalty :-

Request to consider reviewing the 'Royalty on Minor Minerals' from contractors as this collection involves various State Government Department, which leads to various mal practices.

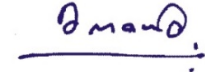
If government could come out with a workable solution to collect royalty t dragging point towards 'EASE OF DOING BUSINESS'.

Sir, your attention to these issues will significantly contribute to the growth and development of the construction industry.

We appreciate your time and consideration, and we look forward to hearing from you soon.

Thanking you,

Yours faithfully,



**ANAND GUPTA
VICE PRESIDENT
BUILDERS' ASSOCIATION OF INDIA**

Copy to:

1. Shri Rajesh Aggarwal, Secretary, DEPWD.

BAI Centres at :