

MSMEs – ODR Scheme for Recovery of Delayed Payments

INTRODUCTION

On MSME Day 27th June, 2025, President of India unveiled Online Dispute Resolution (ODR) web portal. The webportal is first of its kind across all ministries of Government of India.

In India, Online Dispute Resolution (ODR) is being introduced in stages. At grassroot level, the **online things** is resulting into positive transition and COVID period has played a pivotal role in expediting the whole process.

- Crowds in Court Rooms have started thinning now – as court hearings are happening in Hybrid Mode (the option of attending hearing in physical mode or through VC);
- Easing out of parking pressures in and around campuses of courts / quasi-judicial authorities as many legal representatives are now attending hearings from the comfort of their offices;
- Court Rooms are now less messy as physical files are now getting reduced. Judges, judicial and technical members are now having large size computer screens to go through the petitions, responses, rejoinders, sur-rejoinders, written submissions, decided cases, etc.
- Pressure on record rooms attached to courts is started reducing as physical files are no more being asked by many courts, e.g. Delhi High Court;
- Submission of petitions, replies, rejoinders, sur-rejoinders, written submissions happening through online mode is resulting into saving of tonnes of papers on all India basis.

But this was only first phase of digitalization / online dispute resolution as Judges were still travelling to their chambers and courts; hearing was still allowed in hybrid mode; even filing was in dual mode in most of the courts and so on.

Second and more exciting phase is starting now with the launch of ODR web portal by Ministry of Micro, Small and Medium Enterprises on MSME day. With the launch of ODR portal for '**Recovery for Delayed Payment for MSEs**' following interesting features have emerged in India for the first time:

- First two stages (out of total four stages) will be Judge Free;
- Physical filings are being totally done away with;
- Physical visits are no more required (at any of the four

stages) – neither for filing nor for attending meetings of MSEFCs nor for attending hearings with Mediators nor for attending hearings with Arbitrators – as the whole process is now online;

- Fee payment mechanism (to MSEFCs) is also likely to be online only (as of now no clarity);
- GOI proposes to reimburse INR 4,000 to MSEs entering into ambit of Recovery for Delayed Payment.

OLD SYSTEM OF RECOVERY OF DELAYED PAYMENTS

Prior to 27th June, 2025, MSME (Development) Act, 2006 provided for recovery of delayed payment mechanism which was completely in the domain of State Governments. 'Micro and Small Enterprises' (MSEs) seeking recovery of delayed payments through old mechanism faced following hardships/challenges:

- Filing of online application on Samadhaan webportal;
- Filing of physical Application with concerned MSE Facilitation Council usually situated at State Capital, though some large size States constituted more than one benches of MSEFC for a cluster of 4-12 Districts;
- Fee payment to MSEFCs;
- Physical visit for -
 - ♦ Filing;
 - ♦ Removal of defects;
 - ♦ Attending meetings of MSEFCs (though some of the States like Haryana facilitated online hearings as well);
 - ♦ Physical visits to Arbitrator/Mediator allotted by MSEFCs;
- Usually the solution to delayed payment system took 18-24 months;
- Involvements of dirty practices;
- Non-functional or ineffective MSEFCs (in some States MSEFCs were there only on papers but they were not proactive).

On an average, old system used to take about 18-24 months and overall recovery cost was around 6-10%. Due to costs and compliances, small claims of less than one lakh were rarely pursued by MSEs through this mechanism due to cost factor.

THE OBJECTIVES OF ODR

The ODR (Online Dispute Resolution) mechanism will help in attaining following written or unwritten objectives for MSEs:

To Remove Existing Difficulties—New system is likely to -

- substantially reduce cost of recovery,
- reduce timelines of litigation,
- provide easy access to justice delivery,
- facilitate end-to end digitalised solution for the recovery of delayed payment,
- reduce travel time and travelling cost for recovery of delayed payment,
- reimburse cost of documentation to MSEs (upto INR 2,000),
- reimburse fee payable to MSEFC (upto INR 2,000).

UNDERSTANDING 'ODR' MECHANISM

'Online Dispute Resolution' (ODR) is defined in technical notes of UNCITRAL as a "mechanism for resolving disputes through the use of electronic communications and other information and communication technology."

Ministry of MSME has launched interactive web portal www.odr.msme.gov.in under World Bank supported RAMP (Raising and Accelerating MSMEs Performance). Once fully loaded, then the major modules of ODR Portal will be maintained as under:

• Creation of Login Id and Password	• E-filing of Application for delayed payment recovery
• Separate Profile for each entity	• Separate Profile for each case
• Digital Guided Pathway	• Payment Gateway
• Automated Online Negotiation	• Online Case management
• Online Conciliation or Mediation	• Online Management System
• E-filing	• Online Display Board
• Issuance of Online Notices/Summons	• Online Hearings and Evidence
• Online Legal HelpDesk	• Online Notifications and alerts through email and text messages
• Standard forms and Templates	• Dashboard
• Grievance Management	• Accessibility in Vernacular Language
• Directory of Institutions / Centers providing online mediation	• Directory of Institutions / Centers providing online arbitration
• Settlement agreements	• Awards passed

It is interesting to note that ODR portal will not maintain the following (in order to maintain confidentiality and avoid legality of proceedings):

• Un-manned Negotiation Proceedings	• Conciliation / Mediation Proceedings
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The newly introduced ODR mechanism is a combination of informal and formal approach to dispute resolution for MSEs.

- The **informal approach** (also named as Pre-MSEFC Phase) to delayed payment precedes the formal approach. It is voluntary & out of court solution based on consent of both the parties to be concluded normally within a period of 15 days (further extendable for 15 days more). It includes two sequential stages:
 - Digital Guided Pathway
 - Un-manned E-Negotiation
- The **formal approach** (also named as MSEFC Phase) to delayed payment (follows failure of informal approach) includes two sequential stages:
 - Mandatory Conciliation
 - Statutory Arbitration

Now onwards, all the four stages (2+2) will be facilitated by way of use of online communication. The system is likely to be a game changer as it will facilitate faster (time wise) and cheaper (cost wise) recovery which is likely to rejuvenate MSE sector in India. Data of existing samadhaan portal will be migrated to ODR portal. Let us understand all the four stages in more detail:

Phase 1 – Digital Guided Pathway (DGP)

DGP Process will contain (i) **Legal guides (write-ups)** (ii) **Manuals** (iii) **FAQs** (iv) **Video tutorials** in order to facilitate the parties in navigating the MSME ODR Portal smoothly without the assistance of any intermediary. The Portal will be enabled by a 24*7 legal help desk or helpline to understand the legal processes and procedures. The notable stages in DGP Process will be as under:

Stage 1: Automated communication (AC) to the parties from ODR portal.

Stage 2: The parties (seller/buyer) can opt out of this stage within three days of AC (along with Claim form) received from ODR portal mechanism.

Stage 3: Both the parties to the dispute shall file duly filled 'claim form' within three days.

Stage 4: Artificial Intelligence-enabled Digital Guided Pathway will analyze the brief facts filed by the parties in the prescribed claim form and will generate the probable outcome of the case at the expiry of three days period (if parties have not opted out of the process).

Stage 5: Probable outcome would be conveyed to the parties.

Stage 6: Parties will have an option to discuss the same on MSME ODR portal to arrive at a settlement. First such date for discussion shall be not later than 5th day.

Stage 7: If parties come to settlement or accept the probable outcome then a draft settlement agreement recording the terms and conditions agreed by the parties will be generated and sent to the parties.

Stage 8: Parties will have an option to modify the clauses of draft settlement agreement by way of online recording of deviations.

Stage 9: On agreeing at mutual agreement, the online execution and signing of settlement agreement will happen through electronic signatures. Such agreement will also record that settlement has been arrived at free will and mutually.

Stage 10: Duly executed agreement will be sent to both the parties by MSME ODR Portal through email and text messages for the purpose of compliance.

Stage 11: At this stage, the matter will be closed and duly executed agreement will be entered in database and will be available on MSME ODR Portal.

Stage 12: The system will track and monitor the compliance with all the terms of the agreement by sending timely prompts.

Stage 13: In case of non-compliance with the terms of agreement by any of the parties, the complete case record including the application for delayed payments, documents, reply, etc. shall be forwarded to the concerned MSEFC for the commencement of dispute resolution proceedings.

Phase 2 – Un-manned Negotiation

Un-manned Negotiation Process (UNP) is completely voluntary process; dependent upon consent of both the parties; total absence of third party (negotiator or mediator).

On opting out of Phase 1 (Digital Guided Pathway) or failure to arrive at mutual settlement in DGP Process, the parties will enter into the Phase 2 on the MSME ODR Portal.

UNP is facilitated on MSME ODR Portal. Through discussions and negotiations, the parties to the dispute may attempt to reach to 'Out of Court Settlement (OCS). If not successful, then parties enter into the formal process of dispute resolution under the MSMED Act, 2006. UNP proceedings shall remain confidential and would be undertaken in a separate virtual room where only the parties to the proceedings and his/ her nominated legal representative, if any, would be allowed to enter.

The notable stages in DGP Process will be as under:

Stage 1: On opting out of DGP process, an automated communication regarding UNP phase would be immediately sent to the parties through text message and email.

Stage 2: Parties are provided a period of 2 days to opt out of UNP (Phase 2) from the date of receipt of this communication.

Stage 3: If none of the two parties opt out, then another automated communication will be sent to the parties intimating date and time of the proceedings (along with other basic details) where they can virtually appear and discuss the case to arrive at a settlement. (NOTE: If parties opts out of DGP Process and directly availed UNP, then the first date would be not later than 6th day of filing of the delayed payment application).

Stage 4: On date of proceedings, the parties and their legal representative(s) would be allowed to virtually attend the proceedings.

Stage 5: Parties can arrive at amicable settlement based on the discussions during the UNP or can decide subsequent date and time within prescribed timeline to continue the process.

Stage 6: On mutually decided subsequent date, Stage 4 and 5 process can be repeated.

Stage 7 to Stage 13: Similar to stages mentioned in Phase 1.

If parties opt out or fail to reach at mutual settlement at Phase 2 UNP, then the matter will enter into Phase-3 and Phase-4 at MSEFC Stage – formal dispute resolution process.

Phase 3 & 4 – Mandatory Conciliation / Mediation and Statutory Arbitration

Stage 1: On receipt of a reference, the MSEFCs of seller state may conduct conciliation itself or may seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institute or centre for conducting conciliation.

Stage 2: Where the parties fail to arrive at any settlement, the MSEFC of Seller state may take up the dispute for arbitration itself or may refer it to any institution or centre providing alternative dispute resolution services (Such arbitration would be conducted under the aegis of the Arbitration and Conciliation Act, 1996).

MSEFCs shall adopt a procedure that is -

- ♦ fair,
- ♦ transparent,
- ♦ follows due process of law,
- ♦ provides the right to be heard,
- ♦ provides sufficient time to participate in proceedings.

The arbitral awards must be supported with legal reasoning.

At Phase 3 and Phase 4, the parties to the dispute shall either:

Option 1: Submit undertaking that no other proceeding(s) has been initiated or pending or disposed-off, before any court of law or tribunal, with reference to the subject-matter of the delayed payment application between the same parties;

OR

Option 2: Submit complete details of the proceedings, if any other proceedings has been initiated or pending or disposed-off, before any court of law or tribunal along with relevant documents and orders of the same.

THE PROFESSIONAL OPPORTUNITY

MSME ODR (Online Dispute Resolution) is a widespread opportunity for Company Secretaries all over the country as Micro and Small Enterprises are spread all across India and regularly face matters related to '**Recovery of Delayed Payment**'. Company Secretaries, in particular 'Practising Company Secretaries' can fit into following roles for MSME ODR related practice:

- **Legal Representative to Sellers:**

Micro and Small Enterprises are shy of regular qualified staff and are dependent upon external consultants. Legal department is pariah to them. Delayed payment eats their working capital. Company Secretaries in Practice (PCS) can easily develop the procedural capabilities; create awareness amongst MSE business entities and represent them as their authorized legal representative. As per an estimate, 20% cases will get resolved in Phase 1 and another 20% cases will get resolved in Phase 2 of Pre-MSEFC stage. Legal representative services can continue to Phase 3 and Phase 4 as well.

- **Legal Representative to Buyer:**

The buyers purchasing goods and/or services from Micro and Small Enterprises may be tiny, small, medium or big size entities. Even they will require services of legal representatives who are well versed about MSME ODR mechanism and its super-fast procedure. Usually, 'internal legal department' is available only with very large size business organizations. Even if it is available, they may not be comfortable and/or well versed with the procedure and timelines of MSME ODR Mechanism. PCS can easily develop the procedural capabilities; and are eligible to handhold such buyers as their authorized legal representative and can guide them for amicable solution at lesser legal cost.

- **Mediator enrolled with Institution/Centre registered on MSME ODR Portal:**

As per estimate, 60% of the MSME ODR litigations will enter phase 3 out of which 1/3rd may get settled through online mediation. PCS who have completed their 'Post Membership Qualification in Alternative Dispute Resolution/Arbitration' will be very comfortable in acting as Mediator. To become mediator on MSME ODR portal, they need to enrol with Institution/Centres which are empanelled from their State on MSME ODR Portal. PCS looking for such opportunities are advised to frequently visit MSME ODR portal and enrol with Institution /

Centre from their State. The matters would be allotted on round robin basis, i.e., every enrolled mediator will get at least one case in a year. Company Secretaries looking for opportunities as Mediator are advised to visit empanelment guidelines available on MSME ODR portal. Additionally they may also handhold one of the BMO institution from their city to empanel on MSME ODR portal.

- **Arbitrator enrolled with Institution/Centre registered on MSME ODR Portal:**

As per estimate, 40% of the MSME ODR litigations will enter phase 4 out of which 1/2 may get settled through online arbitration. PCS who have completed their 'PMQ in Arbitration' will be very comfortable in acting as Arbitrator. To become arbitrator on MSME ODR portal, they need to enrol with Institution/Centres which are empanelled from their State on MSME ODR Portal. PCS looking for such opportunities are advised to visit empanelment guidelines available on MSME ODR portal; develop formats and make mock drill for writing reasoned order.

It has been noticed that majority of the Company Secretaries are also qualified LLB and most of them practice as Company Secretaries if LLB was not their first professional degree. This MSME Online Dispute Resolution mechanism is first such golden opportunity for them.

They just need to take care of five equally crucial steps mentioned hereunder:

- Brush up the process prescribed on MSME ODR portal;
- Develop add - on online capabilities with super fast timelines;
- Understand the role of Artificial intelligence in legal arena;
- Develop and fine tune formats to act as Mediator and Arbitrator;
- Being first such initiative, they need to keep track of changing pace on MSME ODR portal.

Be ready many more such initiatives are in the offing. First movers will certainly be in advantageous position.

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