

TRICKS FOR GETTING STUCK PAYMENT FROM LIMITED COMPANIES

Which are still working.

1. Get hold of party's balance sheet and profit and loss account. In all probabilities auditor should not have observed section 22 of MSME Act 2006. Send a letter to auditor. Performa of letter is enclosed. (Performa courtesy Amit Parikh- Advance Paint Ltd.)
2. Issue notice of recovery to the party under MSME Act 2006. Section 15, 16.
3. Issue notice under section 434 of the company's act 1956 (Under this section winding up procedure can be initiated against the party) Draft notice is enclosed.

G. K. LOYALKA

BY RPAD

Ref.: _____

Date: _____.

To,

_____, **Chartered Accountants,**

Mumbai - _____.

Sub.: Your client M/s. _____ Ltd. ("the said Company").

Ref.: Audit Report and Audited books of Accounts as published in Annual Report of the said Company.

Sir,

We are manufacturers of _____ products. We are registered as Small Enterprise under Micro Small and Medium Enterprises Development Act, 2006 bearing Entrepreneurs Memorandum Number _____.

This is to record that during financial years _____ on written orders as placed by the said Company, we have sold, supplied and delivered to the said Company goods under diverse Invoices. Till date, the said Company has willfully failed and neglected to make payments of principal sum of Rs. _____/- towards the said goods sold, supplied and delivered to them.

Recently we have perused the Annual Report of the said Company for the year _____ which inter-alia contained Auditor's report by your goodself and further also contained Audited Books of Accounts of the said Company for the Financial Year _____. We were shocked to note the contents of the same especially contents of Notes to Accounts - Note _____ Trade Payables and Note _____ -Disclosure in accordance with Section 22 of the Micro, Small and Medium Enterprises Development Act, 2006. As per the same, the balance due to Micro, Small and Medium Enterprises as defined under the MSMED Act, 2006 is Rs. NIL/_____ Lakh. Admittedly, we are Enterprise failing under the MSMED Act, 2006 and further, admittedly our legitimate dues are till date not paid by the said Company. Hence the said statutory disclosures as made in your Audit report and/or Audited Books of Accounts of the said Company are incorrect. It appears that the said Company has deliberately with malafide intentions furnished you incomplete information and documents which has led to such erroneous and misleading statutory disclosures.

Hence, in view of the above facts you are requested to look into the matter, rectify the said incorrect statutory disclosure and thereafter clarify and publish the correct financial position of the said Company, not only to us but also to all other Statutory Bodies and Investors and Shareholders of the said Company to whom such incorrect and misleading information has been disclosed.

For _____

C.C.:

1. Secretary, Institute of Chartered Accountants of India, Mathura Road, Delhi.
www.ICAI.ORG
2. Ministry of MSME, Udyog hawan, Rafi Marg, New Delhi - 110011
MSME.GOV.IN
3. **SECURITIES AND EXCHANGE BOARD OF INDIA**
Plot No.C4-A,'G' Block,BandraKurla Complex,
Bandra(East), Mumbai 400051.
4. **BSE LIMITED,**
PhirozeJeejeebhoy Towers
Dalal Street, Mumbai- 400001.
5. **NATIONAL STOCK EXCHANGE OF INDIA LTD.**
Exchange Plaza, Plot no. C/1, G Block,
Bandra-Kurla Complex, Bandra (E), Mumbai - 400 051.

Note: This letter is to put pressure on the auditor for settlement. You may decide whether to send or not copies to the other addresses mentioned.

SECTION 15, 16 AND 22 OF MSME ACT 2006

15. Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefore on or before the date agreed upon between him and the supplier in writing or, where there is no agreement on 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.

16. Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

22. Where any buyer is required to get his annual accounts audited under any law for the time being in force, such buyer shall furnish the following additional information in his annual statement of accounts, namely:-

(i) The principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year.

(ii) The amount of interest paid by the buyer in terms of section 18, along with the amounts of the payment made to the supplier beyond the appointed day during each accounting year:

(iii) The amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under this act;

(iv) The amount of interest accrued and remaining unpaid at the end of each accounting year: and

(v) The amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure under section 23.

DRAFT OF NOTICE UNDER SECTION 434 OF COMPANY'S ACT.

To

Name and address of the party

Dear Sirs,

My client (Name and address of the party) have instructed me to address you as follows"-

1. Pursuant to the order placed with my clients at my client have sold and supplied you goods at the agreed rates. In respect of the said supplies, my clients have submitted you their bills bearing No. dated for Rs. You have received and accepted the said goods and the said bills without any objection whatsoever. My clients have thus sold and supplied you the said goods as per the said bills for an aggregate sum of Rs..... You have failed and neglected to pay to my clients the said amount or any part thereof, though my clients have made repeated demands in that behalf.
2. In the circumstances. my clients have instructed me to call upon you, which I hereby do to pay to my clients the said sum of Rs..... together with interest thereon at 21% per annum within three weeks from the receipt of this letter by you, failing which my clients shall be compelled to file a winding up petition against you and you shall be solely responsible for the costs and consequences thereof.
3. Please treat this notice having been served upon you under the provision of section 434 of the Companies Act 1956.

Yours Truly,