

## **Buyer who has Defaulted to a medium enterprise, need not pay int at 3 times Bank Rate:**

The New India Assurance Co. Ltd. v Winsome International Ltd. Citation: 2023 LiveLaw (Cal) 180

### **Hon. Calcutta HC held as below:**

1. Three kinds of enterprises are defined in three distinct ways under MSMED Act and cannot be viewed as a common set of similar enterprises.
2. “Medium enterprise” is defined under Section 2(g) as an enterprise classified under Section 7 and the sub-clauses thereunder. A “micro enterprise” is defined under Section 2(h) while a “small enterprise” is defined under Section 2(m) of the Act.
3. The distinction becomes further important with reference to the definition of “supplier” under Section 2(n) which has been defined to mean a “micro” or “small” enterprise which has filed a memorandum with the authority referred to under Section 8(1). Medium enterprise is not included in Section 2(n).
4. Section 16 of the Act deals with the rate of interest payable by a defaulting buyer to a “supplier”, as required under Section 15 which in turn deals with the liability of a buyer to make payment to a supplier. Section 16 uses the term “supplier” which traces back to Section 2(n), thus excluding a medium enterprise from the scope.
5. Exclusion of a “medium enterprise” from the definition of a supplier and the liability fixed on a buyer to make payment to it under Section 16 of the Act at

three times the bank rate, therefore, establishes that interest components could not have been awarded to the respondent/supplier/claimant in the arbitration in accordance with the mandate of Section 16 of the Act.

6. A stay is ordered on the impugned award, upon payment of the principal amount, along with interest at a rate of 8% instead of 24.6%.