

# **The Collection of Entertainment Duty on Cable Television (including Entertainments Duty leviable or Direct-to-Home (DTH) Broadcasting Service) by Way of Public Auction Rules, 2003**

MAHARASHTRA

India

## **The Collection of Entertainment Duty on Cable Television (including Entertainments Duty leviable or Direct-to-Home (DTH) Broadcasting Service) by Way of Public Auction Rules, 2003**

### **Rule**

### **THE-COLLECTION-OF-ENTERTAINMENT-DUTY-ON-CABLE-TELEVISION of 2003**

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The Collection of Entertainment Duty on Cable Television (including Entertainments Duty leviable or Direct-to-Home (DTH) Broadcasting Service) by Way of Public Auction Rules, 2003Published vide Notification G.N. No. ENT. 1002/CR-274/T-1, (M.G.G., Part 4-B)In exercise of the powers conferred by section 7 of the Bombay Entertainments Duty Act, 1923 (Bombay I of 1923), the Government of Maharashtra hereby makes the following rules, for collection of entertainment duty on cable television (including entertainment duty on Direct-to-Home (DTH) Broadcasting service) by way of public auction, the same having been previously published as required by sub-section (3) of the said section 7, namely :-

#### **1. Short title.**

- These rules may be called The Collection of Entertainment Duty on Cable Television (including Entertainments Duty Leviable or Direct-to-Home (DTH) Broadcasting Service) by Way of Public Auction Rules, 2003.

## **2. Definitions.**

(1)In these rules,-(a)"Act" means the Bombay Entertainments Duty Act, 1923 (Bombay I of 1923);(b)"Agent" means a person appointed for collection of entertainment duty on cable television including entertainment duty on DTH Broadcasting Service;(c)"Cable operator" means a person registered as a Cable Operator under section 3 of the Central Act;(d)"Central Act" means the Cable Television Networks (Regulation) Act, 1995 (Act No. 7 of 1995);(e)"Government" means the Government of Maharashtra in the Department of Revenue and Forests;(f)"Person" means a person as defined in the Central Act;(g)"Territorial Unit" means ordinarily a district or a Municipal Corporation or a Municipal Council or a designated area of a Municipal Corporation or of a Municipal Council or any other area of a district as may be declared by the Government or the Collector from time to time;(h)"Upset price" means a notional aggregate of the entertainment duty leviable on all the cable connections and the duty leviable on Direct-to-Home broadcasting service in a territorial unit.(2)Words and expressions used in these rules but not defined shall have the meanings respectively assigned to them in the Act.

## **3. Determination of upset price.**

- The Government may, by general or special order determine upset price for every territorial unit.

## **4. Collection of entertainments duty.**

(1)The Government may, lease by public auction the collection of the entertainment duty leviable on the cable television including duty leviable on Direct to Home (DTH) Broadcasting Service under section 4-E of the Act or appoint an agent for collection of the duty.(2)For the purpose of leasing the collection of entertainment duty for a territorial unit tenders shall be invited by the concerned Divisional Commissioner and by the Government.(3)The form of offer to be submitted by the bidder and the terms and conditions of the tender document shall be such as may be specified by general or special order by the Government from time to time.(4)[ The period of lease contract shall be one year and may be further extended for one year at a time. The Government may escalate the contract amount upto 25 per cent, of the original contract amount for the extended period. The total period of lease contract shall not exceed three years.] [Substituted by the Collection of Entertainments Duty on Cable Television (including Entertainments Duty Leviable on Direct-to-Home (DTH) Broadcasting Service) by way of Public auction (Amendment) Rules, 2004, dated 9th January, 2004.]

## **5. Eligibility of a Bidder.**

- A person shall be eligible to apply as a bidder if he,-(a)is not less than twenty-one years of age (in case of an individual);(b)[\* \* \*] [Entry (b) was deleted by the Collection of Entertainments Duty on Cable Television (including Entertainments Duty Leviable on Direct-to-Home (DTH) Broadcasting Service) by way of Public auction (Amendment) Rules, 2004, dated 9th January, 2004.](c)produces Solvency Certificate issued by the Collector, of the value of not less than the upset price fixed for

territorial unit;Explanation. - For the purposes of these rules, solvency in respect of a company or partnership firm or corporate body means aggregate of the company or partnership firm or corporate body means aggregate of the assets of the Directors and the capital assets of the company or body as the case may be, and in the case of a partnership firm the assets, of all the partners;(d)[\* \*] [Entry (d) was deleted by the Collection of Entertainments Duty on Cable Television (including Entertainments Duty Leviable on Direct-to-Home (DTH) Broadcasting Service) by way of Public auction (Amendment) Rules, 2004, dated 9th January, 2004.](e)has an office registered in the State of Maharashtra;(f)is not convicted of an offence under the provisions of the Act or the Central Act or under any other law;(g)is not in arrears of entertainments duty at the time of making an application.(h)produces a Certificate regarding antecedents issued by the local police authorities having jurisdiction over the area in which an individual ordinarily resides or in case of Partnership Firm. Company or Corporate body from the Commissioner of Police or Superintendent of Police having jurisdiction over the area in which registered office of the Firm, Company or Corporate Body is situated.Explanation. - A company or a partnership firm or corporate body shall be disqualified for making any application as a Bidder, if -(1)any director of such company or partner of such partnership firm or corporate body is convicted; of an offence under provisions of the Act or the Central Act or under any other law or;(2)any director of such company or corporate body or partner of such partnership firm is in arrears of entertainments duty.

## 6. Conditions of offer.

(1)An offer of the contract amount shall not be less than the upset price.(2)A bidder shall not submit more than one offer. If he submits more than one offer, only the highest offer shall be considered. No representation in this regard shall be entertained.(3)A person signing the offer may sign in his personal capacity or, as the case may be, in the capacity of the sole proprietor of the Firm or Concern or as a Secretary or Manager or Managing Director of a Limited Company. In all cases of bidders other than the individuals or proprietary concerns, attested copy of the partnership deed and in absence of the express provision in the said deed, the authorisation of the firm in favour of the person signing the offer and the names of the partners or the names of all the Directors shall be furnished alongwith the offer. The offer shall be accompanied by a certificate (bearing seal of the company) that the person signing the offer is empowered to do so on behalf of the company and also accompanied by a copy of Memorandum and Articles of the Association of the company.(4)The Government may reject any offer without giving any reason therefore.

## 7. Earnest money.

(1)The bidder shall pay alongwith the tender, a sum which shall be equal to 10 per cent, of the upset price, by way of earnest money in the form of [Demand Draft or Pay Order] [Substituted by the Collection of Entertainments Duty on Cable Television (including Entertainments Duty Leviable on Direct-to-Home (DTH) Broadcasting Service) by way of Public Auction (Amendment) Rules, 2004, dated 9th January, 2004.](2)The sum of earnest money shall remain with the Collector for the period required to take a decision regarding acceptance of the tender or thirty days from the date of opening of the tenders, whichever is earlier.(3)In the event of his tender being accepted, subject to the provisions of sub-clause (4) below, the said amount of earnest money shall be appropriated

towards the amount of security deposit payable by the bidder under general conditions of contract.(4)If, after submitting the tender, the bidder withdraws his offer, or modifies the same or if after the acceptance of his tender, the bidder fails or neglects to deposit the balance amount of security deposit, the Government shall forfeit the full amount of the earnest money deposited by the bidder.(5)In the event of his tender not being accepted, the amount of earnest money deposited by the bidder shall, unless forfeited under the provisions of sub-clause (4) above, be refunded to him.

## **8. Acceptance of offer.**

(1)The terms and conditions of the agreement to be entered into by the Government with the successful bidder shall be such as may be specified by general or special order by the Government from time to time.(2)The Principal Secretary (Revenue), Revenue and Forests Department, Mantralaya, Mumbai - 400 032 or his nominee or the Collector of the concerned district on behalf of the Government of Maharashtra and the Agent appointed under these rules shall be the parties to the contract.

## **9. [ Security Deposit. [Substituted by the Collection of Entertainments Duty on Cable Television (including Entertainments Duty Leviable on Direct-to-Home (DTH) Broadcasting Service) by way of Public Auction (Amendment) Rules, 2004, dated 9th January, 2004.]**

- The Collector shall require the successful bidder to deposit 25 per cent, of the amount of the contract. In the form of National Savings Certificate or one year Post Office Time Deposit Account, duly pledged, being Security Deposit, before entering into an agreement and to furnish solvency certificate of the value not less than 50 per cent, of the contract amount, from each of the two guarantors who are the residents of the State of Maharashtra.]

## **10. Rates of entertainment duty.**

(1)The agent may himself or through any other person authorised by the concerned Collector collect the entertainment duty on Cable Television in the territorial unit at the rates specified in sub-section (4) of section (3) of the Act and as the case may be entertainment duty on Direct to Home (DTH) Broadcasting Service at the rates specified in sub-section (15) of section 3 of the Act [from the Cable Operators only] [Substituted by the Collection of Entertainments Duty on Cable Television (including Entertainments Duty Leviable on Direct-to-Home (DTH) Broadcasting Service) by way of Public Auction (Amendment) Rules, 2004, dated 9th January, 2004.].(2)The Agent shall comply with all the provisions of the Act, rules, regulations or administrative orders issued by the Government in respect of collection of the duty and matters incidental thereto.(3)[ The Collector shall enquire or cause to be enquired into any complaint received as regards the harassment cause to the subscriber by the agent himself or any other person employed by him. If the complaint is substantiated, the Collector, after giving an opportunity of being heard to the agent, shall proceed to cancel the agreement, to forfeit the security deposit and to prosecute the agent under sub-section (2) of section 7 of the Act.] [Substituted by the Collection of Entertainments Duty on Cable Television

(including Entertainments Duty Leviable on Direct-to-Home (DTH) Broadcasting Service) by way of Public Auction (Amendment) Rules, 2004, dated 9th January, 2004.]

## **11. Mode of remittance of entertainments duty to the Government.**

(1)The agent shall remit within 15 days of every calendar month 1/12th of the contract amount to the Collector falling which the agent shall be liable to pay interest at the rate specified in section 9-B of the Act.(2)If in any calendar month the amount of the duty collected by the agent is less than the amount of instalment specified, then the agent shall forthwith remit to the Government, the shortfall in the collection of the duty alongwith interest leviable as aforesaid.

## **12. Sub-letting.**

(1)If the agent enters into partnership or sublets or transfers or assigns the contract or any part thereof in any manner whatsoever without prior approval of the Government, the Collector shall terminate the contract and forfeit the entire amount of security deposit after giving him an opportunity of being heard.(2)If the agent fails to remit the specified instalment to the Government for three consecutive calendar months, then the Security Deposit shall be liable to be forfeited to the Government without any notice to the agent.

## **13. Services of employees of the Government.**

- In case the agent is required to utilise temporarily the services of any employee(s) of the Government for the purpose of collection of the duty, the agent shall pay in advance every month to the Collector, the amount equal to the salary of such employee(s).Explanation. - For the purpose of this rule, "salary" means basic pay plus any other allowances as are admissible under the Maharashtra Civil Services Rules, 1981.

## **14. [ Assessment, Recovery and Prosecution. [Substituted by the Collection of Entertainments Duty on Cable Television (including Entertainments Duty Leviable on Direct-to-Home (DTH) Broadcasting Service) by way of Public Auction (Amendment) Rules, 2004, dated 9th January, 2004.]**

(1)The Collector, on the basis of the report made by the agent, shall assess the cable operator under section 4B of the Act.(2)After assessing the cable operator, the Collector shall recover the amount of entertainment duty, evaded by the operator. Out of the evaded amount of the duty, the duty pertaining to the period prior to the execution of lease contract with the agent, shall be credited to the Government and the remaining amount of duty shall be adjusted against the amount payable by the agent.(3)The Collector shall concurrently file prosecution against the errant cable operator assessed under sub-rule (1) (of this rule), under section 5 of the Act.]

## **15. Supply of information to the agent.**

- The Collector, at the time of entering into the agreement, shall supply free of cost the information regarding the cable operators in the territorial unit.

## **16. Supervision, Inspection and Accounts.**

(1)The Collector or any officer appointed in this behalf, shall exercise such rights, authority, control and supervision over the work of collection of the duty, carried out by the agent with a view to ensure that the work of collection of the duty is carried out smoothly, efficiently and without any hindrance to or harassment to the public at large.(2)The officers authorised under sub-rule (1) shall exercise all the powers conferred under section 8 of the said Act to inspect receipt books, registers and accounts maintained by the agent.(3)The Collector or any of his officers shall ordinarily not interfere with the working of the agent in his work of collection of entertainment duty.(4)[ \* \* \* ] [Substituted by the Collection of Entertainments Duty on Cable Television (including Entertainments Duty Leviable on Direct-to-Home (DTH) Broadcasting Service) by way of Public Auction (Amendment) Rules, 2004, dated 9th January, 2004.](5)The Agent shall keep monthly accounts of the number of cable connections and the entertainment duty collected and names of the cable operators and submit a copy thereof alongwith the instalment in the next month to the Collector or any officer appointed on his behalf.

## **17. Rebate.**

- The Agent shall not be entitled to any compensation, rebate or reduction in the rates fixed in lease contract amount on the grounds of closure or strike by the Cable Operators or decrease in the cable connections in the territorial unit or for any other reasons.

## **18. Application of rules to agents.**

- If on inviting the tenders, it is not possible for the Government to lease the collection of entertainment duty, for the reasons mentioned in sub-rule (4) of rule 7 or for any other reason, the Government may call for fresh tenders and if no tender is received for a second time, or no bidder found eligible, then without following the process the Government may appoint a suitable agent for the upset price determined for such lease contract. The provisions of the rules (5) to (14) above shall be applicable in respect of the agents so appointed by the Government :Provided that, if in any district, the lease backs out at any time during period of lease contract, the Government shall call for fresh tenders for the remaining period of lease contract, after determining the proportionate upset price of the lease :Provided further that, if no tender is received for the second time or no bidder found eligible, then without following the process the Government may appoint an agent for the upset price so determined for the remaining period of contract.

## **19. Settlement of disputes.**

(1) Any question, dispute or difference in respect of the lease shall be referred to the sole arbitration of the Principal Secretary (Revenue) of Revenue and Forests Department or any officer authorised by him. (2) The Award of the Arbitrator shall be final and binding on both the parties. Where such Arbitrator, to whom the matter is originally referred is unable to act for any reason, the Principal Secretary (Revenue) of Revenue and Forests Department, shall appoint another person to act as Arbitrator. (3) The arbitration proceedings shall be carried out as per the Arbitration and Conciliation Act, 1996 and the rules made thereunder. (4) The Arbitrator shall make the assessment of costs, interest and incidental expenses in the proceeding for the award.