

Competition Commission of India (Lesser Penalty) Regulations, 2024

UNION OF INDIA

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In exercise of the powers conferred by sub-section (1) and clauses (ga), (gb) and (gc) of sub-section (2) of section 64, read with section 46 and clause (b) of section 27 of the Competition Act, 2002 (12 of 2003), the Competition Commission of India hereby makes the following regulations, namely: -

1. Short Title and Commencement.

(1) These regulations may be called the Competition Commission of India (Lesser Penalty) Regulations, 2024. (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.

(1) In these regulations, unless the context otherwise requires, - (a) "*Act*" means the Competition Act, 2002 (12 of 2003) as amended from time to time; (b) "*admission*" means statement or submission by a party that it has indulged in the alleged violation of the provisions of Section 3 of the Act; (c) "*applicant*" means an enterprise, as defined in clause (h) of section 2 of the Act, who is or was a member of a cartel and includes an individual who has been involved in the cartel on behalf of an enterprise; and further includes an enterprise or association of enterprises or a person or association of persons, though not engaged in identical or similar trade if it participates or intends to participate in furtherance of such cartel and submits an application for lesser penalty and/or lesser penalty plus to the Commission; (d) "*cartel*" means a cartel as defined in clause (c) of section 2 of the Act; (e) "*Commission*" means the Competition Commission of India established under sub-section (1) of section 7 of the Act; (f) "*designated authority*" means an officer of the Commission who is authorized by the Chairperson to function as such, for the purpose of these regulations; (g) "*Director General*" means the Director General as defined in clause (g) of section 2 of the Act; (h)

"newly disclosed cartel" means a cartel as determined by the Commission having regard to the disclosures provided by the applicant in Schedule I and Schedule II of these regulations, including the material available with the Commission or the Director General, which enables the Commission to form a prima facie opinion under sub section (1) of section 26 of the Act;(i) *"party"* includes an enterprise or person defined in clauses (h) and (l) of section 2 of the Act, respectively, against whom inquiry or proceeding is instituted and shall include the Central Government, any State Government or any statutory authority and shall also include any person permitted to join the proceedings;(j) *"priority status"* means the position of the applicant marked for giving the benefit of lesser penalty or lesser penalty plus in the queue of the applicants;(k) *"vital disclosure"* means full and true disclosure of information or evidence by the applicant to the Commission, which is sufficient to enable the Commission to form a prima facie opinion about the existence of a cartel or which helps to establish the contravention of the provisions of section 3 of the Act.(2) Words and expressions used but not defined in these regulations shall have the same meanings respectively as assigned to them in the Act or the rules or regulations framed thereunder or in the Companies Act, 2013 (18 of 2013).

3. Conditions For Lesser Penalty Or Lesser Penalty Plus.

(1) An applicant, seeking the benefit of lesser penalty or lesser penalty plus under section 46 of the Act, shall-(a) cease to have further participation in the cartel from the time of its disclosure unless otherwise directed by the Commission;(b) provide vital disclosure in respect of alleged contravention of the provisions of section 3 of the Act;(c) provide all relevant information, documents and evidence as may be required by the Commission;(d) co-operate genuinely, fully, continuously and expeditiously throughout the investigation and other proceedings before the Commission;(e) not conceal, destroy, manipulate or remove the relevant documents in any manner that may contribute to the establishment of a cartel; and(f) not give any false evidence or omit to submit any material information knowing it to be material.(2) The applicant shall provide the names of the individuals who have been involved in the cartel on its behalf and for whom lesser penalty or lesser penalty plus, as the case may be, is sought by the applicant.(3) Where an applicant or its authorized representative, at the time of filing of application for lesser penalty or lesser penalty plus, as the case may be, fails to provide full and true disclosure of the information and evidence as referred and described in Schedule I or Schedule II or both or as required by the Commission from time to time, the Commission may reject its application.(4) Without prejudice to sub-regulation (1), the Commission may subject the applicant to further restrictions or conditions, as it may deem fit, after considering the facts and circumstances of the case.(5) Where an applicant or its authorized representative fails to comply with the conditions mentioned in sub-regulations (1) and (4), either before the Director General or before the Commission after receipt of the investigation report, the Commission may reject its application.(6) Before rejecting the lesser penalty or lesser penalty plus application of the applicant under this regulation, the Commission shall provide an opportunity of being heard to such applicant.(7) Notwithstanding rejection of application in terms of sub-regulations (3) or (5) above, the Commission or the Director General shall be free to use the information, documents and evidence submitted by the applicant, in the ongoing matter, in accordance with the provisions of section 46 of the Act.(8) Upon rejection of application in terms of sub-regulations (3) or (5) above, the applicant may be subjected to inquiry for the contravention.(9)

The discretion of the Commission, in regard to reduction in monetary penalty under these regulations, shall be exercised having due regard to -(a) the stage at which the applicant comes forward with the disclosure;(b) the evidence already in possession of the Commission;(c) the quality of the information provided by the applicant;(d) fulfilment of conditions specified in sub-regulation (1) and (4) above; and(e) the entire facts and circumstances of the case.

4. Grant of Lesser Penalty.

Subject to the conditions laid down in regulation 3, the applicant and individual(s) mentioned in sub-regulation 2 of regulation 3 shall be granted benefit of lesser penalty on the amount leviable under clause (b) of section 27 and section 48 of the Act, as the Commission may decide, in the following manner, namely:-(a) The applicant and individual(s) mentioned in sub-regulation (2) of regulation 3 may be granted benefit of reduction in penalty upto or equal to one hundred percent, if the applicant is the first to make a vital disclosure by submitting evidence of a cartel, enabling the Commission to form a prima facie opinion regarding the existence of a cartel which is alleged to have contravened the provisions of section 3 of the Act and the Commission did not, at the time of application, have sufficient evidence to form such an opinion:Provided that the Commission may also grant benefit of reduction in penalty up to or equal to one hundred per cent, to the applicant and individual(s) mentioned in sub-regulation (2) of regulation 3, if the applicant is the first to make a vital disclosure by submitting such evidence which establishes the contravention of the provisions of section 3 of the Act, by a cartel, in a matter under investigation and the Commission, or the Director General did not, at the time of application, have sufficient evidence to establish such a contravention.(b) The applicant(s) and individual(s) who are subsequent to the first applicant may also be granted benefit of reduction in penalty on making a disclosure by submitting evidence, which in the opinion of the Commission, provides significant added value to the evidence already in possession of the Commission or the Director General, as the case may be, to establish the existence of the cartel, which is alleged to have contravened the provisions of section 3 of the Act.*Explanation.* - For the purposes of these regulations, 'significant added value' means the extent to which the evidence provided enhances the ability of the Commission or the Director General, as the case may be, to establish the existence of a cartel, which is alleged to have contravened the provisions of section 3 of the Act.(c) The reduction in monetary penalty referred to in clause (b) shall be in the following order-(i) the applicant and individual(s) mentioned in sub-regulation (2) of regulation 3 marked as second in the priority status may be granted reduction of monetary penalty up to or equal to fifty percent of the penalty imposed; and(ii) the applicant and individual(s) mentioned in sub-regulation (2) of regulation 3 marked as third or subsequent in the priority status may be granted reduction of penalty up to or equal to thirty percent of the penalty imposed.

5. Grant of Lesser Penalty Plus.

(1) In terms of sub-section (4) of section 46 of the Act and subject to the conditions laid down in regulations 3 and 4, an applicant, who had earlier made a full, true and vital disclosure in respect of alleged contravention of provisions of section 3 of the Act under regulation 6 (first cartel), makes a full, true and vital disclosure in respect of existence of another cartel (second cartel) in which it is alleged to have violated section 3 of the Act, which enables the Commission to form a prima facie

opinion regarding the existence of newly disclosed cartel under sub-section (1) of section 26 of the Act, may be granted an additional reduction in monetary penalty up to or equal to thirty per cent of the penalty imposed with regard to the first cartel besides obtaining benefit of reduction in penalty up to or equal to one hundred percent in respect of newly disclosed cartel in terms of sub-section (1) of section 46 of the Act. **Illustration:** *In respect of Cartel A, X and Y are lesser penalty applicants having first and second marker status with reduction in penalty available of up to or equal to one hundred percent and fifty percent, respectively. Y, being aware of Cartel B, reports about it under regulation 7. Subject to fulfilment of requisite conditions, for reporting Cartel B, Y shall be eligible for additional reduction in penalty of up to or equal to thirty percent in respect of Cartel A, besides obtaining first marker status in respect of Cartel B.* Provided that the individual(s) of such applicant who were part of its lesser penalty application in the first cartel may also be granted the benefit of lesser penalty plus as applicable to the applicant, if such individual(s) are also a part of both the newly disclosed cartel and the lesser penalty plus application filed in that regard. (2) While determining the newly disclosed cartel in terms of sub-section (4) of section 46 of the Act, the Commission may have due regard to all relevant factors that distinguish the newly disclosed cartel from the existing cartel. (3) The discretion of the Commission, in regard to reduction in monetary penalty under regulation 5, shall be exercised having due regard to- a) likelihood of the newly disclosed cartel being detected by the Commission or the Director General without lesser penalty plus application, and b) any other factor deemed relevant by the Commission.

6. Procedure For Grant of Lesser Penalty.

(1) For the purpose of grant of lesser penalty, the applicant or its authorized representative may make an application containing all the material information as specified in the Schedule I of these regulations, or may intimate in writing either in person or through e-mail or fax, to the designated authority, for furnishing the information and evidence relating to the existence of a cartel. The designated authority shall, thereafter, within ten working days, put up the matter before the Commission for its consideration. Provided that an application under sub regulation (1) of regulation 6 for grant of lesser penalty can be made at any time during inquiry but not after the report of investigation directed under section 26 of the Act has been received by the Commission. (2) The date and time of receipt of the application by the Commission shall be the date and time as recorded by the designated authority or as recorded on the server or the facsimile transmission machine of the designated authority. (3) The Commission shall thereupon mark the priority status of the applicant and the designated authority shall convey to the applicant through post or e-mail or fax that the 'appropriate priority status has been marked', and that it shall not entitle the applicant for grant of lesser penalty merely on that basis. (4) If only an intimation is received under sub-regulation (1) for furnishing the information and evidence relating to existence of a cartel, the Commission shall direct the applicant to submit a written application containing all the material information as specified in the Schedule I of these regulations within a period not exceeding fifteen days. (5) Where the application, along with the necessary documents, is not received within a period of fifteen days from the date of communication of direction under sub-regulation (4) or during the further period as may be extended by the Commission, the priority status of the applicant and consequent benefit of grant of lesser penalty shall stand forfeited. (6) Unless the evidence submitted by the first applicant has been evaluated, the next applicant shall not be evaluated by the Commission. (7)

Where the benefit of the priority status is not granted to the first applicant, the subsequent applicants shall move up in order of priority for grant of priority status by the Commission and the procedure prescribed above, as in the case of first applicant, shall apply *mutatis mutandis*.⁽⁸⁾ The decision of the Commission of granting or rejecting the application for lesser penalty shall be communicated to the applicant.

7. Procedure For Grant of Lesser Penalty Plus.

(1) For the purpose of grant of lesser penalty plus, the applicant or its authorized representative may make an application containing all the material information as specified in the Schedule II to these regulations, or may intimate in writing either in person or through e-mail or fax, to the designated authority for furnishing the information and evidence relating to the existence of a newly disclosed cartel. The designated authority shall, thereafter, within ten working days, put up the matter before the Commission for its consideration. Provided that an application under sub regulation (1) of regulation 7 for grant of lesser penalty plus can be made at any time before the receipt of investigation report of the Director General under section 26 of the Act in the first cartel by the Commission. Provided further that in case of more than one applicant for lesser penalty plus in respect of a newly disclosed cartel, the Commission shall not examine the application of the next or subsequent applicant(s) for grant of the lesser penalty plus, unless the application of the first lesser penalty plus applicant has been rejected by the Commission. (2) The date and time of receipt of the application by the Commission shall be the date and time as recorded by the designated authority or as recorded on the server or the facsimile transmission machine of the designated authority. (3) The Commission shall thereupon mark the priority status of the applicant, for lesser penalty plus in respect of the first cartel, and simultaneously for lesser penalty in respect of the newly disclosed cartel, and the designated authority shall convey to the applicant through post or e-mail or fax that the 'appropriate priority status has been marked', and that it shall not entitle the applicant for grant of lesser penalty plus and/or lesser penalty merely on that basis. (4) If only an intimation is received under sub-regulation (1) for furnishing the information and evidence relating to the existence of a newly disclosed cartel, the Commission shall direct the applicant to submit a written application containing all the material information as specified in the Schedule II to these regulations within a period not exceeding fifteen days. (5) Where the application, along with the necessary documents, is not received within a period of fifteen days from the date of communication of direction under sub-regulation (4) or during the further period as may be extended by the Commission, the priority status of the applicant both for lesser penalty plus in respect of the first cartel and for lesser penalty in respect of the newly disclosed cartel along with their respective consequent benefits, shall stand forfeited. (6) Where the benefit of the 'lesser penalty plus' is not granted to the first applicant by the Commission, the subsequent applicant(s), if any, shall be examined by the Commission in order of their priority status for grant of 'lesser penalty plus' status in respect of the first cartel and the procedure prescribed above, as in the case of first applicant, shall apply *mutatis mutandis*. (7) The decision of the Commission of granting or rejecting the application for lesser penalty plus shall be communicated to the applicant.

8. Confidentiality.

(1) Notwithstanding anything contained in the Competition Commission of India (General) Regulations, 2009, the Commission or the Director General shall treat as confidential, - (a) the identity of the applicant; and (b) the information, documents and evidence furnished by the applicant under regulation 6 and/or regulation 7: Provided that the identity of the applicant or such information or documents or evidence may be disclosed if, - (i) the disclosure is required by law; or (ii) the applicant has agreed to such disclosure in writing; or (iii) there has been a public disclosure by the applicant: Provided further that where the Director General deems it necessary to disclose the information, documents and evidence furnished under regulation 6 or regulation 7, as the case may be, to any party for the purposes of investigation and the applicant has not agreed to such disclosure, the Director General may disclose such information, documents and evidence to such party for reasons to be recorded in writing and after taking prior approval of the Commission. (2) Except submissions made before the Commission under regulations 6 and 7 above within a period of fifteen days or during the further period as may be extended by the Commission, confidentiality of all further submissions made by the lesser penalty and/ or lesser penalty plus applicant before the Director General shall be governed in terms of provisions of regulation 35 of Competition Commission of India (General) Regulations, 2009.

9. Inspection and Certified Copies of Documents.

(1) Notwithstanding the confidentiality under regulation 8, the provisions of sub- regulations (1), (3) and (4) of regulation 37 and the provisions of regulation 50 of the Competition Commission of India (General) Regulations, 2009, to the extent it relates to inspection and grant of certified copies, shall become applicable to the non-confidential version of the information, documents and evidence furnished by the applicant under regulation 6, after the Commission forwards a copy of the report containing the findings of the Director General to the party concerned. (2) Notwithstanding the confidentiality under regulation 8, the provisions of sub- regulations (1), (3) and (4) of regulation 37 and the provisions of regulation 50 of the Competition Commission of India (General) Regulations, 2009, to the extent it relates to inspection and grant of certified copies, shall become applicable to the nonconfidential version of the information, documents and evidence furnished by the applicant under regulation 7 in the second cartel, after the Commission forwards a copy of the report containing the findings of the Director General to the party concerned in the second cartel. (3) Any party conducting inspection or obtaining certified copies under this regulation shall not disclose such information, documents and evidence so obtained other than for the proceedings under the Act.

10. Withdrawal.

(1) The applicant may withdraw the application under regulation 6 and/or regulation 7, as the case may be, any time prior to the receipt of the report of investigation, under section 26 of the Act in the concerned matter, by the Commission. (2) Where the applicant withdraws application under regulation 6 and/or regulation 7, as the case may be, the Director General or the Commission shall be at liberty to use for the purposes of the Act any information or evidence or document submitted

by the applicant except its admission.

11. Removal of Difficulty.

In the matter of interpretation or implementation of the provisions of these regulations, if any doubt or difficulty arises, the same shall be placed before the Commission and the decision of the Commission thereon, shall be binding.

12. Repeal and Savings.

(1) The Competition Commission of India (Lesser Penalty) Regulations, 2009, stand repealed from the date on which these regulations come into force. (2) Notwithstanding such repeal -(a) anything done or any action taken or purported to have been done or taken, or any proceedings or decision, inquiry or investigation commenced under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations; (b) the operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred thereunder, or any investigation, legal proceeding or remedy ensued thereunder, shall remain unaffected as if the repealed regulations have never been repealed; (c) after the repeal of the Competition Commission of India (Lesser Penalty) Regulations, 2009, any reference thereto including in any regulations, direction or decision issued by the Commission shall be deemed to be a reference to the corresponding provisions of these regulations. Schedule I Contents of The Application/See sub-regulations (1) and (4) of regulation 6 The application for lesser penalty shall, inter alia, include the following, namely: -(a) name, email, contact number and address of the applicant or its authorized representative as well as of all other enterprises in the cartel; (b) in case the applicant is based outside India, the address of the applicant in India for communication including the telephone numbers and the e- mail address, etc.; (c) a detailed description of the alleged cartel arrangement, including its aims and objectives and the details of activities and functions carried out for securing such aims and objectives; (d) the role of the applicant in the cartel and admission in terms of sub-regulation (1)(b) to regulation 2; (e) the goods or services involved; (f) the geographic market covered; (g) the commencement and duration of the cartel; (h) the estimated volume of business affected in India by the alleged cartel; (i) the names, positions, office locations and, wherever necessary, home addresses of all individuals who, in the knowledge of the applicant, are or have been associated with the alleged cartel, including those individuals which have been involved on behalf of the applicant; (j) the details of other Competition Authorities, forums or courts, if any, which have been approached or are intended to be approached in relation to the alleged cartel; (k) details of any previous contravention of the provisions of the Act by the applicant or any proceeding pending against the applicant before the Commission for alleged violation of provisions of the Act; (l) a descriptive list of evidence regarding the nature and content of evidence provided in support of the application for lesser penalty; and (m) any other material information as may be directed by the Commission. Schedule II Contents of The Application/See sub-regulations (1) and (4) of regulation 7 The application for lesser penalty plus shall, inter alia, include the following, namely: -(a) name, email, contact number and address of the applicant or its authorized representative; (b) details of the ongoing matter or case(s) in which the applicant has already obtained any priority status; (c) disclosures pertaining to newly disclosed cartel as per the

details sought in Schedule I (two original copies);(d) whether there exists any similarity between the conduct or product or service or parties or matter referred to in (B) and (C) above, along with details thereof;(e) justification as to how the newly disclosed cartel is new or separate cartel arrangement from the first cartel in view of disclosure made in point (B) and (C) above; and(f) any other material information.