

The Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2011

UNION OF INDIA

India

The Competition Act, 2002

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Regulation

THE-COMPETITION-COMMISSION-OF-INDIA-MANNER of 2011

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1. Short title and commencement. -

(1)These regulations may be called the Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2011.(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);(b)"Commission" means the Competition Commission of India established under sub-section (1) of section 7 of the Act;(c)"demand notice" means a notice issued by the Commission to an enterprise from whom any penalty is recoverable under the Act;(d)"enterprise" means enterprise as defined in clause (h) of section 2 of the Act;(e)"enterprise in default" means an enterprise which has not paid the penalty imposed on it within the stipulated time despite the demand notice duly served upon;(f)"Income-tax authority" means an authority as defined in section 116 of the Income-tax Act, 1961 (43 of 1961);(g)"penalty" means a monetary penalty or fine or any other sum imposed by the Commission and realisable under the Act;(h)"penalty recovery register" means the register as set out in Form IV appended to these regulations containing all the details of the penalties imposed by the Commission;(i)"recovery certificate" means a certificate issued by the Commission and to be executed by the recovery officer in terms of the Commission's orders;(j)"recovery officer" means an officer authorised by the Commission to recover the penalty from the enterprise or the 'enterprise in default' as the case may be, as defined under these regulations;(k)"Secretary" means the Secretary appointed under sub-section (1) of section 17 of the

Act and includes an officer of the Commission authorised by it to function as Secretary;(I) "Tax Recovery Officer" means the Tax Recovery Officer as referred to in Explanation 2 to section 39 of the Act and defined in clause (44) of section 2 of the Income-tax Act, 1961 (43 of 1961).(2)Words and expressions used but not defined in these regulations shall have the same meanings respectively assigned to them in the Act or in the Companies Act, 1956 (1 of 1956) or in the Income-tax Act, 1961 (43 of 1961), as the case may be.

3. Issuance of demand notice. -

(1)Where a penalty has been imposed on an enterprise by the Commission, the Secretary shall issue a demand notice as set out in Form I appended to these regulations and shall serve it through the recovery officer, to the enterprise concerned after expiry of the period specified for the purpose in the order of imposition of penalty by the Commission at its last address known to the Commission and in the case of a joint account to all the joint holders of such account at their last addresses known to the Commission.(2)A demand notice issued under sub-regulation (1) shall provide a time of thirty days from the date of service of the demand notice to the enterprise concerned to deposit the penalty in the manner specified in the said notice: Provided that where the Commission has any reason to believe that it will be detrimental if the full period of thirty days aforesaid is allowed, it may direct the enterprise concerned that the sum specified in the demand notice shall be paid within such period being a period less than the period of thirty days aforesaid, as may be specified by the Commission in the demand notice.(3)Upon receipt of demand notice the enterprise shall pay the penalty, through challan as set out in Form II appended to these regulations, in favour of Pay & Accounts Officer (PAO), Ministry of Corporate Affairs, Head No. 1475.00.105.05, Sub-Head-05 - 'Penalties imposed by Competition Commission of India'.(4)One copy of the challan shall be submitted by the enterprise to the recovery officer immediately but not later than seven days of the payment and the recovery officer shall make an entry in the penalty recovery register to the same effect.(5)The Commission may, at any time, rectify any clerical or arithmetical mistake made in the demand notice.

4. Extension of time and grant of installments. -

(1)On an application made by the enterprise concerned, before the expiry of the due date of the payment specified in the demand notice, the Commission may extend the time for payment or allow payment by instalments, subject to such conditions as the Commission may think fit to impose in the circumstances of the case.(2)In a case where an extension has been granted and the enterprise concerned fails to make the payment within the time so extended, the enterprise concerned shall be deemed to be an enterprise in default.(3)In a case where payment by instalments has been allowed and the enterprise concerned commits default in paying any one of the instalments within the time fixed, the enterprise concerned shall be deemed to be enterprise in default as to the whole of the penalty then outstanding, and the other instalment or instalments shall also be deemed to have been due on the same date as the instalment actually in default.

5. Interest on penalty. -

If the amount specified in any demand notice is not paid within the period specified by the Commission, the enterprise concerned shall be liable to pay simple interest at one and one-half per cent. for every month or part of a month comprised in the period commencing from the day immediately after the expiry of the period mentioned in demand notice and ending with the day on which the penalty is paid: Provided that the Commission may reduce or waive the amount of interest payable by the enterprise concerned if it is satisfied that default in the payment of such amount was due to circumstances beyond the control of the enterprise concerned: Provided further that where as a result of an order of the Competition Appellate Tribunal or the High Court or the Supreme Court of India, as the case may be the amount of penalty payable has been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded in accordance with regulation 14.

6. Issuance of recovery certificate. -

(1) Where an enterprise is an enterprise in default or deemed to be an enterprise in default as per sub-regulations (2) and/ or (3) of regulation 4, the Commission shall issue recovery certificate through the Secretary to be executed by the recovery officer, as set out in Form III appended to these regulations mentioning the amount of penalty and interest thereon alongwith modes of recovery therein, giving fifteen days time to deposit the penalty. (2) The Commission may, at any time rectify any clerical or arithmetical mistake made in the recovery certificate issued or extend the time for making any payment in pursuance of such recovery certificate.

7. Functions of Recovery Officer. -

(1) The Commission may from time-to-time authorise any of its officers to function as recovery officer for the purposes of these regulations, to recover the penalties in the manner specified under these regulations. (2) The recovery officer shall ensure that the demand notice is duly served on the enterprise concerned. In the case of non-service of the demand notice, the recovery officer shall immediately inform the Secretary. (3) When the payment of penalty is made by the enterprise concerned, recovery officer shall bring it to the notice of the Secretary. In the case of default by the enterprise concerned he shall intimate to the Secretary and ensure thereafter issuance of recovery certificate to such an enterprise in default. (4) The recovery officer shall execute the recovery certificate to realise the amount of penalty imposed upon the enterprise in default in the manner specified in these regulations. (5) The recovery officer shall after issuance of recovery certificate proceed in accordance with the modes specified under these regulations for recovery of the penalty imposed.

8. Maintenance of Penalty Recovery Register. -

The recovery officer shall maintain the penalty recovery register as set out in Form IV appended to these regulations and update the penalty recovery register regularly.

9. Modes of Recovery. -

Where the enterprise in default fails to pay the penalty within the stipulated time as mentioned in the recovery certificate, the recovery officer shall proceed to recover the penalty in the following manner,-(a)the recovery officer shall at any time after issuance of recovery certificate require any enterprise in default from whom penalty is due or may become due or any other enterprise who holds or may subsequently hold money for or on account of the enterprise in default, to pay to the Commission either forthwith upon the penalty becoming due or within the time specified in the recovery certificate so much of the money as is sufficient to pay the penalty due to the enterprise in default. If such other enterprise fails to pay the said amount in lieu of the penalty then such enterprise shall also be treated in the same manner as an enterprise in default;(b)a recovery certificate may be issued to any enterprise who holds or may subsequently hold any money for or on account of the enterprise in default jointly with any other enterprise and for the purposes of this regulation, the shares of the joint holders in such account shall be presumed, until the contrary is proved, to be equal;(c)every enterprise to whom a recovery certificate is issued shall be bound to comply with such certificate, and, in particular, where any such notice is issued to a post-office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy, or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;(d)any claim respecting any property, in relation to which a recovery certificate has been issued, arising after the date of the demand notice shall be void as against any demand contained in the recovery certificate;(e)where an enterprise to whom a recovery certificate has been issued objects to it by a statement on oath that the sum demanded or any part thereof is not due to the enterprise in default or that it does not hold any money for or on account of the enterprise in default, then, nothing contained in these regulations shall be deemed to require such enterprise to pay any such sum or part thereof, as the case may be: Provided that such assertion of the enterprise is to be brought to the notice of the Commission for its consideration;(f)the recovery officer may apply, for payment of the amount sufficient to discharge the penalty due to enterprise in default, to the court in whose custody there is money belonging to such enterprise;(g)where an enterprise in default has property in a country outside India (being a country with which the Central Government has entered into an agreement for the recovery of penalty under the Act and the corresponding law in force in that country), the Commission may propose to that country to take such action thereon as the Commission may deem appropriate having regard to the terms of the said agreement with such country and to remit any sum so recovered to the Commission, and thereafter the Secretary shall take appropriate steps to deposit the same in the account earmarked for the purpose;(h)where during the pendency of any proceeding or after the decision under the Act but before the service of the notice under regulation 3, any enterprise in default creates a charge or parts with the possession by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever of any of its assets in favour of any other person or enterprise, such charge or transfer shall be void as against any claim in respect of any penalty payable by such enterprise in default as a result of the decision of the said proceeding or otherwise: Provided that such charge or transfer shall not be void if it is made,-(i) for adequate consideration and without notice of the pendency of such proceeding; or(ii)with the previous permission of the Commission.

10. Other modes of Recovery. -

After issuance of recovery certificate the recovery officer may also proceed to recover the amount of penalty through the modes mentioned below, in accordance with the rules laid down in the Second Schedule of Income-tax Act, 1961 (43 of 1961), namely:-(a)by attachment and sale of movable property of the enterprise; and(b)by attachment and sale of immovable property of the enterprise.

11. Reference by the Commission to the Income-tax authority. -

Where the Commission is of the opinion, for reasons to be recorded in writing, that it would be expedient to recover the penalty imposed under the Act in accordance with the provisions of the Income-tax Act, 1961 (43 of 1961), it shall make reference under sub-section (2) of section 39 of the Act to the concerned Income-tax authority as set out in the Form V appended to these regulations for recovery of the penalty as 'tax due' under the Income-tax Act, 1961 (43 of 1961).

12. Intimation of recovery by Income-tax authority. -

(1)Where an intimation of recovery of penalty has been received by the Secretary from the Tax Recovery Officer, he shall ensure that recovery officer records it in the penalty recovery register immediately but not later than five days from the date of having received such intimation.(2)The Secretary shall review and obtain a progress report, at least once in three months, from the Tax Recovery Officer, of the progress made in the recovery of demands referred to the Tax Recovery Officer and shall place the progress of recovery of penalty before the Commission every month.

13. Monitoring and supervision in proceedings of recovery of penalty. -

The Secretary shall place before the Commission all the cases where the recovery of penalty has not been made, alongwith details of action taken in each case including the details of references made under sub-section (2) of section 39 of the Act at least once in a month.

14. Refund of excess penalty. -

(1)Where by any order of the Competition Appellate Tribunal or the High Court or the Supreme Court of India, as the case may be, it has been held, - that the enterprise is not liable to pay any penalty or liable to pay penalty less than the amount mentioned in any order or notice, the demand notice or the recovery certificate shall be withdrawn or modified and the amount of penalty, if paid, shall be refunded.(2)In case of a refund, the Secretary shall issue a refund order for such amount, under his signature and seal.

15. Power to determine procedure in certain circumstances. -

In a situation not provided for in these regulations or the Competition Commission of India (General) Regulations, 2009, the Commission may determine the procedure, for specific matters, if

so required.

16. Removal of difficulties. -

In the matter of implementation 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.