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THE COMPETITION COMMISSION OF INDIA

NOTIFICATION

The Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2011 (No. 1 of 2011)

No. R-40007/Reg-Recovery/Noti/04-CCI, dated 8-2-2011 In exercise of the powers conferred by clause (g) of sub-section (2) of section 64 read with section 36 and sub-section (1) of section 39 of the Competition Act, 2002 (12 of 2003), the Competition Commission of India hereby makes the following regulations to specify manner of recovery and monetary penalty, namely :—

Short title and commencement.

1. (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.

Definitions.

2. (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;

(l) “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.

Issuance of demand notice.

3. (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.

Extension of time and grant of instalments.

4. (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.

Interest on penalty.

5. 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.

Issuance of recovery certificate.

6. (1) Where an enterprise is an enterprise in default or deemed to be an enterprise in default as per sub-regulation (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 along with 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.

Functions of Recovery Officer.

7. (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.

Maintenance of Penalty Recovery Register.

8. 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.

Modes of Recovery.

9. 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.

Other modes of Recovery.

10. 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.

Reference by the Commission to the Income-tax authority.

11. 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).

Intimation of recovery by Income-tax authority.

12.(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.

Monitoring and supervision in proceedings of recovery of penalty.

13. The Secretary shall place before the Commission all the cases where the recovery of penalty has not been made, along with 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.

Refund of excess penalty.

14. (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.

Power to determine procedure in certain circumstances.

15. 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.

Removal of difficulties.

16. 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.

THE COMPETITION COMMISSION OF INDIA

FORM I

(See regulation 3)

DEMAND NOTICE

[Under The Competition Act, 2002 (12 of 2003)]

To

.....

.....

.....

Subject: Notice of demand for the recovery of penalty imposed u/s.....of the Competition Act, 2002 (12 of 2003) – regarding.

WHEREAS *vide* order dated in the matter of (case No.) the Competition Commission of India (the Commission) has imposed a penalty of Rs.(Rupees) on (*Name of the concerned enterprise*) having its office at (*address*) and having PAN number under section(s) of the Competition Act, 2002 (12 of 2003) (the Act); and

WHEREAS a copy of the said order was duly served upon you on (date); and in terms of the above mentioned order, the penalty of Rs. (Rupees.) was payable on (date); and

WHEREAS you have not paid the said penalty within the time so specified;

NOW, therefore, you are required to deposit a sum of Rs..... (Rupees.....) within thirty days from the date of receipt of this notice through Challan. The payment of penalty shall be made in favour of ‘Pay and Accounts Officer- Ministry of Corporate Affairs, New Delhi’ in the account head 1475.00.105.05, sub-head-05 ‘Penalties imposed by Competition Commission of India’;

[In case you fail to deposit the penalty amount, i.e..... (RupeesOnly) within the aforesaid period, you shall be liable to pay simple interest @ 1.5% for every month or part of a month comprised in the period commencing from the date immediately after the expiry of the period mentioned in this demand notice and ending with the date on which the demand is paid.

Further, the Commission shall also take necessary steps for recovery of the sum so due besides initiating actions for non-compliance of the order(s) of the Commission]¹

Place:.....
Date:.....

Signature:.....
Name:
Designation: Secretary Competition
Commission of India

Seal

¹ Substituted by the Competition Commission of India (Manner of Recovery of Monetary Penalty) Amendment Regulations, 2014 for “*In case you fail to deposit the entire demand imposed by the Commission within the aforesaid period, the Commission shall take any action as it deems necessary in accordance with law*”
[No. R-40007/Reg-Recovery/Noti/04-CCI dated July 25, printed in the The Gazette of India Extraordinary Part III Section 4 on July 30, 2014]

FORM- II

[See regulation 3(4)]

Challan to be filled in quadruplicate for Bank/PAO/CCI/Depositor (OBVERSE)

G.A.R.-7

[See Rule 26(1) of Central Government Account (Receipts and Payments) Rules, 1983]

Competition Commission of India

Please Civil
indicate Defence
Whether Railway
Post and
Telegraph

Case No.

Penalty(ies) imposed under section of the Competition Act, 2002

Challan of Money paid into Treasury/Sub-Treasury or State/Reserve Bank of India
at

To be filled by the remitter				To be filled by the departmental Officer or the Treasury		
By whom Tendered	Name (or designation and address of the enterprise/person on whose behalf money is paid)	Full Particulars of the remittance and or authority (if any)	Amount	Head of Account	Account Officer by whom adjustable	Order to the Bank
Name		Competition Commission of India, New Delhi	Rs. P.	Head 1475.00.105.05 Sub Head-05- 'Penalties Imposed by Competition Commission of India'	Pay and Accounts Officer (PAO), Ministry of Corporate Affairs	Date Correct: Receive and grant receipt. (Signature and full designation of the officer ordering the money to be paid in)
Signature		Total*				
*(in words) Rupees				To be used only in the case of remittances to the Bank through Departmental Officer of the Treasury Officer		

Received payment (in words) Rupees			
Treasurer	Accountant	Date	Treasury Officer Agent or Manager

(REVERSE)

Particulars to be filled by the remitter **Amount**

Rs. P.

Cash
Bank Draft/ Pay order (With details)

THE COMPETITION COMMISSION OF INDIA

FORM III

(See regulation 6)

RECOVERY CERTIFICATE

[Under The Competition Act, 2002 (12 of 2003)]

To

.....

.....

.....

Ref: Case No.

**Subject: Recovery Certificate for the recovery of penalty imposed u/s
..... of the Competition Act, 2002 (12 of 2003) – regarding.**

Whereas *vide* order dated..... in the matter of
..... (case No.) the Competition Commission of
India (the Commission) has imposed a penalty of Rs.
(Rupees.....) on (*Name of the concerned enterprise*) having
its office at (*address*) and having PAN number
under section (s) of the Competition Act, 2002 (12 of 2003) (the
Act); and

WHEREAS the Commission, in its demand notice dated to the
enterprise had given time up to; and

WHEREAS you have failed to pay the said penalty despite the demand notice
being served on you on within days as specified therein.

Upon your failure to make payments within the aforesaid time, you are hereby
deemed to be an enterprise in default;

NOW, therefore, the Commission shall proceed to recover the amount due by
adopting all or any of the modes specified under regulation 9 of the Competition
Commission of India (Manner of Recovery of Monetary Penalty) Regulations,

2010 (the Regulations) including the following measures specified under regulation 10 of the Regulations, namely:-

- (a) Attachment and sale of any movable property of the enterprise; and/or
- (b) Attachment and sale of any immovable property of the enterprise.

Place:.....
Date: :.....

Signature:.....
Name:.....
Designation
:.....
(Recovery Officer)
Seal

THE COMPETITION COMMISSION OF INDIA

FORM IV

(See regulation 8)

PENALTY RECOVERY REGISTER

[Under The Competition Act, 2002 (12 of 2003)]

Serial No.

Case No.

S.No.	Entry Name	Details
1	Name and address of the enterprise	
2	Date of the Order by the Commission	
3	Section under which such Order was passed	
4	Details of Penalty (Amount + Interest)	
5	Whether an extension of time has been granted under regulation 4. If so-details.	
6	Whether payment in instalments has been allowed under regulation 4. If so, details.	
7	Whether payment of penalty stayed by any authority/court; if so, (a) name of the authority/court (b) date of the order	
8	Whether penalty reduced/waived stayed by any authority/court; if so, (a) name of the authority/court (b) date of the order	
9	Whether the Commission has modified the penalty order	
10	Date of issuance of demand notice	

11	Date of issuance of recovery certificate	
12	Date of reference to the Income-Tax Authority, if any	
13	Whether the provision of regulation 9(g), is attracted, if so, details thereof	
14	Date of the part payment, if any	
15	Date of full payment	
16	Date of credit by the bank	
17	Whether any refund order has been issued by the Secretary; If so, the date of the order	
18	Remarks, if any	

THE COMPETITION COMMISSION OF INDIA

FORM V

(See regulation 11)

REFERENCE TO THE INCOME-TAX AUTHORITY

[Under The Competition Act, 2002 (12 of 2003)]

Case No.

To

Tax Recovery Officer

.....

.....

Subject: (Recovery of penalty as tax due under the Income-tax Act, 1961(43 of 1961) – Reference under section 39(2) of the Competition Act, 2002.

WHEREAS *vide* order dated in the matter of(case No.) the Competition Commission of India (the Commission) has imposed a penalty of Rs. (Rupees) on(Name of the concerned enterprise) having its office at (address) and having PAN number under section(s) of the Competition Act, 2002 (12 of 2003) (the Act); and

WHEREAS, the Commission, in terms of section 39(2) of the Act, is empowered to make a reference to the concerned Income-tax authority, for recovery of the penalty as ‘tax due’ under the Income-tax Act, 1961 (43 of 1961) (the Income-tax Act); and

WHEREAS, in terms of section 39(2) of the Act, the provisions contained in sections 221 to 227, 228A, 229, 231 and 232 of the Income-tax Act and the Second Schedule to Income-tax Act and any Rules made thereunder, are to apply as if these were part of the Act; and

WHEREAS the Commission, in terms of section 39(2), is of the opinion that it would be expedient to recover the penalty imposed under the Act as ‘tax due’ under the Income-tax Act;

You are hereby required to recover the penalty from the enterprise treating the enterprise as an 'assessee in default' under Income-tax Act and inform the Commission about the recovery made.

Place :.....

Date :.....

Signature

.....

Name :.....

Designation: Secretary
Competition Commission
of India Seal