

FAQs ON LESSER PENALTY REGIME

Q.1 What is meant by Lesser Penalty?

Ans. Lesser Penalty means reduction in the amount of penalty imposed upon a person (enterprise or an individual or an association of enterprises or association of persons) by the Competition Commission of India (CCI) for contravention of certain provisions of the Competition Act, 2002 (Act). Lesser Penalty is an incentive provided to infringers of law to come forward and disclose information, documents and evidence with respect to their cartel conduct, in return for grant of reduction in the penalty which may be levied on them.

Q.2 What is meant by Lesser Penalty Plus?

Ans. Lesser Penalty Plus provides an incentive to existing Lesser Penalty applicants to come forward and disclose information, documents and evidence with respect to their participation in another cartel. Such disclosure would not only entitle the Lesser Penalty Plus applicant for grant of reduction in penalty which may be levied on it in the second cartel, but also for grant of additional reduction in penalty which may be levied on it in the first cartel.

Q.3 What are the applicable provisions of the Act and Regulations which govern the Lesser Penalty regime of CCI?

Ans. The Lesser Penalty regime of CCI is provided under Section 46 of the Act and is governed by the Competition Commission of India (Lesser Penalty) Regulations, 2024, more commonly known as the LPR, which are available on the website of CCI and can be accessed at <https://cci.gov.in/legal-framwork/regulations>.

Q.4 Do Lesser Penalty and Leniency mean the same thing?

Ans. Yes, in common parlance, programs/ regimes similar to the Lesser Penalty regime of CCI available under the Competition/ Antitrust Laws of various other jurisdictions are referred to and known as “Leniency Programs”.

Q.5 Who can apply for Lesser Penalty and/ or Lesser Penalty Plus and for what kind of conduct?

Ans. Under the Lesser Penalty regime of CCI, an application for Lesser Penalty and/ or Lesser Penalty Plus may be made by any producer, seller, distributor, trader or service provider included in any cartel or by one who though is not engaged in identical or similar

trade, if it participates or intends to participate in the furtherance of such cartel. Such applicant may be an (a) enterprise who is or was a member of a cartel, or (b) association of enterprises or association of persons, or (c) individual who is or was involved in the cartel on behalf of such enterprise or association. To become a Lesser Penalty Plus applicant, one should already be a Lesser Penalty applicant.

An application for Lesser Penalty and/ or Lesser Penalty Plus may, however, be made only with respect to cartel conduct, *i.e.*, producers, sellers, distributors, traders or service providers coming together and agreeing amongst themselves to limit, control or attempt to control production, distribution, sale, price or trade in goods or provision of services (including bid-rigging and collusive bidding).

Q.6 Why should one apply for Lesser Penalty/ Lesser Penalty Plus?

Ans. For committing contravention of certain provisions of the Act (including cartels), CCI may impose upon an entity, penalty of upto 10% of the average of the turnover or income of the infringer for the last three preceding financial years.

Further, in cartel cases, such penalty may even go upto three times of the profit or 10% of the turnover or income of the infringer for each year of the continuance of the cartel, whichever is higher.

In case of individuals, CCI may impose a penalty of upto 10% of the average of the income of the infringer for the last three preceding financial years.

By applying for Lesser Penalty and by making full, true and vital disclosures regarding the cartel, the Lesser Penalty applicant may get a reduction in the penalty amount to be imposed upon it, of even upto 100%.

Similarly, by applying for Lesser Penalty Plus and by making full, true and vital disclosures regarding a second cartel, the Lesser Penalty Plus applicant may get an additional reduction in the penalty amount to be imposed upon it in the first cartel, of upto 30%.

The sooner one files an application for Lesser Penalty, the higher shall be its Priority Status and the higher the benefit of reduction in penalty awarded to it. Similarly, since the benefit of Lesser Penalty Plus is granted only to one Lesser Penalty Plus applicant (per newly disclosed cartel), the sooner one files an application for Lesser Penalty Plus, the better are its chances of availing the Lesser Penalty Plus benefit.

Accordingly, enterprises/ associations, including their individuals, should come forward and apply for Lesser Penalty/ Lesser Penalty Plus in a swift manner, as soon as they detect or become aware of their participation in a cartel.

Q.7 What factors are considered by the Commission to assess ‘Significant Added Value’ for the purposes of determining the amount of reduction in penalty to be granted to the second or subsequent Lesser Penalty applicant(s)?

Ans. ‘Significant added value’ is determined by the Commission considering:

- (a) the degree to which the evidence strengthens the Commission’s ability to prove the alleged cartel, owing to its nature and level of detail;
- (b) the contribution made in terms of quality and timing; and
- (c) the level of corroboration needed from other sources, with more compelling evidence being considered more valuable than statements that require corroboration if disputed.

More weightage is given to incriminating evidence directly related to the matter than evidence with only indirect relevance.

Q.8 What are the benefits of applying for Lesser Penalty?

- Ans.** (a) For the first applicant approaching CCI by submitting an application for Lesser Penalty, benefit of reduction in penalty of upto or equal to 100% may be given;
- (b) For the second applicant approaching CCI by submitting an application for Lesser Penalty, benefit of reduction in penalty of upto or equal to 50% may be given; and
- (c) For the third and all subsequent applicants approaching CCI by submitting an application for Lesser Penalty, benefit of reduction in penalty of upto or equal to 30% may be given.

Q.9 What are the benefits of applying for Lesser Penalty Plus?

Ans. For the applicant who eventually is granted Lesser Penalty Plus benefit, additional reduction in penalty of up to 30% may be given in the first cartel in addition to the reduction which it may avail therein as the Lesser Penalty applicant. The said applicant may also be entitled to reduction in penalty of up to or equal to 100% in the second cartel.

Q.10 What are the conditions to be fulfilled to avail the benefits of Lesser Penalty/ Lesser Penalty Plus?

Ans. To avail the benefits of Lesser Penalty, the Lesser Penalty applicant ought to:

- (a) make full, true and vital disclosures in respect of the cartel conduct before CCI;
- (b) cease further participation in the cartel from the date of filing the Lesser Penalty application, unless otherwise directed by CCI;
- (c) render genuine, full, continuous and expeditious cooperation throughout the investigation as well as before CCI till completion of the proceedings;
- (d) not conceal, destroy, manipulate or remove any relevant document in any manner, that may contribute to the establishment of the contravention;
- (e) not give any false evidence or omit to submit any material information knowing it to be material; and
- (f) fulfil any other and/ or further restriction and/ or condition which CCI may deem fit to impose, considering the facts and circumstances of a particular case.

Q.11 How is one protected/ safeguarded under the Lesser Penalty regime?

Ans. The identity of Lesser Penalty/ Lesser Penalty Plus applicant and the information, documents and evidence provided by the applicant as part of its Lesser Penalty/ Lesser Penalty Plus application are granted confidentiality by CCI.

After forwarding of the Investigation Report to the parties, non-confidential version of the Lesser Penalty application is made open for inspection to the other parties involved in the matter, for securing their rights of defence. However, in the first cartel, Lesser Penalty Plus application is not made open for inspection to the other parties involved in the matter.

All further submissions shall be made by the Lesser Penalty applicant during the course of investigation before the Director General and confidentiality may be claimed on the same under Regulation 35 of the Competition Commission of India (General) Regulations, 2009 by fulfilling certain conditions (see FAQs on Confidentiality Regime).

The identity of the Lesser Penalty applicant is kept confidential by CCI till the date of passing of the final order in the matter and completion of proceedings before CCI.

Q.12 How does CCI evaluate Lesser Penalty/ Lesser Penalty Plus applications?

Ans. While calculating the amount of reduction in penalty which may be awarded to a Lesser Penalty applicant (subject to the maximum limit(s) of 100%, 50% or 30%), or the Lesser Penalty Plus applicant (subject to the maximum limit of 30%), as the case may be), CCI gives due regard to:

- (a) the priority status of the applicant;
- (b) the stage at which the Lesser Penalty applicant comes forward with the disclosures;
- (c) the evidence which was by that time already in possession of CCI;
- (d) the quality of the information provided by the applicant; and
- (e) the entire facts and circumstances of the matter.

Q.13 How can one apply for Lesser Penalty/ Lesser Penalty Plus?

Ans. One can submit an application for Lesser Penalty/ Lesser Penalty Plus in any of the following manners:

- (a) By contacting the designated authority, *i.e.*, Secretary seeking a Priority Status (also known as “first contact”):
 - i. in writing by sending registered post or by filing personally in the Secretary's office;
 - ii. through e-mail to secy@cci.gov.in;
 - iii. through fax at 011-20815022;
- (b) by filing a formal Lesser Penalty/ Lesser Penalty Plus application as per Schedule I or Schedule II to the LPR, as the case may be, in writing or through e-mail or fax, as stated above.

Q.14 Is there a filing fee to apply for Lesser Penalty/ Lesser Penalty Plus?

Ans. No, there is no filing fee for applying for Lesser Penalty/ Lesser Penalty Plus.

Q.15 Can one make an anonymous application seeking Lesser Penalty?

Ans. No, one cannot make an anonymous application seeking Lesser Penalty. The identity of the applicant ought to be clearly disclosed in the first contact made with CCI for seeking a Priority Status itself. However, such identity shall be kept confidential by CCI till the date of passing of the final order in the matter and completion of proceedings before CCI.

Q.16 Can more than one person/ entity apply jointly for Lesser Penalty/ Lesser Penalty Plus?

Ans. (a) An enterprise and its individuals may jointly apply for Lesser Penalty and/ or Lesser Penalty Plus.

(b) Group companies not competing in the same market may jointly apply for Lesser Penalty and/ or Lesser Penalty Plus. However, two competitors in the same market (even if belonging to the same group) cannot jointly approach CCI for filing a Lesser Penalty/ Lesser Penalty Plus application.

(c) An association and its office-bearers in their individual capacity can file a common application seeking Lesser Penalty and/ or Lesser Penalty Plus. However, members of an association cannot file a common application seeking Lesser Penalty and/ or Lesser Penalty Plus.

Q.17 What is a Priority Status in the context of Lesser Penalty??

Ans. Priority Status means the position of the applicant marked by CCI for giving the benefit of Lesser Penalty in the queue of applicants. To put it simply, Priority Status simply means the number at which the Lesser Penalty applicant has approached CCI in the queue of applicants in a particular matter. It is also sometimes known as the Marker Status.

For example, the first one to approach CCI by filing an application seeking a Priority Status is granted Priority Status “1”; the second one to approach is granted Priority Status “2”; the third one to approach is granted Priority Status “3”; and so on.

The applicant at number “1” position is entitled to be granted benefit of reduction in penalty upto 100%. The applicant at number “2” position is entitled to be granted the benefit of reduction in penalty upto 50%. Applicants at number “3” and subsequent positions are entitled to be granted the benefit of reduction in penalty upto 30%.

Q.18 What is a Priority Status in the context of Lesser Penalty Plus?

Ans. For Lesser Penalty Plus, Priority Status means the number at which the Lesser Penalty Plus applicant has approached CCI in relation to a second cartel during the course of investigation of the first cartel. Only the applicant at number “1” position is entitled to be granted the benefit of Lesser Penalty Plus. In case the application of first Lesser Penalty Plus applicant is rejected by CCI or withdrawn by the applicant or its priority status is forfeited, the applicant(s) at subsequent priority status(es) move up and the next applicant is examined accordingly.

Q.19 What information is required to be provided for seeking a Priority Status?

Ans. In the first contact made for seeking a Priority Status, the following information ought to be disclosed:

- (a) the name, address, e-mail address and contact number of the applicant;
- (b) the product with respect to which existence of a cartel is alleged and Lesser Penalty application is proposed to be filed; and
- (c) the fact that the applicant has, or believes that it has, indulged into a cartel.

Q.20 How does one know that one has received a Priority Status?

Ans. Communication in this regard is sent by the Secretary to the applicant on the address or e-mail address provided by the Lesser Penalty/ Lesser Penalty Plus applicant.

Q.21 Does one get to know the Priority Status awarded to it?

Ans. The actual Priority Status awarded to a Lesser Penalty/ Lesser Penalty Plus applicant is not disclosed to it during pendency of proceedings before CCI. The same is only disclosed at the time of passing of the final order by CCI in the matter. However, intimation that an appropriate Priority Status has been marked is given by the Secretary to the Lesser Penalty/ Lesser Penalty Plus applicant.

Q.22 Does securing a Priority Status guarantee receiving the benefit under the Lesser Penalty regime?

Ans. No, merely securing a Priority Status does not guarantee receiving the benefit of reduction in penalty under the Lesser Penalty regime.

Actual grant of benefit under the Lesser Penalty regime is determined by CCI at the time of passing of final order and the same is subject to the Lesser Penalty/ Lesser Penalty Plus applicant fulfilling all the necessary conditions to avail the benefits of the Lesser Penalty regime.

Q.23 What is a Lesser Penalty/ Lesser Penalty Plus applicant expected to do after receiving a Priority Status?

Ans. Once one has received intimation regarding marking of its appropriate Priority Status from the Secretary, the Lesser Penalty/ Lesser Penalty Plus applicant has to, within a period of 15 days from the date of receipt of the communication, file a Lesser Penalty/ Lesser Penalty Plus application before CCI, containing all the information as specified in Schedule I or Schedule II to the LPR, as the case may be, along with an affidavit verifying that the application being filed under Section 46 of the Act read with the LPR provides full and true

disclosure of all the information and evidence in power and possession of the applicant as on the date of filing of the application and that nothing is being concealed therein.

Q.24 How much time does one have to make an application for Lesser Penalty/ Lesser Penalty Plus?

Ans. Once Priority Status is awarded to a Lesser Penalty/ Lesser Penalty Plus applicant, it is given 15 days' time from the date of receipt of communication in this regard to file a Lesser Penalty/ Lesser Penalty Plus application before CCI, containing all the information as specified in Schedule I or Schedule II to the LPR, as the case may be, along with the requisite affidavit.

Q.25 Once Priority Status is marked, can one seek an extension of time for filing the Lesser Penalty/ Lesser Penalty Plus application?

Ans. Yes, one may make an application seeking a brief extension of time for filing the Lesser Penalty/ Lesser Penalty Plus application once its Priority Status is marked. However, such extension is granted by CCI only in exceptional cases where it is convinced with the reasons provided for seeking such extension.

Q.26 What consequences does one face if one doesn't provide requisite information by filing the application for Lesser Penalty/ Lesser Penalty Plus within the stipulated time?

Ans. The Priority Status granted to the applicant, if it fails to provide the requisite information as per Schedule I or Schedule II to the LPR, as the case may be, within the stipulated time, *i.e.* 15 days or further period as extended by CCI, stands forfeited. No intimation in this regard is made by CCI to the applicant. CCI is also free to use the information provided by the applicant during the first contact for the purposes of its proceedings.

Q.27 What information is required to be submitted in an application for Lesser Penalty?

Ans. In the application for Lesser Penalty, information as specified in Schedule I to the LPR is required to be submitted. The same consists of the following:

- (a) Name, address, e-mail address and contact number of the applicant;
- (b) Name, address, e-mail address and contact number of the authorized representative of the applicant, if any (specifically where the applicant is based or situated outside India);

- (c) Names and preferably addresses of all other persons/entities who are parties to the alleged anti-competitive agreement being reported;
- (d) Detailed description of the alleged anti-competitive agreement (clearly specifying therein the role played by the applicant);
- (e) Role of the applicant in the cartel and admission in that regard;
- (f) Evidences in support of the alleged anti-competitive agreement, along with a descriptive list of the same;
- (g) Goods or services involved;
- (h) Geographic market covered;
- (i) Date of commencement of the anti-competitive agreement;
- (j) Duration of the anti-competitive agreement;
- (k) Is the anti-competitive agreement still continuing?
- (l) Estimated volume of business affected in India by the alleged anti-competitive agreement;
- (m) Names and preferably details (roles, designations, addresses, e-mail addresses, contact numbers) of all individuals who were, to the best of the knowledge of the applicant, associated with the alleged anti-competitive agreement, either on their own or on behalf of any company/firm that was party to the alleged anti-competitive agreement (including the applicant's own individuals);
- (n) Details of other competition/antitrust authorities, forums or courts, if any, approached or intended to be approached by the applicant in relation to the alleged anti-competitive agreement;
- (o) 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 any provisions of the Act;
- (p) Any other material information which the applicant finds pertinent to share or is directed by CCI to provide.

Q.28 What information is required to be submitted in an application for Lesser Penalty Plus?

Ans. In the application for Lesser Penalty Plus, information as specified in Schedule II to the LPR is required to be submitted. The same consists of the following:

- (a) Name, address, e-mail address and contact number of the applicant;
- (b) Name, address, e-mail address and contact number of the authorized representative of the applicant, if any (specifically where the applicant is based or situated outside India);
- (c) Details of the ongoing matter/ case(s) *i.e.* the first cartel in which the applicant has already obtained any priority status;
- (d) Disclosures pertaining to the newly disclosed cartel as per Schedule I (in two original copies);
- (e) Whether there exists any similarity between the conduct/ product/ service/ parties/ matter involved in the first cartel and in the second cartel, along with details thereof;
- (f) Justification as to how the newly disclosed cartel is a new/ separate cartel arrangement from the first cartel;
- (g) Any other material information which the applicant finds pertinent to share or is directed by CCI to provide.

Q.29 When should one apply for Lesser Penalty/ Lesser Penalty Plus?

Ans. One should apply for Lesser Penalty/ Lesser Penalty Plus as soon as one detects or becomes aware of its participation in a cartel as Priority Status is granted on a first-come first-serve basis.

No Lesser Penalty/ Lesser Penalty Plus application can be entertained after receipt of Investigation Report by CCI from the Director General.

Q.30 What is the process after filing of Lesser Penalty application by the Lesser Penalty applicant?

Ans. If the Lesser Penalty application is found by CCI to be duly complete in all respects, the same is forwarded to the Director General for investigation, and the applicant will be contacted by the Investigation Officer in due course.

If any further clarifications are required by CCI, the applicant shall be communicated the same by Secretary CCI. The applicant is required to provide the requisite clarifications within the time stipulated or appear for an oral hearing on the date and time communicated to it, if directed.

If the application is rejected, communication in this regard is made by Secretary CCI to the applicant.

Q.31 Can one withdraw its application for Lesser Penalty/ Lesser Penalty Plus?

Ans. Yes, an application for Lesser Penalty/ Lesser Penalty Plus maybe withdrawn by the applicant any time before the investigation report is received in the matter from the Director General. CCI, however, is free to use the information provided by the applicant, except its admission, for the purposes of its proceedings.

Q.32 What happens if one does not pursue its Lesser Penalty/ Lesser Penalty Plus application after making first contact for Priority Status?

Ans. If one does not pursue its Lesser Penalty/ Lesser Penalty Plus application after making first contact or fails to provide further co-operation during the course of investigation and proceedings before CCI, the applicant may lose the benefits under the Lesser Penalty regime. Besides, in appropriate cases, the Priority Status awarded to the applicant may also be forfeited or its application may be rejected. CCI, however, in all cases, is free to use the information provided by the applicant for the purposes of its proceedings.

Q.33 Does one lose the right to appeal against the final order passed by the Competition Commission of India if one had filed an application for Lesser Penalty?

Ans. No, one does not lose the right to appeal against the final order passed by CCI merely because it had filed an application for Lesser Penalty. The applicant still has the right to file an appeal before the National Company Law Appellate Tribunal under Section 53B read with Section 53A of the Act, against the final order passed by CCI, challenging the contravention found by CCI as well as challenging the amount of reduction in penalty awarded to it.