

**Item No. 20      Modification of the Conditions for grant of instalment facility to the establishment.**

A Committee had been constituted comprising the following officers for study of the above issues in detail:

- (1) Sh. K. L. Taneja, ACC (HQ)- Chairman
- (2) Sh. K. L. Goyal, ACC(HQ)- Member
- (3) Sh. R. M. Verma , ACC (Legal)-Member
- (4) Smt. Uditia Chaudhary, ACC (Finance)- Member

The above Committee had met on 28.11.2017 and 01.12.2017 and discussed the following modification of the conditions for grant of instalment facility to the establishment.

The Central Board of Trustees, Employees' Provident Fund in their 89<sup>th</sup> meeting held at Simla on 30.06.1981 and 01.07.1981 considered the proposal containing the conditions for grant of instalment facility for clearance of Employees' Provident Fund arrears in suitable number of instalments.

Keeping in view the concern of the Board explained above and in the light of the recommendations of the Employees' Provident Fund Review Committee the following guidelines were issued to all Regional Provident Fund Commissioners to process the requests of the employers for grant of instalment facility to clear the arrears for consideration by the General Purpose Committee.

- i) The employer should pay in lump sum the employees' share of contributions in arrears;
- ii) The employer's share of contribution in arrears shall be payable in suitable monthly instalments not exceeding thirty six.
- iii) Current contributions (both employees' and employer's shares) shall be paid promptly and regularly;
- iv) The employer should furnish a Bank Guarantee or Collateral securities for twice the amount of the arrears or the State Government should stand surety for the arrears;
- v) The employer should undertake to pay such damages as may be levied by the appropriate authority in accordance with Section 14B of the Employees' Provident Fund & Misc. Provisions Act, 1952;
- vi) Contributions in respect of outgoing members shall be payable in full in addition to the current contribution and the amount of instalment;
- vii) The employer should agree to pay the legal cost that may be determined by the Provident Fund Authorities; and
- viii) In cases of non-compliance with any of the conditions of instalment, the instalment facility shall be deemed to have been withdrawn and legal action revived.

The conditions for the grant of instalment facility were later modified in accordance with the decisions taken in the CBT meetings held on 06.03.1992(129<sup>th</sup>), 19.08.2003(163<sup>th</sup>), 03.02.2004(166<sup>th</sup>) and 23.02.2006(174<sup>th</sup>) and stand as under, as of today:

- i. The facility of instalment shall be available to both Un-exempt as well as Exempted Establishments.
- ii. The facility of instalment shall cover unpaid employees as well as employer's share of PF contribution, damages, interest.
- iii. Current contributions and employer's share shall be paid regularly by 15<sup>th</sup> of each month.
- iv. Each instalment shall be paid along with interest under Section 7Q of the month alongwith current contributions.
- v. A revolving bank guarantee for an amount equal to one instalment shall be furnished alongwith the application for instalment facility.

- vi. Post Dated Cheques from the defaulting establishments for the number of instalments shall be obtained for ensuring compliance of terms and conditions of instalment facility.
- vii. Contribution in respect of outgoing/deceased member shall be paid in one lump sum in the following month itself in addition to the amount of dues and monthly instalment.
- viii. The employer shall undertake to pay such damages as may be levied by the RPFs concerned and that grant of instalment facility is not absolving him from the payment of statutory dues under Section 14B and 7Q.
- ix. In case of dues exceeding Rs.25 Lakhs, the establishment shall furnish in addition to the revolving bank guarantee covering one instalment, an undertaking that he shall not transfer the immovable property by sale, lease, gift or any other manner whatsoever during the currency of the instalment facility.
- x. The condition to avail instalment facility to liquidate the arrears in 72 instalment:
  - a) Proposal will only be considered in case of un-exempted Establishments.
  - b) If the establishment has earlier availed the instalment facility and has defaulted as per terms/conditions of instalment facility, second application for the same shall not be considered in this regard.
  - c) The establishment shall submit revolving bank guarantee equivalent to VI month's instalment.

The Committee's intention was to provide relief in cases where the employer/owner is sincere about liquidating the dues through instalments, but finds it difficult to fulfil the condition of not committing even a single default in current compliance after the start of the instalment. This is especially true where a new owner take over a sick or closed unit.

Upon acquiring such sick/closed establishment the new owner, though intending to liquidate the arrears finds it difficult to do so while also ensuring the current Compliance by 15<sup>th</sup> of each month regularly. The process of revival of such sick/closed establishment, entails heavy financial expense and sustained efforts. The New owners find themselves financially burdened, in addition to the expense already being undertaken for revival, with statutory PF dues etc in arrears.

A default in the Current Compliance results in the withdrawal of the instalment facility and also of the liquidation of the Bank Guarantee provided by the establishment.

Only relief that is proposed to be provided to the establishment is that, a limited number of instances where the establishment defaults in making current compliance, shall not result in the immediate withdrawal of the instalment facility. Such modification should not be considered as a Blanket condoning of current compliance default by the establishment. Committee considered a cap of three instances of default in current demand, which may be condoned before the instalment facility is withdrawn and coercive action u/s 8 is initiated.

After long discussion of the issues involved in the matter, the Committee has recommended the following:

1. The modified condition of condoning of three defaults (consecutive or otherwise) in the current compliance, after the grant of instalments shall be applicable only to the establishments registered under BIFR or where a new owner has acquired the sick establishment through auction/sale.
2. Establishment shall bring its current compliance upto date as on the date of moving the application for the grant of the instalment facility. All other conditions for the grant of instalments facility shall remain unchanged.
3. If the establishment falling under para (1) above makes upto three defaults in the remittance of current dues, the instalment facility shall not be withdrawn. However not even a single default shall be allowed in the payment of instalments. Default in the payment of contribution of each

month by the 15<sup>th</sup> of the following month shall be counted as one instance of default. A warning letter shall be issued to the establishment after each such default. In the instance of the establishment failing to remit the current dues for a fourth time, after the start of instalments facility, the instalment facility shall be withdrawn and other action including the liquidation of the revolving Bank Guarantee and initiation of coercive action shall be taken recourse to.

At the end of the report Committee has recommended that the proposed conditions of condoning three instances of default (consecutive or otherwise) in current compliance, shall only be limited to not withdrawing the instalment facility immediately. Also, the defaults made shall continue to attract action under section 7A, 7Q and 14B of the EPF & MP Act, 1952.

**Proposal:**                    **It is stated that CBT, EPF may kindly consider the above issues and approve the modification Modification of the Conditions for grant of instalment facility to the establishment subject to conditions as specified in the foregoing paras.**