

The Consumer Protection (Search and Seizure and Compounding of Offences by the Central Authority and Crediting of Penalty) Rules, 2021

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The Consumer Protection (Search and Seizure and Compounding of Offences by the Central Authority and Crediting of Penalty) Rules, 2021¹

In exercise of the powers conferred by sub-sections (3) and (4) of Section 22, sub-section (1) of Section 96 and Section 97 read with clauses (j), (k), (zh) and (zj) of sub-section (2) of Section 101 of the Consumer Protection Act, 2019 (35 of 2019), the Central Government hereby makes the following rules, namely—

1. Short title and commencement.—(1) These rules may be called the Consumer Protection (Search and Seizure and Compounding of Offences by the Central Authority and Crediting of Penalty) Rules, 2021.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.—(1) In these rules, unless the context otherwise requires,—

- (a) ‘Act’ means the Consumer Protection Act, 2019 (35 of 2019);
- (b) ‘Central Authority’ means the Central Consumer Protection Authority established under Section 10 of the Act;
- (c) ‘Director General’ means the Director General appointed under sub-section (2) of Section 15 of the Act.

(2) Words and expressions used herein and not defined, but defined in the Act shall have the meanings assigned to them in the Act.

3. Procedure of taking copies or extracts of documents, records, or articles seized or produced.—(1) Where the Director General or any other officer authorised by him in this behalf, or the District Collector, in the exercise of his powers under clause (a) and clause (c) of sub-section (1) of Section 22 of the Act, has seized, or require production of, any document, record, or article, the Director-General or any other officer authorized by him in this behalf or the District Collector, as the case may be, shall return the same to the person from whom such document, record, or article was seized, or required for production, within a period of twenty days from the date of such seizure or production;

(2) The Director General or any other officer authorized by him in this behalf or District Collector who has seized or require production under sub-rule (1), may take copies of, or extracts from, the relevant document, record, or article, as its nature permits, before returning such document, record, or article:

1. Ministry of Consumer Affairs, Food and Public Distribution (Deptt. of Consumer Affairs), Noti. No. S.O. 5021(E), dated December 6, 2021 and published in the Gazette of India, Extra., Part II, Section 3(ii), dated 6th December, 2021, pp. 5-8, No. 4650

Provided that the Director-General or any other officer authorized by him in this behalf or District Collector may require the person from whom such document, record, or article was seized or required for production to take and provide such copy or extract to the Director-General or officer or District Collector, as the case may be.

(3) The copies or extracts of the document, record, or article made under sub-rule (2) shall be authenticated by way of an affidavit as set out in Form I by the person from whom such document, record, or article is seized or required for production:

Provided that where such person refuses to so authenticate, such document, record, or article shall be returned to him only after copies thereof or extracts therefrom have been taken as authenticated by the District Commission within the local limits of whose jurisdiction such document, record or article has been seized or required to be produced.

4. Disposal of articles subject to speedy or natural decay.—(1) Where any article is seized by the Director-General or any other officer authorised by him in this behalf, or the District Collector in exercise of his powers under sub-section (1) of Section 22 of the Act and the Director-General or any other officer authorized by him in this behalf or District Collector, as the case may be, is of the opinion that such article is subject to speedy or natural decay, he may cause such article to be sold by public auction.

(2) Where any article is sold, under sub-rule (1), the sale proceeds thereof, after deduction of the expenses of such sale and other incidental expenses thereto, shall, immediately after the sale of the property, be credited to the Consolidated Fund of India:

Provided that where, pursuant to the investigation in the course of which such article was seized, no order is passed or proceeding initiated or, if any proceeding is initiated, such person is acquitted in such proceeding or in any appeal arising therefrom, the amount of the sale proceeds shall be paid to the person from whom the article was seized.

5. Compounding of offences.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) and subject to the provisions of Section 96 of the Act, any offence committed for the first time punishable under Sections 88 and 89 of the Act may, either before or after the institution of any prosecution, be compounded by an officer so authorised by the Chief Commissioner.

(2) Any person may either before or after the institution of prosecution, make an application in the form as specified by the Central Authority with the approval of the Central Government from time to time to the compounding officer referred to in sub-rule(1), to compound the offences specified under Section 96 of the Act.

(3) On receipt of an application under sub-rule (2), the compounding officer shall call for any other information from the applicant which may be considered

relevant for examination of such application and such information shall be furnished by the applicant within a period of thirty days or within such extended period as may be allowed by the compounding officer, from the date of receipt of communication from the compounding officer.

(4) The compounding officer, after giving personal hearing to the applicant and after taking into account the contents of the said application, may, by order, giving reasons of arriving at the decision, either allow the application indicating the compounding amount or reject such application:

Provided that the application shall not be rejected unless an opportunity has been given to the applicant of being heard and the grounds of such rejection are mentioned in such order:

Provided further that the applicant shall not claim, as a matter of right, that his offence be compounded:

Provided also that no compounding shall be allowed by the compounding officer where there are apparent contradictions, inconsistencies or incompleteness in the case of the applicant.

(5) A copy of order passed under sub-rule (4) shall be sent to the applicant by registered post or speed post or by e-mail at the address given in the application and also be placed on the website of the Central Authority.

(6) Where the prosecution has already been instituted, the compounding officer may bring the composition, including the compounding amount, to the notice of the court by filing appropriate application, and shall be bound by the decision of the court on such application.

(7) The applicant shall within a period of thirty days from the date of receipt of order under sub-rule (4) allowing the compounding of offences, or order of the court under sub-rule (6), pay to the Central Authority the compounding amount as ordered to be paid by the compounding officer or the court, as the case may be, and shall furnish the proof of such payment to the compounding officer:

Provided that the compounding amount once paid shall not be refunded except in cases where the court rejects grant of immunity from prosecution for the same offence.

(8) The amount for composition under this rule shall be as provided in the following table:

| Sl. No. | Offence specified under the Act | Compounding amount |
|---------|---------------------------------|---|
| 1 | Section 88 | fifty per cent of the maximum, subject to minimum of twenty-five per cent of the applicable fine. |
| 2 | Section 89 | fifty per cent of the maximum, subject to minimum of twenty-five per cent of the applicable fine. |

Provided that the compounding amount shall be decided by the compounding officer having regard to:

- (a) the conduct of the person alleged to have committed the relevant offence;
- (b) gravity of the alleged offence, including the harm suffered by consumers;
- (c) history of violations of the Act;
- (d) existence of any circumstances beyond the control of the person alleged to have committed the relevant offence;
- (e) processes which have been introduced to minimize future violations;
- (f) any economic benefits accruing to the person alleged to have committed the relevant offence as a result of alleged offence;
- (g) conditions to deter future violations;
- (h) compensation of any consumers who may have suffered harm;
- (i) whether the person alleged to have committed the relevant offence has undergone any other civil or regulatory enforcement action; and
- (j) any other factors relevant in the facts and circumstances of the case.

(9) Where the offence committed falls under both sections specified in the table in sub-rule (8), the amount so compounded, in such cases shall be the amount as determined for the offence for which a higher compounding amount has been prescribed.

6. Powers and duties of compounding officer.—(1) Where the compounding officer is satisfied that any person who has made the application for compounding of offence under sub-rule (2) of Rule 5 has cooperated in the proceedings before him and has made full and true disclosure of the facts relating to the goods, articles, process, system or service, he may, if the prosecution has not been instituted with respect to the case so compounded, grant to such person exemption from being prosecuted, subject to such conditions as the compounding officer may deem fit to impose.

(2) The compounding officer shall endeavour to decide every application for compounding within sixty days of its filing.

(3) The compounding officer shall file before the Chief Commissioner, a monthly report indicating the details of applications received by him and actions taken thereon.

7. Credit of penalty under Section 21 and Section 96 of the Act.—The penalty collected under Section 21 and Section 96 of the Act shall be credited to the Consolidated Fund of India.

FORM I

FORM OF AFFIDAVIT

Seizure of books of account and other documents

[Refer Rule 3(3)]

I, son of/wife of/daughter of Mr., aged about years and residing at do hereby solemnly affirm and sincerely state as follows:

1. I am the sole proprietor/Partner/Director/employee of (here give the name of the firm/Company/entity) having its Office/carrying on business/Registered Office at.....

2. I say that on at about ...a.m./p.m., the Director General/officer authorised by the Director General/District Collector, by name of, inspected/searched the premises at where I/the firm/company/entity, namely am/is carrying on business. During the course of such search, the Director General/officer authorised by the Director General/District Collector has seized/required the production of certain documents/records/articles relating to the business.

3. I say that the documents/records/articles seized/required to be produced during the search are required for carrying on business and hence it is necessary that they be returned to me immediately.

4. At my request, the Director General/officer authorised by the Director General/District Collector has agreed to return the documents/records/articles so seized during the search, subject to my providing him extracts or copies of such documents/records/articles. The Director General/officer authorised by the Director General/District Collector has given me the details of the extracts or the copies required by him.

5. I say that I have caused the extracts/copies so required to be taken in the presence of the Director General/officer authorised by the Director General/District Collector.

6. I confirm and declare that the extracts/copies annexed to this Affidavit are the true, authentic and genuine extracts/copies of documents/records/articles seized on and in confirmation thereof, I have initiated each page of the extracts or copies of such document or record / initiated and placed thumb impression on a label affixed to such article.

7. I am aware that based on the solemn declarations given in this Affidavit, the Director General/officer authorised by the Director General/District Collector has agreed to return the documents/records/articles seized as aforesaid on

8. I hereby undertake to produce the documents/records/articles or any part thereof at any time as may be required by the Director General/officer authorised by the Director General/District Collector or before any inquiry proceedings or before any adjudication proceedings that may be initiated by the Director General/officer authorised by the Director General/District Collector against me or against the firm/company/entity, namely....., or against both.

(SIGNATURE OF THE DEPONENT)

Solemnly affirmed and signed before me on this day of Notary Public.....
