

## **LABOUR CODE ON WAGES BILL, 2015**

### **A BILL**

to consolidate and amend the law relating to wages and bonus and the matters connected there with or incidental thereto.

BE it enacted by Parliament in the sixty sixth year of the Republic of India as follows:

### **Chapter I Preliminary**

#### **1. Short title, extent, application and commencement**

- (i) This Code may be cited as the Labour Code on Wages, 2015.
- (ii) It extends to the whole of India.
- (iii) It shall come into force on such date as the Central Government may, by notification, appoint.

#### **2. Definitions**

In this Code, unless the context otherwise requires,-

- (a)** “accounting year” means the year commencing on the first day of April ;
- (b)** “advisory board” means the advisory board constituted under section 17;
- (c)** “agriculture income tax law” means any law for the time being in force relating to the levy of tax on agricultural income;
- (d)** “appropriate government” means –

(i) in relation to an establishment carried on by or under the authority of the Central Government, or a corporation or other authority established by a Central Act or a central public sector undertaking, subsidiary companies set up by the principal undertakings or autonomous bodies owned or controlled by the Central Government including establishments of the contractors for the purposes of such establishment, corporation, other authority, public sector undertakings or the subsidiary companies, as the case may be, the Central Government; and

(ii) in relation to any other establishment, the state Government.

**(e)** “company” means a company incorporated under Companies Act, 2013 or under any previous company law;

**(f)** “consumer price index number” means the consumer price index number as notified by the Central Government from time to time;

**(g)** “co-operative society” means a society registered or deemed to be registered under the Co-operative Societies Act, 1912 (2 of 1912), or any other law for the time being in force in any State relating to co-operative societies;

**(h)** “corporation” means any body corporate established by or under any Central, or State Act but does not include a company or a co-operative society;

**(i)** “direct tax” means,-

(a) any tax chargeable under,-

(i) the Income-tax Act;

(ii) the Super Profits Tax Act, 1963 (14 of 1963);

(iii) the Companies (Profits) Surtax Act, 1964 (7 of 1964);

(iv) the agricultural income tax law; and

(b) any other tax which, having regard to its nature or incidence, may be declared by the Central Government, by notification to be a direct tax for the purposes of this Act;

**(j)** “employee” means any person (other than an apprentice) employed directly or indirectly on wages in any establishment to do any skilled, semi-skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied;

**(k)** “employer” means a person who employs directly or indirectly employees in his establishment and where the establishment is carried on by any department of Central Government or State Government, the authority prescribed in this behalf or where no authority is prescribed the head of the department and in relation to an establishment carried on by a local authority, the Chief Executive of that authority and includes -

(i) in relation to an establishment which is a factory, the occupier of the factory as defined under clause (n) of section 2 of the Factories Act 1948 and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and

(ii) in relation to any other establishment, the person who, or the authority which has ultimate control over the affairs of the establishment and where said affairs are entrusted to a manager or managing director, such manager or managing director;

**(l) “establishment” means any place where any industry, trade, business, manufacture or occupation is carried on and includes Government establishment;**

(m) “Facilitator” means the Facilitator appointed by the appropriate government under sub-section (1) of section 49;

(n) “factory” means the factory as defined under clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

**(o) “Government establishment” means any office or department of the Government or a local authority;**

(p) “Income Tax Act” means the Income Tax Act, 1961 (43 of 1961);

(q) “industrial dispute” means a dispute or difference as defined under clause (k) of Section 2 of the Industrial Disputes Act, 1947 (4 of 1947);

(r) “Labour Court” means a Labour Court constituted under Section 7 of the Industrial Disputes Act, 1947 (4 of 1947);

**(s) “list of defaulters” means a list of such employers who have contravened any of the provisions of this Code maintained by the appropriate Government in the prescribed manner and such list shall be revised from time to time in the prescribed manner and the names of such employers, who after having contravened any of the provisions of this Code have not further contravened any if the provisions of this Code till five years from such contravention, shall be removed from such list;**

(t) “minimum wage” means the wage fixed under section 6;

(u) “National Tribunal” means a National Industrial Tribunal constituted under Section 7B of the Industrial Disputes Act, 1947 (4 of 1947);

(v) “notification” means a notification published in the Gazette of India or the Official Gazette of a State, as the case may be, and the expression “notify” with its grammatical variations and cognate expressions shall be construed accordingly;

(w) “prescribed” means prescribed by rules made by the Central Government or State Government;

(x) “same work or work of a similar nature” means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions by a man or a woman or a transgender and the difference if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment;

(y) “state” includes union territory;

(z) “wages” means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes: –

- (a) any remuneration payable under any award or settlement between the parties or order of a court;
- (b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- (c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
- (d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;
- (e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

*but does not include-*

- (1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;
- (2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;

- (3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- (4) any travelling allowance or the value of any travelling concession;
- (5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- (6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).

Note: The words used in this Code but not defined shall have the meaning as assigned to them in the Industrial Disputes Act, 1947 (14 of 1947)

**3. Prohibition of discrimination on ground of gender-** (1) There shall be no discrimination among male, female and transgender employees on the ground of sex in the matter of wages; under the same employer, in respect of work of same or similar nature.

(2) No employer shall, for the purpose of complying with the provisions of sub-section (1), reduce the rate of wages of any employee.

**4. Determination of the disputes with regard to same or similar nature of work:**

Where there is any dispute as to whether a work is of same or similar nature for the purpose of section 3, the dispute shall be decided by the authority notified by the appropriate government.

## **Chapter II Minimum Wages**

**5. Payment of minimum wages:** No employer shall be allowed to pay to any employee wages less than the minimum rates of wages notified by the State Government for the territorial limit of the State or any part thereof. .

**6. Fixation of minimum wages:** (1) The State Government shall fix the minimum rates of wages payable to employees employed in an employment.

**(2) For the purposes of sub-section (1), the State Government shall fix –**

- (a) a minimum rate of wages for time work; or**
- (b) a minimum rates of wages for piece work; or**

**(c) a minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis;**

**and such rate of wages may be fixed for a period determined -**

**(i) by the hour; or**

**(ii) by the day; or**

**(iii) by the month;**

**and where such rates are fixed by the hour or by the day or by the month, the manner of calculating the wages, as the case may be, shall be as may be prescribed.**

**(3) The State Government may revise from time to time the minimum rate of wages or remuneration fixed under sub-section (2).**

**(4)The State Government, in fixing or revising the minimum rates of the wages under foregoing sub-sections, shall take into account the skill required, the arduousness of the work assigned to the worker, the cost of living of the worker, geographical location of the place of work and other factors which the State Government considers appropriate:**

**Provided that while fixing or revising such minimum wage the State Government shall take into consideration any guidelines made by the Minimum Wages Advisory Board constituted by the Central Government under sub-section (3) of section 15 and shall abide by such guidelines.**

**(5) Where in respect of an industrial dispute relating to the rates of wages payable to any employee, any proceeding is pending before a Tribunal or National Tribunal under the Industrial Disputes Act, 1947 (14 of 1947) or before any other authority under any other law for the time being in force, or an award made by any Tribunal, National Tribunal or such authority is in operation, and a notification fixing or revising the minimum rates of wages in respect of employment is issued during the pendency of such proceeding or the operation of the award, then, notwithstanding anything contained in this Act, the minimum rates of wages so fixed or so revised shall apply**

to those employees during the period in which the proceeding is pending and the award made therein is in operation or, as the case may be, where the notification is issued during the period of operation of an award, during that period; and where such proceeding or award relates to the rates of wages payable to all the employees in the employment, no minimum rates of wages shall be fixed or revised in respect of that employment during the said period.

**7. Components of Minimum Wages:** (1) Any minimum rate of wages fixed or revised by the State government in respect of employments under section 8 may consist of –

(i) a basic rate of wages and a special allowance at a rate to be adjusted at such intervals and in such manner as the State government may direct to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers; or

(ii) a basic rate of wages with or without the cost of living allowance and the cash value of the concessions in respect of suppliers of essential commodities at concession rates where so authorized; or

(iii) an all-inclusive rate allowing for the basic rate the cost of living allowance and the cash value of the concessions if any.

(2) The cost of living allowance and the cash value of the concessions in respect of supplied of essential commodities at concession rate shall be computed by the competent authority at such intervals and in accordance with such directions as may be specified or given by the State government from time to time.

**8. Procedure for fixation and revision minimum wages:** (1) In fixing minimum rates of wages in respect of any employment for the first time under this code or in revising minimum rates of wages so fixed, the State government shall –

(a) appoint as many committee and sub-committee as it considers necessary to hold enquiries and advise such Government in respect of such fixation or revision as the case may be or

(b) by notification publish its proposals for the information of persons likely to be affected thereby and specify a date not less than two months from the date of the notification on which the proposals shall be taken into consideration.

(2) After considering the advice of the committee or sub-committee appointed under clause (a) of sub-section (1) or, as the case may be, all representations received by it before the date specified in the notification under clause (b) of that sub-section, the State Government shall by notification fix or as the case may be, revise the minimum rates of wages and unless such notification otherwise provides it shall come into force on the expiry of three months from the date of its issue:

Provided that where the State Government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-section (1) the State government shall consult the Minimum Wage Advisory Board also.

(3) The State Government shall review or revise minimum rates of wages at intervals not exceeding 5 years, if the minimum rates of wages have a component of variable Dearness Allowance worked out on the basis of rise in Consumer Price Index Numbers for Industrial Workers; otherwise such review or revision shall be made at the interval of two years.

**9. Correction of errors:** (1) The State Government may, at any time, by notification, correct clerical or arithmetical mistakes in any order fixing or revising minimum rates of wages under this Code, or errors arising therein from any accidental slip or omission.

(2) Every such notification shall as soon as may be after it is issued, be placed before the Minimum Wage Advisory Board for information.

**10. Wages of worker who works for less than normal working day:** If an employee whose minimum rate of wages has been fixed under this Code by the day works on any day on which he was employed for a period less than the requisite number of hours constituting a normal working day he shall save as otherwise hereinafter provided, be entitled to receive wages in respect of work done by him on that day as if he had worked for a full normal working day:



Provided that he shall not be entitled to receive wages for a full normal working day-

- (i) in any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work; and
- (ii) in such other cases and circumstances as may be prescribed.

**11. Wages for two or more classes of work:** Where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work wages at not less than the minimum rate in force in respect of each such class.

**12. Minimum time rate wages for piece work:** Where an employee is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under this Code the employer shall pay to such employee wages at not less than the minimum time rate.

**13. Fixing hours of work for normal working day:** (1) In regard to any employment in respect of which the minimum rates of wages have been fixed under this Code, the State Government may—

- (a) fix the number of hours of work which shall constitute a normal working day inclusive of one or more specified intervals;
- (b) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest;
- (c) provide for payment for work on a day of rest at a rate not less than the overtime rate.

(2) The provisions of sub-section (1) shall in relation to the following classes of employees apply only to such extent and subject to such conditions as may be prescribed, namely:-

- (a) employees engaged on urgent work or in any emergency which could not have been foreseen or prevented;
- (b) employees engaged in work of the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;
- (c) employees whose employment is essentially intermittent;

- (d) employees engaged in any work which for technical reasons has to be completed before the duty is over; and
- (e) employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces.

(3) For the purposes of clause (c) of sub-section (2), employment of an employee is essentially intermittent when it is declared to be so by the appropriate Government on the ground that the daily hours of duty of the employee or if there be no daily hours of duty as such for the employee the hours of duty normally include periods of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.

**14. Wages for the overtime work:** Where an employee whose minimum rate of wages has been fixed under this Code by the hour, by the day or by such a longer wage-period as may be prescribed, then, for works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate which shall not be less than twice the normal rate of wages fixed under this Code.

**15. Minimum Wages Advisory Board:** (1) The State Government shall constitute the Minimum Wages Advisory Board for advising the State Government in fixation or revision of minimum wages and other connected matters and the Board may constitute one or more committees to look into any matter pertaining to minimum wages and the wages may be determined by notification on the advice of the Board or the committee or thereof constituted for such purpose.

(2) The Advisory Board and each of the committees and sub- committees thereof shall consist of persons to be nominated by the State Government representing employers and employees in the employments, who shall be equal in number, and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman of the Board by the State Government:

Provided that all the employments need not be individually represented in the Advisory Boards or Committees or Sub-Committees.

(3) The Central Government shall constitute Minimum Wages Advisory Board which shall consist of a Chairman and such number of members as may be prescribed.

(4) The Minimum Wages Advisory Board constituted under sub-section (3) shall from time to time advise the Central Government on reference of issues to it relating to minimum wages and on such advice the Central Government may issue directions to the State Government as it deems fit in respect of fixation or revision of minimum wages or matters relating thereto.

### **Chapter III Payment of Wages**

**16. Mode of payment of wages:** All wages to employees shall be paid by depositing the same in the bank account of the employees, electronically or by cheque:

Provided that payment of wages to the employees up to such amount as may be notified by the appropriate Government in a month may be made by cash.

**17. Fixation of wage period:** The employer shall fix the wage period for employees either as daily, or weekly or fortnightly or monthly subject to the condition that no wage period in respect of any employee shall be more than a month:

Provided that different wage periods may be fixed for different employments.

**18. Time limit for payment of wages:** (1) The employer shall pay or cause to be paid wages to the employees, engaged on, -

- (i) monthly basis, before the 7<sup>th</sup> day of the succeeding month.
- (ii) daily basis, at the end of the shift.
- (iii) weekly basis, on the last working day of the week, that is to say before the weekly holiday;
- (iv) fortnightly basis, before end of second day after the end of the fortnight.

(2) Where an employee has been –

- (i) removed or dismissed from service; or
- (ii) retrenched or has resigned from service, or became unemployed due to closure of the establishment,

the wages payable to him shall be paid within 48 hours of his removal, dismissal, retrenchment or, as the case may be, his resignation.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the appropriate Government may provide any other time limit for payment of wages where it considers reasonable having regard to the circumstances under which the wages are to be paid.

(4) Nothing contained in sub-section (1) or sub-section (2) shall affect any time limit of payment of wages provided in any other law for the time being in force.

**(5) Notwithstanding anything contained in this section, the provisions of this section shall not apply to the Government establishment except where the appropriate Government applies, by notification, such provisions to the Government establishments specified in such notification.**

**19. Deductions which may be made from wages:** (1) Notwithstanding anything contained in any other law for the time being enforce, there shall be no deductions from the wages of the employee, except those as are specified under this Section.

(2) The wages of an employee shall be paid to the employee without deductions of any kind except those authorised by or under this Code.

Explanation: For the purposes of this sub-section,-

(I) any payment made by an employee to the employer or his agent shall be deemed to be a deduction from his wages;

(II) – any loss of wages to an employee, for a good and sufficient cause, resulting from-

(a) the withholding of increment or promotion, including the stoppage of an increment; or

(b) the reduction to a lower post or time-scale

shall not be deemed to be a deduction from wages in a case where the provisions made by the employer for such purposes are satisfying the requirements specified by notification, by the appropriate government in this behalf.

(3) Deductions from the wages of an employee shall be made only in accordance with the provisions as may be prescribed, and for the following purposes only, namely: -

(a) fines imposed on him;

(b) deductions for his absence from duty;

- (c) deductions for damage to or loss of goods expressly entrusted to the employee for custody; or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;
- (d) deductions for house-accommodation supplied by the employer or by appropriate Government or any housing board set up under any law for the time being in force (whether the Government or the board is the employer or not) or any other authority engaged in the business of subsidising house-accommodation which may be specified in this behalf by the appropriate Government by notification;
- (e) deductions for such amenities and services supplied by the employer as the appropriate Government or any officer specified by it in this behalf may by general or special order, authorise.  
Explanation- For the purposes of this clause the expression 'services' does not include the supply of tools and raw materials required for the purposes of employment;
- (f) deductions for recovery of loans and advances by the employer from the funds of the establishment or from any statutory Welfare Fund;
- (g) deductions of income tax payable by the employee or any other tax levied by the Central or State Government or deductions required to be made by order of a court or other authority competent to make such order;
- (h) deductions for subscription to, and for repayment of advances from any social security fund or scheme constituted by law including provident fund or pension fund or health insurance scheme or fund known by any other name;
- (i) deductions made, with the written authorisation of the employees, for payment of the fees payable by him for the membership of any trade union registered under the Trade Union Act, 1926 (16 of 1926);
- (j) deductions for recovery of losses sustained by an employer on account of acceptance by the employee of counterfeit or base coins or mutilated or forged currency notes;
- (k) deductions for recovery of losses sustained by an employer on account of the failure of the employee to invoice, to bill, to collect or to account for the appropriate charges due to that administration whether in respect of fares, freight, demurrage, wharfage and carnage or in respect of sale of food in

catering establishments or in respect of commodities in grain shops or otherwise;

(l) deductions for recovery of losses sustained by an employer on account of any rebates or refunds incorrectly granted by the employee where such loss is directly attributable to his neglect or default;

(m) deductions, made with the written authorisation of the employee, for contribution to the Prime Minister's National Relief Fund or to such other fund as the Central Government may, by notification specify;

(4) Notwithstanding anything contained in this Code and subject to the provisions of any other law for the time being in force, the total amount of deductions which may be made under sub-section (3) in any wage-period from the wages of an employee shall not exceed fifty per cent of such wages:

Provided that where the total deductions authorised under sub-section (3) exceed fifty percent of the wages, the excess may be recovered in such manner as may be prescribed.

## **20. Fines:**

(1) No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer with the previous approval of the Appropriate Government or of the prescribed authority may have specified by notice under sub-section (2).

(2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on.

(3) No fine shall be imposed on any employed person until the employee has been given an opportunity of showing cause against the fine or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.

(4) The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to three per cent of the wages payable to him in respect of that wage-period.

(5) No fine shall be imposed on any employed person who is under the age of eighteen years.

- (6) No fine imposed on any employed person shall be recovered from him by instalments or after the expiry of sixty days from the day on which it was imposed.
- (7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.
- (8) All fines and all realisations thereof shall be recorded in a register to be kept in such form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the establishment as are approved by the prescribed authority.

## **21. Deductions for absence from duty:**

- (1) Deductions may be made only on account of the absence of an employed person from the place or places where by the terms of his employment, he is required to work such absence being for the whole or any part of the period during which he is so required to work.
- (2) The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made in a larger proportion than the period for which he was absent bears to the total period within such wage-period during which by the terms of his employments he was required to work:

Provided that subject to any rules made in this behalf by the appropriate Government if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

Explanation: For the purposes of this section an employed person shall be deemed to be absent from the place where he is required to work if although present in such place he refuses in pursuance of a stay-in strike or for any other cause which is not reasonable in the circumstances to carry out his work.

## **22. Deductions for damage or loss:**

(1) A deduction for damage or loss shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person.

(2) A deduction shall not be made under sub-section (1) until the employed person has been given an opportunity of showing cause against the deduction or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.

(3) All such deductions and all realisations thereof shall be recorded in a register to be kept in such form as may be prescribed.

## **23. Deductions for services rendered:**

A deduction for services rendered shall not be made from the wages of an employed person, unless the house-accommodation amenity or service has been accepted by him as a term of employment or otherwise and such deduction shall not exceed an amount equivalent to the value of the house-accommodation amenity or service supplied and in the case of deduction shall be subject to such conditions as the Appropriate Government may impose.

## **24. Deductions for recovery of advances:**

Deductions for recovery of advances given to an employee shall be subject to the following conditions namely:-

- (a) recovery of an advance of money given to an employee before employment began shall be made from the first payment of wages to him in respect of a complete wage-period but no recovery shall be made of such advances given for travelling-expenses;
- (b) recovery of an advance of money given to an employee after employment began shall be subject to such conditions as the Appropriate Government may impose;
- (c) recovery of advances of wages to an employee not already earned shall be subject to such conditions as the Appropriate Government may impose.



## **25. Deductions for recovery of loans:**

Deductions for recovery of loans granted to an employee shall be subject to any rules made by the Appropriate Government regulating the extent to which such loans may be granted and the rate of interest payable thereon.

### **Chapter IV Payment of Bonus**

**26. Eligibility for bonus:** (1) There shall be paid to every employee drawing wages less than the amount as notified by the Central Government for this purpose, by his employer, who has put in at least 30 days work in an accounting year, an annual minimum bonus calculated at the rate of 8 and 1/3% of the wages earned by the employee or the amount notified by the Central Government from time to time whichever is higher whether or not the employer has any allocable surplus during the previous accounting year.

(2) For the purpose of calculation of the bonus the wages of the employee or the amount for this purpose as notified by the central government whichever is minimum shall be taken.

(3) Where in respect of any accounting year, the allocable surplus exceeds the amount of minimum bonus payable to the employees, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wages earned by the employee during the accounting year subject to a maximum of twenty per cent of such salary or wage.

(4) In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 37 shall be taken into account in accordance with the provisions of that section.

(5) Any demand for bonus in excess of the bonus referred to in sub-section (1), either on the basis of production or productivity in an accounting year to a calendar year for which the bonus is payable shall be determined by collective bargaining between the employer and the employees, failing which by arbitration or adjudication as an industrial dispute subject to the condition that the total bonus including the

annual minimum bonus referred to in sub-section (1) shall not exceed 20% of the wages earned by the employee in the accounting year.

(6) In the first five accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, bonus shall be payable only in respect of the accounting year in which the employer derives profit from such establishment and such bonus shall be calculated in accordance with the provisions of this code in relation to that year, but without applying the provisions of section 35.

(7) For the sixth and seventh accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 35 shall apply subject to the following modifications, namely,-

(i) for the sixth accounting year,-

set on or set off, as the case may be, shall be made in the manner illustrated in the Fourth Schedule taking into account the excess or deficiency, if any as the case may be, of the allocable surplus set on or set off in respect of the fifth and sixth accounting years;

(ii) for the seventh accounting year,-

set on or set off, as the case may be, shall be made in the manner illustrated in the Third Schedule taking into account the excess or deficiency, if any as the case may be, of the allocable surplus set on or set off in respect of the fifth, sixth and seventh accounting years.

(8) From the eighth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 35 shall apply in relation to such establishment as they apply in relation to any other establishment.

Explanation I : For the purpose of sub-section (6), an employer shall not be deemed to have derived profit in any accounting year unless,-

(a) he has made provision for that year's depreciation to which he is entitled under the Income Tax Act or, as the case may be., under the agricultural income tax law, and

(b) the arrears of such depreciation and losses incurred by him in respect of the establishment for the previous accounting years have been fully set off against his profits.

Explanation II: For the purposes of sub-section (6), (7) and (8), sale of the goods produced or manufactured during the course of the trial running of any factory or of the prospecting stage of any mine or an oil-field shall not be taken into consideration and where any question arises with regard to such production or manufacture, the decision of the appropriate government made after giving the parties a reasonable opportunity of representing the case, shall be final and shall not be called in question by any court or other authority.

(2) The provisions of 19 sub-sections (6), (7) and (8) shall, so far as may be, apply to new departments or undertakings or branches set up by existing establishments.

## **27. Disqualification for bonus:**

Notwithstanding anything contained in this Code, an employee shall be disqualified from receiving bonus under this Code, if he is dismissed from service for,-

(a) fraud; or

(b) riotous or violent behaviour while on the premises of the establishment; or

(c) theft, misappropriation or sabotage of any property of the establishment; or

(d) Conviction for sexual harassment.

## **28. Establishments to include departments, undertakings and branches:**

Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such

departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this code:

Provided that where for any accounting year a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus, under this code for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus.

**29. Payment of bonus out of allocable surplus:** (1) The bonus shall be paid out of the allocable surplus which shall be an amount equal to 60% in case of a banking company and 67% in case of other establishment, of the available surplus and the available surplus shall be the amount calculated in accordance with Section 31.

(2) Audited accounts of companies shall not normally be questioned:

Provided that wherever there is any dispute regarding the quantum of payment of bonus the authority notified by the appropriate Government having jurisdiction may call upon the employer to produce the balance sheet before it, but the authority shall not disclose any information contained in the balance sheet unless agreed to by the employer.

**30. Computation of gross profits:** The gross profits derived by an employer from an establishment in respect of the accounting year shall,-

(a) in the case of a banking company, be calculated in the manner specified in the First Schedule;

(b) in any other case, be calculated in the manner specified in the Second Schedule.

**31. Computation of available surplus:** The available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in section 34:

Provided that the available surplus in respect of the accounting year commencing on any day in a year after the commencement of this code and in respect of every subsequent accounting year shall be the aggregate of,-

- (a) the gross profits for that accounting year after deducting there from the sums referred to in section 34; and
- (b) an amount equal to the difference between,-
  - (i) the direct tax, calculated in accordance with the provisions of section 36, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and
  - (ii) the direct tax, calculated in accordance with provisions of section 36, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting there from the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Code for that year.

**32. Sums deductible from gross profits:** The following sums shall be deducted from the gross profits as prior charges, namely:-

- (a) any amount by way of depreciation admissible in accordance with the provisions of the sub-section (1) of section 32 of the Income Tax Act or in accordance with the provisions of the agricultural income tax law, for the time being in force as the case may be:

Provided that where an employer has been paying bonus to his employees under a settlement or an award or agreement made before the 29th May, 1965, and subsisting on that date after deducting from the gross profits notional normal depreciation, then, the amount of depreciation to be deducted under this clause shall, at the option of such employer (such option to be exercised once and within one year from date) continue to be such notional normal depreciation;

- (b) any amount by way of development rebate or investment allowance or development allowance which the employer is entitled to deduct from his income under the Income Tax Act;

(c) subject to the provisions of section 35, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year;

(d) such further sums as are specified in respect of the employer in the Third Schedule.

**33. Calculation of direct tax payable by the employer:** Any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely,-

(a) in calculating such tax no account shall be taken of,-

(i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;

(ii) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any following accounting year or years under sub-section (2) of section 32 of the Income Tax Act;

(iii) any exemption conferred on the employer under section 84 of the Income Tax Act or of any deduction to which he is entitled under sub-section (1) of section 101 of that Act, as in force immediately before the commencement of the Finance Act, 1965 (10 of 1965);

(b) where the employer is an individual or a Hindu Undivided Family, the tax payable by such employer under the Income Tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income;

(c) where the income of any employer includes any profits and gains derived from the export of any goods or merchandise out of India and any rebate on such income is allowed under any law for the time being in force relating to direct taxes, then, no account shall be taken of such rebate;

(d) no account shall be taken of any rebate other than development rebate or investment allowance or development allowance or credit or relief or deduction (not

hereinbefore mentioned in this section) in the payment of any direct tax allowed under any law for the time being in force relating to direct taxes or under the relevant annual Finance Act, for the development of any industry.

**34. Set on and set off of allocable surplus:** (1) Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employee in the establishment under section 27, then, the excess shall, subject to a limit of twenty percent of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilised for the purpose of payment of bonus in the manner illustrated in the Third Schedule.

(2) Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under section 27, and there is no amount or sufficient amount carried forward and set on under sub-section (1) which could be utilised for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the Second Schedule.

(3) The principle of set on and set off as illustrated in the Third Schedule shall apply to all other cases not covered by sub-section (1) or sub section (2) for the purpose of payment of bonus under this Code.

(4) Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest account year shall first be taken into account.

**35. Adjustment of customary or interim bonus against bonus payable under the Code:** Where in any accounting year, -

(a) an employer has paid any Puja Bonus or other customary bonus to employee;  
or

(b) an employer has paid a part of the bonus payable under this Code to employee before the date on which such bonus becomes payable,

then, the employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee under this Code in respect of that accounting year and the employee shall be entitled to receive only the balance.

**36. Deduction of certain amounts from bonus payable under this Code:** Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under this Code in respect of that accounting year only and the employee shall be entitled to receive the balance, if any.

**37. Time limit for payment of bonus:** All amounts payable to an employee by way of bonus under this Code shall be paid by transferring to the bank account of the employee by his employer and -

(a) where there is a dispute regarding payment of bonus pending before any authority such bonus shall be paid, within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;

(b) in any other case, such bonus shall be paid within a period of eight months from the close of the accounting year:

Provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of eight months to such further period or periods as it thinks fit; so, however, that the total period so extended shall not in any case exceed two years:

Provided if there is a dispute for payment at the higher rate, the employer shall pay 8.33% as per of the Code with in time limit.

**38. Application of this Chapter to establishments in public sector in certain cases:**

(1) If in any accounting year an establishment in public sector sells any goods produced or manufactured by it or renders any services, in competition with an establishment in private sector, and the income from such sale or services, or both is



not less than twenty per cent of the gross income of the establishment in public sector for that year, then, the provisions of this Chapter shall apply in relation to such establishment in public sector as they apply in relation to a like establishment in private sector.

(2) Save as otherwise provided in sub-section (1), nothing in this Chapter shall apply to the employees employed by any establishment in public sector.

**39. Non- applicability of the Chapter:** Nothing in this Chapter shall apply to -

(i) employees employed by the Life Insurance Corporation of India;

(ii) seamen as defined in clause (42) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958);

(iii) employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948, (9 of 1948), and employed by registered or listed employers;

(iv) employees employed by an establishment engaged in any industry carried by or under the authority of any department of the Central Government or a State Government or a local authority.

(v) employees employed by-

(a) the Indian Red Cross Society or any other institution of a like nature (including its branches);

(b) universities and other educational institutions;

(c) institutions (including hospitals, chamber of commerce and social welfare institutions) established not for purposes of profit.

(vi) employees employed by the Reserve Bank of India;

**(vii) employees employed by public sector financial institution other than a banking company, which the Central Government may, by notification, specify, having regard to -**

**(a) its capital structure;**

**(b) its objectives and the nature of its activities;**

**(c) the nature and extent of financial assistance or any concession given to it by the Government; and**

**(d) any other relevant factor;**

(viii) employees employed by inland water transport establishments operating on routes passing through any other country; and

**(ix) employees of any other establishment which the appropriate Government, by notification, exempts having regard to the overall benefits under any other scheme of profit sharing available in such establishments to the employees:**

**Provided that notwithstanding anything contained in this section, the provisions of this chapter shall apply to every other establishment in which twenty or more persons are employed or were employed on any day during an accounting year.**

## **Chapter V Miscellaneous**

**40. Removal of difficulties:** 1) If any difficulty arises in giving effect to the provisions of this code, the Central Government may, by order, published in the official gazette, make such provision not inconsistent with the provisions of this code, as appear to be necessary

2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

**41. Responsibility for payment of various dues:** Every employer shall be responsible for the payment of all amount required to be paid under this Code to every employee employed by him and in case a person,-

(a) in a factory has been named as the manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948); or

- (b) other establishment is responsible to the employer for the supervision and control of the establishment;
- (c) in railways (otherwise than in factories), if the employer is the railway administration and the railway administration has nominated such person in this behalf for the local area concerned, or
- (d) in the case of contractor, is designated by such contractor for such payment and is directly under his charge; or
- (e) in any other case, is designated by the employer as a person responsible for complying with the provisions of this Code, then the person so named, shall also be responsible for such payment.

**42. Payment of various undisbursed dues in case of death of employed person:**

(1) Subject to the other provisions of this code all amounts payable to an employed person shall if such amounts could not or cannot be paid on account of his death before payment or on account of his whereabouts not being known -

(a) be paid to the person nominated by him in this behalf in accordance with the rules made under this code; or

(b) where no such nomination has been made or where for any reasons such amounts cannot be paid to the person so nominated be deposited with the prescribed authority who shall deal with the amounts so deposited in such manner as may be prescribed.

(2) Where in accordance with the provisions of sub-section (1), all amounts payable to an employed person -

(a) are paid by the employer to the person nominated by the employer person; or

(b) are deposited by the employer with the prescribed authority, the employer shall be discharged of his liability to pay those amount.

**43. Claims under the Code and procedure thereof:** (1) The appropriate Government may by notification appoint one or more authorities to hear and decide the claims arising out of non-payment of wages, deduction made by employer from the wages of an employee which are not as per this Code, payment of less wages than the minimum wages, non-payment of wages for the leave period, non-payment

of over time, non-payment of equal remuneration to male, female and transgender employees as may be prescribed and non-payment of bonus.

(2) The authority appointed under sub-section (1) may order payment of compensation up to 10 times in addition to the dues involved as specified in sub-section (1) to the employee and such authority shall, before ordering compensation, have regard to the circumstances due to which the dues had remained unpaid or less paid.

(3) If an employer fails to pay the outstanding dues of an employee that are decided to be paid by the authority under sub-section (1), the authority shall issue a certificate of recovery to the Collector or District Magistrate of the District where the establishment is located who shall recover the same as arrears of land revenue and remit the same to the authority for payment to the concerned employee.

(4) Any application for claim arising out of any dues payable as specified under sub-section (1) may be filed before the authority by either the employee or any Trade Union of which the employee is a member or a Non-Government Organisation duly authorised by the employee or an Inspector appointed under this Code.

(5) Authority appointed under sub-section (1) **and the appellate authority appointed under sub-section (1) of section 44, or as the case may be, the Chairperson and every Member of the Board referred to in sub-section (2) of section 44** shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority, **appellate authority or, as the case may be, the Chairperson and every Member** shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

**44. Appeal: (1) Any person aggrieved by an order passed by the authority under sub-section (2) of section 43 may prefer an appeal to the appellate authority having jurisdiction appointed by the appropriate Government, by notification, for such purpose within ninety days from the date of such order in such form accompanied with such fee as may be prescribed by the appropriate Government:**

**Provided that the appellate authority may entertain the appeal after ninety days if it is satisfied that the delay in filing the appeal has occurred due to sufficient cause.**

**(2) If the appropriate Government considers it appropriate for dispensation of justice, instead of appointing appellate authority or authorities under sub-section (1) or if such appellate authority or authorities have been appointed, dissolve such appellate authorities and establish one or more Board as provided in sub-section (3).**

**(3) The appropriate Government shall establish one or more Board referred to in sub-section (2) which shall consist of-**

- (i) a Chairperson who shall be an officer not below the rank of Director in the Government of India or equivalent having experience in dealing with labour matters;**
- (ii) a Member having experience in the field of Trade Unions representing workers; and**
- (iii) a Member having experience in employers' association representing employers.**

**(4) If a Board is established after dissolving an appellate authority under sub-section (2), the appeals pending before such appellate authority shall stand transferred to such Board and the Board shall either hear an appeal so transferred de-novo or as it deems fit from the stage the appeal is transferred to it.**

**(5) Appellate authority referred to in sub-section (1) or, as the case may be, the Board referred to in sub-section (2) shall after hearing the parties in the appeal dispose of the appeal and endeavour shall be made to dispose of the appeal within three months.**

**(6) The outstanding dues under the orders of the appellate authority referred to in sub-section (1) or, as the case may be, the Board referred to in sub-section (2) shall be recovered by the authority by issuing certificate of recovery in the manner specified in sub-section (3) of section 43.**

**(5) The salary and other terms and conditions of service of the Chairperson and Members of the Board referred to in sub-section (2) shall be such as may be prescribed.**

**45. Single application in respect of a number of employees:**

(1) Subject to such rules as may be prescribed, a single application may be presented under section 46 on behalf or in respect of any number of employees employed in the employment in respect of which minimum rates of wages have been fixed and in such cases the maximum compensation which may be awarded under sub-section (2) of section 46 shall not exceed ten times the aggregate amount of the dues in excess to the dues payable or ten rupees per head as the case may be.

(2) The authority may deal with any number of separate pending applications presented under section 46 in respect of employees in the employments in respect of which minimum rates of wages have been fixed as a single application presented under sub-section (1) of that section and the provisions of that sub-section shall apply accordingly.

**46. Records, Returns and Notices:** (1) Every employer of an establishment to which this Code applies, shall maintain a register containing the details with regard to persons employed, muster roll, wages, and other details as prescribed by the appropriate Government and as far as possible electronically.

(2) Every employer shall display a notice on the notice board at a prominent place of the establishment containing the abstract of the code, category-wise wage rates of employees, wage period, day or date and time of payment of wages, and the name of the person responsible for payment of wages to the employees.

(3) Every employer of an establishment shall send an annual return in the prescribed form and as far as possible electronically to the authority as may be prescribed.

**47. Appointment of Facilitators and their powers.**-(1) The appropriate Government may, by notification, appoint Facilitators who shall exercise the powers conferred on them under sub-section (4) throughout the State or such geographical limits assigned to them, in relation to establishments situated in such State or geographical limits, as the case may be.

(2) The appropriate Government may lay down an inspection scheme which shall provide for **generation of a** web-based inspection schedule, **based on self-**

certification, utilizing services of technical experts or agencies and complaint received **and list of defaulters.**

(3) Every Facilitator appointed under sub-section (1) shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code (45 Of 1860).

(4) Subject to any rules made in this behalf by the appropriate Government, a facilitator may, within the local limits for which he is appointed –

(i) (a) supply information and advice to employers and workers concerning the most effective means of complying with the provisions of this code.

(b) inspect the establishment for the purpose of inspection referred to in sub-section (2) **based on inspection scheme referred to in that sub-section;**

(ii) Subject to the above, the Facilitator may –

(a) examine any person who is found in any premises of the establishment and whom, the Facilitator has reasonable cause to believe, is a worker of the establishment;

(b) require any person to give any information, which is in his power to give with respect to the names and addresses of the persons;

(c) search, seize or take copies of such register, record of wages or notices or portions thereof as the Facilitator may consider relevant in respect of an offence under this Code and which the Facilitator has reason to believe has been committed by the employer;

(d) bring to the notice of the appropriate Government defects or abuses not covered by the law for the time being in force; and

(e) exercise such other powers as may be prescribed.

(5) Any person required to produce any document or to give any information required by a Facilitator under sub-section (4) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code (45 of 1860).

(6) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to the search or seizure under sub-section (4) as they apply to the search or seizure made under the authority of a warrant issued under section 94 of the said Code.

**48. Cognizance of offences:** (1) Cognizance of offences committed under this Code shall be taken on the complaint filed by an employee or a registered trade union or a recognised welfare institution or a **Facilitator** appointed under this Code.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (1 of 1974), no court inferior to the Metropolitan Magistrate or Magistrate of first class shall try the offences under this code.

**49. Penalties for offences:** (1) Any employer who –

(a) pays to any employee less than the minimum rates of wages fixed for that employee's class of work or less than the amount due to such employee under the provisions of this Code or discriminates between male, female and trans-gender employees or vice-versa in payment of wages on ground of gender shall be punishable with fine which may extend to fifty thousand rupees:

Provided that if such employer having been convicted of an offence under this clause is again found guilty of similar offence under this clause, **while his name is occurring on the list of defaulters**, he shall, on the second or any subsequent commission of the offence under this clause be punishable with an imprisonment for a term which may extend to three months or with fine which may extend to RUPEES ONE LAKH, or with both;

(b) makes any deduction other than those authorised under this code from the wages to be paid to the employee, shall be punishable with fine which may extend to fifty thousand rupees:

Provided that if the employer having been convicted of an offence under this clause is again found guilty of similar offence under this clause, **while his name is occurring on the list of defaulters**, he shall, on the second and or any subsequent commission of the similar offence under this clause, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one lakh rupees or with both; or



(c) fails in making payment of bonus to the employee as per his eligibility and entitlement shall be punishable with fine which may extend to fifty thousand rupees:

Provided that if such employer having been convicted of an offence under this clause again found guilty of similar offence under this clause, **while his name is occurring on the list of defaulters**, he shall, on the second and any subsequent commission of the offence under this clause, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one lakh rupees, or with both; or

(d) contravenes any other provision contained in this Code or any rule made or order issued thereunder shall be punishable with fine which may extend to twenty thousand rupees:

Provided that if such employer having been convicted of an offence under this clause again found guilty of similar offence under this clause, **while his name is occurring on the list of defaulters**, he shall, on the second and any subsequent commission of the offence under this clause, be punishable with imprisonment for a term which may extend to one month or with fine which may extend to forty thousand rupees, or with both.

(2) For the offences of non or improper maintenance of records in his establishment, the employer shall be punishable by fine which may be extended to TEN THOUSAND RUPEES.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Facilitator shall, before initiation of prosecution proceedings, give an opportunity, to the employer to comply with the provisions of this Code by way of a written direction, which shall lay down a time period for such compliance and if the employer complies with the direction within such period, the Facilitator shall not initiate such prosecution proceedings.

**50. Compounding of offences:** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), on the application of the employer concerned, any offence under this code shall be compounded, by such officer being

a gazetted officer of the appropriate Government in such manner and on payment of such amount to such government as may be prescribed and if the employer does not agree to pay such amount for composition of the offence, then, the proceedings shall be initiated against such employer in accordance with law.

(2) The offence referred to in sub-section (1) may be compounded before or pending the trial of the offence and when the offence is compounded during the trial of the offence, the officer compounding the offence under sub-section (1) shall file a report in the court in which the trial of the offence is pending and the court shall on filing of such report discharge the accused with whom the offence has been compounded and such composition shall have the effect of an acquittal of the accused.

(3) No offence under this section shall be compounded if the accused has previously been convicted by a Court for committing same offence.

(4) No offence under this code shall be compounded, except as provided under this section.

**51. Bar of suits:** No Court shall entertain any suit for the recovery of minimum wages, any deduction from wages, discrimination in wages and payment of bonus in so far as the sum so claimed –

- (a) forms the subject of claims under Section 46;
- (b) has formed the subject of a direction under this Code; or
- (c) has been adjudged in any proceeding under this Code;
- (d) could have been recovered under this Code.

**52. Protection of action taken in good faith:** No suit, prosecution or any other legal proceeding shall lie against the appropriate government or any officer of such government for anything which is in good faith done or intended to be done under this Code.

**53. Burden of proof:** Where a claim has been filed on account of non - payment of remuneration or bonus or less payment of wages or bonus or on account of making deductions not authorised by this Code from the wages of an employee, the burden to prove that the above mentioned dues have been paid shall be on the employer.

**54. Contracting out:** Any contract or agreement whereby an employee forgoes his right to any amount due under this Code or foregoes his right to bonus shall be *void ab initio*.

**55. Offences by companies:** (1) If the person committing an offence under this Code is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

PROVIDED that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Code has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purposes of this section,-

(a) "company" means anybody corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

**56. Effect of laws and agreements inconsistent with the Code:** Subject to the provisions of section 38 the provisions of this Code shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in the terms of any award, agreement, settlement or contract of service.

**57. Saving:** Nothing contained in this Code shall be deemed to affect the provisions of the Coal Mines Provident Fund and Bonus Schemes Act, 1948 (46 of 1948), or of any scheme made thereunder.

**58. Power of the Central Government to make rules:** (1) The Central Government may, by notification, make rules for carrying out the provisions of this Code.

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the rule or both Houses agree that rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or amendment shall be without prejudice to the validity of anything previously done under that rule.

**59. Repeal and savings** - (1) The Payment of Wages Act, 1936 (4 of 1936), the Minimum Wages Act, 1948 (11 of 1998), the Payment of Bonus Act, 1965 (21 of 1965) and the Equal Remuneration Act, 1976 (25 of 1976) are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the enactments so repealed (including any notification, nomination, appointment, order or direction made thereunder) shall be deemed to have been done or taken under the corresponding provisions of this code and shall be in force to the extent they are not contrary to the provisions of this code till they are repealed by the Central government.

(3) Without prejudice to the provisions of sub-section (2), the provisions of section 6 of the General Clause Act, 1897 (10 of 1897) shall apply to the repeal of such enactments.

## THE FIRST SCHEDULE: Computation of Gross Profits

Accounting year ending .....

<b>Item No.</b>	<b>Particulars</b>	<b>Amt. of sub-Items `</b>	<b>Amt. of main Items `</b>	<b>Remarks</b>
*1.	Net Profit as shown in the profit and loss account after making usual and necessary provisions.			
2.	Add back provision for:  (a) Bonus to employees  (b) Depreciation  (c) Development Rebate Reserve  (d) Any other reserves  Total of Item No.2.....	`.....		**  **
3.	Add back also:  (a) Bonus paid to employees in respect of previous accounting years.  (b) The amount debited in respect of gratuity paid or payable to employees in excess of the aggregate of –  (i) the amount, if any, paid to, or provided for payment to, an approved gratuity fund; and  (ii) the amount actually paid to employees on their retirement or on termination of their employment for any reason.  (c) Donations in excess of the amount admissible for income-tax .			**
	(d) Capital expenditure (other than capital expenditure on scientific research which is allowed as a deduction under any law for the time being in force relating to direct taxes) and capital losses (other than losses on sale of capital assets on which depreciation has been allowed for income tax).			**
	(e) Any amount certified by the Reserve Bank of India in terms of sub-section (2) of section 34A of	`.....		

	<p>the Banking Regulation Act, 1949 (10 of 1949).</p> <p>(f) Losses of , or expenditure relating to, any business situated outside India.</p> <p>Total of Item No.3.....</p>			
4.	<p>Add also income, profits or gains (if any ) credited directly to published or disclosed reserves, other than-</p> <p>(i) capital receipts and capital profits (including profits on the sale of capital assets on such depreciation has not been allowed for income-tax);</p> <p>(ii) profits of, and receipts relating to , any business situated outside India;</p> <p>(iii) income of foreign banking companies from investment outside India.</p> <p>Net total of Item No.4.....</p>	^ .....		
5.	Total of Item Nos.1,2,3& 4...	^ .....		
6.	<p>Deduct :</p> <p>(a) Capital receipts and capital profits (other than profits on the sale of assets on which depreciation has been allowed for income-tax).</p> <p>(b) Profits of, and receipts relating to any business situated outside India.</p>			***
	<p>(c) Income of foreign banking companies from investments outside India .</p> <p>(d) Expenditure or losses (if any ) debited directly to published or disclosed reserves, other than –</p> <p>(i) capital expenditure and capital losses (other than losses on sale of capital assets on which depreciation has not been allowed for income-tax );</p> <p>(ii) losses of any business situated outside India.</p>			***

	<p>(e) In the case of foreign banking companies proportionate administrative (overhead ) expenses of head-office allocable to Indian business.</p> <p>(f) Refund of any excess direct tax paid for previous accounting years and excess provision if any of previous accounting years, relating to bonus, depreciation or development rebate, if written back.</p> <p>(g) Cash subsidy, if any, given by the government or by any body corporate established by any law for the time being in force or by any other agency through budgetary grants, whether given directly or through any agency for specified purposes and the proceeds of which are reserved for such purposes .</p> <p>Total of Item No. 6 .....</p>	<p>.....</p>	<p>***</p> <p>***</p> <p>***</p>
7.	Gross profits for purposes of bonus (Item No. 5 minus Item No. 6)	<p>.....</p>	

**Explanation :** In sub-item (b) of Item 3, "approved gratuity fund" has the same meaning assigned to it in clause (5) of section 2 of the Income Tax Act.

\* Where the profit subject to taxation is shown in the profit and loss account and the provision made for taxes on income is shown, the actual provision for taxes on income shall be deducted from the profit.

\*\* If, and to the extent, charged to Profit and Loss Account.

\*\*\* If, and to the extent, credited to Profit and Loss Account.

\*\*\*\* In the proportion of Indian Gross Profit (Item No. 7) to Total World Gross Profit (as per consolidated profit and loss account adjusted as in Item No. 2 above only)]

## THE SECOND SCHEDULE: Computation of Gross Profits

Accounting year ending.....

<i>Item No.</i>	<i>Particulars</i>	<i>Amt. Of sub-Items`</i>	<i>Amt. Of main Items`</i>	<i>Remarks</i>
1.	Net profit as per profit and loss account			
2.	Add back provision for :  (a) Bonus to employees  (b) Depreciation.  (c) Direct taxes, including the provision (if any), for previous accounting years  (d) Development rebate / investment allowance / development allowance reserve.  (e) Any other reserves  Total of Item No.2.....	` .....		*  *
3.	Add back also :  (a) Bonus paid to employees in respect of previous accounting years.  (aa) The amount debited in respect of gratuity paid or payable to employees in excess of the aggregate of-  (i) the amount, if any, paid to, or provided for payment to, an approved gratuity fund; and  (ii) the amount actually paid to employees on their retirement or on termination of their employment for any reason.  (b) Donations in excess of the amount admissible for income-tax .  (c) Any annuity due, or commuted value of any annuity paid, under the provisions of section 280D of the Income Tax Act during the accounting year.			*



	<p>(d) Capital expenditure (other than capital expenditure on scientific research which is allowed as a deduction under any law for the time being in force relating to direct taxes) and capital losses (other than losses on sale of capital assets on which depreciation has been allowed for income tax or agricultural income-tax.).</p> <p>(e) Losses of , or expenditure relating to, any business situated outside India.</p> <p>Total of Item No.3.....</p>			*
4.	Add also income, profits or gains (if any) credited directly to reserves, other than-			
	(i) capital receipts and capital profits (including profits on the sale of capital assets on which depreciation has not been allowed for income-tax or agricultural income-tax);			
	(ii) profits of, and receipts relating to, any business situated outside India;			
	(iii) income of foreign concerns from investments outside India.			
	Net total of Item No.4.....	.....		
5.	Total of Item Nos. 1,2,3 and 4...	.....		

6.	Deduct :  (a) Capital receipts and capital profits (other than profits on the sale of assets on which depreciation has been allowed for income-tax or agricultural income-tax).  (b) Profits of, and receipts relating to, any business situated outside India.  (c) Income of foreign concerns from investment outside India.  (d) Expenditure or losses (if any ) debited directly to reserves, other than-  (i) capital expenditure and capital losses (other than losses on sale of capital assets on which depreciation has not been allowed for income-tax ; or agricultural income-tax;  (ii) losses of any business situated outside India.  (e) In the case of foreign concerns proportionate administrative (overhead ) expenses of head office allocable to Indian business.  (f) Refund of any direct tax paid for previous accounting years and excess provision, if any, of previous accounting years relating to bonus, depreciation, taxation or development rebate or development allowance, if written back.  (g) Cash subsidy, if any, given by the government or by any body corporate established by any law for the time being in force or by any other agency through budgetary grants, whether given directly or through any agency for specified purposes and the proceeds of which are reserved for such purposes.  Total of Item No.6			**  **  **  ***  **
7.	Gross Profits for purposes of bonus (Item No.5 minus Item No.6 )	.....		

**Explanation :** In sub-item (aa) of Item 3, "approved gratuity fund" has the same meaning assigned to it in clause (5) of section 2 of the Income Tax Act.

\* If, and to the extent, charged to Profit and Loss Account.

\*\* If, and to the extent, credited to Profit and Loss Account.

\*\*\* In the proportion of Indian Gross Profit (Item No. 7) to Total World Gross Profit (as per consolidated profit and loss account, adjusted as in Item No. 2 above only).

## THE THIRD SCHEDULE

<i>Item No.</i>	<i>Category of employer</i>	<i>Further sums to be deducted</i>
1.	Company, other than a banking company.	<p>(i) The dividends payable on its preference share capital for the accounting year calculated at the actual rate at which such dividends are payable;</p> <p>(ii) 8.5 percent of its paid up equity share capital as at the commencement of the accounting year;</p> <p>(iii) 6 percent of its reserves shown in its balance sheet as at the commencement of the accounting year, including any profits carried forward from the previous accounting year :</p> <p><b>PROVIDED</b> that where the employer is a foreign company within the meaning of Clause (42) of Section 2 of the Companies Act ,2013 (No.18 of 2013) , the total amount to be deducted under this item shall be 8.5 percent on the aggregate of the value of the net fixed assets and the current assets of the company in India after deducting the amount of its current liabilities (other than any amount shown as payable by the company to its Head Office whether towards any advance made by the Head Office or otherwise or any interest paid by the company to its Head Office ) in India.</p>
2.	Banking company	<p>(i) The dividends payable on its preference share capital for the accounting year calculated at the rate at which such dividends are payable ;</p> <p>(ii) 7.5 per cent of its paid up equity share capital as at the commencement of the accounting year ;</p> <p>(iii) 5 percent of its reserves shown in its balance sheet as at the commencement of the accounting year, including any profits carried forward from the previous accounting year;</p> <p>(iv) any sum which, in respect of the accounting year, is transferred by it-</p> <p>(a) to a reserve fund under sub-section (1) of section 17 of the Banking Regulation Act, 1949 (10 of 1949 ); or</p> <p>(b) to any reserves in India in pursuance of any direction or advice given by the Reserve Bank of India,</p> <p>whichever is higher:</p> <p><b>PROVIDED</b> that where the banking company is a 'foreign company' within the meaning of Clause (42) of Section 2 of the Companies Act, 2013 (No.18 of 2013), the amount to be deducted under this item shall be the aggregate of-</p> <p>(i) the dividends payable to its preference shareholders for the accounting year at the rate at which such dividends are payable on such amount as bears the same proportion to its total preference share capital as its total working funds in India bear to its total world</p>

		<p>working funds;</p> <p>(ii) 7.5 per cent of such amount as bears the same proportion to its total paid up equity share capital as its total working funds in India bear to its total working funds.</p> <p>(iii) 5 per cent of such amount as bears the same proportion to its total disclosed reserves as its total working funds in India bear to its total world working funds;</p> <p>(iv) any sum which, in respect of the accounting year, is deposited by it with the Reserve Bank of India under sub-clause (ii) of clause (b) of sub-section (2) of section 11 of the Banking Regulation Act, 1949 (10 of 1949) , not exceeding the amount required under the aforesaid provision to be so deposited.]</p>
3.	Corporation	<p>(i) 8.5 per cent of its paid up capital as at the commencement of the accounting year;</p> <p>(ii) 6 per cent of its reserves, if any, shown in its balance sheet as at the commencement of the accounting year, including any profits carried forward from the previous accounting year.</p>
4.	Co-operative society	<p>(i) 8.5 per cent of the capital invested by such society in its establishment as evidenced from its books of accounts at the commencement of the accounting year;</p> <p>(ii) such sums as has been carried forward in respect of the accounting year to a reserve fund under any law relating to co-operative societies for the time being in force.</p>
5.	Any other employer not falling under any of the aforesaid categories	<p>8.5 per cent of the capital invested by him in his establishment as evidenced from his books of accounts at the commencement of the accounting year:</p> <p><b>PROVIDED</b> that where such employer is a person to whom Chapter XXII-A of the income Tax Act applies , the annuity deposit payable by him under the provisions of that Chapter during the accounting year shall also be deducted:</p> <p><b>PROVIDED FURTHER</b> that where such employer is a firm, an amount equal to 25 per cent of the gross profits derived by it from the establishment in respect of the accounting year after deducting depreciation in accordance with the provisions of clause (a) of section 6 by way of remuneration to all the partners taking part in the conduct of business of the establishment shall also be deducted, but where the partnership agreement, whether oral or written, provides for the payment of remuneration to any such partner, and –</p> <p>(i) the total remuneration payable to all such partners is less than the said 25 per cent the amount payable, subject to a maximum of forty-eight thousand rupees to each such partner; or</p> <p>(ii) the total remuneration payable to all such partners is higher than the said 25 percent , such percentage, or a sum calculated at the rate of forty – eight thousand rupees to each such partner, whichever is less , shall be deducted under this proviso:</p> <p><b>PROVIDED ALSO</b> that where such employer is an individual or a Hindu Undivided Family -</p>

		<p>(i) an amount equal to 25 per cent of the gross profits derived by such employer from the establishment in respect of the accounting year after deducting depreciation in accordance with the provisions of clause (a) of section 6; or</p> <p>(ii) forty-eight thousand rupees,</p> <p>whichever is less by way of remuneration to such employer, shall also be deducted.</p>
6.	Any employer falling under Item No.1 or Item No. 3 or Item No. 4 or Item No. 5 and being a licensee within the meaning of Electricity Regulatory Commissions Act, (No. 14 of 1998 ) .	In addition to the sums deductible under any of the aforesaid Items, Such sums as are required to be appropriated by licensee in respect of the accounting year to a reserve under the Sixth Schedule to that Act shall also be deducted.

**Explanation :** The expression "reserves" occurring in column (3) against Item Nos. 1(iii), 2(iii) and 3(ii) shall not include any amount set apart for the purpose of,-

(i) payment of any direct tax which, according to the balance-sheet, would be payable;

(ii) meeting any depreciation admissible in accordance with the provisions of clause (a) of section 23;

(iii) payment of dividends which have been declared, but shall include,-

(a) any amount, over and above the amount referred to in clause-(i) of this Explanation, set apart as specific reserve for the purpose of payment of any direct tax; and

(b) any amount set apart for meeting any depreciation in excess of the amount admissible in accordance with the provisions of clause (a) of section 23.

## THE FOURTH SCHEDULE

In this Schedule, the total amount of bonus equal to 8.33 per cent of the annual salary or wages payable to all the employees is assumed to be Rs. 1,04,167. Accordingly, the maximum bonus to which all the employees are entitled to be paid (twenty per cent of the annual salary or wages of all the employees) would be Rs. 2,50,000.

Year	Amount equal to sixty per cent or sixty-seven per cent, as the case may be, of available surplus allocable as bonus	Amount payable as bonus	Set on or Set off of the year carried forward	Total set on or set off carried forward	
	Rs.	Rs.	Rs.	Rs.	Of (year)
1.	1,04,167	1,04,167 <sup>#</sup>	Nil	Nil	
2.	6,35,000	2,50,000*	Set on 2,50,000*	Set on 2,50,000*	(2)
3.	2,20,000	2,50,000* (inclusive of 30,000 from year-2)	Nil	Set on 2,20,000	(2)
4.	3,75,000	2,50,000*	Set on 1,25,000	Set on 2,20,000 1,25,000	(2) (4)
5.	1,40,000	2,50,000* (inclusive of 1,10,000 from year-2)	Nil	Set on 1,10,000 1,25,000	(2) (4)
6.	3,10,000	2,50,000*	Set on 60,000	Set on Nil <sup>##</sup> 1,25,000 60,000	(2) (4) (6)
7.	1,00,000	2,50,000* (inclusive of 1,25,000 from year-4 and 25,000 from year-6)	Nil	Set on 35,000	(6)
8.	Nil (due to loss)	1,04,167 <sup>#</sup> (inclusive of 35,000 from year-6)	Set on 69,167	Set off 69,167	(8)
9.	10,000	1,04,167 <sup>#</sup>	Set off 94,167	Set off 69,167 94,167	(8) (9)
10.	2,15,000	1,04,167 <sup>#</sup> (after setting off 69,167 from year-8 and 41,666 from year-9)	Nil	Set off 52,501	(9)

\* Maximum amount admissible.

# Minimum amount admissible.

## The Balance of Rs. 1,10,000 set on from year-2 lapses;