An ISO 9001 & 14001 Company

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ಬೆಂಗಳೂರು ಸ್ಥಾವರ
ದೂರವಾಣಿನಗರ,
ಬೆಂಗಳೂರು - ೫೬೦೦೧೬, ಭಾರತ.
ದೂರವಾಣಿ : (೯೧) (೮೦) ೨೫೬೫೧೨೧೧
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The Regional Provident Fund Commissioner
RO-KR Puram
Bangalore

Sub: Reply for the Notice issued for Rejection of Applications for Joint Options on Pension on Higher Wages from Exempted Establishments with trust rules not permitting EPS contributions above Pension Ceiling wages -Reg.

Sir,

This has reference to your e-mail dated 05/07/2024 on the above subject. In this regard, the following facts are submitted for your consideration.

1. At the outset, the proposal of rejection of applications for Joint options is totally against the ratio of the Supreme Court judgment in the case of RC Gupta & others dated 04/11/2022. It is in total violation of the spirit of the aforesaid judgments.

2. ITI Ltd., Bangalore is an exempted establishment under section 17, having its own trust. An exempted PF Trust is a trust that has been granted an exemption by the Employees' Provident Funds Organization (EPFO) from contributing to the EPF. Such a trust is required to follow the rules and regulations set forth by the EPFO for managing the Provident Fund accounts of the employees. The PF Trust is therefore governed by the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The trust rules framed have been approved by EPFO having complied with the conditions specified. For the purpose of Pension, the employees are covered by 'The Employees' Pension Scheme, 1995' and not by the rules of the trust. The contributions of the employer to the Pension fund, cannot be retained by the Trust. The PF trust being exempted for the purpose of EPF, cannot have conditions or rules which are not in line/contrary to the provision of the Employees' Pension Scheme, 1995, which are not beneficial to the employees.

3. It may kindly be noted that as per Rule 11 (b) of the ITI Ltd Provident Fund Trust Rules, it has been made very clear that where the pay of the member exceeds Rs.6500 per month, the contribution payable by the employer be limited to the amount on his pay of Rs.6500 only. The ceiling limit has been enhanced w.e.f 1/9/2014 by the EPFO and the same been adjudicated by the Hon'ble Supreme Court in its ruling dated 4/11/2022,which allowed the benefits after exercising the joint option. Further Rule 31 (A) (1) of the ITI Trust Rules clearly states that in the absence of any specific

provisions in these rules, statutory provisions shall have overriding effect and will prevail mutatis--mutandis. The Hon'ble Supreme Court in its ruling dated 4/11/2022 did not differentiate exempted and non--exempted establishments and made it clear that the amended scheme of 2014 would squarly apply to employees of exempted establishments. Only the condition was to give an undertaking along with joint option to transfer the stipulated employees contribution, matching the quantum that would have been due for transfer for accounts maintained by PF authorities, It is not clear from your office letter dated 5/7/2024 as to how employees of ITI are not eligible for exercising joint option despite of Hon'ble Supreme Court ruling and of the fact of Rule 11 (b) and Rule 31 (A) (1) of ITI Ltd Provident Fund Trust Rules. The said rules do permit to effect EPS contributions payable by employees limiting to the statutory wage ceiling. Till now, the Trust has been following the statutory ceiling limit and contributions are affected based on ceiling of Rs. 15,000 per month. Besides Hon'ble Supreme Court in its ruling did not differentiate between exempt and non-exempted establishments as far as allowing higher pensionary benefits are concerned. The interpretation made by EPFO is contrary to the decision of Hon'ble Supreme Court and amounts to contempt of court. Joint Option forms were uploaded in the EPFO Portal within the stipulated time limit. It is to be appreciated that the Hon'ble Supreme Court has in fact upheld the amendment to EPS 2014 which paved the way for the enhancement of the wage ceiling from Rs 6500 to Rs 15,000 per month for calculation of contribution. It is reiterated that the ITI Ltd PF Trust has not violated or deviated any of the provisions of EPS. Even the requirement of EPFO circular dated 29/12/2022 though it is contrary to the Hon'ble Supreme Court ruling, has been satisfied with as it states that the employees who have contributed towards EPF scheme on a salary exceeding the ceiling limit. (Rs 5000/Rs 6500) as the case may be.

4. The employees of ITI Ltd., have fully complied with the conditions specified, in the above circular dated 20/02/2023 referred to above in para 9, and therefore, their options cannot be rejected on the grounds that the ITI PF trust rule 11(b) restricts such a contribution. Para 11(3) and para 11(4) are provisions under the Employees' Pension Scheme, 1995, and cannot be a part of PF Trust rules, which are mainly to govern the PF account of the employees and not that of the Pension. The rule 11(b) only accounts for the total contribution of the employer. It cannot be deemed as a condition for the rate and quantum of Pension Fund contributions, which is actually governed by the Employees' Pension Scheme, 1995.

5. Further, in response to para 5 of your e-mail, we wish to state that it is only an extract of the agenda point for the 235th CBT meeting and no decision/action is recorded on this in the draft minutes.

6. The employees who were members of the EPS as of 1/9/2014 and did not opt for higher pension earlier are also eligible for higher pension benefits as per Para 44(iv) of the Hon'ble Supreme Court ruling dated 4/11/2022 provided they should opt for higher pension as per the specified period. The employees of ITI have all exercised the joint option and the same were uploaded to the EPFO Portal. It is not correct to interpret that Trust rules limits the contribution of employees to EPS up to Rs.6500

per month as the statutory cap has been revised to Rs.15,000 per month only on 1/9/2014. The Hon'ble Supreme Court in its ruling has also made it clear that statutory provision shall prevail over Trust Rules and allowed the employees to re--exercise the option till 3/3/2023 which has been further extended by EPFO till 11/7/2023. The ITI Trust Rules also permit the same. (See Rule 31(A)(1))

Under the circumstances, it is once again requested to reconsider in the light of the Hon'ble Supreme Court Ruling as it did not made any distinction between exempt and non-exempted establishments while dealing with pensionary benefits under EPS. The trust rules are in consonance with the EPS. While dealing with the social security benefits, liberal interpretation should be made in favor of employees except where statute may compel otherwise as it is intended to benefit the weaker section of society .It is once again requested to process all pending applications immediately under intimation to the Trust.

Considering all the facts stated above, we request you to process the joint options submitted in the right spirit of the orders of the Supreme Court dated 04/11/2022 in the case of RC Gupta & others else, it will be contempt of court orders.

Submitted please.

With regards,

For ITI Ltd PF Trust

Chairman – PF Trust.