

शिघ्र डाक सेवा
SPEED POST

BEFORE THE REGIONAL DIRECTOR, (WR), MUMBAI

RD(WR)/Sec. 454(5)/ Gaffino Resorts And Motels Private Limited/H84632041/2019/3663

In the matter of Companies Act, 2013: Section 454(5)

- 1 MAR 2021

AND

In the matter of GAFFINO RESORTS AND MOTELS PRIVATE LIMITED

having Registered Office at Gaffino Building, C/o Gaffino Beach Resort, Mobor,
Cavelossim, Goa-403731.

.....Appellant

Parties Present:

Mr. Elson Sequera, Practicing Chartered Accountant, authorized representative
attended on behalf of the Appellant Company and officers in default.

Date of Hearing: 22.12.2020

ORDER

Heard.

1. This appeal is filed under sub-Section (5) of Section 454 of the Companies Act, 2013 (hereinafter referred to as the "Act") read with Companies (Adjudication of Penalties) Rules, 2014 (hereinafter referred to as the "Rules") by Gaffino Resorts And Motels Private Limited (hereinafter referred to as the "Company" or "Appellant") having CIN U55101GA1994PTC001585, incorporated under the Companies Act, 1956, having its registered office at Gaffino Building, C/o Gaffino Beach Resort, Mobor, Cavelossim, Goa-403731 against the order passed by Registrar of Companies-cum-Official Liquidator (ROC), Goa, adjudicating a penalty for



2. The order was passed by the ROC on 19.06.2019 and the appeal is filed with this appellate forum having jurisdiction in the matter being the Regional Director having jurisdiction in the State of Maharashtra and Goa. Thus, this appellate forum is having jurisdiction.

3. The appeal on Form ADJ (SRN H84632041) is filed on 23.08.2019. As per provisions of Section 454(6), an appeal under sub-Section (5) of Section 454 is to be filed within a period of 60 days from the date of which the copy of the order made by the adjudicating officers is received by the aggrieved person. In this case, the appellant company has admitted that the order was received on 27.06.2019 and the appeal is filed on 23.08.2019. The appeal was filed on 23.08.2020 and thus is within the stipulated period of 60 days in terms of provisions of Section 454(5) of the Act.

4. The brief facts of the case are as under:
 - a. The appeal is filed by the Appellants. The appellant company was defaulting in filing of its Annual return and Financial Statements for the Financial Year ended 31.03.2018
 - b. The ROC has issued show cause notice dated 01.03.2019 to the company and its officer in default for non-filing of such documents. In response to the above said show cause the Company has replied on 25.03.2019 to the ROC and informed that Company has already filed its financial statements and annual returns on 15.03.2019.

Document required to be filed	No of Days of Default	Penalty imposed on Company/Director	First Default (in Rs)	Default Continues (in Rs)	Total (in Rs)
Financial Statement u/s 137(1) of the Companies Act, 2013	133days	On Company	Rs.1000x133 days =Rs.1,33,000/-		Rs.1,33,000/-
		Mr. Anthony Gaffino	Rs.1,00,000/-	Rs. 100x133 days =Rs.13,330/	Rs.1,13,300/-
		Jesumira Gaffino	Rs.1,00,000/-	Rs. 100x133 days =Rs.13,330/	Rs.1,13,300/-
Annual Returns u/s 92(4) of the Companies Act, 2013	104 days	On Company	Rs. 50,000/-	Rs.100x104days = Rs.10,400/-	Rs.60,400/-
		Mr. Anthony Gaffino	Rs. 50,000/-	Rs.100x104days = Rs.10,400/-	Rs.60,400/-
		Jesumira Gaffino	Rs. 50,000/-	Rs.100x104days = Rs.10,400/-	Rs.60,400/-

- No. of days have been calculated from November& December for Financial Statement and Annual Return respectively till 16.04.2019.

e. The Appellant Company has not yet deposited the said penalty.

4. In the appeal, the appellant has taken the following grounds:

- The impugned order is barred by limitation as the show cause notice was issued on 01.03.2019 whereas the impugned adjudication order has been passed on 25.06.2019 after more 90 days from the date of issue of show casue notice. The explanation of the ROC that the impugned order could not be passed on time as most of officials of the office were engaged in Lok Sabha Election duty is not a valid explanation.
- That the impugned adjudication order was passed in utter disregard to principles of natural justice as no opportunity to explain the delay was provided before passing the impugned adjudication order.
- The Roc has failed to conduct the inquiry before levying the penalty.

- a. The impugned adjudication order be set aside and be declared as not valid and void ab-initio.
- b. The alleged penalty levied on the company and directors be deleted.

6. This forum provided hearing to the Appellants on 22.12.2020 at 4.00 p.m. on which date Mr. Elson Sequeira, Practicing Chartered Accountant, authorized representative on behalf of the Appellants appeared before this forum and made submission. I have carefully considered the impugned order, all the submissions made by the Appellants in the appeal and oral submissions made by the Learned Representative of the company during the hearing held on 22.12.2020. Accordingly, the appeal is allowed and it was directed to the representative of the Appellants that revised penalty to be paid as under:-

Sr. No.	Defaults made for Non-filing documents	Penalty to be paid by Company/Director (officer in default)	Revised Penalty Rs.	Financial Year
1.	Financial Statement u/s 137(1) of the Companies Act, 2013	On Company	26,600/-	2017-18
		Mr. Anthony Gaffino	22,660/-/-	2017-18
		Jesumira Gaffino	22,660/-	2017-18
2.	Annual Returns u/s 92(4) of the Companies Act, 2013	On Company	12,080/-	2017-18
		Mr. Anthony Gaffino	12,080/-	2017-18
		Jesumira Gaffino	12,080/-	2017-18

Total penalty comes to Rs.1,08,160/-for the default of Non-filing Financial Statement and Annual Return for the FY 2017-18.

7 Pursuant to the said directions of this forum, the authorized representative

92 of the Companies Act, 2013 by the Company & officers in defaults to MCA. The details of the said challan are as under:-

Sr. No	Defaulters	Amount (Rs.)	Financial Year	Challan No. / SRN No. & date
1	Company U/s. 137 of the Act, 2013	26,600/-	2014-15	SRN: U80998404 Dated 22.02.2021
2	Mr. Anthony Gaffino, U/s. 137 of the Act, 2013	22,660/-	2014-15	SRN: U80998438 Dated 22.02.2021
3	Jesusmira Gaffino, U/s. 137 of the Act, 2013	22,660/-	2014-15	SRN: U81003352 Dated 22.02.2021
4	Company U/s. 92 of the Act, 2013	12,080/-	2014-15	SRN: U80747504 Dated 18.02.2021
5	Mr. Anthony Gaffino, U/s. 92 of the Act, 2013	12,080/-	2014-15	SRN: U80999063 Dated 22.02.2021
6	Jesusmira Gaffino, U/s. 92 of the Act, 2013	12,080/-	2014-15	SRN: U80999311 Dated 22.02.2021
	Total :-	1,08,160/-		

8. In view of the above and penalty having been paid by the Appellant Company and officer in defaults, the Appeal is disposed off.
11. A copy of this order shall be published on the website of the Ministry of Corporate Affairs as per Rules.

Signed and sealed on ²⁶ day of February, 2021.



man
(M.P.SHAH)
REGIONAL DIRECTOR
WESTERN REGION, MUMBAI.

To,

1. Gaffino Resorts And Motels Private Limited
Gaffino Building, C/o Gaffino Beach Resort,
Mobar, Cavelossion,
Goa.

2. The Registrar of Companies, Goa.

3. Master Copy

"Certified True Copy"

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यू. पी. परमार, आई.सी.एल.एम्.
U. P. PARMAR
संयुक्त निदेशक / Joint
कार्या. प्रादेशिक निदेशक