

BEFORE THE REGIONAL DIRECTOR, (WR), MUMBAI
RD(WR)/Sec.454(5)/Laxmidurga Constructions Private Limited/R36070621/2020/3243

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

02 FEB 2021

AND

In the matter of LAXMIDURGA CONSTRUCTIONS PRIVATE LIMITED

having Registered Office at Shreekrishana, Plot No.20/22, Road No.16, Sector-19,
New Panvel (E), Navi Mumbai-410206Appellant

Parties Present:

Shri T.K. Joshi & Ms. Laxshmi Joshi, Directors attended the hearing on behalf of the Appellant Company and officer in default in person on 22.12.2020 and on 14.01.2021 through Video Conference.

Date of Hearing: 22.12.2020 & 14.01.2021

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 Laxmidurga Constructions Private Limited (hereinafter referred to as the "Company" or "Appellant") having CIN U45200MH1982PTC026914, incorporated under the Companies Act, 1956, having its registered office Shreekrishana, Plot No.20/22, Road No.16, Sector-19, New Panvel (E), Navi Mumbai-410206, against the order passed by Registrar of Companies, Mumbai adjudicating a penalty for violation of Section 12 of the Act, 2013 vide Order No. ROC(M)/IPC/APD/100036139/2020/3679/dated 24.01.2020.
2. The order was passed by the ROC on 24.01.2020 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 R36070621) is filed on 23/03/2020. 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 not mentioned the date of receipt of order dated 24.01.2020 in the appeal, however, the appeal is filed on 23.03.2020. Therefore, the appeal was filed on 23.03.2020 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 Appellant Company and its officers in defaults. The appellant company was violated of Section 12(3) of the Companies Act, 2013.
 - b. The ROC has issued show cause notice dated 20.11.2019 to the company and its directors calling them to show cause for non-compliant of Section 12 of the Companies Act, 2013. In response to the said Show cause notice, the Company submitted its reply dated 26.11.2019 and explained the matter.
 - c. The ROC fixed personal hearing on 27.11.2019 to adjudicate the default under Section 12 of the Companies Act, 2013. Ms. Laxmi Joshi, Director of the Company appeared for hearing and submitted written representation and during the hearing Ms. Laxmi Joshi stated that reply of the Company to notice from Registrar of Companies dated 20.11.2019 was inadvertently printed on the wrong letter head of the Company and there was no malafide intention.
 - d. The ROC has imposed penalty of Rs.1,00,000/- (Rupees One Lakh only) on Company and Rs.1,00,000/- each on three (3) officers of the Company who are in default under Section 12 (8) of the Act to whom notice of hearing dated 27.09.2019 was issued for failure to make compliance u/s. 12(1), 12(4) of the Act.
5. In the appeal, the appellant has taken the following grounds:
 - a. The director of the Company Mr. Joshi Kumaran Thilayaparambil is carrying on a proprietorship firm in the name and style of "Laxshmi Developers " from the past 19 years having business of Construction

and Developers of Residential and Commercial buildings having registered office at " Suryakiran", 1st Floor, Plot No.5 Sector- 5, New Panvel (E), Navi Mumbai-410206.

- b. Mr. Nilesh Jitendra Vanjara, is director of the Company from the last 9 years. Who is handling and dealing in all the day to day business activities of the Company " Laxmidurga Construction Private Limited" and Proprietorship firm "Lakshmi Developers". He lost his vision , hence the directors of the Company requested him not to resign from the Company because of his good behavior, therefore, he was instructed by the directors of the Company to delegate his work to the staff and as per wish of the directors he started continuing with the work exposed to him and used to instruct the staff to get the work accomplished in time.
- c. As a human being it is quite possible to get typographical error as the starting name of both the Proprietorship and Company is same i.e. "Lakshmi" /"Laxmi" where letter drafting gets done by other staff person or there may be chances of running Auto Correct function in computer system due to which spelling automatically changed at the time of typing from "Laxmi to Lakshmi". Such an error was mistakenly, not purposely, written and should be readily remedied without objection.
- d. The wrong letter head was used by the staff inadvertently and without any wilful or malafide motive and it was purely unintentional. Neither any stakeholder nor any right of the stakeholders are getting affected by the wrong letter head unintentionally used by the Company.
- e. The Appellant Company prays that the penalty of 1,00,000/- imposed on Company and Rs,1,00,000/- each on officers of the Company shall be waived or pass such further order as may deem fit and proper in circumstances of the case.

6. This forum provided hearing to the Appellants on 22.12.2020 at 3.45 p.m. on which date Shri T.K. Joshi & Ms. Lakshmi Joshi, Directors of the Appellant Company appeared for hearing. At the time of hearing it is noticed from the Appeal that the same is filed for Company only. The officer/directors of the Company who are in default have not joined the said Appeal. Therefore, the Directors were directed to file an Affidavit for joining the Appeal. Accordingly, the officers/ directors of the Company who were in default have filed individual Affidavit for joining the Appeal vide letter dated 29.12.2020. Thereafter, further hearing was fixed on 14.01.2021 through Video Conference, when Shri T.K. Joshi, Director of the Company attended the hearing and made submissions. I have carefully considered the impugned order, all the submissions made by the Appellant in the appeal and oral submissions made by the Director of the company during the hearing. Accordingly, the appeal is allowed and it was directed to the Appellant Company & officer in default that revised penalty to be paid as under:

Sr. No.	Defaults made under Section	Penalty to be paid by Company/Director (officer in default)	Penalty Rs.
1.	Section 12(3) of the Act, 2013	Company	10,000/-
		Mr. Joshi Kumaran Thilayaparambil	10,000/-
		Ms. Lakshmi Joshi Thilayaparambil	10,000/-
		Mr. Nilesh Jitendra Vanjara	10,000/-
Total :-			40,000/-

Total penalty comes to Rs.40,000/-for violation of Section 12 of the Act, 2013

7. Pursuant to the said directions of this forum, the Appellant Company vide its letter dated 22.01.2021 submitted the copies of challan /payment receipt for penalties paid to the MCA and state that as directed in virtual hearing which was held on 14.01.2021, the total penalty of Rs.40,000/- has been paid by the Company & officer in default through challan to MCA. The details of the said challan are as under:-

Sr. No	Defaulters	Amount (Rs.)	Challan No. / SRN No. & date
1	Company	10,000/-	SRN: U79071031 Dated 22.01.2021
2	Mr. Joshi Kumaran Thilayaparambil	10,000/-	SRN: U78726544 Dated 16.01.2021
3	Ms. Lakshmi Joshi Thilayaparambil	10,000/-	SRN: U78726288 Dated 08.01.2021
4	Mr. Nilesh Jitendra Vanjara	10,000/-	SRN: U79071528 Dated 22.01.2021
Total :-		40,000/-	

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

Signed and sealed on 2nd day of February, 2021.



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

1/ Laxmidurga Constructions Private Limited
 Shreekrishana, Plot No.20/22,
 Road No.16, Sector-19,
 New Panvel (E),
 Navi Mumbai-410206

2. The Registrar of Companies, Mumbai.
3. E-Gov. cell for publication on MCA website.
4. Master Copy
5. Office Copy.

"Certified True Copy"

M. S. Bang

मनोज एस. बंग
 Manoj S. Bang
 डा. निदेशक (प.क्ष.), Director
 (प.क्ष.), ऑफिस निदेशक (प.क्ष.)
 Cio. regional Director (W.R.)
 वित्तपरिचय कक्षा, मंत्रालय, मुंबई-२
 Ministry of Corporate Affairs, Mumbai-2