



BEFORE THE REGIONAL DIRECTOR, WESTERN REGION
MINISTRY OF CORPORATE AFFAIRS, MUMBAI

प्रादेशिक निदेशक, पश्चिम क्षेत्र, कारपोरेट कार्य मंत्रालय, मुंबई के समक्ष

सं. - प्रादे. निदे.(प.क्षे.)/454(5)/George Rao/12/F92395557/2023-24/ 5338

28 JUN 2024

APPEAL UNDER 454(5) OF COMPANIES ACT, 2013 AGAINST ORDER PASSED FOR OFFENCES COMMITTED UNDER SECTION 12 OF THE COMPANIES ACT, 2013.

In the matter of GEORGE RAO AND COMPANY ENGG PRIVATE LIMITED & ORS

1. George Rao and Company Engg Private Limited. - Company
2. Ravalnath Ramchandra Kumbhar - Director

...Appellants

Through: Vaishnavi Shinde, Advocate.

HON'BLE REGIONAL DIRECTOR (WESTERN REGION)

ORDER

Appeal under sub-Section (5) of Section 454 of the Companies Act, 2013 (Act) r/w the Companies (Adjudication of Penalties) Rules, 2014 (Rules) have been filed by 'George Rao and Company Engg Private Limited' (Company) having CIN U28930MH2002PTC138407 and, its Director, against Order No. RoC/MUM/ADJUDICATION/GEORGE RAO/SEC.12/2023/6259 dated 22/12/2023 (ROC Order) of Registrar of Companies, Mumbai for violating provisions of Section 12 of the Act.

2. The appeal lies within the jurisdiction of the Regional Director, Western Region, Ministry of Corporate Affairs, Government of India.

3. The Registrar of Companies, Mumbai (RoC Mumbai) vide Adjudication Order dated 22/12/2023 held the Company and its Director, who have defaulted liable for penalty under Section 12(8) of the Act from 12/12/2021 to 21/12/2023 (739 days) for not maintaining the registered office at the then given address of registered office to the Ministry of Corporate Affairs as under:

Sr. No.	Name of the company / director	No. of days.	Per day Penalty	Actual Penalty	Maximum Penalty	Reduced penalty as per Sec.446B
1	George Rao and Company Engg Private Limited	12/12/2021 to 21/12/2023	Rs.1,000	Rs.7,39,000/-	Rs.1,00,000/-	Rs.50,000/-
2	Ravalnath Ramchandra Kumbhar	(739 days)	Rs.1,000	Rs.7,39,000/-	Rs.1,00,000/-	Rs.50,000/-
TOTAL					Rs.2,00,000/-	Rs.1,00,000/-

4. Appellants have filed Form-ADJ vide SRN F92395557 dt. 19/02/2024. As per provisions of sub-Section (6) of Section 454, every appeal under sub-section (5) shall be filed within sixty (60) days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person. On examination of the application/appeal, it is seen that the said application/appeal has been filed within 60 days from the date of passing of the adjudication order.

5. Grounds of Appeal & Relief sought:

- a. The ROC has erroneously passed the impugned order without considering the facts and circumstance of the case, without giving opportunity of being heard and by erroneously referring to representations made by the complainant directors (Shri Kailash Purushottam Khairnar & Smt. Kirti Kailash Khairnar).
- b. There is no evidence to suggest that the appellants are exclusively charged with the compliance of the company. Keeping in view the provisions of the Companies Act, 2013, all the directors of a company are "officers in default"
- c. The fact that the company has shifted its registered office has been established by neither the complainants nor the Adjudicating Officer.
- d. The impugned order has been passed merely on the basis of letter received from the complainants.
- e. To set aside the order passed by the Hon'ble Adjudicating Officer.
- f. Pass any other order as the Hon'ble Regional Director may deem fit.

6. The matter was posted for hearing as per Section 454(5) r/w Section 454(7) of the Act on 26/06/2024. Vaishnavi Shinde, Advocate appeared on behalf of Appellants as their authorized representative. The Authorized Representative stated that the registered office address has not changed and continues at the same address given in the MCA database. She further stated that the said registered office is under the control of two complainant directors namely Shri Kailash Purushottam Khairnar & Smt. Kirti Kailash Khairnar. Therefore, the appellants are not able to furnish any proof of maintaining registered office along with utility bills and copy of other Government daks received at registered office during the default period. The Advocate has also prayed for giving direction to take necessary action against other officers/directors.

Hea

7. Facts of the Case:

- a. Registrar of Companies, Mumbai had received a complaint dt.20/07/2023 through M/s. Arora Bedi & Associates on behalf of Shri Kailash Purushottam Khairnar & Smt. Kirti Kailash Khairnar, directors of the subject company (complainants) against the company, Shri Bhagyesh A. Gaundalkar and Shri Ravalnath R. Kumbhar.
- b. The complainants in their complaint have stated that a Memorandum of Understanding (MOU) was signed on 07/11/2018 between Shri Kailash Purushottam Khairnar, Smt. Kirti Kailash Khairnar, Shri Bhagyesh A. Gaundalkar and Shri Ravalnath R. Kumbhar wherein, it was agreed between parties that day to day operation along with cash flow management, administration and HR policies shall be carried out and driven by Shri Bhagyesh A. Gaundalkar and Shri Ravalnath R. Kumbhar.
- c. The complainants have further stated in their complaint, according to the MOU signed between the parties, respondent directors (Shri Bhagyesh A. Gaundalkar and Shri Ravalnath R. Kumbhar) were responsible for day to day operations along with adherence of compliance and hence, the respondent directors are officers in default for any non-compliance.
- d. The complainants have also stated the company has shifted its location of registered office from the address recorded with the Registrar to different location and same has not been reported to the Registrar within stipulated time as per the requirements of the Companies Act, 2013.
- e. Accordingly, ROC vide letter dt.11/10/2023 had called upon the company to submit certain documents of utility bills such as electricity bills, rental agreement, rent paid, property tax and monthly rental invoice along with payment proof. However, the said letter was returned undelivered from the company with postal authority remark as 'Left'.
- f. Further, a show cause notice under Section 454 of the Companies Act, 2013 for violation of Section 12 of the Act was issued to the company and its officers vide letter dt.22/11/2023. However, no response to the show cause notice was received by the RoC from the company and its directors.
- g. The complainants vide email dt.09/12/2023 prayed that in terms of MOU signed between parties, the appellant director shall be considered as 'Officer in Default', and complainants may be given relief as deem fit.
- h. RoC in his Adjudication Order dt. 22/12/2023 have concluded that the respondent directors have entered into a Memorandum of Understanding with the complainant directors regarding day to day operations along with adherence of compliance, therefore, the onus of compliance lies upon the respondent directors as agreed in MOU. Hence, the respondent directors i.e. Shri Bhagyesh A. Gaundalkar and Shri Ravalnath R. Kumbhar are considered as 'Officers in Default' while deciding the case. He also stated that an Adjudication Order pertaining to Shri Bhagyesh A. Gaundalkar will be issued subsequently.

In view thereof, the Adjudication Order dt. 22/12/2023 of ROC Mumbai is in accordance with the provisions of the Act.



8. The punishment for contravention of section 12 is prescribed under section 12(8) of the Companies Act, 2013 which states that -

"If any default is made in complying with the requirements of this Section, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees."

9. RoC, Mumbai vide further letter dt.26/06/2024 has stated that -

- a. ROC had issued show cause notice on 22/11/2023 for violation of Section 12 of the Act. However, no reply was received from the company. Noticee replied to the letter dt.09/08/2023 issued by complaint section and has not replied to show cause notice.
- b. Letter dt.11/10/2023 issued to the company by the RoC to submit certain documents of utility bills, rental agreement, property tax receipts were returned back with postal remark 'Left'.
- c. Therefore, the appeal filed by the appellants is not maintainable and should be dismissed.


10. Taking into consideration the Adjudication Order of the Registrar of Companies, Mumbai; submissions made by the Appellant in his application as well as oral submissions of authorized representative during the hearing; further letter of RoC, Mumbai dt.26/06/2024; it can be clearly inferred that company is not maintaining the registered office at the address submitted to the Registrar and hence, company has violated the provisions of Section 12 of the Companies Act, 2013 and accordingly, the Adjudication Order dated 22/12/2023 passed by ROC, Mumbai is confirmed.

11. In view of the above, the present appeal is dismissed with directions to the appellant to pay penalty imposed by the Registrar of Companies, Mumbai vide Adjudication Order dt. 22/12/2023 within 90 days, failing which, Registrar of Companies, Mumbai, is directed to file prosecution under Section 454(8) of the Companies Act, 2013

A copy of this order shall be published on the website of the Ministry of Corporate Affairs as per Rules.

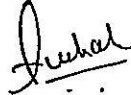
Signed and sealed on 28th day of June 2024.




(SANTOSH KUMAR)
REGIONAL DIRECTOR
WESTERN REGION, MUMBAI

To,

1. George Rao and Company Engg Private Limited,
301, 3rd Floor, Mohan Ashish, Opposite TMC Office,
Panchpakhadi, Thane (West),
Thane, Maharashtra, 400602, India.
2. Ravalnath Ramchandra Kumbhar,
279/B-29, Sambhaji Nagar Housing Society, NM Joshi Marg,
Next to NM Joshi Municipal School, Delisle Road,
Mumbai, 400013, Maharashtra, India.
3. Registrar of Companies, Mumbai.
4. E-Gov Cell, Ministry of Corporate Affairs, New Delhi.
5. Master Copy.
6. Office Copy.


(TUSHAR WAGH, ICLS)
DEPUTY DIRECTOR