



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)/Top Telemedia/203(1)/ F92643154 /2023-24/

6 JUN 2024

4564

APPEAL UNDER 454(5) OF COMPANIES ACT, 2013 AGAINST ORDER PASSED FOR OFFENCES COMMITTED UNDER SUB-SECTION (1) AND (4) OF SECTION 203 OF THE COMPANIES ACT, 2013.

In the matter of TOP TELEMEDIA LIMITED & ORS

1. TOP TELEMEDIA LIMITED. - Company
2. INDRAJIT LAKHAJI VAGHELA - Whole-time Director

... Appellants

Through: Ajit U. Bhalgaonkar, Practicing Company Secretary.

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 Top Telemedia Limited (Company) having CIN L32301PN1995PLC015978 and, its Whole-time Director, against Order No. RoCP/ADJ/order/203/Top Television/2023/2157 dated 04/12/2023 (ROC Order) of Registrar of Companies, Pune for violating provisions of sub-Section (1) and (4) of Section 203 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, Pune (RoC Pune) vide Adjudication Order dated 04/12/2023 held the Company and its Whole-time Director, who have defaulted, liable for penalty under Section 203(5) of the Act from 02/11/2018 to 27/06/2023 for non-appointment of Whole-Time Key Managerial Personnel as under:

No. of days default	Penalty imposed on Company / Director (s)	First default (In Rs.)	Total / maximum penalty (In Rs.)
02/11/2018 to 27/06/2023 = 1698* days	Top Telemedia Limited	5,00,000	5,00,000
	Indrajit Lakhaji Vaghela	50,000 + 1000*1698 = 17,48,000	5,00,000

\* 02/11/2018 (date of amendment) to 27/06/2023 (date of issue of notice)

4. Appellants have filed Form-ADJ vide SRN F92643154 dt. 24/02/2024. 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. The Authorised Representative confirmed that the said Adjudication Order was received by the company on 12/12/2023 and as such, the application has not been filed by Appellants within 60 days from the date of receipt of the adjudication order. Further, the PCS has requested to condone the delay in filing of Adjudication Application by 13 days due to illness of one director namely Sh. Indrajit Lakhaji Vaghela.

5. Grounds of Appeal & Relief sought:

- a) The company could not recruit a suitable candidate.
- b) The nature of the offence is such that it has not affected public.
- c) The Adjudication Order of RoC, Pune be set aside.
- d) The offence may kindly be compounded, and a lenient view may be taken in the present matter.
- e) This appeal may please be considered expeditiously.
- f) The appellants be pardoned.
- g) This appeal may be compounded jointly for the company and for all officers in default.
- h) Pass such order as the Hon'ble Regional Director may deem fit and proper, in the benefits of the company, other Appellants and stakeholders of the company.

6. The matter was posted for hearing as per Section 454(5) r/w Section 454(7) of the Act on 31/05/2024. Ajit U. Bhalgaonkar, Practicing Company Secretary appeared on behalf of Appellants as their authorized representative. The Authorized Representative stated that he did not find any defect in ROC Adjudication Order dt. 04/12/2023 but they have applied on the ground of bad financial position of the company in order to reduce the penalty amount.

7. Facts of the Case:

- a. An inquiry of the company under Section 206 of the Companies Act, 2013 was conducted by Inspecting Officer.
- b. As per the Balance Sheet of the company for the Financial Year ended on 31/03/2015, 31/03/2016, 31/03/2017 & 31/03/2018, the paid-up share capital of the company was Rs.39,09,99,000/-. It was observed from the records of company available with this office that the company has not complied with the provisions of Section 203 of the Act mandating the appointment of Key Managerial Personnel in the company. Further, the secretarial audit reports for the Year 2018-19, 2019-20 & 2020-21 state that 'the company has not fulfilled the requirement of Section 203 of the Companies Act, 2013.'
- c. In the instant case, the Whole-Time Key Managerial Personnel resigned from the company w.e.f. 15/10/2018 and the company has not appointed a Whole-Time Company Secretary as per the requirements of Section 203 of the Companies Act, 2013.
- d. Central Government has decriminalized the Act with effect from 02/11/2018 and therefore the period of non-compliance between 02/11/2018 and 27/06/2023 (the date of issue of notice by RoC, Pune) has been considered for adjudication by the Adjudicating Officer as per provisions of Section 454 of the Act.

*JLW*

8. That the punishment for contravention of section 203(1) is prescribed under section 203(5) of the Companies Act, 2013 which states that "If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees". As such, the order of ROC Pune dt.04/12/2023 is in accordance with the provision qua the appellants.

9. RoC, Pune vide further letter dt.17/05/2024 has stated that the appellants have taken defence that the violation of Section 203 is unintentional and incidental, and the company and the directors/officers had no direct and cogent intention to contravene the law and the default was totally inadvertent and was without any malafide motive on the part of the company.

10. Taking into consideration the Adjudication Order of the Registrar of Companies, Pune, submissions made by the Appellants in their application, further report of RoC, Pune dt.17/05/2024 and, oral submissions of the authorized representative of the company during the hearing, it is observed that:

- a) The appeal has not been filed within the stipulated period of 60 days as provided under Section 454(6) of the Act.
- b) There is no inherent defect in the Adjudication Order dt. 04/12/2023.
- c) ROC, Pune has imposed penalty as per Section 203(5) of Companies Act, 2013.

11. In view of above, the present appeal is dismissed with directions to the appellants to pay the penalty imposed by the Registrar of Companies, Pune vide Adjudication Order dt. 04/12/2023 within 90 days, failing which, Registrar of Companies, Pune, is directed to file prosecution under Section 454(8) of the Companies Act, 2013 against the company and every officers in default.

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

Signed and sealed on 6<sup>th</sup> day of June 2024.



To,

1. Top Telemedia Limited,  
Office No. 4, First Floor, 77 Vijayanagar Colony,  
2147 Sadashiv Peth, Pune, Maharashtra 411030, India.

  
(SANTOSH KUMAR)  
REGIONAL DIRECTOR  
WESTERN REGION, PUNE

2. Indrajit Lakhaji Vaghela,  
A/202, Asavari Appartment, Opp. Karnavati Club,  
Satellite Road, Ahmedabad,380015,Gujarat,India.
3. Registrar of Companies, Pune.
4. E-Gov Cell, Ministry of Corporate Affairs, New Delhi.
5. ✓ Master Copy.
6. Office Copy.

  
(TUSHAR WAGH, ICLS)  
DEPUTY DIRECTOR