



शिव डाक सेवा  
SPEED POST

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/12/F92644103/2023-24/

4568  
6 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 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/12/Top Telemedia/VVG/2023/2171 dated 04/12/2023 (ROC Order) of Registrar of Companies, Pune 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, 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 12(8) of the Act from 06/02/2019 to 30/06/2023 for not maintaining the registered office at the then given address of registered office to the Ministry of Corporate Affairs as under:

No. of days default	Penalty imposed on Company / Director (s)	First default (In Rs.)	Total / maximum penalty (In Rs.)
*From 06/02/2019 to 30/06/2023 = 1604 days	Top Telemedia Limited	1000*1604 = 16,04,000	1,00,000
	Indrajit Lakhaji Vaghela	1000*1604 = 16,04,000	1,00,000

\* 06/02/2019 (date of spot inspection) to 30/06/2023 (date of attempt of delivery of the adjudication notice by postal authorities).

*[Signature]*

4. Appellants have filed Form-ADJ vide SRN F92644103 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) Due to unforeseen circumstances and a lack of business activities, maintaining a physical office space has become impractical and financially burdensome for the company.
- b) The company submits that this violation of Section 12 is purely unintentional and incidental, and the company and the directors and officers of the company 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.
- c) The nature of the offence is such that it has not affected public interest.
- d) The Adjudication Order of RoC, Pune be set aside.
- e) The offence may kindly be compounded, and a lenient view may be taken in the present matter.
- f) This appeal may please be considered expeditiously.
- g) The appellants be pardoned.
- h) This appeal may be compounded jointly for the company and for all officers in default.
- i) 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 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 complaint dt. 06/09/2018 received by RoC, the details relating to the phone number, email address is nonfunctional. Further, letter head of the company has not mentioned the CIN of the Company.
- c. Based on the complaint dt. 04/01/2018, RoC had performed the spot inspection of the registered office of the company and observed that the company has not maintained the registered office at the then given address of registered office to the MCA.

*Sh*

- c. Based on the complaint dt.04/01/2018, RoC had performed the spot inspection of the registered office of the company and observed that the company has not maintained the registered office at the then given address of registered office to the MCA.
- d. The company and its officers have defaulted the provisions of Section 12 of the Act as per Spot Inspection report dt.06/02/2019. Further, the adjudication notice issued to the company was returned undelivered by postal authorities with remark 'Not Known'. Thus, the company and its directors have violated the provisions of Section 12 of the Act and are liable for action under Section 12(8) 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, Pune vide further letter dt.17/05/2024 has stated that the appellants have taken defence that the violation of Section 12 of the Act 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 12(8) 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 officer 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.

  
(SANTOSH KUMAR)  
REGIONAL DIRECTOR  
WESTERN REGION, PUNE



To,

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