

EM-108239559



शिघ्र डाक सेवा
SPEED POST

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

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

सं. प्रादे. निदे. (प.क्षे.)/454(5)/ Xing Max (Mangesh Bane)/12/AB2571132/2024-25/

30 APR 2025

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

In the matter of XING MAX PRIVATE LIMITED.

1. MANGESH TUKARAM BANE

- Director

...Appellant

ORDER

Appeal under sub-Section (5) of Section 454 of the Companies Act, 2013 (Act) read with the Companies (Adjudication of Penalties) Rules, 2014 (Rules) has been filed by 'Mangesh Tukaram Bane', Director of 'Xing Max Private Limited' (Company) having CIN U74999MH2019PTC322741, against Order No. ROC(M)/XING MAX-INQ/ADJ-ORDER/12/2024-25/2900 to 2903 dated 04/12/2024 (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 04/12/2024 held the Company and its Officers/Directors, who have defaulted liable for penalty under Section 12(8) of the Act from 29/12/2021 to 12/09/2023 (date of conduct of spot office inspection till date of issue of show cause notice) 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 / KMP	Default continues penalty (in Rs.)	Total penalty (In Rs.)	Maximum penalty payable (In Rs.)
622 days	Xing Max Private Limited	622X1000 = 6,22,000/-	6,22,000/-	1,00,000/-
	Mangesh Tukaram Bane	622X1000 = 6,22,000/-	6,22,000/-	1,00,000/-
	Sun Yanbo	622X1000 = 6,22,000/-	6,22,000/-	1,00,000/-
	Jiale Wei	622X1000 = 6,22,000/-	6,22,000/-	1,00,000/-
TOTAL			24,88,000/-	4,00,000/-

TOTAL PENALTY PAYABLE: Rs.4,00,000/-

Handwritten signature

4. Appellant has filed Form-ADJ vide SRN AB2571132 dt. 30/01/2025. 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 Appellant has resigned from the company with effect from 09/01/2022 and has filed DIR-11 vide SRN T95508008.
- b. Appellant was served notice on incorrect address, hence Appellant was not provided with proper opportunity to be heard which is in violation of Principles of Natural Justice.
- c. As on the date of show cause notice, the Appellant was not a director of the company. Hence, he cannot reply on behalf of the company.
- d. During the course of Search by Income Tax Department and Inquiry by Ld. ROC, Appellant's mother was diagnosed with Cancer and Appellant has exhausted his entire savings for her treatment.
- e. Default under Section 12 of the Act by Appellant is only for period of 12 days instead of 681 days i.e. Date of spot inspection till date of resignation (from 29/12/2021 to 09/01/2022).
- f. Appellant is currently facing significant financial hardship and is struggling to make ends meet.
- g. To allow this Appeal and set aside the Order dt.04/12/2024 passed by the ROC, Mumbai.
- h. To waive the penalty imposed on the Appellant, taking into consideration the Appellant's financial position and the undue hardship caused by the imposition of the penalty.
- i. To direct the recovery of penalty (if any) on Appellant from current account and debtor's list of the company which has been frozen by the Tax Authorities.
- j. Such further and other reliefs as may deem fit and proper.

6. The matter was posted for hearing as per Section 454(5) read with Section 454(7) of the Act on 04/04/2025. Shri Elias Rodrigues, Practicing Company Secretary, appeared on behalf of the Appellant. The authorized representative reiterated the submission made by the Appellant in his application and admitted the contravention of Section 12 of the Act. However, he argued that the Appellant has resigned from the company with effect from 09/01/2022 and has filed DIR-11 vide SRN T95508008. He further stated that as on the date of show cause notice, the Appellant was not a director of the company and requested to waive off the penalty imposed on the Appellant as the Appellant is facing significant financial hardship and is struggling to make ends meet

7. The punishment for contravention of section 12 is prescribed under section 12(8) of the Act 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."



8. Asstt. Registrar of Companies, Mumbai vide further letter dt.21/03/2025 has stated that –

- a. The averments made in the appeal are denied in toto unless specifically admitted and any issues which have not been specifically dealt with may not be deemed to be admitted due to lack of traverse.
- b. The company's Master Data and Signatory details as available on MCA21 database revealed that the name of Mr. Mangesh Tukaram Bane is still being reflected as Signatory (Director).
- c. The applicant has only submitted his resignation letter and has not produced even an iota of evidence to the effect that the said resignation was received by the company. Thus, in absence of proof of acknowledgement of receipt of resignation letter by the company, the contention of appellant is inadmissible.
- d. Change of address was not communicated by the appellant to the Registrar of Companies either by filing an e-form or otherwise.
- e. The notices were sent by the Respondent to the appellant at the correct address as per the signatory details available in the MCA21 database and it is settled principal of law that the notices sent to the correct address are deemed delivered.

9. Facts of the Case:

- a. Office of Registrar of Companies, Mumbai has conducted an inquiry under Section 206(4) of the Act against the irregular functioning of the company.
- b. During the inquiry, the office of ROC, Mumbai conducted spot inspection of the company on 29/12/2021. However, it was found that the company is not situated at the registered office premises. Also, notices sent to the company and its directors on its registered address on 02/02/2022 and 12/09/2023 were returned back undelivered by the Postal authorities with remark "Left", "Refused" and "Door Locked". Thus, there is a violation of Section 12 of the Act.
- c. ROC, Mumbai has imposed penalty as per Section 12(8) of the Act.
- d. Change of address was not communicated by the appellant to the Registrar of Companies either by filing an e-form or otherwise.
- e. The company has failed to file e-form DIR-12 till date.

In view thereof, there is no inherent defect in the Adjudication Order dt. 04/12/2024 and the same is in accordance with the provisions of the Act.

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 submission during the hearing; further letter of RoC, Mumbai; I am of the considered view that there is no merit in the appeal as filing e-form DIR-11 is not Bonafide in the present situation, and accordingly, the Adjudication Order dated 04/12/2024 passed by ROC, Mumbai is 'CONFIRMED' under Section 454(7) of the Act.



11. In view of the above, the present appeal is disposed of with directions to the appellant to pay the penalty imposed by the Registrar of Companies, Mumbai vide Adjudication Order dt. 04/12/2024 within 90 days, failing which, Registrar of Companies, Mumbai, is directed to file prosecution under Section 454(8) of the Act.

No. of days default	Penalty imposed on Company / KMP	Default continues penalty (in Rs.)	Total penalty (In Rs.)	Maximum penalty payable (In Rs.)
622	Mangesh Tukaram Bane	622X1000 = 6,22,000/-	6,22,000/-	1,00,000/-
TOTAL			6,22,000/-	1,00,000/-

TOTAL PENALTY PAYABLE: Rs.1,00,000/-


Further, the appellant is advised to submit proof of payment of penalty (challan) imposed upon him to the Office of Registrar of Companies, Mumbai, for their record and for further necessary action.

12. Registrar of Companies, Mumbai, is further directed to file prosecution under Section 454(8) of the Act, if the company and other directors/officers of the company have failed to deposit the penalty imposed upon them within 90 days of Adjudication Order of ROC, Mumbai dt. 04/12/2024.

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

Signed and sealed on 30th day of April 2025.




(SANTOSH KUMAR)
REGIONAL DIRECTOR
WESTERN REGION, MUMBAI

To,

1. Xing Max Private Limited,
01st & 2nd Floor , Kagalwala House, Plot No.175,
Behind Metro House, CST Road, Kalina, B KC complex,
Santacruz East, Mumbai City, Maharashtra 400098, India.
2. Mangesh Tukaram Bane,
C-04, Landbreez Complex Manjali Road, Mohammad Nagar,
Badlapur East, Thane 421503, Maharashtra, India.
3. Registrar of Companies, Mumbai.
4. E-Gov Cell, Ministry of Corporate Affairs, New Delhi.
5. Master Copy.
6. Office Copy.

"Certified True Copy"


(TUSHAR WAGH, ICLS)
DEPUTY DIRECTOR