

EM-108239559



सिख लक्ष्मी
SPEL



BEFORE THE REGIONAL DIRECTOR, WESTERN REGION

MINISTRY OF CORPORATE AFFAIRS, MUMBAI

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

सौ. प्रादे. निदे. (प.क्षे.)/454(5)/ Xing Max (Mangesh Bane)/137/AB2368219/2024-25/

30 APR 2025

APPEAL UNDER SECTION 454(5) OF COMPANIES ACT, 2013 AGAINST ORDER PASSED FOR OFFENCES COMMITTED UNDER SECTION 137 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/137/2024-25/2908 to 2911 dated 04/12/2024 (ROC Order) of Registrar of Companies, Mumbai for violating provisions of Section 137 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 137(3) of the Act from 31/10/2021 to 12/09/2023 for not filing Financial Statements for the Financial Year 2020-21 within thirty days from the date of Annual General Meeting in pursuance of Section 96 of the Act as under:

No. of days default	Penalty imposed on Company / KMP	First default (In Rs.)	Default continues penalty (in Rs.)	Total penalty levied (In Rs.)	Maximum penalty (In Rs.)
681 days	Xing Max Private Limited	10,000/-	681X100 = 68,100/-	10,000 + 68,100 = 78,100/-	78,100/-
	Mangesh Tukaram Bane	10,000/-	681X100 = 68,100/-	10,000 + 68,100 = 78,100/-	50,000/-
	Sun Yanbo	10,000/-	681X100 = 68,100/-	10,000 + 68,100 = 78,100/-	50,000/-
	Jiale Wei	10,000/-	681X100 = 68,100/-	10,000 + 68,100 = 78,100/-	50,000/-
TOTAL				3,12,400/-	2,28,100/-

He

4. Appellant has filed Form-ADJ vide SRN AB2368219 dt. 13/01/2025. 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 e-form 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 liable to file said e-form AOC-4.
- d. Ld. ROC while passing order has considered violation from 01/12/2021 and due date as 30/11/2021. Ld. Office of ROC has issued order on 23/09/2021 giving a blanket extension of 2 months to all companies under its jurisdiction to convene Annual General Meeting. Thus, due date for convening AGM was 30/11/2021 for F.Y. 2020-21.
- e. Further, due date of filing e-form AOC-4 was 29/12/2021 (30 days). Thus, my default is only for period of 10 days instead of 681 days from 30/12/2021 till 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.

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 137 of the Act. However, he argued that the Appellant has resigned from the company with effect from 09/01/2022 and has filed e-form 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 137 is prescribed under section 137(3) of the Act which states that –

" If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified therein the company shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of fifty thousand 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. Registrar of Companies, Mumbai vide Office Memorandum dt.23/09/2021 had given an extension of two months' time for holding of Annual General Meeting for the Financial Year ended 31/03/2021 and while calculating the period of default, the Adjudicating Officer should have excluded the period of extension i.e. 30/10/2021 to 29/12/2021. After the exclusion of said period, the period of default shall be 30/12/2021 to 12/09/2023 i.e. 622 days and accordingly, the penalty payable by Mr. Mangesh Tukaram Bane shall be Rs.50,000/- (maximum penalty payable as per Section 137(3) of the Act) and to that extent the Learned Regional Director may be pleased to modify the period of default.
- e. Change of address was not communicated by the appellant to the Registrar of Companies either by filing an e-form or otherwise.
- f. 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. The Company has failed to file a copy of the Financial Statements with the Registrar of Companies for the Financial Year 2020-21 within thirty days as per the provisions of Section 137 of the Act.
- c. ROC, Mumbai has imposed penalty as per Section 137(3) of the Act.
- d. The company has failed to file e-form AOC-4 and DIR-12 till date.
- e. As stated by the Asst. Registrar of Companies vide letter dt.21/03/2025, the period of default shall be from 30/12/2021 to 12/09/2023 i.e. 622 days and accordingly, the total penalty payable by Mr. Mangesh Tukaram Bane amounts to Rs. 72,200/-. However, as per Section 137(3) of the Act, the maximum penalty payable shall be Rs.50,000/- which remains unchanged.

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 except for number of days of default under Section 137 of the Act which comes to 622 days and accordingly the number of days of default will be modified without having impact on maximum penalty of Rs.50,000/- for the Appellant. The modified penalty is as under:

No. of days default	Penalty imposed on Company / KMP	First default (In Rs.)	Default continues penalty (in Rs.)	Total penalty (In Rs.)	Maximum penalty payable (In Rs.)
622	Mangesh Tukaram Bane	10,000/-	622X100 = 62,200/-	10,000 + 62,200 = 72,200/-	50,000/-
TOTAL				72,200/-	50,000/-

TOTAL PENALTY PAYABLE: Rs.50,000/-

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 'MODIFIED' 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.

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