

**THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court -I)
KOLKATA**

C.P. No. 161/KB/2024

*A petition under section 97(1) of the Companies Act, 2013 read with Rule 11 and Rule 74 of the
National Company Law Tribunal Rules, 2016;*

In the matter of:-

M/s. Blueland ConstructioIns Private Limited having its registered Office at “Hastings Chamber” 4th Floor, Room No. 4P, 7C Kiran Shankar Roy Road, Kolkata – 700 001

.....Petitioner Company

- Versus -

In the matter of :-

1. Overgrow Vincom Private Limited (CIN: U51909WB2012PTC184202) having its registered Office at “Hastings Chamber” 4th Floor, Room No. 4P, 7C Kiran Shankar Roy Road, Kolkata – 700 001

And

2. The Registrar of Companies, Kolkata having its office at Nizam Palace, 2nd MSO Building, 2nd Floor, 234/4, A.J.C.B. Road, Kolkata-700020, West Bengal;

.....Respondents

Date of pronouncement: 10.07.2024

Coram:-

Smt. Bidisha Banerjee : Member (Judicial)

Shri Balraj Joshi : Member (Technical)

Appearances (via video conferencing/physical):

For the Petitioner:-

Ms..Rupa Gupta, PCS

For the Respondent

Ms. Aditi Junjhunwala, PCS

ORDER

Per: Balraj Joshi, Member (Technical)

1. The present Company Petition under section 97(1) of the Companies Act, 2013, has been filed by a Director/ shareholder Tanvir Dagman son of Salim Dagman holding 3000 Equity Shares representing 30% of the total holdings of the company seeking the Tribunal's orders for calling the Annual General Meeting of the Respondent No. 1 Company for the Financial Years ending on 31.03.2021, 32.03.2022 & 32.03.2023.
2. The Respondent No. 1 Company, Overgrow Vincom Private Limited was incorporated on 30.07.2012 under the Companies Act, 1956. The last Annual General Meeting of the Respondent Company was held on 30.12.2020 for the financial year ended on 31st March 2020.
3. The petitioner states that due to the flagship company was going through a bad phase in and around 2020 due to Amphan and factory was shut down and it took time to recover from such losses and that being the group company, the effect of such phase was also on the company in as much as the management and administration was not being looked after as the concerned officers in the company had resigned. Owing to such reasons in the flagship company the AGM could not be held on time for the financial years ended 31.03.2021, 31.03.2022 & 31.03.2023.
4. The applicant states that no extension of time for holding of Annual General Meetings of the Company was sought by the respondent No. 1 from Registrar of Companies, Kolkata respondent No. 2 herein.
5. The applicant states that as the company, herein respondent No. 1 could not hold its Annual General Meetings on or before the stipulated time as per the provision of Section 96 of the Companies Act, 2013 therefore the Company has not filed its Audited Accounts and Annual Returns with the Registrar of Companies Kolkata, herein respondent No. 2 and is not able to comply with Statutory Requirements of Companies Act, 2013.

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6. The applicant submits that the Tribunal in the facts and circumstances stated hereinabove pray for a direction to make an order directing the respondent No 1 company to convene its Annual General Meetings for the year ending 31.03.2021, 31.03.2022 & 31.03.2023 under Section 97(1) of the Companies Act, 2013 and to file its Annual Accounts and Annual Returns with the Registrar of Companies Kolkata, herein Respondent No. 2 as otherwise the applicant and all other members will highly be prejudiced.
7. The applicant submits that the Ld. Tribunal shall direct to make an order directing the respondent No. 1 Company to convene, conduct and hold the Annual General Meetings for the years ending 31.03.2021, 31.03.2022 & 31.03.2023 since there exists no other remedy and accordingly it is just and equitable that the Ld. Tribunal shall be pleased to pass appropriate order under Sub-Section (1) of Section 97 of the Companies Act, 2013 by directing the respondent Company to call the Annual General Meetings and give such ancillary or consequential directions as the Ld. Tribunal thinks expedient in the facts and circumstances of the case.
8. The Petitioner state that due to the aforesaid reasons the Respondent No. 1 Company for the year ended, 31st March, 2021, 31st March, 2022 and 31st March, 2023 the Respondent No. 1 Company could not hold the AGM. Therefore, calling of AGM for the years ended on 31.03.2021, 31.03.2022, and 31.03.2023 and adoption of Annual Report is still pending and in view of the aforesaid reasons this Bench may further consider extension of time for holding Annual General Meetings, in respect of the financial years ending 31st March, 2021, 31st March, 2022, 31st March, 2023 by a period of upto 1 month from the date of Order on this petition, so as to enable the applicant to Call/ convene AGM and approve in the respective annual general meetings of the Company for year ended 31st March, 2021, 31st March, 2022, 31st March, 2023.
9. The Petitioner prays to this Bench to allow and direct to convene the Annual General Meeting for the above-mentioned financial years of the Respondent No. 1 Company under Section 96 and 97(1) of the Companies Act, 2013 read with Rule 74 of the National Company Law Tribunal Rules, 2016.

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10. The Respondent No. 1 Company have no objection for calling and convening of Annual General Meeting.

11. We have heard the learned Authorised Representative appearing for Respondents No.1 Company. The petitioner has not been able to hold the AGM for Three Consecutive financial years and has virtually attributed its failure on the Amphan Cyclone whereby the employees of the company had left due to closure of the factory. This is not a very convincing argument and the fact remains that the company has not held the AGM as required under Section 96 of the Companies Act and has therefore made itself liable for a punishment with a fine under Section 99 of the Companies Act. Section 97 of the Companies Act 2013 empowers this Tribunal to direct holding of Annual General meeting of a company. The Ld. Counsel for the Respondents No.1 Company does not have any objection to the application being allowed.

12. Accordingly, we hereby, give the following directions in the exercise of the powers conferred on this Tribunal under section 97(1) of the Companies Act, 2013 read with Rule 11 and Rule 74 of the National Company Law Tribunal Rules, 2016:
 - (a) The Respondent, namely, Overgrow Vincom Private Limited, shall hold Annual General Meeting within 45 days from the date of this order, to finalise and approve the annual returns and financial papers in accordance with the procedure prescribed in the provisions of Companies Act, 2013 and Rules made therein, **subject to payment of a fine of Rs 75000/-[Rupees Seventy five thousand] to the RoC WB..** The meeting shall be considered as an Annual General Meeting for the purposes of the Companies Act 2013 and all the pending financial statements shall be prepared and presented in the said meeting.

 - (b) The Respondents No.1 Company is directed to give 21 days' clear notice in advance, either in writing or through electronic mode in the manner prescribed every member of the Company, legal representative of any deceased member or the assignee of an insolvent member, the auditors of the Company and every director of the Company in accordance

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with section 101 of the Companies Act, 2013, informing therein the place, date, day and the hour of the meeting shall contain a statement of the business to be transacted at such meeting.

13. The **C.P. No. 161/KB/2024** shall stand **disposed of** accordingly.
14. The Registry is directed to send copies of the Order forthwith to all the parties and their representative for information and for taking necessary steps.
15. Registry is also directed to send a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.
16. Certified Copies of this order may be issued, if applied for, upon compliance with all requisite formalities.
17. File be consigned to records.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order Signed on 10.07.2024.

SSG