

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- COURT II
Company Petition No. 174 of 2024

**An application for section 97(1) of the Companies Act, 2013 read with
Rule 74 of the National Company Law Tribunal Rules, 2016;**

In the matter of:

Mr. Supravat Banerjee (holding 10100 shares) residing at BD- 61 Sector- I, Salt Lake City, Bidhannagar (M), North 24 Parganas, Kolkata 700064, being shareholder of M/s Esbee Stock & Share Pvt. Ltd., a company incorporated under the Companies Act, 1956 and having its Registered Office at 242 B B Ganguly Street, Kolkata- 700012, within the aforesaid jurisdiction.

...Petitioner

-And-

In the matter of:

ESBEE STOCK & SHARE PVT. LTD., a company incorporated under the Companies Act, 1956 and having its Registered Office at 242 B B Ganguly Street, Kolkata- 700012, within the aforesaid jurisdiction and having CIN: U67120WB1995PTC075158.

...Respondent

Date of pronouncement of the Order: 18/7/2024

Coram:

Smt. Bidisha Banerjee: Member (Judicial)

Shri D. Arvind: Member (Technical)

Appearances:

For the Petitioner:

1. Adv. Urmila Chakraborty
2. Ms. Sneha Khaitan, PCS

For the Respondent:

1. Ms. Tanvee, PCS
2. Ms. Urvi Sanghvi, PCS

ORDER

Per: Bidisha Banerjee (Judicial)

1. This Court convened via hybrid conferencing.
2. The present Company Petition has been filed under section 97(1) of the Companies Act, 2013 read with rules 11 and 74 of the NCLT Rules, 2016 by member/ shareholder, Mr. Supravat Banerjee (holding 10,100 shares), representing 18.88% of the total issued, subscribed and paid-up share capital of the Respondent Company praying for the following reliefs:
 - a) *Direction upon the Respondent No.1 Company to convene, hold and conduct the Annual General Meeting from the Financial Year ended 31.03.2021, 31.03.2022 and 31.03.2023 under the provision of sub-section (1) of section 97 of the Companies Act, 2013.*
 - b) *And give such ancillary or consequential directions as the learned Tribunal thinks Expedient.*

Submissions of the Petitioner:

3. The Petitioner submits that the Respondent No. 1, M/s ESBEE STOCK & SHARE PVT. LTD. is a Company incorporated on 31st October, 1995 under the Companies Act 1956 having its Registered Office at 242 B B Ganguly Street, Kolkata- 700012.
4. Ld. Authorised Representative for the petitioner submits that the last Annual General Meeting of the Respondent Company was held on 31st December 2020 for the financial year ended on 31st March 2020 as per master data.

5. The Petitioner submits that he approached the Company for holding of Annual General Meeting for the financial year ended 31.03.2021, 31.03.2022 and 31.03.2023.
6. Ld. Authorised Representative for the petitioner submits that the Annual General Meeting for the financial year ended 31.03.2021 onwards till the financial year ended 31.03.2023 could not be held because of the fact that Financial statements of the company for the Financial Year ended 31.03.2021, 31.03.2022 and 31.03.2023 could not be made ready since there was sudden resignation of Statutory Auditor of the Respondent Company after audit for F.Y. ended 31.03.2020 on 15.03.2021 and as a result a new auditor was appointed in casual vacancy which led to delay in auditing of Financial Statement of the company.
7. The respondent company could not get its accounts audited on time, hence the Annual General Meeting could not be held within stipulated time for the Financial Year ended on 31.03.2021, 31.03.2022 and 31.03.2023 as required under section 96 of the Companies Act, 2013.
8. The Petitioner being the shareholder has the right to receive his amount of contribution to the Company as a member. The rights of the Shareholders to receive their contribution of money could only be established when the Company is well functioning and fully compliant. The Respondent Company is "ACTIVE" company as reflects from its Master Data of the Respondent.
9. Ld. Authorised Representative for the Respondent submits that the financials of the Company for the Financial Year ended 31.03.2021, 31.3.2022 and 31.03.2023 are now ready and they have no objection to hold AGM for the said Financial Years.

10. We have heard Authorized Representative appearing for the Petitioner and the Authorized Representative appearing for the Respondent, who submit that the accounts have now been got prepared and audited and as such the AGM can now be held.
11. Accordingly, we hereby, give the following directions in the exercise of the powers conferred on this tribunal under section 96 and 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 company shall hold a General Meeting within 45 days from the date of this order, to finalise and approve the annual returns and financial statements for the Financial Years from **31.03.2021**, **31.03.2022** and **31.03.2023** in accordance with the procedure prescribed in the provisions of Companies Act, 2013 and Rules made therein. This meeting shall be considered as an Annual General Meeting for the purposes of the Companies Act 2013.
 - (b) The Respondent 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 with section 101 of the Companies Act, 2013, informing therein the place, date, day and the hour of the meeting and shall contain a statement of the business to be transacted at such meeting.
 - (c) Necessary health protocol and Govt. Advisory, if any, shall be scrupulously followed.

(d) The Respondent Company is being granted the liberty to approach this Tribunal in case there is any difficulty in holding the Annual General Meeting as directed aforesaid.

12. The **C.P. No. 174/KB/2024** shall stand **disposed of** accordingly.
13. The Registry is directed to send copies of the Order forthwith to all the parties and their Counsel/Authorised Representative for information and for taking necessary steps.
14. Registry is also directed to send a copy of this Order to the **Registrar of Companies, West Bengal, Kolkata.**
15. Certified Copies of this order may be issued, if applied for, upon compliance of all requisite formalities.
16. File be consigned to records.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order dated 18/7/2024

NKS(LRA)