

**MENTIONED MATTER**

DIVISION BENCH  
COURT - I

**NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

CP/205/2023

**CORAM: 1. HON'BLE MEMBER(J), SHRI ROHIT KAPOOR  
2. HON'BLE MEMBER(T), SHRI BALRAJ JOSHI**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 06<sup>TH</sup> FEBRUARY 2024, 10:30 A.M**

IN THE MATTER OF	Patit Mandal VS Touchpoint Tools Private Limited & Anr.
UNDER SECTION	97(1)

**Appearances (via video conferencing/physically)**

Mr.Rishav Banerjee, Adv. ] For the Applicant/Petitioner

**CORRIGENDUM O R D E R**

1. This matter was not on board today; it was taken up upon mentioning.
2. Certain typographical errors have been brought to our notice by the Ld.Counsel for the petitioner in the order dated 05/01/2024, which are corrected as below.
3. This corrigendum is issued for corrections as under:-
  - i. Page No. 3, in Para Nos – 6, 9, 10(a), Financial Year shall be read as “**2021-2022**” instead of ‘2027-22 & 2020-2021’.
  - ii. Para 10 (a), meeting shall be convened and held within 45 days from the date of this **corrigendum order**.
4. Rest of the order shall remain unchanged.

**Balraj Joshi  
Member (Technical)**

**Rohit Kapoor  
Member (Judicial)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH- I  
KOLKATA**

Company Petition No. 205 of 2023

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

-And-

**In the matter of:**

Patit Mandal, S/o Amitanshu Mandal, residing at 195, Kavi Sukanta Road, F1-1,  
Manibhawan, Kolkata, West Bengal.

...Petitioner

Versus

**In the matter of:**

1. Touchpoint Tools Private Limited, having its registered office at 74E Bondel Road,  
Ground Floor, Flat 1, Kolkata, West Bengal- 700019.
2. The Registrar of Companies, West Bengal, having his office at 234/4, Acharya  
Jagadish Chandra Bose Road, 2<sup>nd</sup> Floor, Nizam Palace, 2<sup>nd</sup> MSO Building,  
Kolkata, West Bengal.

...Respondents

**Date of pronouncement of the Order: 05/01/2024**

**Coram:**

**Shri Rohit Kapoor : Member (Judicial)**  
**Shri Balraj Joshi : Member (Technical)**

**Appearances:**

Mr. Rishav Banerjee, Adv. ] For the Applicant /petitioner  
Mr. Rajarshi Banerjee, Adv. ]

Ms. Prerna Shaha, Adv. ] For R1/Company



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**ORDER**

***Per: Balraj Joshi, Member (Technical)***

1. The court convened physical mode.
2. The present Company Petition has been filed by petitioner (holding 5000 equity shares), representing 50% of the total issued, subscribed and paid- up share capital of the Respondent Company. The Petitioner (being the shareholder of the Respondent Company) under section 97(1) of the Companies Act, 2013 read with rules 11 and 74 of the NCLT Rules, 2016 are praying for calling of the Annual General Meeting of the respondent company for the Financial Year ended F.Y. 2021- 22.
3. The Respondent Company, Touchpoint Tools Private Limited was incorporated on 06/09/2016 under the Companies Act, 1956. The company held its last Annual General Meeting on 30.11.2021 for financial year 2020-2021.
4. Ld. Counsel for the petitioner states that the Respondent Company thereafter could not hold its Annual General Meeting for the 2021-2022 because of the fact that the compilation of Annual Accounts for the financial year 2021-2022 took much more time than is usually required due to the crash in motherboard that led to crash in hard disk required for operating accounting software [Tally ERP] used by the Company in the month of March, 2022. The statutory auditors of the Company could not meaningfully and properly perform auditing works until the accounting entries were painstakingly and laboriously reconstructed and /or retrieved from pertinent challans, bills, purchase orders, statements etc pertaining to the financial year 2021-2022.
5. It is further stated that the company had engaged the statutory auditor much prior to the expiry of the time period contemplated by section 96 of the Companies Act, 2013, for completion of the audit process but the difficulty in retrieving the pertinent accounting related information in an organised and meaningful manner delayed the process of audit. There was a delay in accumulation and collation of data which has delayed the preparation of the financial statement of the company beyond the end of September, 2022.



6. In view of such unexpected, unusual, and extraordinary circumstances, the Company could not hold its Annual General Meetings for the financial years F.Y. 2021-22 as per the provisions of section 96 of the Companies Act, 2013.
7. In terms of Rule 74 of the National Company Law Tribunal Rules, 2016, the notice was served on the Registrar of Companies, West Bengal, Kolkata. The Registrar of Companies, West Bengal has duly filed his report dated 08/08/2023, wherein no objection has been taken towards holding of the AGM.
8. We have heard the Ld. Counsel appearing for the parties and note that the failure of the Company to hold the AGM for the Financial Years F.Y 2021-2022 within the stipulated time was due to technical problem. However, no steps were taken by the Company to sort out the issues and make the necessary filings all these years. As such the provision of Section 96 of the companies Act has been violated and therefore the company is liable to be fined with an exemplary fine. The RoC was directed to file a report in the matter and RoC has opined that there was no objection from any authorities including the RoC towards extension of time for the purpose of holding AGM.
9. We have heard the Ld. Authorised Representative appearing for the petitioner and the counsel for the Company and are satisfied that the failure of the Company to hold the AGM for the Financial Years that ended on financial year 2020-2021, within the stipulated time was not deliberate but only due to circumstances beyond their control. Also, there is no objection from any authorities towards extension of time for the purpose of holding AGM.
10. Subject to the above, we, hereby give the following directions in the exercise of the powers conferred on this Tribunal under section 97 of the Companies Act, 2013:
  - (a) A general meeting of the company be convened and held within 45 days from the date of this order to transact the ordinary business of approval and adoption of the Audited Financial Statements for the financial years from financial year ending financial year ending on financial year 2020-2021, subject to a fine of **Rs.10,000/- (Rupees Ten thousand only)** to be

deposited with MCA. This meeting shall be deemed to be an AGM of the Company. The meeting shall be held by following various statutory protocols and advisories scrupulously.

- (b) The quorum shall consist of at least one shareholder.
- (c) Notice shall be issued to all the shareholders in accordance with section 101 of the Companies Act, 2013.
- (d) Necessary filings with the RoC shall be made as per the stipulated time lines.

11. The **C.P. No.205/KB/2023** shall be disposed of accordingly.

12. 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.

13. Registry is also directed to send a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.

14. Certified Copies of this order may be issued, if applied for, upon compliance of all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

**Order signed on this the, 05<sup>th</sup> day of January, 2024.**

PJ