

**ORDER SHEET
HIGH COURT OF SINDH AT KARACHI**

J.C.M. No.50 of 2016

Date	Order with signature of Judge
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Present:-

Mr.Justice Muhammad Ali Mazhar

**Gazipura Securities & Services
(Pvt) Limited**

.....**Petitioner**

Date of hearing: 22.11.2017

Mr.Sikandar Khan, Advocate for the Petitioner.

M/s. Salman Salim Rajan and Syed Ibad, Law Officers,
SECP.

Muhammad Ali Mazhar, J: This petition has been brought under Sections 97, 98 and 101 of the Companies Ordinance 1984 for approving the reduction of share capital. The petitioner has entreated as under:-

- “1. Confirm the reduction of the share capital to be effected by Special Resolution referred to paragraph 10 above.**
- 2. Dispense with the requirements that the words “and reduced” be added the petitioner company’s name and the consent of the creditors be obtained.**
- 3. Approve minutes, referred to paragraph 12 above”**

2. The transitory facts jot down in the petition are that the petitioner was initially registered in 2006 as a single member company (SMC) under the provisions of Companies Ordinance, 1984, thereafter it was converted into a private limited company in 2008. The objects of the company are to conduct inter alia the business of brokerage in stocks, shares, securities commodities. Other objects are set out in the Company’s Memorandum of Association. The authorized capital of the company is Rs.170,000,000 divided into 17,000,000 ordinary shares

of Rs.10 each of which 17,000,000 ordinary shares have been issued and are fully paid up/subscribed.

3. The learned counsel for the petitioner argued that under Article 6 of Articles of Association it is clearly provided that by special resolution and subject to confirmation by this court, the petitioner may reduce its share capital in the manner permitted by Section 96 of the Companies Ordinance. The petitioner craves reduction in its paid up share capital from Rs.170,000,000 to Rs.70,000,000. Due to reduced operational activities, the company does not need such a substantial paid up share capital to effectively execute its present operations. He further contended that the proposed reduction in its paid up share capital will not adversely affect the company's operations but in fact it would help to stream line the company's operations. The petitioner convened an extra ordinary general meeting on 19.12.2016. In the EGM, the requisite majority of the shareholders, unanimously through a special resolution resolved that the paid up share capital of the company be reduced. He further argued that keeping in view the current liabilities, it is obvious that the creditor interests will not be adversely affected by the proposed reduction of share capital mainly for the reason that the company have the total assets of Rs.465,026,234 which are sufficient to safeguard and secure the interest of creditors.

4. The learned representative of SECP referred to the comments. He did not oppose the special resolution passed by the members of the petitioner. He admitted the total amount of assets disclosed by the petitioner as

correct. However he raised some objections to the current liabilities in view of the comments filed initially. He also pointed out mortgages registered with Company Registration Office (CRO) Karachi. The learned representative also referred to a Statement filed by Additional Registrar of Companies, In charge Company Registration Office, SECP, Karachi in which he reminded his earlier comments in which SECP made some observation that the petitioner may be asked to produce NOC from its creditors but in this statement, they have clarified that the petitioner in response have submitted NOCs of Pakistan Stock Exchange Limited in this court as well to the SECP which have been examined by the SECP and now they have no further observation on it. The Law Officer wrap up with the closing submissions that the legislature requires a company to add the words “and reduced” at the end of the company’s name in order to avoid the deception and to safeguard the interest of any future stakeholder or creditor.

5. The meticulousness and niceties for approving the reduction in share capital have been conscientiously cogitated and mull over by me in the case reported in **2013 CLD 2156 [Sindh]**. In the likewise matters, the court has to be satisfied first that the creditors if any objected to the reduction or not? Whether their consent to the reduction has been obtained or their debts or claims have been discharged or settled? The court generally require the company to use the words "and reduced" as part of their name and to publish in newspapers for the sake of public knowledge of the reasons for the reduction but such condition may be dispensed with if the reduction does not involve diminution of any liability in respect of up-paid share capital or payment of any share holder of

any paid-up share capital. The extent and amount of reduction is a domestic matter and so long as there is no injustice to the creditors or the shareholders, the court is not concerned with the precise amount of reduction of capital as decided in the case of **Westburn Sugar Refineries Ltd., [1951] 1 All ER 881**. The power conferred on the court in order to enable it to protect the interests of dissenting shareholders and even those who do not appear. In making its order the court approves a minute and embodying minute in a confirmatory order is a sufficient approval. The minute is designed to show the altered structure of the company capital, the amount of remaining share capital, the number of shares into which it is to be divided, the amount of each share if any at the date of registration of minute deemed to be paid-up on each share. Whether to approve the reduction of capital or not, the court will consider the factors whether shareholders have been treated equitably, whether the reduction proposals have been properly explained, whether creditors or third party interests have been prejudiced and whether the reduction has a discernible purpose. **(Ref: Palmer's Company Law, Vol: 1 25th Edn.)**. In **British and American Corporation. V. Couper** case reported in **[1894] A.C. 399**, Lord Herschell L.C said "it will be observed that neither all these statutes prescribed the manner in which the reduction of capital is to be effected nor is there any limitation of the power of the court to confirm the reduction, except that it must first be satisfied that all the creditors entitled to object to the reduction have either consented or being paid or secured.

6. In the various foreign judgments quoted in the **Guide to the Companies Act**, 17th Edition 2010 authored by

A. Ramaiya, at pages 1407 to 1409, the following instances are mentioned for reduction of share capital which are commonly adopted:-

(1) Reduction of excess capital. North Regent Securities Ltd., (No.00811 of 1953); Re, Blackburn Coal Stores Pty. Ltd., (1939) VLR 351.

(2) The cancellation of all the share capital as part of a scheme of arrangement. (1937) 81 SJ 922.

(3) Reduction to rectify an irregular repayment or purchase of shares by the directors. Re, Scottish Queensland Mortgage Co., (1908) 46 SLR 22; Re, York Glass Co. Ltd., (1889)60 LT 744.

(4) Paying off part of the shares out of capital in excess of wants so as to enable the holders of the remaining shares in effect to acquire the interest of those paid off and become the only shareholders.

(5) Cancelling shares of two members by agreement to repay the company the loss resulting from misappropriation of funds by an official. Re, Banknock Coal Co. Ltd., (1897) 24 R 476. Cancelling shares surrendered, or the holders of which consent to cancellation. Re, Llynvi, etc. Iron Co., (1877) 26 WR 55; Re, Vivian 86 Co., (1886) 54 LT 384; Poole v. National Bank of China Ltd., (1907) AC 229. In Randesia Base Mineral Mining and Development Co. (Pty) Ltd., (1939) WLD 291, a reduction was confirmed to rectify the payment of a dividend out of capital.

(6) Paying off or returning paid-up capital not wanted for the purposes of the company. Re, Less Brook Spinning Co., (1906) 2 Ch 394; Re, Artisans Land and Mortgage Corpn., (1904) 1 Ch 796; Re, Piercy Whithwham v. Piercy, (1907) 1 Ch 289.

(7) Paying off unpaid-up capital by issuing debentures or debenture stock in satisfaction Re, De La Rue and Co. Ltd, and Reduced, (1911) 2 Ch 361. This will not be sanctioned where it would result in the company becoming wholly insolvent: Re, Clark, (1921) NZLR 533 or where a company is satisfied that it can finance its requirements to the extent of capital repaid by raising money or loan or borrowing from its bankers.

(8) Paying off and cancelling preference shares, in pursuance of a contract in the memorandum and articles binding on both preference and ordinary shareholders, by applying for the purpose a portion of the profits of the company. See Re, Dicido Pier Co., (1891) 2 Ch 354.

(9) Reducing the liability of shareholders in respect of uncalled or unpaid capital.

(10) Reduction in excess of the wants of the company satisfied by the distribution of investments of greater value than the amount of the reduction. Re, Westburn Sugar Refineries Ltd., (1951) 1 All ER 881.

(11) Lost capital. Cancelling capital which has been lost or is unrepresented by available assets. In such case where a company has lost part of its capital, nothing, as SIR GEORGE JESSEL said in Ebbw Vale Steel etc. Co., (1877) 4 Ch D 827 can be more beneficial to the company than to admit the loss, and to write it off, e.g., to reduce its £1 shares to 10s., and thus place itself in a position to resume payment of dividends, or raise further capital.

(12) Reduction to reduce all shares of a company which has lost its register of members and cancel all shares the holders of which do not signify their wish to continue as members. Re, Kasudan Holdings Ltd., (No.0063 of 1956).

(13) Paying off paid-up capital on the footing that it may be called up again. Re, Fore Street, etc., Co., (1888) 59 LT 214; Re, Brown, Sons & Co., (1931) SC 701; Watson-Walker & Quickfall, (1898) WN 69; Re, Scottish Vulcanite Co, Ltd.,(1894) 21 R 752; Re, Stevenson, Anderson & Co. Ltd., 1951 SLT 235. Repaying capital to the holders of fully paid-up shares of a class on the footing that it can be called up again so as to bring them into line with the partly paid shares of the class. Neale v. City of Birmingham Tramways, (1910) 2 Ch 464.

(14) Where the amount unpaid on shares was cancelled and money was raised by the issue of new shares. Hoggan v. Tharsis Sulphur & Copper Co. Ltd: (1882) 9 R 1191. In Morrison (W) & Co. Ltd., (1892) 19 R 1049, the court refused the reduction where the nominal amount of the shares was unaffected but the paid-up amount was reduced.

(15) Writing off unpaid capital.---The company proposed to cancel shares which were allotted to public but which remained unpaid. A special resolution was passed for cancellation of such shares and reduction of capital accordingly. There was no opposition to the resolution. The minute of reduction as proposed by the company was confirmed by the court. Vantech Industry Ltd. Re, (1999) 2 Comp LJ 47: (1999) 20 SCL 370 (AP).

(16) Reduction need not be qua all shareholders. The company proposed to reduce its issued and paid-up shared capital. The proposed resolution was to extinguish and cancel shares held by shareholders constituting 25% of the issued and

paid-up capital. The capital was to be returned to the shareholders. The scheme was applicable to shareholders who either assented or did not object to it. The court said that it was not necessary that a proposal of this kind should be applicable to every shareholder. A speculative variation in price of shares of the company could invalidate an otherwise valid resolution. The court allowed the petition. Elpro International Ltd., Re., (2009) 149 Com Cases 646 (Bom); (2008) 86 CLA 47 (Bom).

7. The record of this case shows that the advertisement of main petition in terms of Rules 19 and 76 of the Companies (Court) Rules 1997 was published in the newspapers daily "Jang and The News" as well as in the official Gazette on 15.3.2017. Notice was also issued to S.E.C.P and they filed comments. No objection certificate issued by Pakistan Stock Exchange Limited dated 18.5.2017 is also attached with the statement filed by the petitioner on 22.5.2017. The S.E.C.P in their additional comments admitted the factual position and their representative endorsed no objection. The petitioner has filed a statement under Section 160 (b) of the Companies Ordinance, 1984 along with the certified true copy of Resolution passed by the Board of Directors on 17.11.2016 and the Resolution passed in the Extraordinary General Meeting held on December 19, 2016 at Registered Office of the Company. The resolution passed in EGM is reproduced as under:-

"Resolution of Extraordinary General Meeting held on December 19, 2016 at Registered Office of the Company"

Resolved that subject to confirmation by the hon'ble High Court of Sindh the paid up capital of the company be and is hereby reduced from Rs.170,000,000 divided into 17,000,000 ordinary shares of Rs.10 each to Rs.70,000,000 divided into 7,000,000 shares of Rs.10 each and such reduction shall be affected by refunding Rs.100,000,000 divided into 10,000,000 shares of Rs.10 each from paid up capital to the shareholders.

Resolved that the Board of Directors be and is hereby authorized to take necessary actions in relation of the above and in particular to move the petition to the High Court of Sindh for the order confirming the aforesaid reduction and Mrs.Bilquis be and is hereby authorized to sign and verify the said petition, other pleadings therein, appoint advocates and

to do all such other acts and deeds as may be necessary for obtaining the order of the court confirming the reduction of paid up capital in terms of the aforesaid resolution”.

8. After considering the pros and cons, I have reached to the conclusion that the petitioner has complied with all requisite formalities. There is no impediment to grant this petition. The learned counsel for the petitioner categorically and unequivocally stated that the reduction of capital does not involve any diminution of any liability in respect of unpaid share capital or payment to any shareholder of any paid-up share capital.

9. For the foregoing reasons the resolution passed in EGM for capital restructuring through reduction of share capital is approved and the petition is allowed. However, the condition of the words "and reduced" required to be added with the name of company is dispensed with keeping in view the facts and circumstances of the case. Let all the formalities concerning to the registration of order and minute of reduction be complied with in terms of Section 102 of the Companies Ordinance 1984.

Judge