

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

**J.C.M. No.33 of 2014**

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**DATE            ORDER WITH SIGNATURE    OF JUDGE**  
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**Present:-  
Mr.Justice Muhammad Ali Mazhar**

**M/s.Symmetry Digital (Pvt.)  
Limited** .....**Petitioner**  
**V/s.**

**Securities & Exchange Commission  
of Pakistan.....Respondent**

**24-04-2018**

Mr.Muhammad Ishaq Ali, Advocate for the Petitioner.

M/s.Saad Abbasi and Syed Hafiz Ebad, Law Officers of SECP.

**Muhammad Ali Mazhar, J:** This petition under Section 97 of the Companies Ordinance, 1984 has been brought for reduction of share capital with the following prayers:-

- (1) **Under Section 101 of the Companies Ordinance 1984 the reduction in the share capital of the petitioner to be effected in the manner resolved by the Ordinary and Special Resolution set out in the above paragraph No.10 of this petition.**
- (2) **Under Section 98 of the Companies Ordinance, 1984 directing that notwithstanding the reduction aforesaid in the issued and paid up share capital of the petitioner, the use of the words 'and reduced' in relation to the name of the petitioner shall be dispensed with.**
- (3) **Under Section 102 of the Companies Ordinance 1984 confirming the minute as set forth in the above paragraph of this petition and directing that the notice of the registration of such minutes shall be published in at least one issue of a daily newspaper in the English language and a daily newspaper in the Urdu language having circulation in the Province of Sindh.**

2. The petitioner is a private company limited by shares and registered with the respondent under the Companies Ordinance 1984 on 31.8.2009 at Karachi with the paid up capital of 100 million divided into 10 million ordinary

shares. The financial statement ended on 30.6.2010 though demonstrate the authorized capital of 100 million divided into 10 million share each of Rs.10 but the business of the petitioner company never exceeded from 10 million. According to the income tax return for the financial year 2010 also it is evident that the total assets and the liabilities never exceeded from Rs.10 million.

3. In the above circumstances the shareholders, directors and the management has decided to reduce the authorized paid up capital from 100 million to 10 million since the actual shares subscribed by the shareholders is of Rs.10 million divided into 1 million shares for Rs.10 each and for the purpose of reduction in the paid up share capital, an extra ordinary general meeting was convened on 23.6.2014 through a notice published in the newspapers. In the extra ordinary meeting, special resolution was unanimously passed by all the shareholders whereby it was resolved that the reduction of share capital of the company to the extent of 10 million be reduced to 1 million share of Rs.10 each. Under Section 96 of the Ordinance and in pursuance of the powers in that behalf contained in the memorandum of association and article of association of the petitioner, the members of the petitioner approved the reduction in share capital of the petitioner through ordinary and special resolution passed in the Extra Ordinary General Meeting of the members of the petitioner on 23.6.2014 as under:

**EXTRACT MINUTES OF THE EXTRA ORDINARY GENERAL MEETING HELD AT REGISTERED OFFICE AT 17-C, 12<sup>TH</sup> COMMERCIAL STREET, PHASE-II (EXT), DEFENCE OFFICERS HOUSING AUTHORITY, KARACHI ON 23-06-2014**

**The Extraordinary Meeting of Symmetry Digital Private Limited held at 11:00 AM, on 23-06-2014, at 17-C, 12<sup>th</sup> Commercial Street, Phase-II (Ext), Defence Officers Housing Authority, Karachi, in order to consider and approve capital restructuring through Reduction of the Share**

**Capital of the Company and Issuance of Right Shares and to pass the following resolutions:**

**IT IS RESOLVED THAT** the reduction of the share capital of the Company, to the extent of PKR 10,000,000/- and to file a Petition under Section 96 of the Companies Ordinance, 1984, before the High Court of Sindh at Karachi in this respect be and is hereby approved;

**IT IS FURTHER RESOLVED THAT** the issuance of shares at PKR 10 per share amounting to PKR 10,000,000/- by way of right issue under Section 86 of the Companies Ordinance, 1984 be and is hereby approved.

**FURTHER RESOLVED THAT** the Company Secretary and Chief Executive Officer of the Company be, and are hereby jointly and/or severally authorized to take all necessary steps, ancillary and incidental for the (i) reduction in capital of the Company and (ii) issuance of right shares of the Company, including but not limited to obtaining all requisite regulatory approvals; filing of all the requisite statutory forms and all other documents as may be required to be filed with the Securities and Exchange Commission of Pakistan, submitting all such documents as may be required with the State Bank of Pakistan, executing all such certificates, applications, notices, reports, letters and any other documents or instruments including any amendment or substitution to any of the foregoing as may be required in respect of the reduction in capital under Section 96 of the Companies Ordinance, 1984 and issue of right shares under Section 86 of the Companies Ordinance, 1984 and all other matters incidental or ancillary thereto.

**RESOLVED THAT** the Company Secretary or Chief Executive Officer of the Company, be jointly and/or severally further authorized to file a Petition under Section 96 of the Companies Ordinance, 1984 before the High Court of Sindh at Karachi in respect of reduction in capital of the Company including but not limited to engaging of legal counsel, filing of affidavits and applications.

**By Order of the Board.**

**Karachi:  
Dated.23.6.14**

**Sd-  
M. Raghieb Saeed  
Company Secretary**

4. The reduction of share capital involves the decrease of 9,000,000 shares of the petitioner. It was further averred that this reduction will not affect the financial position of the petitioner and no liability exists beyond the limit of 10,000,000 shares. By reduction of authorized paid up capital there will be no loss to any shareholder or any person from public. The company is a private limited company and all the shareholders have given their no objection to the scheme of reduction which is fair and equitable. The petitioner has also prayed that in the above circumstances, it would be reasonable not to require the petitioner to add the words "and reduced" and this condition may be dispensed with.

5. The SECP had filed their comments and sought directions to cure some objections by the petitioner but after sometime they filed another statement on 24.4.2018 in the following terms:-

**“STATEMENT**

**It is respectfully submitted on behalf of the Securities and Exchange Commission of Pakistan as under:**

**1.That the petitioner company filed above petition under Section 97 of the Companies Ordinance 1984 and prayed that this Hon’ble Court may please pass an order for confirming Reduction of Paid up Capital.**

**2.That in response to the observation made by the Securities and Exchange Commission of Pakistan in its comments/reply to the Petition in respect of charges of Bank Al Habib against the petitioner company as registered with SECP and that petitioner is required to file Form-26 after passing of a Special Resolution for reduction in paid up capital, the Petitioner Company vide its statements dated 15.12.2014 and 10.02.2018 has filed Form-26 (Special Resolution), Form-17 dated 18.04.2017 for satisfaction of charge and ‘No Dues Certificate’ of Bank Al Habib dated 27.02.2017.**

**3.Since the charge registered against the company has been satisfied, the SECP has no objection if petition is allowed.**

**Submitted accordingly.**

**Karachi.**

**Dated: 24.4.2018.**

**Sd./-**

**Muhammad Naeem Khan  
Additional Registrar of Companies  
In-Charge Company Registration Office, Karachi  
Securities & Exchange Commission of Pakistan”**

6. 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.

7. 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, Dcido 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).**

8. The record shows that all necessary formalities have been complied with. The S.E.C.P after checking and ensuring all necessary formalities, filed a statement of no objection. 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.

9. For the foregoing reasons the resolution passed 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 accordance with the law.

**Karachi:-  
Dated.14.9.2018**

**Judge**