

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
J. C. M. No. 47 of 2016

DATE: **ORDER WITH SIGNATURE(S) OF JUDGE(S).**

For hearing of main petition.

25.06.2018.

Mr. Ali Almani, Advocate for the Petitioner.

Syed Ebad, Law Officer, SECP.

This is a petition for reduction of paid-up capital of Petitioner No.1 by an amount of Rs.667,865,830/- (Rupees Six Hundred and Sixty Seven Million Eight Hundred and Sixty Five Thousand and Eight Hundred and Thirty only) through cancelling 66,786,583 Ordinary Shares registered in the name of Metal One Corporation (Japan)-the Petitioner No.2, such that Metal One Corporation (Japan) will cease to be a shareholder of Petitioner No.1.

Mr. Ali Almani, learned counsel for the Petitioners has referred to various documents to show that all requisite statutory compliances have been made, besides no objection by the Securities and Exchange Commission of Pakistan (“SECP”) as mentioned in their parawise comments.

The Petitioner No.2 (Metal One Corporation (Japan) has authorized Mr. Muhammad Arif Habib vide Irrevocable Power of Attorney dated 30th May, 2016, *inter alia*, to take all necessary steps in connection with the reduction of share capital of Petitioner No.1 (Aisha Steel Mills Limited); the Irrevocable Power of Attorney is available at page-137 (original seen and returned), which has been duly notarized by the Notary Public at Tokyo and Director of the Tokyo Legal Affairs Bureau dated 30.05.2016, besides

attested by the Embassy of Pakistan at Tokyo containing reference No.CS.432/7 dated May 31, 2016. This Irrevocable Power of Attorney also discloses that the said Muhammad Arif Habib has made payment for the above paid up ordinary shares to Petitioner No.2, in terms of a Share Purchase Agreement of 31.03.2016.

Learned counsel for the Petitioners has next referred to the Notice of 12th Annual General Meeting (“AGM”) of Petitioner No.1, which was sent to the General Manager, Pakistan Stock Exchange Limited, for circulation, as the Petitioner No.1 is a public listed company. Notice was also published in daily Business Recorder in its issue of 06.10.2016 and a copy of the same is produced in Court today along with Balance Sheets (containing Horizontal and Vertical Analysis of Finance Statements), which are taken on record. Perusal of the Notice of 06.10.2016 to Pakistan Stock Exchange shows that it was accompanied by the draft of 12th AGM; mentioning at serial No.5, the aforementioned subject of reduction of ordinary shares and the proposed resolution to be passed pursuant thereof. At page-157 is the Memorandum of Association of Petitioner No.1 and at page-165 is the Articles of Association and clause-45 thereof has a provision of Reduction of Share Capital by way of special resolution and after fulfilling other statutory requirements, which have been complied with by the Petitioners’ side as also confirmed by the SECP. At page-227 is the Minutes of 12th AGM, held on 27.10.2016 at Beach Luxury Hotel, Karachi, in which, according to the Minutes of Meeting, 566 shareholders participated, which represents 69% of the voting rights in Petitioner No.1. In that meeting, agenda Item No.5 about aforesaid issue was considered and approval was accorded unanimously, which means the requirements of section 96 of the Companies Ordinance, 1984, was also complied with as the approval was accorded by a special resolution and unanimously.

To a specific query about protecting the interest of creditors of Petitioner No.1 and would they be adversely affected by such Reduction Scheme, learned counsel has categorically stated that neither any payment is being made by Petitioner No.1 as Company to Petitioner No.2 or any other shareholder for the cancellation of paid up shares nor any diminution (reduction) of liability is taking place, therefore, interest of all the creditors of Petitioner No.1 is duly secured; thus Section 99 (about settlement of creditors' objection) of the erstwhile Companies Ordinance, 1984, is not applicable in the present case. Additionally and admittedly, despite public notice in daily Business Recorder as well as to the Pakistan Stock Exchange, no shareholder and creditor has come forward to raise any objection, which is also confirmed by the learned counsel for SECP.

In view of the above and since no objection has been raised by the Regulator-SECP, rather they have supported the case of Petitioners in their parawise comments, therefore, this Scheme of Reduction as contained in the present petition is allowed but with a clarification that it does not adversely affect the interest of any of the creditors of Petitioner No.1.

For the forgoing reasons, the minutes passed in the 12th AGM on 27.10.2016 for reduction of paid-up capital are approved and the petition is allowed. However, the condition of the words "and reduced" as mentioned in Section 98 of the Companies Ordinance, 1984, 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