

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

**J. C. M. No. 04 of 2021**

Date	Order with signature of Judge
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Petitioner : Eleven Stars Securities (Pvt.) Ltd.  
through Mr. Sikandar Khan Advocate.

Date of hearing : 04.10.2022

**ORDER**

**NADEEM AKHTAR, J.** – The petitioner viz. Eleven Star Securities (Pvt.) Limited (**'the company'**) has filed this petition under Sections 89, 92, and 93 of The Companies Act, 2017, (**'the Act'**) seeking confirmation of this Court for reducing its share capital. The company was incorporated on 25.06.2008 under the erstwhile Companies Ordinance, 1984, as a private company limited by shares, and is now existing under the Act. Its authorized capital is Rs.200,000,000.00 divided into 20,000,000 ordinary shares of Rs.10.00 each, which is fully paid-up / subscribed. Thus its paid-up share capital is also Rs.200,000,000.00 divided into 20,000,000 ordinary shares of Rs.10.00 each which is sought to be reduced to Rs.100,000,000.00. After the proposed reduction, the paid-up share capital of the company will be reduced to Rs.100,000,000.00 divided into 10,000,000 ordinary shares of Rs.10.00 each.

2. It is stated that after acquiring membership card of Karachi Stock Exchange Limited, the company commenced its business of stocks brokerage and became an active member of the Stock Exchange ; due to demutualization of the Stock Exchange in the year 2012, the company was issued a Trading Right Entitlement Certificate / Stock Brokering License and shares of Karachi Stock Exchange Limited in lieu of its membership card ; and, in view of the financial crises in the stocks business and strict regulations imposed by the Securities and Exchange Commission of Pakistan (**'SECP'**), the directors of the company decided to halt the brokerage business and since then they are operating the company with their own investment and funds without any borrowings or clientele. The main ground disclosed in the petition for reducing the paid-up share capital of the company is that the business of the company has shrunken and as such a substantial part of its paid-up share capital is not required by the company to carry on its business and operations at the Pakistan Stock Exchange Limited.

3. It is stated in the petition that by virtue of Article 7 of its Articles of Association, the company is authorized to reduce its share capital subject to the confirmation by this Court. In their meeting, the Board of Directors of the company resolved to call an Extra Ordinary General Meeting ('EOGM') of the members of the company for approving the reduction in its paid-up share capital by refunding Rs.100,000,000.00 divided into 10,000,000 ordinary shares of Rs.10.00 each to the shareholders proportionate to their shareholding in the company. Accordingly, a notice dated 08.12.2020 was issued by the company to its members for convening the EOGM on 30.12.2020 for this purpose ; whereafter the EOGM was held on 30.12.2020 wherein it was unanimously resolved by the members to reduce the paid-up share capital of the company, subject to the confirmation by this Court, by refunding the above mentioned amount to the shareholders. The extract of the minutes of the aforesaid EOGM has been filed along with the petition in support of the above contention, which specifically states that the excess paid-up share capital is not required for the business of the company. The petitioner has stated that it does not have any creditor. A copy of the last audited financial statements / balance sheet of the company for the year ended June 30, 2020, has been filed with the petition.

4. The notice of this petition was published in the Gazette of Pakistan dated 07.04.2021, and also in daily newspapers viz. 'The News' dated 17.03.2021 and 'Jang' dated 17.03.2021. The notice was also affixed on the Court notice board and it was issued to the Additional Registrar of Companies too. Para-wise comments dated 08.06.2021 were filed on 15.06.2021 by the Additional Registrar of Companies, In-charge Company Registration Office, Karachi, SECP. It is stated in the comments that the company had a registered charge / mortgage in favour of Karachi Stock Exchange Limited on 31.05.2013, however, the Court may pass such order as may be deemed fit in this matter. Thereafter, the petitioner filed a copy of letter dated 05.04.2021 issued by the Pakistan Stock Exchange stating that they have no objection if the paid-up capital of the company is reduced, however, subject to compliance of their regulations and the law. No objection whatsoever has been received from any quarter to oppose this petition.

5. Section 89 of the Act provides that a company limited by shares, if so authorized by its articles, may by a special resolution reduce its share capital in any way viz. (a) cancel any paid-up share capital which is lost or unrepresented by available assets, and (b) pay off any paid-up share capital which is in excess of the needs of the company. Article 7 of the Articles of Association of the company authorizes the company to increase, consolidate, subdivide, reduce or reorganize its share capital from time to time. Under

Section 92 of the Act, the Court may make an order confirming the reduction of the share capital on such terms and conditions as it may deem fit, if it is satisfied that the conditions with respect to every creditor of the company, mentioned in the said Section, have been fulfilled.

6. As noted above, the company is authorized by its articles to reduce its share capital. The excess paid-up share capital is not required by the company for its business, and it appears that the reduction in its paid-up share capital will not adversely affect the business or operations of the company in any manner. It has been unanimously resolved by the members of the company in the EOGM to reduce the paid-up share capital of the company, subject to the confirmation by this Court, by refunding the surplus amount to the shareholders proportionate to their shareholding. The company does not have any secured or unsecured creditor and the Pakistan Stock Exchange has accorded no objection to the reduction of the paid-up capital of the company ; and, no objection whatsoever has been received from any quarter to oppose the petition. SECP has not disputed any of the submissions made in the petition and or the documents filed therewith, and has stated that this Court may pass such order as it may deem fit in this matter. In the above circumstances, the proposed reduction in the paid-up share capital appears to be just, fair, reasonable and not likely to adversely affect the interest of the shareholders who have themselves resolved to reduce the share capital. Thus, there appears to be no impediment in confirming the proposed reduction in the paid-up share capital of the company. All the requisite formalities under the Act and the prevailing Rules viz. publication of notice of this petition in the official gazette and newspapers, affixation of the notice on the Court notice board and service upon the Additional Registrar of Companies, have been fulfilled.

7. Accordingly, the proposed reduction in the paid-up share capital of the company is hereby confirmed, however, subject to the provisions of Sections 93, 94 and 95 of the Act. The petition is allowed in these terms.

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