

IN THE HIGH COURT OF SINDH AT KARACHI

**J. C. M. No. 35 of 2021**

Date	Order with signature of Judge
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Petitioner : H.P. Byramji & Co. (Pvt.) Ltd.  
through Mr. Sikandar Khan Advocate.

Date of hearing : 09.08.2023

**ORDER**

**NADEEM AKHTAR, J.** – The petitioner viz. H.P. Byramji & Co. (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 21.04.2018 under the erstwhile Companies Ordinance, 1984, as a private company limited by shares, and is now existing under the Act. The objects of the company were / are, inter alia, to conduct / run the Stock Exchange Brokerage Business being Trading Rights Entitlement Certificate (TREC) holder of Pakistan Stock Exchange Limited, and generally to carry on the business of brokerage in stocks, shares, securities, etc. and the other objects set out in its Memorandum of Association. The authorized capital of the company is Rs.200,000,000.00 divided into 2,000,000 ordinary shares of Rs.100.00 each, out of which 1,400,000 have been issued and are fully paid-up / subscribed. Thus, the paid-up share capital of the company is Rs.140,000,000.00 divided into 1,400,000 ordinary shares of Rs.100.00 each which is sought to be reduced to Rs.40,000,000.00 divided into 400,000 ordinary shares of Rs.100.00 each.

2. It is stated that after acquiring membership card of Karachi Stock Exchange Limited, the company commenced its business of brokerage of stocks and securities ; 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 surrender the said Trading Right Entitlement Certificate of Pakistan Stock Exchange with effect from 29.06.2020. The main ground disclosed in the petition for reducing the paid-up share capital of the company is that the core business of the company has shrunken and as such a substantial part of its paid-up share capital is not required to carry on its

business and operations at the Pakistan Stock Exchange Limited ; and, the said paid-up share capital, which is sought to be reduced, is actually surplus to the requirements of the company.

3. It is stated in the petition that by virtue 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 1,000,000 ordinary shares of Rs.100.00 each to the shareholders proportionate to their shareholding in the company. Accordingly, a notice dated 01.08.2021 was issued by the company to its members for convening the EOGM on 23.08.2021 for this purpose ; whereafter the EOGM was held on the said date wherein it was unanimously resolved by the members under Section 89 of the Act 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. 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, 2021, has been filed with the petition.

4. The notice of this petition was published in the Gazette of Pakistan dated 24.11.2021, and also in daily newspapers viz. 'The News' and 'Jang' dated 09.11.2021. 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 06.12.2021 were filed on 15.12.2021 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 29.05.2013. However, no objection has been raised by SECP in their comments to oppose the present petition, and it is stated therein that the Court may pass such order as may be deemed fit in this matter. Thereafter, the petitioner filed a copy of letter dated 13.12.2021 issued by the Pakistan Stock Exchange stating that the mortgage / charge in their favour has been satisfied. 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 18(B) of the Articles of

Association of the company authorizes the company to reduce its share capital in any of the circumstances stipulated therein, however, subject to Section 96 of the Act. 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 proposed reduction in its paid-up share capital will not adversely affect in any manner the business or operations of the company or the interest of its members. 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.

7. 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 themselves have 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.

8. 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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