

IN THE HIGH COURT OF SINDH AT KARACHI

J. C. M. No. 41 of 2022

Date	Order with signature of Judge
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Petitioner : Best Way Exchange Company-B (Pvt.) Ltd.,
through Mr. Ammar Athar Saeed Advocate
a/w M/S Syed Shehryar Raza Zaidi, Muhammad
Usman Alam and Ms. Hamna Faruqi Advocates.

Date of hearing : 17.08.2023

ORDER

NADEEM AKHTAR, J. – The petitioner viz. Best Way Exchange Company-B (Pvt.) Limited (**‘the company’**) has filed this petition under Sections 89 of The Companies Act, 2017, (**‘the Act’**) seeking confirmation of this Court for reducing its paid-up share capital. The company was incorporated on 29.06.2004 under the erstwhile Companies Ordinance, 1984, as a private company limited by shares, and now exists under the Act. The objects of the company, that also acquired a license to act as an Exchange Company ‘B’ Category, were/are, *inter alia*, to set up a country wide network of Exchange Company ‘B’ to deal in sale and purchase of foreign currency notes and coins, subject to the regulations, terms and conditions specified by the State Bank of Pakistan ; and, generally to undertake the business of banking company, banking, leasing, investment or insurance set out in its Memorandum of Association.

2. The authorized capital of the company is Rs.200,000,000.00 divided into 2,000,000 ordinary shares of Rs.100.00 each, which is fully paid-up / subscribed. Thus, the paid-up share capital of the company also is Rs.200,000,000.00 divided into 2,000,000 ordinary shares of Rs.100.00 each that is sought to be reduced to Rs.60,000,000.00 divided into 600,000 ordinary shares of Rs.100.00 each.

3. It is stated that the company initially invested and maintained a higher paid-up capital in order to diversify its business. However, its shareholders have now decided that they will not be engaging in the process of diversification of its business, and therefore, the company has decided to reduce its share capital. It is further stated that in the Extra Ordinary General Meeting (‘EOGM’) of the members of the company held on 28.09.2022 after due notice, for approving the reduction in its paid-up share capital, it was unanimously resolved by the members to reduce the paid-up share capital of the company from Rs.200,000,000.00 to Rs.60,000,000.00 by way of paying off extra paid-up

share capital, subject to the confirmation by this Court. The extract of the minutes of the aforesaid EOGM has been filed along with the petition in support of the above contention.

4. It is contended that Section 89 of the Act empowers the company and Article 6 of its Articles of Association authorizes the company to reduce its share capital subject to the confirmation by this Court. The petitioner has stated that it does not have any creditor and its shareholding is held by private shareholders whose names have been disclosed in the petition. It is further stated that the proposed reduction in the share capital of the company does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital ; and, it does not violate the requirement of minimum paid-up capital of RKR.25,000,000.00 of an Exchange Company 'B'. A copy of the last audited financial statements / balance sheet of the company for the year ending on June 30, 2022, has been filed with the petition.

5. In response to the notice of this petition issued to the Securities and Exchange Commission of Pakistan ('SECP'), comments dated 16.12.2022 were submitted by the Additional Registrar of Companies, In-charge Company Registration Office, SECP, Karachi, on 22.12.2022, confirming the details of the shareholders of the company and that the company does not have any creditor. 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 in this matter as may be deemed fit.

6. Learned counsel for the petitioner requests that as notice of this petition was issued to SECP and no objection whatsoever has been raised by SECP to the grant of the petition, publication of its notice in newspapers may be dispensed with. Section 96 of the Act provides that in the case of reduction of share capital, the Court may require the company to publish, in the manner specified by the Court, the reasons for reduction, or such other information relating thereto as the Court may think expedient with a view to give proper information to the public and the causes that led to the reduction. The object of this Section is clear i.e. to give proper information to the public regarding reduction of capital and the causes that led to the reduction. The word "may" appearing in this Section shows that the provisions thereof are not mandatory, therefore, it implies that publication of the reasons, information and causes contemplated in Section 96 *ibid* can be dispensed with by the Court. In this context Rules 18 and 19 of the Companies (Court) Rules, 1997, **(the Rules)** are relevant. Under Rule 18, every petition, as defined in Rule 5(1) of the Rules,

shall be placed for hearing before the Judge who shall make such orders thereon and give such directions as to the hearing and advertisement of the petition and the notices to be served and such other matters as may seem appropriate to him. Sub-Rule (1) of Rule 19 provides that where any petition is required to be advertised it shall, unless the Judge otherwise orders or the Rules otherwise provide, be advertised in the manner provided in the said Sub-Rule ; and, Sub-Rule (2) of Rule 19 provides that except in the case of a petition to wind up a company, the Judge may, if he thinks fit, dispense with the advertisement required by the Rules.

7. As noted above, the object of publication of the reasons, information and causes contemplated in Section 96 *ibid* is to give proper information to the public that can be dispensed with by the Court. A plain reading of Rules 18 and 19 shows that when a petition filed under the Act is placed before the Court for hearing, the orders and directions regarding the hearing and advertisement of the petition and the notices in respect thereof are to be made by the Court ; and, only such petitions are advertised that are required to be advertised, and advertisement can be dispensed with by the Court even in such petitions, except the petitions to wind up a company. In the instant case, the company is a private company limited by shares having only two shareholders who have resolved to reduce its paid-up share capital ; and, the company does not have any secured or unsecured creditor which fact has not been disputed by SECP. In these circumstances, advertisement of the petition in newspapers for information to general public does not appear to be necessary nor will it serve any purpose. Accordingly, the requirement of advertisement in newspapers in the instant case is hereby dispensed with.

8. 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. 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.

9. As noted above, the company is authorized by its Articles to reduce its share capital. It has been unanimously resolved by its members in the EOGM to reduce the paid-up share capital of the company, subject to the confirmation by this Court, by way of paying off extra paid-up 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. The company does not have any secured or unsecured creditor, and 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 deems fit in this matter.

10. In the above circumstances, the proposed reduction in the paid-up share capital of the company appears to be just, fair, reasonable and is 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. 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.

J U D G E