

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui

J.C.M. No. 3 of 2020

Ali Hussain Rajabali Limited

Date of Hearing: 28.01.2022

Petitioner: Through Mr. Sikandr Khan Advocate.

On Court notice: Security & Exchange Commissioner of Pakistan through Mr. Saad-ur-Rasheed Abbasi, Law Officer.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This petition is being filed by the petitioner company under section 89, 92 and 93 of Companies Act, 2017 for confirmation of the reduction of paid up capital. Security & Exchange Commission of Pakistan has responded in terms of its parawise comments.

2. I have heard learned counsel for petitioner as well as law officer SECP and perused material available on record.

3. The company was incorporated somewhere in November 1995 as limited by shares under the then provisions of Companies Ordinance, 1984, by SECP, having its object to conduct trading in the commodities as authorized by Pakistan Mercantile Exchange Limited and other allied objects, as disclosed in the Companies Memorandum of Association. The authorized capital was 100,000,000 divided into 10,000,000 ordinary shares of Rs.10 each of which 5,000,000 ordinary shares were issued as fully paid. Consequently the issued and paid up capital of the petitioner company was Rs.50,000,000.

4. It appears that after its incorporation the company acquired membership card of Karachi Stock Exchange, as it then was, and became an active member and commenced its operation of share brokerage as well. However due to demutualization of the stock exchange, company the (petitioner) was issued Trading Right Entitlement (TRE) certificates in response to the corporate requirement of demutualization of the stock exchange. It appears that on account of business crunch that concerns with stock Exchange the directors have decided to reduce scale of brokerage business and since they were operating company with their own investment from their own funds and without any borrowing with some selected clients, they opted to reduce the capital and hence this petition.

5. The Company also claimed to have surrendered the TRE and decided to quit Pakistan Stock Exchange brokerage business and to act as member of Pakistan Mercantile Exchange (PME) with business of trading in commodities etc. on account of their reduced business size. now they seek reduction in its paid up share capital as it does not need a substantial paid up share capital which was earlier felt while business of the company was in full swing. The proposed reduction of paid up capital is being done inasmuch as it is not being utilized and is being surplus to the requirement of the company.

6. The company issued paid up capital of Rs.50,000,000 on June 30, 2019 with bonus shares of Rs.10,000,000 by issuance of 1,000,000 ordinary shares of Rs.10/- each as on January 22, 2020 making a total paid up capital of Rs.60,000,000. The company now seeks reduction in its paid up share capital from Rs.60,000,000 to Rs.20,000,000/- i.e. from 6,000,000 to 2,000,000 ordinary shares for the aforesaid reasons and such reduction shall be effected by reducing Rs.40,000,000/- which consequently reduced 4,000,000 million ordinary shares of Rs.10/- each

by proportionately distributing cash to the existing shareholders to the extent of their holdings.

7. The company claimed to have been authorized under Article 6.4 of its Articles of Association to pass special resolution in this regard which it did subject to confirmation of this Court, as required under section 89 of Companies Act, 2017. The Extraordinary General Meeting (EGM) was carried out on 30.01.2020 after issuance of notices dated January 8, 2020 and on the recommendation of the Board of Directors the resolution was passed on 08.01.2020. The Board unanimously through a special resolution passed on 30.06.2020 in terms of Section 89 of the Companies Act, 2017 resolved that the paid up share capital of the company be reduced in terms of the above.

8. From the record in terms of statement as available of 30.06.2019, it is also evident that the current liabilities being accrued expenses and other payable in the sum of Rs.1,09,181/- cash and bank balance of Rs.1,132,094/- have the capacity to pay of all liabilities of the company.

9. The petition was advertised in "Daily News" of March 10, 2020 and was also gazetted on 25.03.2020 but none has appeared to oppose or contest the petition. Notice was also issued to Securities & Exchange Commission of Pakistan who did not raise any objection of any nature whatsoever rather they confirmed to the extent that current liabilities and bank balance disclosed by the petitioner are in conformity with the accounts filed by it for the year ended on 30.06.2019. The regulator SECP also confirmed that there is no secured creditor as per their record.

10. In case for confirmation of resolution of reduced share capital the question for consideration are, should the Court refuse its sanction to the reduction out of regard to the interest of those members of the public who may be induced to take shares in the company; is the

reduction fair and equitable between different classes of shareholders; whether the reduction is shared by all; and is it designed to work justly and equitably and whether it does not involve diminution of the liability in respect of unpaid capital or payment of any shareholder of any paid up capital; and there is evidence regarding loss of capital and non-representation of available assets. None of these impediments exist in the case of the petitioner's company and consequently in view of above proposed reduction in the share capital, as resolved by the company itself, apparently seems to be just, fair and reasonable and not likely to adversely affect the interests of shareholders who have themselves resolved to the approval of this scheme of reduction. The proposal for reduction of share capital is therefore confirmed in terms of the requirements of Companies Act, 2017.

11. Petition stands disposed of in the above terms.

Dated:

Judge