

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.07.2016

DELIVERED ON : 22.07.2016

Coram

The Honourable **Mr.Justice RAJIV SHAKDHER**

C.P.No.171 of 2016

M/s.Pee Yes Yem Hk Holdings Private Limited
14B, Jaganathan Street,
Nungambakkam
Chennai - 600 034.
rep. by Mr.Palavoodu Sultan Mahmood Husain
Director

.. Petitioner

Petitions filed under Sections 100 to 105 of the Companies Act,
1956 to confirm the reduction of share capital.

For Petitioner : Mr.S.P.Muralikrishnan

Mr.G.Venkatesan
Central Government Standing Counsel
for Regional Director
Ministry of Company Affairs,Chennai

ORDER

1. This is a petition filed under Sections 100 to 104 of the
Companies Act, 1956 to obtain sanction of this court qua its prayer

for reduction of share capital obtaining in the books of M/s.Pee Yes Yem Hk Holdings Private Limited (hereafter referred to as the petitioner company).

2. The captioned petition, along with an application being: CA No. 481/2016, came up before this court for hearing, for the first time, on 29.04.2014. This court, on that date, for the reasons given in the order of even date, dispensed with the procedure laid down in Section 101(2) of the 1956 Act. Accordingly, CA No. 481/2016 was disposed of.

2.1. Furthermore, in so far as the captioned petition is concerned, notice was issued to the Regional Director (in short the RD), which was accepted. Direction was also issued for serving a copy of the petition on the Registrar of Companies (in short the ROC). In addition thereto, the petitioner company was directed to carry out publication in the Business Standard (English) and Malai Malar (Tamil).

2.2. Since then, the petitioner company has filed an affidavit dated 11.07.2016 demonstrating publication in the two newspapers

referred to above. The RD has also filed its reply/ affidavit which takes into account the response of the ROC.

3. This petition has, thus, been filed in the background of the following facts:

3.1. The petitioner company was incorporated on 15.06.2011 under the provisions of the 1956 Act as a private limited company. As on 31.03.2015, as per its latest audited balance sheet, it had an authorized share capital of Rs.5 crores, divided into 50,00,000 equity shares of face value of Rs.10/- each. Furthermore, as on that date, it has issued, subscribed and paid-up capital, of Rs.5,00,00,000/- comprising of 50,00,000 equity shares of face value of Rs.10/- each.

3.2. Evidently, the Board of Directors (BOD) of the petitioner company at their meeting held on 08.01.2016 approved the reduction of the share capital in accordance with the provisions of Section 78 read with Sections 100 to 104 of the 1956 Act. Resolution to that effect was passed at this meeting.

3.3. Furthermore, the petitioner company also decided to give a notice to the shareholders for convening an Extraordinary General

Meeting (EOGM), for enabling them, to consider, passing a special resolution qua the proposed reduction in share capital. Accordingly, notices of the EOGM, which was to be convened on 22.2.2016, along with explanatory statements were dispatched to the shareholders of the petitioner company.

3.4. Consequent thereto, on 22.2.2016, the EOGM of the shareholders was convened, whereat a special resolution was passed approving the reduction in the share capital of the petitioner company.

3.5. The said resolution of the petitioner company, for the sake of convenience, is extracted hereinbelow:

"RESOLVED THAT pursuant to the provisions of Sections 100 to 104 of the Companies Act, 1956 and subject to the confirmation of the Hon'ble High Court of Madras, the Paid-up Share Capital of the Company be and is hereby reduced from Rs. 5,00,00,000/- (Rupees Five Crores Only) consisting of 50,00,000 (Fifty Lakhs) Equity Shares of Rs.10/- (Rupees Ten only) each to Rs.4,95,00,000 (Rupees Four Crores Ninety-five Lakhs only) divided into 49,50,000 (Forty-nine lakhs and Fifty Thousand) Equity Shares of Rs.10/- (Rupees Ten only) by

extinguishing the 50,000 (Fifty Thousand) Equity Shares as set out herein below, an aggregate sum of Rs.5,00,000/- (Rupees Five Lakhs only) by adjusting the debit balance in Profit and Loss Account representing the Face Value of Rs.10/- (Rupees Ten only) per share and thereby extinguishing all such 50,000 (Fifty Thousand only) Equity Shares which is lost and is unrepresented by available assets.

S.N o.	Details of Shareholders	No. of Shares being extinguished
1	Mr.Palavoodu Sultan Mahmood Husain	1,000
2	Mr.Pattathu Sultan Mohamed Habibulla Khan	49,000
	Total shares being extinguished	50,000 (Fifty Thousand)

3.6. A perusal of the aforesaid resolution would show that the shareholders at the EOGM, approved reduction of the issued and paid-up share capital of the petitioner company, as obtaining on 31.03.2015, from Rs.5,00,00,000/- to Rs. 4,95,00,000/-.

3.7. Notably, in the petition, it is averred that, since, the petitioner company is expected to generate sufficient cash from its operations to meet its existing requirement, which would include its business operations, it is proposed to reduce the Paid-up equity share capital by Rs.5,00,000/- as on 31.3.2015, as it is in excess of its

needs.

3.8. The petitioner company has obtained a certificate from the Chartered Accountant (CA) dated 23.03.2016, whereby, it is certified that the petitioner company does not have any secured creditor. The CA has also issued another certificate of even date, whereby, it is certified, that the petitioner company owes unsecured debts of Rs.8,16,53,423/. Pertinently, the unsecured creditor is none other than the Director of the petitioner company, who has given his consent to the proposed reduction in the Paid-up share capital.

4. The petitioner company, thus, as indicated right at the outset, moved this Court on 29.04.2016, when notice was issued in the petition. Since then, the RD, as indicated above, has filed its reply. In the reply, the RD observed as follows:

"..... 4. It is respectfully submitted that as per records of ROC, Chennai the company is regular in filing the statutory returns and there is no Investigation is pending against the company.

5. The petitioner company in para 14 of the petition has stated that it does not have any Secured creditor and furnished a certificate from a Chartered Accountant to this effect. It has also enclosed the List of

Unsecured creditors along with the petition.

It is prayed that the Hon'ble High Court be pleased to take the above submissions into consideration and pass such order or orders as deemed fit and proper."

4.1. Learned counsel appearing for the RD submits that the RD has no objection to the sanction sought by the petitioner company to the proposed reduction in share capital.

5. A perusal of the record and the submissions made before me would clearly demonstrate that the petitioner company seeks reduction of its share capital from Rs.5,00,00,000/- to Rs.4,95,00,000/-.

5.1. The reason put forth by the petitioner company for seeking reduction in Paid-up equity share capital is that the Paid-up share capital is in excess by a sum of Rs.5,00,000/-, as it is not represented by available assets. In other words, by seeking reduction of its share capital, the petitioner company seeks to portray a realistic picture of its financials of all stakeholders; an assertion, which I have no reason to disbelieve based on the records presently, produced before me.

5.2. Furthermore, the petitioner company avers that the proposed reduction in share capital will not have any significant impact on the net worth of the company. The record shows that despite accumulated losses incurred by the petitioner company to the tune of Rs.4,07,95,842/- (as on 31.03.2015), its net worth remains positive even after reduction of Paid-up share capital as proposed via the instant petition.

5.3. Besides what is noted above, the shareholders of the petitioner company have also given their approval at the EOGM held on 22.2.2016. There are, in all, two shareholders; all of whom have given their consents to the reduction in share capital. Furthermore, as certified by the CA, there are no secured debts owed by the petitioner company and the only unsecured creditor has given his consent to reduction in Paid-up share capital.

5.4. Furthermore, the petitioner company has the necessary power conferred upon it, under Article 1 of its Articles of Association, a fact, which is not in dispute.

6. Having regard to the aforesaid circumstances, in my view,

there is no legal impediment in the petitioner company seeking a reduction of its Paid-up share capital, which is sought as indicated above, to present, a more realistic picture of its state of affairs. The RD, in its reply/report has not articulated any objection to the proposed reduction.

7. Therefore, for the reasons set out above, the reduction of excess paid-up capital appearing in the balance sheet of petitioner company, as obtaining on 31.03.2015, is approved in terms of the special resolution dated 22.02.2016, passed in the EOGM of its shareholders. Prayer (a) is, accordingly, disposed of.

8. Furthermore, the minutes of the EOGM dated 22.02.2016, (the extract of which is set out herein above, as also in Annexure-L appended to the petition), are approved for registration. Prayer (b) is, accordingly, disposed of.

8.1 Having regard to the overall circumstances, the requirement of adding the suffix "AND REDUCED", while describing the capital structure of the petitioner company is dispensed with.

9. Learned counsel for the RD will be entitled to a fee of Rs.5,000/-, which shall be paid by the petitioner company.

10. Resultantly, the petition is disposed of in the aforesaid terms.

sl

22.07.2016

RAJIV SHAKDHER,J.

sl

Pre-Delivery order in

C.P.No.171 of 2016

Dated: 22.07.2016