

THE REPUBLIC OF UGANDA
IN THE COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
COMPANY CAUSE NO. 08 OF 2022
IN THE MATTER OF MESCHACH LIMITED
IN THE MATTER OF AN APPLICATION FOR AN ORDER OF
CONFIRMATION FOR REDUCTION OF SHARE CAPITAL BY
MESCHACH LIMITED

BEFORE:HON. JUSTICE SSEKAANA MUSA

RULING

The applicant filed an application under section 76 of the companies act 2012 and section 98 of the civil procedure act, section 33 of the judicature act and order 52 rules 1,2 and 3 of the civil procedure rules for orders that ;

- a) The applicant reduction of its share capital pursuant to a special resolution dated 6th September 2020 be confirmed by these honorable court.

- b) Costs of the application are done by the applicant.

The grounds in support of the application were briefly stated in the Notice of Motion and the affidavit in support by the company secretary-OKUMU JOSEPH of the applicant but generally and briefly stated that:

1. On the 6th day of may 2020 the applicant company resolved to reduce to share capital from 2,500,000,000 to UGX 1,900,000,000.

2. It was further resolved that the reduction of share capital be confirmed by court.

3. In line with the section 76 of the companies act 2012. The reduction of share capital must be confirmed by court.
4. The applicants companies' memorandum of association gives it discretion to increase or decrease share capital.

The applicant was represented by Counsel Mukwaya Edward and the company Auditor-Kiwanuka Slyvester

The following issue was formulated for determination;

Whether the applicant is entitled to an order of confirmation of reduction of share capital

The applicant counsel submitted that Article 15 of the Company Articles of Association provides that *the Company may by special resolution reduce its share capital subject to the consent as required by law.*

In addition he referred to Section 76(1) of the Companies Act 2012 which provides that;

Subject to the confirmation by the court, a company limited by shares may if authorized by its articles by special resolution reduce its share capital.

It was counsel's submission that since the Articles of Association allow reduction of share capital and the members have unanimously resolved to reduce the share capital, then it is a proper case where this honourable court should exercise its discretion and confirm the order of reduction of share capital.

Analysis

The applicant's counsel cited section 98 of the Civil Procedure Act and tries to invoke the inherent powers of court. This in my view is superfluous or surplusage since there is specific law governing reduction of share capital under the Companies Act. A party cannot invoke inherent powers where there is a specific provision of the law applicable. In addition, the

procedure for moving court ought to have been by way of a petition and not an application by way of Notice of Motion.

The principles governing reduction of share capital are well set out under the companies' Act 2012 under section 76 and 77. This follows the well known practice of corporate finance law in many of the common wealth jurisdictions. The role of court in the process is meant not to impair the capital of the company through a well reasoned judicial process.

World over, the reasons for reducing share capital are well known and a matter of prudent business practice. The reasons are about three;

To create distributable reserve for payment of dividends or to finance the purchase of companies own shares. The second reason is to pay surplus capital back to share holders whether a company has excess cash or assets, it could cancel shares in return for cash or non cash assets with book value. Lastly a company can seek reduction of share capital where it's apparent that one of the share holders has not paid up for allotted shares.

Therefore, a company may quite legitimately wish to reduce stated capital for accounting reasons, or return surplus capital to shareholders for legitimate business reasons. However, given the overriding concern in corporate law theory with share capital as a creditors' fund, it becomes necessary to balance legitimate business needs to reduce stated capital against the need to protect corporate creditor's interest in the maintenance of the company's capital. See *Unisource Canada Inc v Hongkong Bank of Canada (1998) 43 BLR (2d) 226 Ont Gen Div; varied (2000) 131 OAC 24 Ont CA*

The companies Act section 76(1) (a) allows reduction of share capital for the purpose of extinguishing or reducing the liability in respect of share capital not paid up. Therefore, reduction in share capital in such circumstances should not be applicable once the shares are fully paid up. The applicant in this matter does not state in the application whether the shares were fully paid up.

Secondly, the Companies Act 76(1) (b) also allows reduction of share capital where any paid up share capital is lost or unrepresented by available assets. This is intended to reduce share capital by returning an amount in respect of consideration that the company received for an issued share, whether or not the company purchases, redeems or otherwise acquires any share or fraction thereof that it issued. Reductions in respect of consideration which the company received for an issued share and to reflect an amount not represented by realizable assets are essentially an exercise in restoring reality to the company's accounts.

Thirdly, the Companies Act 76(1) (c) allows reduction in order to pay off any paid share capital which is in excess of the requirement of the company. The share capital may be reduced to reflect an amount that is not represented by realizable assets. The share capital is thus reduced to return to its shareholders any of its assets which are in excess of the wants of the company. Reduction for this purpose caters for occasions where there are legitimate business reasons to return capital to shareholders.

From the memorandum of association put on record the applicant company has three shareholders namely; Piber Gunter, Egesse Abel, and Owori John. However from special resolutions on record, Owori John isn't made reference of. This application is lacking and they have not given any convincing or justifiable reasons why the share capital of this company should be reduced. This court should not be seen to prejudice the rights of a shareholder without any justifying reason.

The general overview for reduction of share capital is that the company should be solvent and the company should not confirm reduction if there are reasonable grounds for believing that the company is either unable to pay its liabilities when they become due or would not be able to do so after the reduction or that the realizable value of the company's assets would be rendered less than the aggregate of its liabilities by the reduction. This would require that the company presents audited books of accounts to satisfy the court that the company is indeed financially sound and not a going concern or that the intended reduction is not made *malafide*.

Much as Article 15 of the Articles & Memorandum of association allows the company to reduce its share capital, I find that no justifiable reasons have been given to court to warrant such a reduction on court record. One of the minority shareholders Owori John, seems to have been left out of the process and yet the document on the court record shows that the process was unanimous. It is the duty of the court to see that the interests of the minority shareholders and or creditors are adequately protected and that there is no unfairness even though this is an internal matter of the company.

In Re OCL India Ltd, AIR 1998 on 153, the company wanted to reduce the company based on a special resolution past. The court held that in order to permit the reduction it is the duty of court to see if the procedure through which the resolutions is to be passed is formally sound and correct. It is also the responsibility of court to see if the scheme is fair or not.

The court declines to grant the application confirming the resolution to reduce the share capital from UGX 2,500,000,000 to UGX 1,900,000,000.

The application stands dismissed.

I so Order

Ssekaana Musa

Judge

2nd September 2022