

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 851
MC24/2021

In the matter between:

IN THE MATTER OF THE COMPANIES ACT, 1972

Applicant

AND IN THE MATTER OF SECTION 63 AND OTHER

APPLICABLE PROVISIONS OF THE COMPANIES ACT

1972 (reduction of Share Capital of Company) RULES, 1972

(rep. by John Renaud)

and

IN THE MATTER OF SWORD INVESTMENT CAPITAL LTD

Respondent

(rep. by Nissa Thompson)

Neutral Citation: *In the matter of Companies Act 1972 v Sword Investment* (MC24/2021)
[2021] SCSC 851 (09th December 2021).

Before: Burhan J

Heard: Application under section 63 of the Companies Act.. Application not in order
dismissed .

Delivered: 09th December 2021

ORDER

BURHAN J

[1] This is an application made under section 63 of the Companies Act for confirmation by the Court of a resolution to reduce the share capital of the Company, Sword Investment Capital Ltd. In support of its application, the Applicant has submitted the Special Shareholders' Resolution where it was resolved that the share capital would be reduced, memorandum and articles of association, and affidavits in support by Nourijan Mahammadi CHAMPIRI and Manavta KISTO, Directors of Sword Investment Capital Ltd.

- [2] Section 64 of the Companies Act provides that where the proposed reduction of share capital involves either a diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, creditors get a say. In this case, it is averred at paragraph 14 of the affidavits in support sworn by Nourijan Mohammadi CHAMPIRI and Manavta KISTO, both being Directors of Sword Investment Capital Ltd, that the proposed reduction does not in any manner whatsoever prejudice or affect the rights of the creditors or any stakeholders.
- [3] The Registrar of Companies intervened in this matter, represented by the Attorney General and raised no objections to this application.
- [4] I do note, however, some discrepancies in the documents in support of this application. The application refers to a resolution passed at an Extraordinary Meeting held on 16th August 2020 where it was resolved, inter alia, that the Share Capital of the Company be reduced to USD200,000 consisting of 200,000 ordinary shares at par value USD1 each. However, the resolution attached to the application reflecting this decision was not dated. The affidavits in support of the application are both dated 15th March 2020. However, the Commissioner of Oaths or Notary Public having attested both affidavits has dated it 15th March 2021. This date appears both next to their signature as well as on the stamp affixed to the affidavits. While this discrepancy in dates could be attributable to a typing error or oversight, given that the directors could not possibly have attested in March 2020 to something that would occur months later in August 2020, there are other discrepancies in dates throughout this application. The Memorandum and Articles of Association of Sword Investment Capital Ltd initially attached to the application appear to be drafts of amended documents reflecting the reduction, as they are dated 12th August 2020. These documents reflect the proposed reduced share capital which was allegedly resolved on 16th August 2020, and yet they are dated prior to that date.
- [5] The Court, having made note of some of these discrepancies, gave the applicant an opportunity to submit further documents in support. The applicant proceeded to file a Special Shareholders Resolution that was dated, as well as the original memorandum and articles of association. The new Special Shareholders Resolution approving the reduction in

share capital is dated 1st June 2020. The application and affidavits in support all allege that the special resolution to reduce the share capital took place on 16th August 2020 (paragraph 10 of Application dated 15th March 2021 and paragraph 12 of affidavit of Mohammadi Champiri and Manavta Kisto dated 15th March 2020 correct date 15th March 2021 as per date appearing with signature). Therefore, the resolution before this Court does not support the averments made in either the application itself or the affidavits in support.

- [6] In light of the fact that the applicant in this matter was afforded an opportunity to file further documents in support after certain discrepancies were pointed out, one cannot overlook these persisting inconsistencies. Whether it be due to an oversight on the part of the applicant or that the Company's records are not in order, the Court cannot overlook this lack of diligence on behalf of the applicant.
- [7] For the above reasons, I cannot confirm the reduction of share capital and I hereby dismiss the application.

Signed, dated and delivered at Ile du Port on 09th December 2021.



M Burhan J