

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**COURT-III**

**NEW DELHI**

**C.P.142 (ND) 2017**

**CORAM: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)**

**Dr. V.K.SUBBURAJ, MEMBER (TECHNICAL)**

**IN THE MATTER OF**

The Companies Act, 2013

And

Section 66 and other applicable provisions of the Companies Act, 2013 read with National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016

And

**TARASPAN SOLUTION PRIVATE LIMITED**

Through its Authorized Representative: Shri. Nihar Ranjan Sahoo

Registered Office:

4<sup>th</sup> Floor, Rectangle No.1,

Behind Marriot Hotel

Saket Commercial Complex,

D-4, Saket, New Delhi-110017

CIN No.: U72300DL2007PTC167395

**....Applicant Company**

**FOR THE APPLICANT** : Mr. Satwinder Singh, Mr. Abhijeet Das, Mr. Saheb Singh Chadha, Advocates

**FOR THE RESPONDENTS:** Ms. Sonam Sharma, Company Prosecutor

## ORDER

**Date: 12.09.2018**

1. Taraspan Solutions Private Limited, a company incorporated under the provisions of Companies Act, 1956 and having its registered office at 4<sup>th</sup> Floor, Rectangle No.1, Behind Marriot Hotel, Saket Commercial Complex, D-4, Saket, New Delhi-110017 has filed this application under section 66 of the Companies Act, 2013 for confirming its reduction of share capital.

2. The facts, in brief, that are necessary for the disposal of this application are as follows :-

(i) That the main objects of the Applicant Company as stated in clause III(A) of the Memorandum of Association of the Applicant Company are as follows:-

*"1.To carry on the business of designing, producing, conceptualizing, marketing, distribution, Business development, licensing, research and development, directly and indirectly, of end to end solutions, software's and services, including fixed and wireless communication and information technology networks for carrier class and business applications.*

*2.To import, export, distribute, service, buy, sell, assemble, install and modify and deal in, directly or indirectly, telecommunication products, information technology products, information technology networks, software and services, their programmes and accessories, components, their inputs, software, assemblies and subassemblies, data processing supplies, appliances, microprocessors, accessories and components of different*



capacities, specifications, applications, descriptions and models of every kind and description in India and abroad.

3.To carry on the business of and to engage in, directly or indirectly, general research and development in the filed of telecommunication products and equipments and related items, development and commercialization of patents, copyrights and other intellectual properties, office, industry and automation equipments, development for industrial and commercial purposes in India and abroad."

ii) The share capital structure of the Applicant Company as on March 31, 2017 is as follows:

Particulars	Amount in INR
Authorized Share Capital (3,00,00,000 Equity Shares of Rs. 10/- each.)	Rs. 30,00,00,000/- (Rupees Thirty Crore Only)
Issued, Subscribed and paid-Up Share Capital (2,78,94,595 Equity Shares of Rs. 10/- each.)	Rs. 27,89,45,950/- (Rupees Twenty Seven Crore Eighty Nine Lakh Forty Five Thousand Nine hundred and Fifty Only)

The post-reduction share capital of the Applicant Company will be as follows:

Particulars	Amount in INR
Authorized Share Capital	Rs. 30,00,00,000/- (Rupees

(3,00,00,000 Equity Shares of Rs. 10/- each.)	Thirty Crore Only)
Issued, Subscribed and paid-Up Share Capital (110,063,020 Equity Shares of Rs. 10/- each.)	Rs. 11,006,302/-- (Rupees Eleven Crore Six Thousand Three Hundred Only)

(ii) It is stated that Article 10 of Article of Association ("**AOA**") of the Applicant Company provides that the Company may, from time to time, by special resolution reduce its capital in any manner permitted by law. The relevant extract of Article 10 of the AOA is reproduced hereunder:

***"Reduction of Capital***

*(10)The company may ( subject to the provisions of the act) from time to time by special resolution reduce its capital and any capital Redemption Reserve Account or Premium Account in any manner for the time being authorised by law and, in particular capital may be paid off on the footing that it may be called up again or otherwise."*

(iii) It is further stated that the Applicant Company had no secured creditor and 08 (Eight) unsecured creditors as on June 27, 2017. The Applicant Company has also filed a



certificate from Suresh Surana & Associates LLP, Chartered Accountants, Statutory Auditors of the Applicant Company dated June 29, 2017, to the effect that the accounting treatment proposed by the Applicant Company for the proposed reduction of its share capital, as envisaged in paragraph 20 of the Application, is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013.

3. The Board of Directors of the Applicant Company it is averred considered and unanimously approved the proposed reduction of issued, subscribed and paid up equity share capital in their meeting held on April 24, 2017 and convened the Extraordinary General Meeting of its shareholders, seeking their approval for the proposed reduction of issued, subscribed and paid up equity share capital by way of a special resolution on May 29, 2017.
4. The shareholding pattern of the Company as on date is given as under:

<b>NAME OF SHAREHOLDER</b>	<b>ADDRESS</b>	<b>NUMBER OF SHARES</b>	<b>PERCENTAGE OF SHARE</b>
PETER SOMMERER	GOLDSCHLAGSTR ASSESS 183/2/9, 1140 WIEN, AUSTRIA	61,470	0.22%
KANANDIA INTERNATIONAL LIMITED	6/7 <sup>TH</sup> FLOOR. DIAS PIER BUILDING LE CAUDAN	2,78,33,125	99.78 %



	WATERFRONT, CAUDAN 11307 PORT LOUIS, MAURITIUS		
	<b>TOTAL</b>	<b>2,78,94,595</b>	<b>100%</b>

5. In the Extra-ordinary General Meeting of the shareholders of the Applicant Company held on May 29 2017, the following resolution was passed unanimously by the shareholders, present and voting, in accordance with section 66(1) of the Companies Act, 2013:

*"RESOLVED THAT pursuant to section 66 , sub section 1 clause b part (i) of the companies act , 2013 read with NCLT rules for reduction in share capital including any statutory amendments or re-amemdments thereof and subject to confirmation by the Nation Company Law Tribunal ("Tribunal" ) and such other terms, conditions, and modifications as may be prescribed by the tribunal, the paid up share capital if the Company is hereby reduced from INR 278,945,950.00( Rupees, Two Hundred Seventy Eight Million Nine Hundred Forty Five Thousand Nine Hundred Fifty Only) comprising of 27,894,595 (Twenty seven Million Eight Hundred Ninety Four Thousand Five Hundred Ninety Five Only) equity shares of INR. 10/- (Ten) each to INR110,063,020 (Rupees One Hundred Ten Million Sixty-Three Thousand Twenty Only) comprising of 11,006,302*

*(Eleven Million Six Thousand Three Hundred Two) equity shares of INR. 10/- (Ten) each by canceling the paid up capital of INR 168,882,930 (Rupees One Hundred Sixty Eight Million Eight Hundred Eighty-Two Thousand Nine Hundred Thirty) which is un-represented by the available assets (Amalgamation Reserves)."*

**"RESOLVED FURTHER, THAT** upon reduction of such share capital, the issued, subscribed and paid-up equity share capital of the company shall stand reduced proportionate to the number of shares of the shareholders so extinguished."

**"RESOLVED FURTHER, THAT** for the purpose of giving effect to the above resolution, Mr. Nihar Ranjan Sahoo, Managing Director of the company and Mrs. Nisha Sharma, Company Secretary of the Company be and are hereby authorized to sign and execute the documents and so all such acts, deeds matters and things as it may as its absolute discretion deem necessary or desirable for effectively implementing the resolution and to settle any question, difficulties or doubts that may arise in this regard as it may in its absolute discretion deem fit."

6. In view of the above resolutions, the Applicant Company proposed to reduce its issued, subscribed and paid up equity share capital from Rs. 278,945,950.00/- divided into 27,894,595 equity shares



of Rs. 10/- each fully paid up to Rs. 110,063,020/- divided into 11,006,320 equity shares of Rs. 10/- each fully paid up of the Applicant Company by cancelling Rs. 168,882,930/- divided into 1,68,88,293 equity shares of Rs. 10/- each fully paid up from its issued, subscribed and paid up equity share capital.

7. The form of the minute proposed to be registered under section 66 (5) of the Companies Act, 2013 is as follows:

*"The issued, subscribed and paid up equity share capital of the Company is henceforth Rs. 110,063,020 (Rupees One Hundred Ten Million Sixty -Three Thousand Twenty Only) divided into 11,006,302 (Eleven Million Six Thousand Three Hundred Two) of equity shares of 10 each, reduced from INR 278,945,950 /- (Rupees Two Hundred Seventy Eight Million Nine Hundred Forty Five Thousand Nine Hundred Fifty Only ) comprising of 27,894,595 (Twenty Seven Million Eight Hundred Ninety Four Thousand Five Hundred Ninety Five Only) equity shares of INR. 10/- ( Ten) each."*

8. This Tribunal in its order dated August 2, 2017 further modified by order dated November 17, 2017 directed the Applicant Company as follows :

- i) The applicant is directed to give notice of the instant application within a period of 7 days from the date of receipt of this order to the Central Government, the



registrar of Companies having jurisdiction over the files of the applicant company as well as to the creditors, if any of the applicant Company.

- ii) The applicant Company is further directed to cause the publication of notice in the prescribed form in English Daily 'Business Standard' and in the Hindi daily 'Business Standard' in the edition in which the registered office of the applicant Company is situated.
- iii) The applicant Company is also directed to upload on the website of the Applicant Company, if any, intimating about the factum of the petition and notice of the date of hearing which is fixed as 10.11.2017.

9. Mr. Nihar Ranjan Sahoo, Authorized Signatory of the Applicant Company has filed a compliance affidavit before this Hon'ble Tribunal on August 16, 2017 in relation to compliance of the directions contained in the aforesaid orders.

10. The RD has submitted its first observation letter with the Applicant dated March 26, 2018 seeking various details about the Application. The Applicant Company duly submitted reply of the same on May 18, 2018. On the other hand, the RoC also submitted its report with the RD dated October 25, 2017. The RoC in para 9 and 10 of its report submitted to the RD, has stated that there are no secured creditor and eight unsecured creditors in the Applicant

Company as on June 27, 2017. Applicant Company has furnished consent letter of the said creditors in regard to the proposed reduction of share capital.

11. The RD relying on the report of the RoC has issued its final representation/observation before this Tribunal on June 4, 2018 stating the following :

*"6. (xvi) The amalgamation Reserve (Debit Balance) was created by the company to accommodate the share capital which was issued in course of earlier Amalgamation with a company. Now the said Amalgamation Reserve (Debit Balance) is sought to be set off with corresponding existing share capital. Therefore, no capital of the company came to be unrepresented by Assets through time or operation of the company, but by virtue of an act of the company on its own violation. Such Reduction is therefore not having merit. Now the company filed application u/s. 66 (1) (b) (i) of the Companies Act, 2013 that the amount is unrepresented by available assets of the company and has sought cancellation of 1, 68, 88,293 shares of Rs. 1, 16, 88, 82,930/-. The Applicant / Petitioners should bring out the valid reasons before the Tribunal for extinguishing liability towards the shareholder. M/s. Kanadinan International Ltd.*



*incorporated in Marutius which is appears to be suspicious in nature.*

In response to the aforesaid observation written submission are filed on behalf of the Applicant Company, stating as follows:

*"3. In this regard, it is humbly submitted that the consideration for the scheme of Amalgamation to be discharged by the Transferee Company by issuance of its equity shares to the shareholders of the Transferor Company was determined by Prakash K. Prakash, Chartered Accountants, Firm Reg. No. 000415N ("**Valuer**") vide their valuation report dated May 2, 2012. IT is noteworthy to mention that the entire share capital of the Transferor and the Transferee Company was held by Kanandia International Limited (a company registered under the laws of Mauritius) being a common parent company. Since the parent company was foreign entity, the valuation methodology adopted by the Valuer for the Scheme Of Amalgamation was done in Compliance of notification no. FEMA 205/2010-RB dated April 7, 2010 issued by the Reserve Bank Of India ("**RBI notification**") following Discounted Free Cash Flow method. A copy of*



*the said Valuation report is enclosed herewith as  
**Annexure- A.***

12. It is to be noted that this Tribunal cannot go into the commercial wisdom of shareholders in relation to acquisition of business as well as in relation to restructuring their capital values. The regulatory authorities or objectors must be able to show that a fraud is being played upon or such exercise is being undertaken to defraud the revenue or to contravene any law including FEMA. Mere suspicion on the part of the RD will not lead to the petition being rejected. In any case the authorities are well within the powers to initiate action against the petitioner in case of infraction and we observe that this order will not stand in the way from doing so.

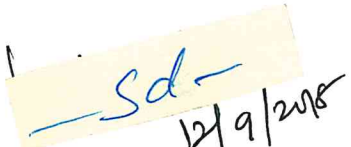
13. In view of the above discussion, and also keeping in view the principles laid down in the order Re: *Wringley India Private Limited, Company Petition No. 516 of 2016* dated 28.07.2017 seem to be satisfied, this Tribunal is of the view that it is just and proper to confirm the reduction of equity share capital of the Applicant Company as resolved by the equity shareholders by passing a special resolution, set out in paragraphs 14 of the Application. This Tribunal also approves the proposed Form of Minutes set out in paragraph 20 of the Application. It is made clear that the confirmation proposed to be granted herein shall be subject to all




compliance with not only FEMA/RBI regulations but also other laws whether it be fiscal or otherwise which may have a bearing on the proposed reduction to equity share capital as enunciated in the petition.

14. Applicant Company shall publish the order of confirmation of reduction of share capital in Delhi editions of Business Standard in English and Business Standard in Hindi and file a certified copy of this order with the RoC within 30 days from the date of this order.

15. This application is disposed of accordingly.

  
**(Dr.V.K.SUBBURAJ)**  
**MEMBER (TECHNICAL)**

  
**(R.VARADHARAJAN)**  
**MEMBER (JUDICIAL)**

U.D.Mehta / K