

**IN THE NATIONAL COMPANY LAW TRIBUNAL,**  
**COURT - V, MUMBAI BENCH**

**C.P. NO. 189 (MB) / 2021**

In the matter of the Companies Act,  
2013

And

In the matter of Section 66 of the Companies Act, 2013 (“Act”) and other applicable provisions of the Act and the rules & regulations framed thereunder

And

In the matter of Reduction of Capital of Traxit Engineers Private Limited, a company incorporated under the Act and having its registered office at #460, Solaris II, Opp. L&T Gate No. 6, Saki-Vihar Road, Powai, Mumbai, Maharashtra – 400 072

CIN: U29297MH1999PTC120710

**TRAXIT ENGINEERS PRIVATE LIMITED**, a company incorporated under the provisions of Companies Act, 1956 and having its registered office at #460, Solaris II, Opp. L&T Gate No. 6, Saki- Vihar Road, Powai, Mumbai – 400 072, Maharashtra.

CIN: U29297MH1999PTC120710

**...Petitioner Company**

**Order delivered on 6<sup>th</sup> January 2023**

**CORAM: Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)**

**Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)**

**Appearances (through video-conferencing):**

**FOR THE PETITIONER COMPANY:** CA Harsh C. Ruparelia, i/b A R C H and Associates, Authorised Representatives for the Petitioner Company.

**FOR THE REGIONAL DIRECTOR (WR):** Ms. Rupa Sutar, Deputy Registrar of Companies

**ORDER**

1. Heard the Learned Authorised Representative for the Petitioner Company and the representative from the Regional Director (WR). No objector has come before the Tribunal to oppose the Petition nor any party has controverted any averments made in the Petition.
2. The Authorised Representative for the Petitioner Company submits that this Company Petition is filed for confirmation of the special resolution passed unanimously by the members of the Petitioner Company to reduce the issued, subscribed and paid-up equity share capital of the Company from Rs.30,00,020 (Rupees Thirty Lakhs Twenty Only) consisting of 3,00,002 (Three Lakhs Two) equity shares of Rs. 10/- (Rupees Ten only) each to Rs.9,00,020 (Rupees Nine Lakhs Twenty only) consisting of 90,002 (Ninety Thousand Two) equity shares of Rs. 10/- (Rupees Ten only) each by paying off, cancelling and extinguishing, in aggregate, subscribed and paid-up equity share capital of the Company, comprising of 2,10,000 (Two Lakh Ten Thousand) equity shares of Rs. 10/- each held by Traxit International GmbH,

by paying off Rs. 1,90,00,000 (Rupees One Crore Ninety Lakhs only). The said special resolution was unanimously approved by the members of the Petitioner Company in its Extra Ordinary General Meeting held on 12<sup>th</sup> February 2021.

3. The Authorised Representative for the Petitioner Company submits that one of the shareholder, Traxit International GmbH, wishes to exit the Petitioner Company and has requested that its investment be extinguished by cancelling its shares and returning its capital along with premium. The other shareholders are agreeable to the same and wish to carry on the existing business within India. Hence, this proposed reduction of share capital of the Company is filed for sanction before this Tribunal.
  
4. The Authorised Representative for the Petitioner Company further submits that it has filed an Affidavit dated 12<sup>th</sup> October 2022 stating that during the pendency of the above Company Petition, Traxit International GmbH (the shareholder whose shares are proposed to be cancelled by way of this Special Resolution) has been merged with another German Company, Kluber Lubrication GmbH vide merger agreement dated 10<sup>th</sup> August 2022. As per the said merger agreement in Germany, all the assets of Traxit International GmbH as on the Effective Date i.e., 1<sup>st</sup> January 2022 shall stand transferred to and in favour of Kluber International GmbH. The notarized copy of the merger agreement along with commercial register of the jurisdictional court in Germany is also submitted along with the Affidavit. In view of the aforesaid merger, the amount payable for the proposed reduction of share capital to “Traxit International GmbH”, Germany shall now become payable to “Kluber Lubrication GmbH”, Germany, upon sanction of the Special Resolution passed on 12<sup>th</sup> February 2021 by this Hon’ble Tribunal. The Affidavit dated 12<sup>th</sup> October 2022 is taken on record by this Hon’ble Tribunal

5. The Authorised Representative for the Petitioner Company that it is authorized by Article 15 of the Articles of Association to undertake reduction of share capital of the Petitioner Company. The extract of Article 15 of the Articles of Association, is as follows:

*“The Company may by special resolution reduce its share capital, capital redemption reserve and share premium account in any manner allowed by law.”*

6. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed its Report dated 26<sup>th</sup> September 2022 *inter-alia* making the following observations in Paragraph 6 and Paragraph 7 (A) to 7(E) to which the Petitioner Company has filed an Affidavit-in-Reply to the observations of the Regional Director, Western Region dated 8<sup>th</sup> December 2022. The observations by the Regional Director (Western Region) and the responses of the Petitioner Company to the same are reproduced hereunder:

<b>Para</b>	<b>Observation by the Regional Director</b>	<b>Response from the Petitioner Companies</b>
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6	<p><i>ROC, Mumbai in his Report No. ROC/JTA/120710/66/324 dated 09.02.2022 inter-alia mentioned that there is no inspection, investigation, inquiry, prosecution pending against the company. Further the ROC, Mumbai has made his observation in para no. 23 of his report and stated that,</i></p> <p><i>Interest of the Creditors should be protected.</i></p> <p><i>May be decided on its merits.</i></p>	<p>As far as the observations of the Regional Director as stated in Para 6 of the report and reproduced hereinabove is concerned, the Petitioner Company will protect the interest of creditors, and their outstanding dues, if any, will be paid off in the ordinary course of business as and when they are due. Further, the Petitioner Company states that the rights of the creditors are not affected as there is no compromise or arrangement with creditors.</p>
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<p>7(A) (i)</p>	<p><i>It is observed that in the proposed scheme the applicant proposes to reduce the issued, subscribed and paid-up equity share capital of the Company from Rs. 30,00,020 consisting of 3,00,002 equity shares of Rs. 10/- each to Rs. 9,00,020 consisting of 90,002 equity shares of Rs. 10/- each by paying off, cancelling and extinguishing, in aggregate, subscribed and paid-up equity share capital of the Company, comprising of 2,10,000 equity shares of Rs. 10/- each held by Traxit International GmbH, by paying of Rs. 1,90,00,000.</i></p> <p><i>(i) The proposed reduction of share capital is selective reduction to one foreign shareholder and against share of Rs. 10/- each, the Petitioner Company is paying to a single shareholder namely Traxit International GMBH @ Rs. 90.47 per share for 2,10,000 equity shares to</i></p>	<p>As far as the observations of the Regional Director as stated in Para 7(A)(i) of the report and reproduced hereinabove is concerned, the Petitioner Company hereby undertakes to duly pay the tax liabilities, if any, arising as a result of the reduction of share capital of the Company, under the provisions of Section 2(22)(d) of the Income-tax Act, 1961 or tax under the provisions of Capital Gains, if any, arising as a result of the proposed reduction of share capital, subject to reliefs, if any, available under the provisions of Double Taxation Avoidance Agreement between the countries or any other provisions of the Income-tax Act, 1961. The Petitioner Company undertakes to comply with all the applicable provisions of the Income-tax Act, 1961 and all the tax issues arising out of the petition of reduction of share capital will be met and answered in accordance with the law. The Petitioner Company undertakes to discharge tax liability</p>
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<p><i>be cancelled under the scheme of reduction. Such payment is being made out of General Reserve (accumulated profit) of the company which is otherwise treated as distribution of dividend and the company/shareholder is liable to pay Income Tax as deemed dividend within the meaning of provisions of section 2(22)(e) &amp; other applicable provisions of the Income Tax Act, 1961. Thus, Hon'ble NCLT may issue notice to Income Tax Department or Petitioner may be directed to obtain NOC from Income Tax Authority as the Petitioner Company has not specifically mentioned in the scheme that company/shareholders will pay income tax an amount to be paid over par value of equity shares.</i></p>	<p>or withholding tax liability, if applicable, on the amounts to be paid to the shareholders pursuant to the reduction of share capital, wherever and in case applicable, to the Petitioner Company.</p>
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7(A) (ii)	<i>(ii) The reduction of capital is selective in detriment and unjust and unfair to the rest of shareholders/members holding equity share capital of the company.</i>	As far as the observations of the Regional Director as stated in Para 7(A)(ii) of the report and reproduced hereinabove is concerned, it is submitted that the concerned shareholders whose capital is proposed to be reduced and all the shareholders of the Company were present at shareholders meeting held on 12 <sup>th</sup> February 2021 and have unanimously agreed for the reduction of their share capital. The minutes of the aforementioned meeting is annexed as <b>Annexure A</b> to the affidavit in rejoinder, which is filed in response to the Report of Regional Director. Without prejudice to the above, the Petitioner Company hereby states that the provisions of Section 66 of the Companies Act, 2013 clearly mention that the Company can undertake reduction of share capital <u>“in any manner”</u> . It is a well settled law that the question of reduction of share capital is treated as a matter of domestic concern and it is the
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		<p>decision of majority, which will prevail. Section 66 of the Companies Act, 2013 clearly stipulates that the reduction can be effected in any manner, therefore selective reduction is permitted in law.</p>
7(B)	<p><i>Applicant to submit an Affidavit to the effect that the interest of the creditors and all stakeholders and Government Revenue are protected as well as statutory dues are paid off.</i></p>	<p>As far as the observations of the Regional Director as stated in Para 7(B) of the report and reproduced hereinabove is concerned, the Petitioner Company vide this affidavit hereby solemnly affirms that pursuant to the reduction of share capital of the Petitioner Company, interest of the creditors, stakeholders and the Government Revenue will not be affected i.e., the Petitioner Company will ensure protecting interest of its creditors, stakeholders and Government and all their outstanding dues, if any, will be paid off in the ordinary course of business as and when they are due.</p>

7(C)	<p><i>The tax implication if any arising out of the proposal for reduction is subject to final decision of Income Tax Authorities. The approval of the Company Petition by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Company after giving effect to the proposed reduction. The decision of the Income Tax Authority is binding on the petitioner Company.</i></p>	<p>As far as the observations of the Regional Director as stated in Para 7(C) of the report and reproduced hereinabove is concerned, the Petitioner Company humbly submits that the approval of the Company Petition by this Hon'ble NCLT may not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Company and its shareholders, after giving effect to the proposed reduction of share capital. The Petitioner Company undertakes to comply with all the applicable provisions of the Income-tax Act, 1961 and all the tax issues arising out of the proposed reduction of share capital will be met and answered in accordance with the law. The Petitioner Company undertakes to discharge tax liability or withholding tax liability, if applicable on the amounts to be paid to the shareholders pursuant to the reduction of share capital, wherever and in case applicable to the Petitioner Company.</p>
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7(D)	<i>Applicant shall undertake to serve notice to RBI as one of the shareholder of company is foreign entity and shall ensure compliance of FEMA/RBI guidelines thereof.</i>	As far as the observations of the Regional Director as stated in Para 7(D) of the report and reproduced hereinabove is concerned, the Petitioner Company humbly submits that the Petitioner Company hereby undertakes to follow the Reserve Bank of India Regulations with respect to Foreign Direct Investment Regulations, as may be applicable, to the proposed reduction of share capital and shall undertake all necessary filings with the Reserve Bank of India for giving effect to the proposed reduction of share capital of the Petitioner Company. Further, the Petitioner Company undertakes to follow directions, if any, issued by the Reserve Bank of India in this regard for compliance with the Foreign Direct Investment regulations.
7(E)	<i>The Petitioner company is violated section 12 of the Companies Act, 2013 as no letter head with Company's details is mentioned at reply letter submitted by Petitioner</i>	As far as the observations of the Regional Director as stated in Para 7(F) of the report and reproduced hereinabove is concerned, the Petitioner Company would humbly like to state that the Petitioner

<p><i>Company dated 21.06.2022, hence petitioner company shall undertake to comply with the provisions of section 12 of the Companies Act, 2013 and made the offence good by filing compounding application.</i></p>	<p>Company has been following the letterhead, as per provisions of Section 12 of the Companies Act, 2013. However, the Advocate appearing for the Petitioner Company duly authorized had made the submissions before the Hon'ble Regional Director, without any malafide intent. We undertake with immediate effect and in our all the future submissions to use Company's letterhead with your good office. In view of our humble submissions hereinabove, the Petitioner Companies requests to not consider the submission as a violation and liable for penalty under the provisions of the Companies Act, 2013 and rules &amp; regulations framed thereunder. Further, the Petitioner Company submits that they hereby undertake to be liable for penal action, if any, or comply with directions of the concerned authorities on the matter and approval of this Proposed Reduction of Share Capital by this Hon'ble Tribunal may not be</p>
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		detrimental to the interest of the concerned authorities.
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7. Considering the entire facts and circumstances of the case, the report filed by Regional Director (Western Region), Affidavit in reply to observations of the Regional Director filed by the Petitioner Company and on perusal of the documents produced on record, the Company Petition is allowed.
8. The Petitioner Company undertakes to file the certified copy of the order and form of minutes duly certified by the Designated Registrar of this Tribunal with the Registrar of Companies within 30 days from the date of receipt of the certified Order from the Registry of this Tribunal.
9. The Petitioner Company to publish notices about registration of order and minutes by the concerned Registrar of Companies in two newspapers namely 'Free Press Journal' in English language and translation thereof in 'Navshakti' in Marathi language both having circulation in the State of Maharashtra within 30 days of registration.
10. All concerned regulatory authorities to act on certified copy of the order, duly certified by designated Registrar of this Tribunal.
11. Ms. Rupa Sutar, Authorised representative of Regional Director, MCA (WR) Mumbai, is present and reported no objections for allowing the Company Petition.

12. Ordered accordingly.

**ORDER**

“The paid-up capital of Traxit Engineers Private Limited henceforth is INR 9,00,020/- (Rupees Nine Lakhs and Twenty Only) divided into 90,002 (Ninety Thousand and Two) equity shares of INR 10/- (Rupees Ten Only) each fully paid-up, reduced from INR 30,00,020 (Rupees Thirty Lakhs and Twenty Only) divided into 3,00,002 (Three Lakhs and Two) equity shares of INR 10/- (Rupees Ten Only), each fully paid-up”

**SD/-**

Anuradha Sanjay Bhatia  
Member (Technical)

**SD/-**

Kuldip Kumar Kareer  
Member (Judicial)