

**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

**ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON 02.11.2022 at 02.00 PM THROUGH VIDEO CONFERENCING**

**PRESENT: JUSTICE RAMALINGAM SUDHAKAR, HON'BLE PRESIDENT
SHRI. SAMEER KAKAR, MEMBER (TECHNICAL)**

**APPLICATION NUMBER :
PETITION NUMBER : CP/129(CHE)/2022
NAME OF THE PETITIONER(S) : Gita Power & Infrastructure Pvt Ltd
NAME OF THE RESPONDENTS :
UNDER SECTION : Sec 66 of CA, 2013 R/w 52 of CA, 2016**

7 CP/129(CHE)/2022

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, CHENNAI**

CP/129(CHE)/2022

*Under Section 66 read with Section 52 and other applicable Provisions of the
Companies Act, 2013*

In the matter of ***Gita Power & Infrastructure Private Limited***

Gita Power & Infrastructure Private Limited

CIN: U40100TN2008PTC068233

Having its Registered office at OPG Nagar,
Periya Obulapuram Village,
Nagaraja Kandigai, Madharapakkam Road,
Gummidipoondi, Thiruvallur – 601 201

... Applicant

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**JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Applicant(s): R.Inbaraju, Advocate

ORDER

***Per:*SAMEER KAKAR, MEMBER (TECHNICAL)**

The instant Application has been filed by the Gita Power & Infrastructure Private Limited under the provisions of Section 66 read with Section 52 and applicable provisions of the Companies Act, 2013, seeking reliefs as follows;

a. That the reduction of Equity share capital of the Applicant Company approved by the Equity Shareholders at the Extraordinary General Meeting held on 19.09.2022 as set out in para 8 above be confirmed by this Hon'ble Tribunal, so as to be binding on all shareholders and creditors of the applicant company;

b. That applying the general reserves account of the applicant company for making payment to the shareholders over and above the securities premium account reduced as approved by the equity shareholders at the Extraordinary General Meeting held on 19th September 2022 set out in para 8 above be confirmed by this Hon'ble Tribunal, so as to be binding on all Shareholders and Creditors of the Company;

c. That this Hon'ble Tribunal may issue notice to Central Government. Ministry of Corporate Affairs, represented by the Regional Director, Registrar of Companies and Creditors of the company:

d. That this Hon'ble Tribunal may issue directions for publication in the newspapers;

e. That to this end all inquiries and directions necessary and proper be made and given:

f. That the applicant company be not required to add the words "and reduced" to its name and;

g. That this Hon'ble Tribunal may pass such further orders as it may deem fit and proper in the facts and circumstances of the case.

2. In respect of the above prayers, the Applicant has made an averment to the effect that on 19th September 2022, a Special Resolution was passed by the Shareholders of the petitioner company at the Extra Ordinary General Meeting (EoGM) held at the Registered Office of the Petitioner Company under Section 66 of the Companies Act, 2013 whereby it was accorded to "adjust Negative Retained Earning of Rs. 640,53,91,464 (Rupees Six

Hundred and Forty Crore Fifty Three Lakh Ninety One Thousand Four Hundred and Sixty Four Only) against the Securities Premium Reserve amounting to Rs. 513,84,18,000/- (Rupees Five Hundred and Thirteen Crore Eighty Four Lakh and Eighteen Thousand Only) and the Remaining loss to be adjusted against General Reserve amounting to Rs. 126,69,73,464/- (Rupees One Hundred and Twenty-Six Crore Sixty Nine Lakh Seventy Three Thousand Four Hundred and Sixty Four Only) thereby aggregating to a sum of Rs. 640,53,91,464 /- (Rupees Six Hundred and Forty Crore Fifty Three Lakh and Ninety One Thousand Four Hundred and Sixty Four Only) by way of capital reduction."

3. The Statutory Auditors of the Applicant Company by their certificate dated 26.09.2022 annexed as Annexure "13" to the Application has confirmed that the Accounting Treatment proposed by the Company is in conformity with the Accounting Standards specified by the Central Government under Section 133 of the Act, 2013.

4. We have perused the application filed by the Applicant along with the annexures. The Authorized capital of the company as on 31.03.2022 is Rs.5,00,00,000 divided into 50,00,000 equity shares of Rs.10 each. The issued, subscribed and paid-up capital of the Company as on 31.03.2022 is Rs. 57,36,710 divided into 5,73,671 Equity Shares of Rs.10 each. There is no change in the Share Capital of the company after 31.03.2022.



5. The Statutory Auditors of the Applicant Company has filed a Certificate which is appended as "Annexure 11" to the effect that the Applicant Company as on 20.09.2022 has 3 Secured Creditor with an outstanding balance of Rs.1,04,94,358/- only and has 135 Unsecured Trade Creditors at an outstanding balance of Rs.4,03,30,024/- only. A perusal of the Articles of Association, more particularly, Article 9.4, discloses that the petitioner company by way of a special resolution can reduce the shares of the company.

6. It was averred in the application that the company has not accepted any deposits and therefore there are no arrears in repayment of any deposit or interest thereon as on the date of Application and a declaration to that effect has been filed by the Directors of the company which is placed at page no 193 to 194 of the typed set of the application and the directors have verified and certified that the company has no arrears in repayment of depositor interest and the same is placed at Pages Nos.195 to 196 of the typed set of the application.

7. In consonance with the provisions of this Act as well as the rules framed thereunder, the company amongst other documents, have also filed a certificate dated 26.09.2022 from the Auditor of the company issued to the effect that the accounting treatment for the Reduction of Share Capital is in



conformity with the Accounting Standards specified by the Central Government under Section 133 of the Act, 2013.

8. Taking into consideration, the application as well as the documents filed along with it, and also the representation made by the Learned Counsel for the applicant company, we order 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, Regional Director, the Registrar of Companies having jurisdiction over the files of the Applicant Company as well as to the creditors of the Applicant company.

ii. The Applicant Company is further directed to cause publication of notice in the prescribed form in English "Business Standard" and in Tamil, "Makkal Kural", where the registered office of the Applicant Company is situated.

iii. The Applicant Company is also directed to upload in their website, if any, intimating the factum of the petition and notice of the date of hearing, which is fixed as **22.02.2023**.

9. The Applicant Company shall file an affidavit confirming the dispatch and publication of notice not later than seven days from the date of issue of such notices. The notices directed to be issued herein by the Applicant shall be given by the Applicant Company whereby the authorities to whom such

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notices are issued shall have atleast three months from the date on which the notice is served on them to file their report/objection, if any.

10. The Application shall come up for hearing on **22.02.2023** by which date the authorities to whom the notice of the Application is directed to be given shall file their objections, if any, failing which it will be presumed that there is no objection to the confirmation of reduction of share capital of the petitioner company as contemplated in the petition.

11. To come up for further hearing and orders on **22.02.2023**.

— Sd —

(SAMEER KAKAR)
MEMBER (TECHNICAL)
MS

— Sd —

(JUSTICE RAMALINGAM SUDHAKAR)
PRESIDENT