

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

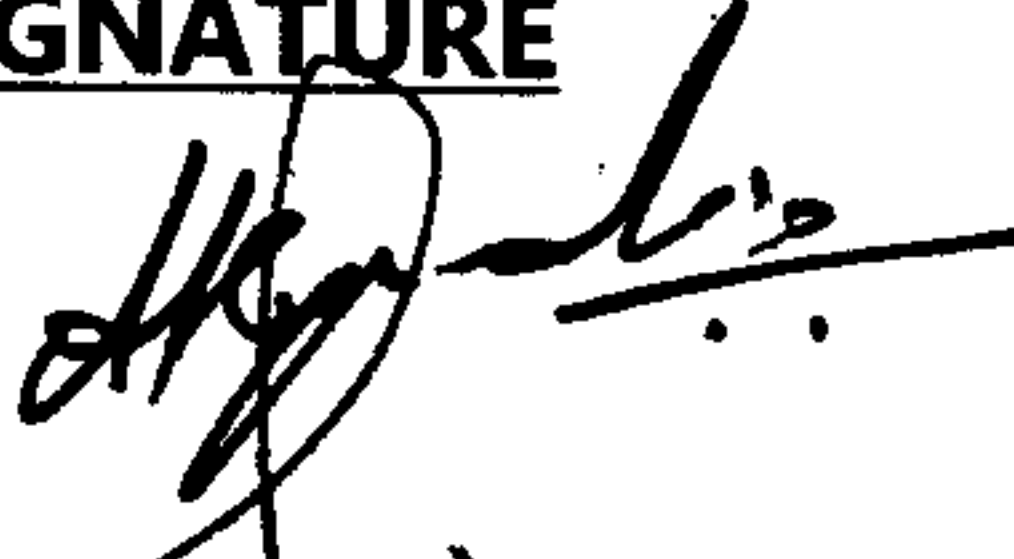

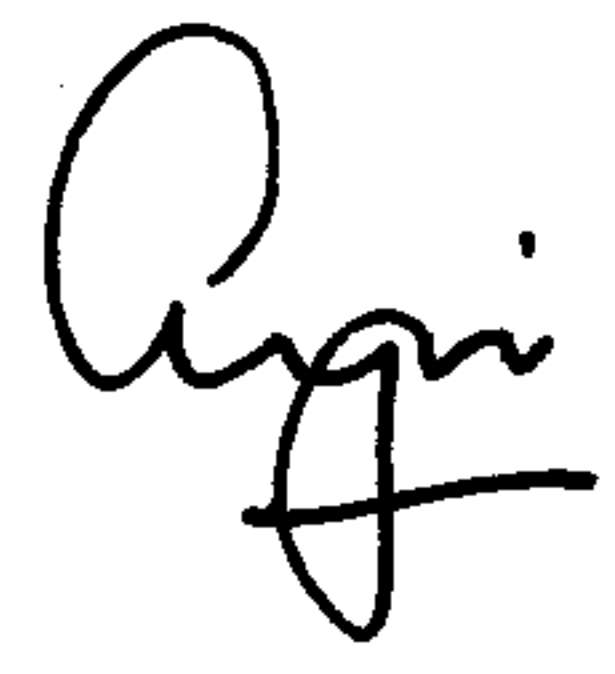
C.P. No. 51/241-242/NCLT/AHM/2018

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 11.06.2018**

Name of the Company: Krishak Bharati Cooperative Ltd.
V/s.
Gujarat State Energy Generation Ltd. & Ors.

Section of the Companies Act: Section 241-242 of the Companies Act, 2013

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Mr. Aspi M. Kapadia	Advocate	Respondent No.2	
2.	MR SAURABH SOPARKAR with MR. VIJAY H. PATEL Mr. Tapan Shah.	Co Adv. } Advocate	Resp. NO 1 Respondent NO.1	
3.	Mr. Mihir Thakore, Sr. Adv.			
4.	Mr. Ashutosh			
5.	Mr. Arun Gupta			
6.	Arjun Joshi			
		ORDER		


Learned Senior Advocate Mr. Mihir Thakore with Messrs Mr. Ashutosh, Mr. Arun Gupta, Mr. Arjun Joshi Advocates is present for the Petitioners. Learned Senior Advocate Mr. Saurabh Soparkar with Messrs Mr. Vijay Patel, Mr. Tapan Shah Advocates is present for the Respondent No. 1. Learned Advocate Mr. Aspi Kapadia is present for the Respondent No. 2.

Reply filed by Respondent No. 1.

An undertaking is filed by Respondent no.2. Copy served to other side.

Interim Order passed and recorded separately.

List the matter on 16.07.2018


MANORAMA KUMARI
MEMBER JUDICIAL


HARIHAR PRAKASH CHATURVEDI
MEMBER JUDICIAL

Dated this the 11th day of June, 2018.

INTERIM ORDER

The present case is taken up due to urgent circulation.

The present Company Petition is filed under Sections- 241-242-244 of the companies Act, wherein notices were directed to be issued to Respondents and pursuant thereto the respondents have caused appearance through their respective counsel. The Respondent no.2 has preferred to file an affidavit in reply opposing in the present company petition including interim relief, being sought for.

We heard at length the submission. Learned counsel appearing for parties e.g petitioner as well as for the Respondents for grant of interim relief of urgent nature or otherwise.

A perusal of the record of the present company petition and the document enclosed therewith, it may be seen that Government of Gujarat, vide its letter dated 20.04.2018, in exercise of power conferred to it under Article-26 of the Article of Association of the Gujarat State Energy & Petrochemicals Department has pleased to direct the Respondent company to offer 22,03,24,753/- number of equity share of Rs. 10 each (as aright share) at par under Section-62(1)(A) of the Companies Act to all the shareholders. Hence, the legality and validity of issuance of such shares by the Respondent company is being challenged by the petitioner and is subject matter of the present company petition.

However, a perusal of the record of the present company petition goes to show that the company petitioner did not chose to implead the State Government of Gujarat, Department of Energy and Petrochemicals as Respondents which prima facie in our view is a proper and/or necessary party for consideration and disposal of the present Company Petition.

Hence, we direct this Registry to issue a formal notice to the State Government of Gujarat, Energy and Petrochemicals Department, Sachivalaya, Gandhinagar through





its Secretary. The petitioner is also directed to forward a copy of the present Company Petition to the State of Gujarat, Energy and Petrochemicals Department and to carry necessary amendment in the present Company Petition. We considered the interim relief as being sought for by the Petitioner in the present Company Petition, who has contended that the last date for closing for subscription/applying for the right issue offered by the Respondent Company and until the rights of Company Petitioner are not determined and decided and offer is allowed to be closed then it would seriously prejudice to the interest of the petitioner. The petitioner has further alleged that the respondents have taken such impugned decision without obtaining express consent from it, which is having 27.90% share for inviting for right issue and if this be allowed to be happened, then the petitioner may be reduced in minority shareholdings. Thus, it would cause serious prejudice and would amount to oppression and against petitioner and mismanagement in the Respondent Company. It is further alleged/contended that the relevant provisions of the Companies Act,2013, are not complied before for taking such decision/action which is now impugned in the present company petition.

In view of this, the petitioner has sought for following direction to be passed from this Court.

- a) *To stay the impugned letter of offer dated 21.05.2018 issued by Respondent No.1 and all other connected acts/deeds/things thereto by Respondents;*
- b) *to declare the resolution as item no.8 alleged to have been passed in the Board meeting dated 12.09.2017 for coming up with the Right issue of shares at par in the Respondent No. 1 as null and void;*
- c) *To restore the representation of the Petitioner on the Board of the Respondent No.1 to three from two in terms of the understanding between parties;*
- d) *Direct the Respondent No. 1 to produce before this Hon'ble Tribunal the original document(s); agreement(s), deed(s), resolution(s), approval etc. entered into with Respondent No.2 on the basis of which the said loan was taken by the Respondent No.1 from Respondent No.2.*
- e) *Direct the Respondent No. 1 not to take further loans, or borrowings in the Respondent No.1 without prior approval of the Audit committee/Board and shareholders of the Respondent No.1;*

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- f) *Grant permanent injunction against the Respondent No. 2 to 3 from interfering in the affairs of the Respondent No. 1 directly or indirectly;*
- g) *Cost of and incidental to this application be paid by the respondents; and/or*
- h) *Pass such other/further order(s)/direction(s), which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*

Having considering this submission put forth before us by the Learned Counsel for the respective parties and during the course of hearing among the respondent gave an assurance cum understanding by the Gujarat State Petroleum Corporation, by its letter of undertaking dated 11.06.2018, which is taken on record the relevant portion of the Respondent No. 2 and is herein reproduced.


a) *The allotment to be made to Respondent No. 2 pursuant to the said offer for right issue of Shares shall be subject to the final outcome of the captioned company petition No. 51 of 2018 and*

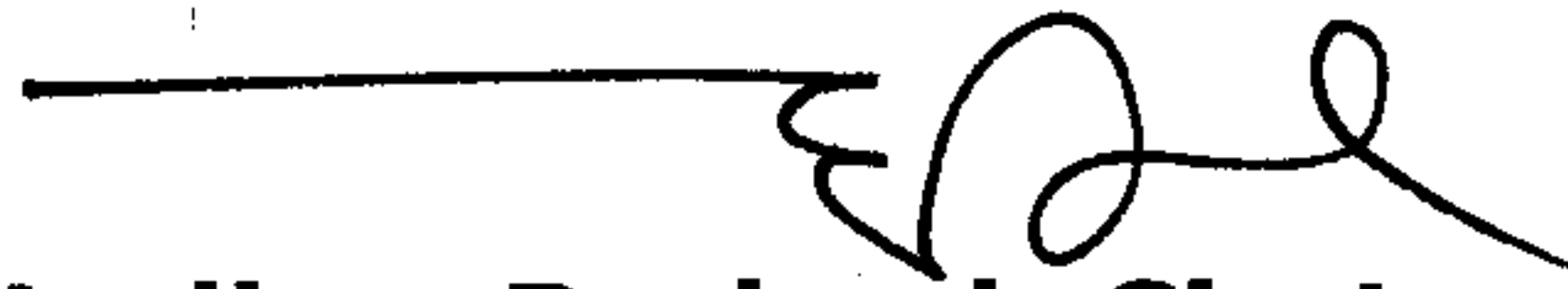
b) *the Respondent No. 2 shall not, during the pendency of the captioned company petition No. 51 of 2018, exercise voting powers in respect of such shares as are allotted to Respondent No, 2 pursuant to the said offer for right issue of shares.*

The under staking shall remain in force until the captioned petition No. 51 of 2018 is disposed of by this Hon'ble Tribunal.

The above facts and circumstances of the instant case, we direct the parties/ Respondents not to make change in Shareholding Pattern and further not to allot, retransfer the proportionate shares under the right issue of the Petition to a third party until further order.

List the matter on 16.07.2018.


**Manorama Kumari,
Member (Judicial)**


**Harihar Prakash Chaturvedi,
Member (Judicial)**

Dated this the 11th day of June, 2018.