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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CA(CAA) No. 100/NCLT/AHM/2017

Coram:

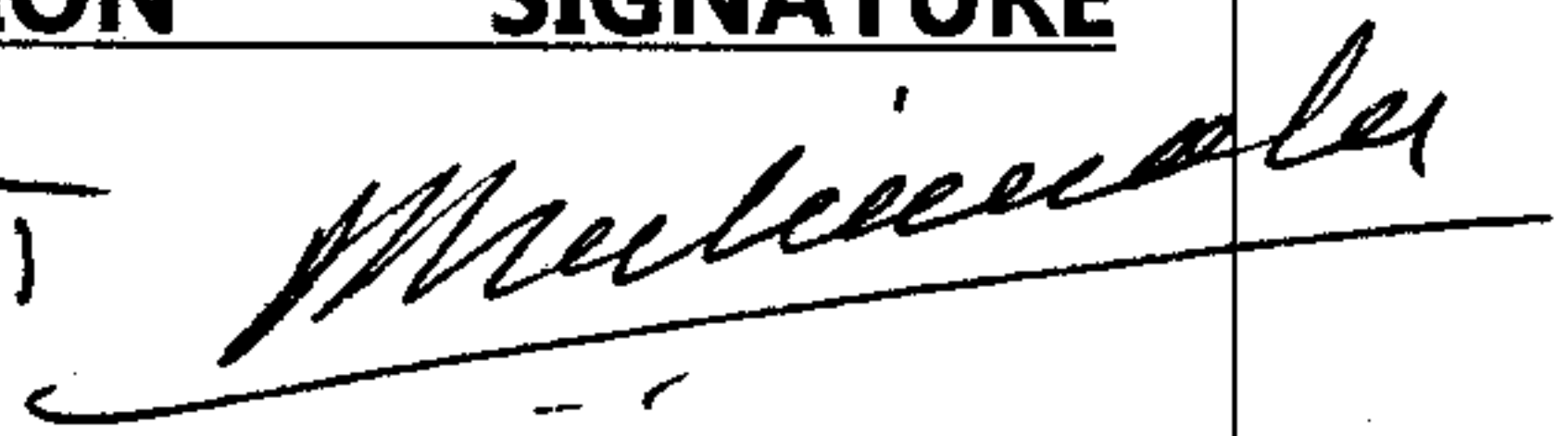
**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 06.11.2017**

Name of the Company: Gujarat Industrial Power Co. Ltd.

Section of the Companies Act: Section 230-232 of the Companies Act, 2013

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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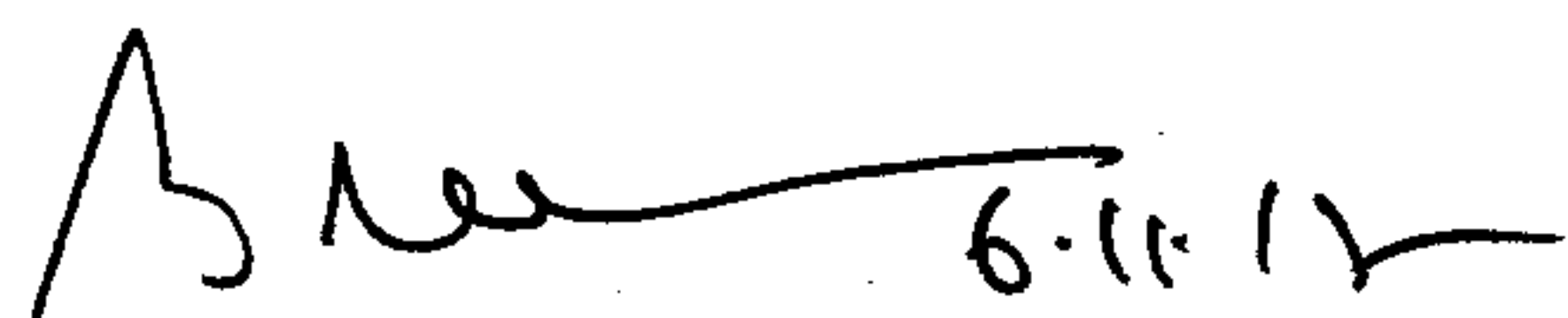
1.	PAYAN S-GODIAWALA	ADVOCATE	APPLICANT	
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2.

ORDER

Learned Advocate Mr. Pavan Godiawala present for Applicant.

Order pronounced in open court. Vide separate Sheets.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 06th day of November, 2017.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

CA(CAA) No.100/NCLT/AHM/2017

In the matter of :-

Gujarat Industries Power Company Limited
A holding company of GIPCL Projects and
Consultancy Company Limited,
CIN: L99999GJ1985PLC007868
Having its registered office at:
P.O. Petrochemical – 391346,
District Vadodara, Gujarat.

... Applicant
(Transferee Company)

Order delivered on 06th November, 2017

Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J)

Appearance:

Mr. Pavan Godiawala, Advocate for the Applicant Company.

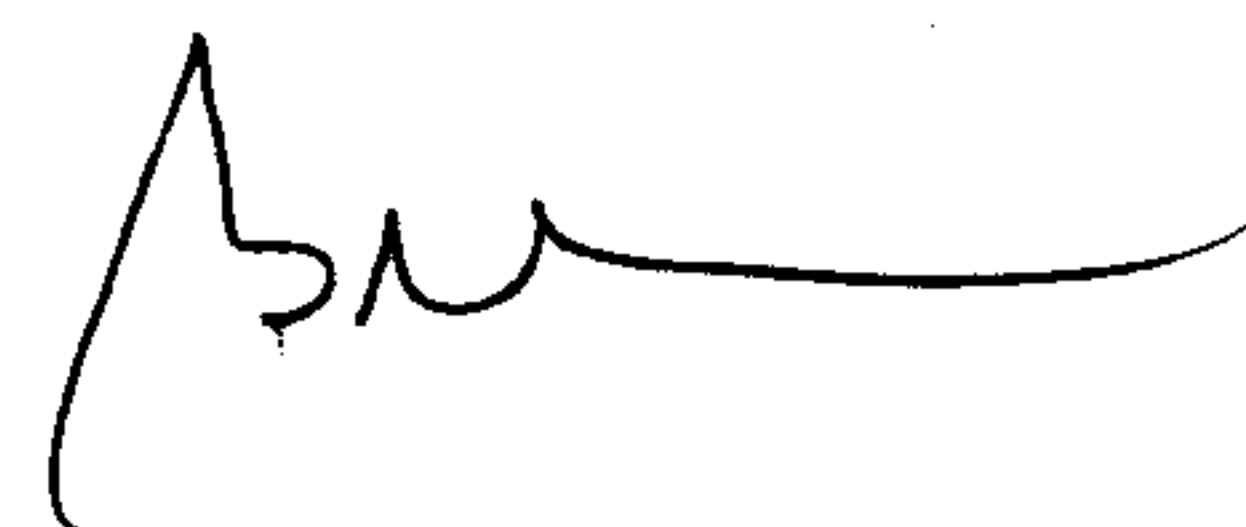
ORDER

1. By this Company Application, the applicant, Gujarat Industries Power Company Limited, is seeking exemption from following the procedure of Section 230-231 of the Companies Act, 2013 for convening and holding of meetings of shareholders and creditors of the Applicant Transferee Company and preferring the petition for sanctioning of the Scheme of Merger of GIPCL Projects and Consultancy Company Limited ("Transferor Company") with Gujarat Industries Power Company Limited ("Transferee Company"), which is at Annexure "C" to the application, as well as seeking dispensation of publication of notice in the newspapers and Government Gazette.

2. GIPCL Projects and Consultancy Company (Transferor Company) Limited is a wholly owned subsidiary of the Applicant Transferee Company and the entire shareholdings of the said

Transferor Company is held by the Applicant Transferee Company and its nominees.

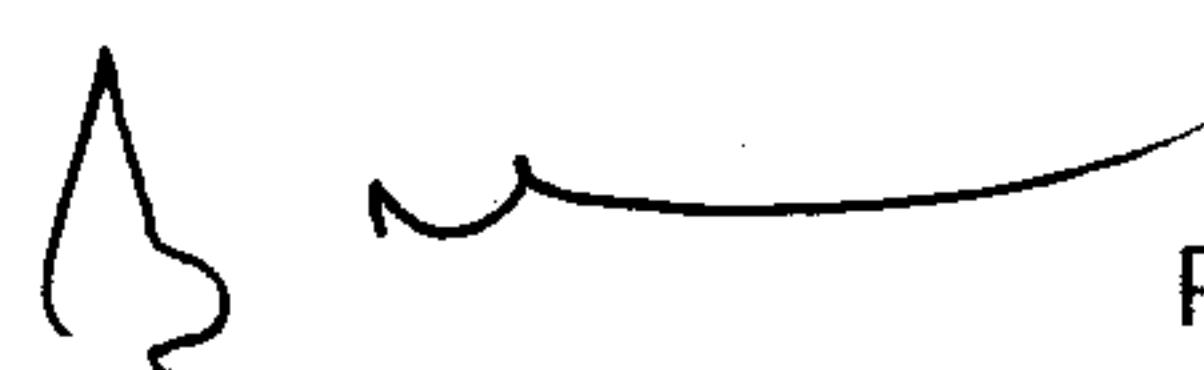
3. The issued, subscribed and paid up share capital of the Applicant Company, as on the Appointed Date, i.e. 1st April, 2016, was Rs.151,25,11,880/- divided into 15,12,51,188 equity shares of Rs.10/- each.
4. According to the Applicant Company, the proposed merger would substantially reduce the duplication of several overhead expenses and formalities and will lead to the economy in the administrative and management costs and also enhances the worth of the holding company, the Applicant Transferee Company.
5. The Board of Directors of the Applicant Company, in its meeting held on the 26th August, 2016, approved the draft Scheme of Arrangement in the nature of merger of GIPCL Projects and Consultancy Company Limited with the Applicant Transferee Company. A copy of the resolution passed by the Board of Directors of the Applicant Company is produced as Annexure "D" to the application.
6. It is stated in the application that no investigation has been instituted or is pending in relation to the Companies under Chapter XIV of the Act or under the corresponding provisions of Sections 235 to 251 of the Companies Act, 1956.
7. It is also stated that no winding up proceedings have been filed or are pending against the Applicant Companies under the Act or the corresponding provisions of the Companies Act, 1956.



8. Heard learned Advocate, Mr. Pavan Godiawala, for the Applicant Company. Perused the Application along with the supporting Affidavit of the Authorised Signatory of the Applicant Company and the annexures annexed thereto.

9. Learned Advocate for the applicant company relying upon decisions of the Honourable High Court of Gujarat submitted that as the applicant transferee company is 100% holding company of its wholly owned subsidiary, i.e. the transferor company, the applicant transferee company may be exempted from following the procedure under Sections 230-231 of the Companies Act, 2013 for convening and holding of meetings of shareholders and creditors of the applicant company and preferring of petition for sanctioning of the Scheme as well as convening of the meeting through postal ballot and e-voting. The applicant company has produced on record consent letters from concerned stock exchanges, viz. BSE and NSE. This submission of the learned counsel for the applicant cannot be accepted for the reason that the decisions of the Honourable High Court of Gujarat relied upon by the learned counsel for the applicant were rendered under Companies Act, 1956 and under new Act of 2013, there is no provision for exempting the applicant company from following the procedure under Sections 230-231 for convening and holding of meetings of shareholders and creditors of the applicant company and preferring of petition for sanctioning of the Scheme as well as convening of the meeting through postal ballot and e-voting.

10. The applicant company has not produced consent letters from its members and creditors for dispensing with their meetings for the purpose of considering and, if thought fit, approving with or without modifications the Scheme. Hence, this Tribunal is of the view that the meetings of members and creditors of the applicant company for the purpose of considering



and, if thought fit, approving with or without modifications the Scheme cannot be dispensed with.

11. Considering the above aspects and the entire material on record, this Tribunal passes the following orders:

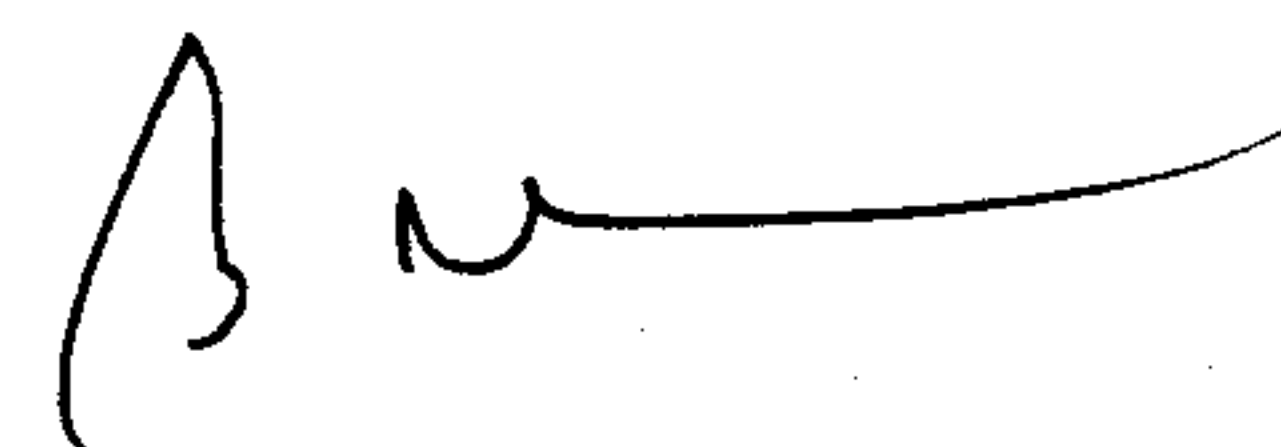
- (1) A meeting of the equity shareholders of the Applicant-company shall be convened and held at Registered office P.O Petrochemical- 391346, District Vadodara, Gujarat on the 26th December, 2017, at 10.00 A.M, for the purpose of considering and, if thought fit, approving the Scheme with or without modification(s).
- (2) A meeting of the secured creditors of the Applicant-company shall be convened and held on the 26th December, 2017, at 12.00 ^{NOON} ~~P.M.~~, at Registered office P.O Petrochemical- 391346, District Vadodara, Gujarat for the purpose of considering and, if thought fit, approving the Scheme with or without modification(s).
- (3) A meeting of the unsecured creditors of the Applicant-company shall be held on the 26th December, 2017, at 2.00 P.M, at Registered office P.O Petrochemical- 391346, District Vadodara, Gujarat, for the purpose of considering and, if thought fit, approving the Scheme with or without modification(s).
- (4) In view of Sections 230(4) and 232(1) of the Companies Act, 2013 read with Rules 5 and 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and Rules 20 and 22 of the Companies (Management and Administration) Rules, 2014, the Applicant-company is required to provide the facility of postal ballot and e-voting to its shareholders. Accordingly, voting by equity

shareholders of the Applicant-company to the scheme shall be carried out through (i) postal ballot and e-voting; and (ii) electronic voting system or ballot or polling paper at the venue of the meeting to be held on the 26th December, 2017. In the case of meetings of secured creditors and unsecured creditors, the voting shall be carried out through ballot/polling paper.

- (5) At least one month before 26th December, 2017, i.e. the date of aforesaid meetings, an advertisement about convening of the said meetings, indicating the day, date, place and time, as aforesaid, shall be published in Indian Express (All editions in English language) and a Gujarati translation thereof in Sandesh (Ahmedabad edition). The publication shall indicate the time within which copies of the scheme shall be made available to the concerned persons free of charge from the registered office of the company. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act and the prescribed form of proxy can be obtained free of charge at the registered office of the Applicant-company in accordance with second proviso to sub-section (3) of Section 230 and Rule 7 of the Companies (CAA) Rules, 2016.
- (6) At least one month before 26th December, 2017, i.e. the date of aforesaid meetings of equity shareholders (including public shareholders), a notice in Form No.CAA.2 convening the said meeting indicating the day, date, place and time aforesaid, containing instructions with regard to postal ballot and e-voting (in case of equity shareholders) together with a copy of the scheme, a copy of the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be

sent to each of the equity shareholders of the Applicant-company at their respective registered or last known addresses either by Registered Post or Speed Post /Airmail or by Courier or e-mail. The aforesaid notice and other documents shall also be placed on the website of the Applicant-company, if any, and the same shall be sent to Securities and Exchange Board of India [proviso to Section 230(3)]. The notices shall be sent to the equity shareholders of the Applicant-company with reference to the list of persons appearing on the record of the Applicant-company and its register as on the date of filing of this application, being a cut of date as prescribed under Rule 20 of the Companies (Management and Administration) Rules, 2014. The aforesaid cut of date would be the date determining the eligibility to vote by the equity shareholders.

- (7) In addition, at least one month before the date of the aforesaid meetings of the secured creditors and unsecured creditors to be held as aforesaid, a notice convening the said meetings, indicating the day, date, place and time, as aforesaid, together with a copy of the scheme, a copy of the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent to each of the secured creditors and the unsecured creditors of the Applicant-company at their respective registered or last known addresses either by Registered Post or Speed Post/Airmail or by Courier. The notice shall be sent to the secured creditors and the unsecured creditors of the Applicant-company with reference to the list of the persons appearing on the record of the Applicant-company as on the date of filing of the application before this Tribunal.

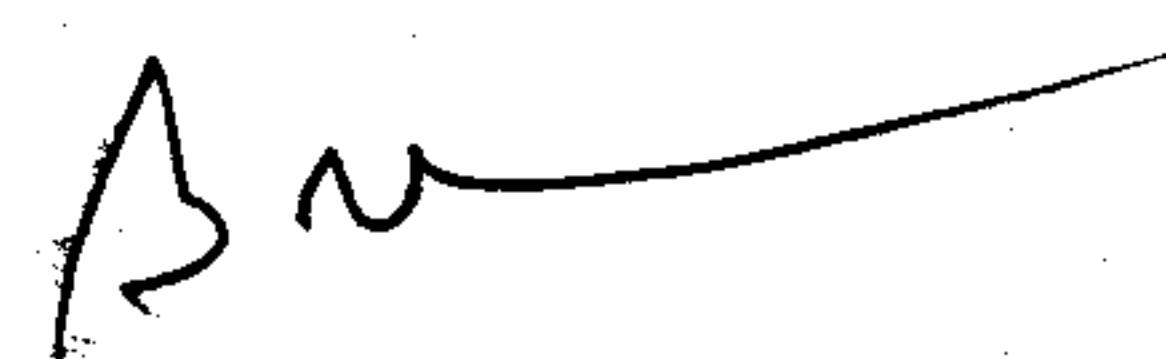


- (8) Mr. Niraj Rudrakant Trivedi, Practising Company Secretary shall be the Chairman of the aforesaid meetings to be held on 26th December, 2017 and in respect of any adjournment or adjournments thereof.
- (9) Mr. Shalin Patel, a Practising Company Secretary, is appointed as the Scrutinizer for the meeting of the equity shareholders (which includes public shareholders) of the Applicant-company including for conducting the postal ballot and e-voting process and also for the meeting of the secured creditors and unsecured creditors of the Applicant-company.
- (10) The Chairman appointed for the aforesaid meetings shall issue the advertisements and send out the notices of the meetings referred to above. The Chairman is free to avail the services of the Applicant-company or any agency for carrying out the aforesaid directions. The Chairman shall have all powers under the Articles of Association of the Applicant-company and also under the Rules in relation to the conduct of meetings, including for deciding any procedural questions that may arise at the meetings or adjournments thereof proposed at the said meetings, amendment(s) to the aforesaid scheme or resolutions, if any, proposed at the aforesaid meetings by any person(s) and to ascertain the decision of the sense of the meeting of equity shareholders by (i) postal ballot and e-voting; and (ii) electronic voting system or ballot or polling paper at the venue of the meeting of the equity shareholders and for the secured creditors and the unsecured creditors by polling paper/ballot.
- (11) The quorum for the meeting of equity shareholders shall be 40 persons present in person. The quorum for the meeting of the secured creditors shall be 2 persons present in

person. The quorum for the meeting of the unsecured creditors shall be 5 persons present in person.

- (12) Voting by proxy/authorised representative is permitted, provided that the proxy in the prescribed form/authorisation duly signed by the person entitled to attend and vote at the aforesaid meetings is filed with the Applicant-company at its registered office not later than 48 hours before the meetings vide Rule 10 of Companies (CAA) Rules, 2016 read with Section 105 of the Companies Act.
- (13) The number and value of equity shares of the equity shareholders or the value of the debts of the secured creditors and unsecured creditors, as the case may be, shall be in accordance with the records or registers of the Applicant-company and where the entries in the records or registers are disputed, the Chairman of the meetings shall determine the number or value, as the case may be, for purposes of the meetings.
- (14) The Chairman to file an affidavit not less than 7 (seven) days before the date fixed for the holding of the meetings and to report to this Tribunal that the directions regarding issuance of notices and advertisement of the meetings have been duly complied with as per Rule 12 of Companies (CAA) Rules, 2016.
- (15) It is further ordered that the Chairman shall, report to this Tribunal on the result of the meeting in Form No.CAA.4, verified by his affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 in Form No.CAA.4 within seven days after conclusion of meeting.

12. In compliance of Sub-section (5) of Section 230 of the Act and Rule 8 of the Companies (CAA) Rules, 2016, the Applicant



Transferee Company shall send a Notice of Meeting under sub-section (3) of Section 230 read with Rule 6 of the Rules in Form No. CAA. 3 along with a copy of the Scheme of Arrangement, the Explanatory Statement and the disclosures mentioned under Rule 6 to (1) the Central Government through the Regional Director, North Western Region, (2) the Registrar of Companies, and (3) the Income-Tax Authorities stating that representations, if any, to be made by them shall be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they have no objection to make on the proposed Scheme. The said Notices shall be sent forthwith by Registered Post or by Hand Delivery at the offices of the authorities as required by sub-rule (2) of Rule 8 of the Rules. The aforesaid authorities, who desire to make any representation under sub-section (5) of Section 230 shall send the same to this Tribunal within a period of 30 (thirty) days from the date of receipt of such notice, failing which it will be deemed that they have no representation to make on the proposed Scheme of Arrangement.

13. This Company Application is disposed of accordingly.

Signature:  6.11.17
[Bikki Raveendra Babu, Member (J)]

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