IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.10.2015

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The Honourable Mrs.Justice PUSHPA SATHYANARAYANA

C.P.No.448 of 2015

Siva Renewable Power and Energy Limited
a Company incorporated under
the Companies Act, 1956 and
having its registered office at
New No.32, Old No.19, Cathedral Garden Road
Nungambakkam, Chennai – 600 034
represented by its Director
Mr.Shankar Varadarajan ..Petitioner

Petition under Sections 101 to 104 of the Companies Act, 1956 and Section 66 of the Companies Act, 2013 read with Rules 46 and 47 of the Companies (Court) Rules, 1959 for confirming the reduction of share capital as approved by the petitioner company in terms of the Special Resolution passed at the Annual General Meeting held on 30th September 2015; and for approving the proposed minute; and also for dispensing with the words "and reduced".

For Petitioner : M/s.K.Ramasamy

For Regional Director : Mr.G.Venkatesan
Central Government
Standing Counsel

ORDER

This petition is filed under Sections 101 to 104 of the Companies Act, 1956 and Section 66 of the Companies Act, 2013 read with Rules 46 and 47 of the Companies (Court) Rules, 1959, for confirming the reduction of share capital as approved by the petitioner company in terms of the Special Resolution passed at the Annual General Meeting held on 30th September 2015 and to approve the form of minute to the effect that,

> *"The Issued, Subscribed and Paid-Up Equity Share Capital of the Company is henceforth Rs.1,85,92,190 (Rupees one crore eighty five lakhs ninety two thousand one hundred and ninety only) divided into 18,59,219 (Eighteen Lakhs Fifty Nine Thousand Two Hundred and Nineteen Only) equity shares of Rs.10 each fully paid up reduced from Rs.61,22,06,070/- (Rupees sixty one crores twenty two lakhs six thousand and sevety only) divided into 6,12,20,607 (Six crores twelve lakhs twenty thousand six hundred and seven only) Equity Shares of Rs.10 each fully paid-up. At the date of registration of this minutes, the*

> *issued subscribed and paid up equity share capital of the Company is Rs.1,85,92,190 (Rupees one crore eighty five lakhs ninety two thousand one hundred and ninety only) divided into 18,59,219 (eighteen lakhs fifty nine thousand two hundred and nineteen only) equity shares of Rs.10 each and are deemed to be fully paid up and the remaining share capital of Rs.63,17,07,810/- divided into 6,31,70,781 equity shares of Rs.10/- each are unissued. ".*

2. The petitioner company was originally incorporated as a Public Limited Company with the name Sterling Bio Diesel Limited on 08.03.2006, under the provisions of the Companies Act, 1956 and then, the name was changed to the present name Siva Renewable Power and Energy Limited with effect from 03.08.2010. The petitioner company is predominantly and currently engaged in generation, transmission, distribution and supply of electricity. The nature of business carried on and the object of the petitioner company is detailed in the Memorandum of Association. Certified copy of the Certificate of incorporation and the Memorandum and Articles of Association are marked as Annexure -1. A

certified true copy of Audited balance Sheet for the year ended 31st March 2015 is annexed as Annexure-2.

3. On 04.09.2015, the Board of Directors of the petitioner company convened a Meeting and vide a resolution considered and approved the proposal to reduce the subscribed and paid up equity share capital of the company. The certified copy of the extracts from the minutes of the Board Meeting of the Company held on 04.09.2015 is marked as Annexure - 3. Annual General Meeting of the members of the petitioner company was convened and held on 30.09.2015 wherein a special resolution was passed, which is annexed as Annexure-5. A copy of the notice for convening the Annual General Meeting on 30.09.2015 and the minutes of the said meeting are marked as Annexures –4 & 6 respectively. The special resolution passed in the Annual General Meeting held on 30.09.2015 is extracted hereunder:-

> ***"RESOLVED THAT*** *pursuant to the provisions of Sections 100 to 104 and other applicable provisions, if any, of the Companies Act, 1956 & Section 66 of the Companies Act, 2013 and any amendments made thereto and other applicable*

provisions, if any, read with Article 15 of the Articles of Association of the Company and subject to confirmation by the High Court of Judicature, Madras ("the High Court") and such other approvals and consents as may be required from various Governments/Statutory Authorities and further subject to such conditions as may be prescribed while granting such approvals, consents and confirmations which the Board of Directors of the Company (hereinafter referred to as "The Board", which term shall include a Committee constituted by the Board for this purpose) may agree and accept, the Subscribed and Paid-up Share Capital of the Company of Rs.61,22,06,070 (Rupees sixty one crores twenty two lakhs six thousand and sevety only) divided into 6,12,20,607 (Six crore twelve lakhs twenty thousand six hundred and seven only) Equity Shares of Rs.10 each fully paid-up be and is hereby reduced to Rs.1,85,92,190 (Rupees one crore eighty five lakhs ninety two thousand one hundred and ninety only) divided into 18,59,219 (eighteen lakhs fifty nine thousand two hundred and nineteen only) equity shares of Rs.10 each *fully paid up and that such reduction be effected by cancelling 5,93,61,388 equity shares of Rs.10 each out of the total paid up share of 6,12,20,607 equity shares of Rs.10 each.*

RESOLVED FURTHER THAT for the purpose of giving effect to this Resolution, any of the Directors and / or the Company Secretary of the Company be and are hereby jointly and severally authorised to make such applications to the High court as may be required and agree to any modifications or conditions that may be suggested, imposed or stipulated by the High Court or any other authority or effect such modifications as may be considered in the best of interest of the Company and its members and to give such directions or instructions as they, from time to time, may think fit or proper (including directions for settling any question, doubt or difficulty which may arise in this regard) and to do all such acts, deeds, matters and things as the Board, in its absolute discretion, may consider necessary, expedient, usual or proper."

4. The petitioner company has only one secured creditor as on 30.09.2015. The certificate of the Chartered Accountant to that effect is enclosed as Annexure-7. There are fifteen unsecured creditors in the petitioner company and the list of unsecured creditors is enclosed as Annexure-8. It is stated in the Company Petition that the proposed utilization of the subscribed and paid up equity capital will in no manner prejudice the creditors of the petitioner company and the proposed reduction of the share capital does not in any way adversely affects the ordinary operations of or the ability of the petitioner company to honour its commitments or to pay its debts in the ordinary course of business. There is no creditor whose name is concealed and who is entitled to be heard or subject to the proposed notional reduction of capital and that there is no misrepresentation about the debt or claim of any creditor and that no official or officer declaring the petition has abated or is privy to any concealment or misrepresentation. The proposed utilization of share capital does not involve diminution of any liability in respect of unpaid share capital of the petitioner company. Hence, the provisions of Section 101(2) of the Act will not be invoked and seek dispensation of the

procedure prescribed under Section 101(2) of the Act, since there is no payment to any shareholder or any paid-up share capital or diminution in the liability in respect of unpaid capital and the interest of the secured and unsecured creditors are not affected.

5. In such circumstances and in the light of the special resolution passed approving the reduction of share capital, this petition is filed before this Court for reduction of share capital and also for approving the proposed minute. The petitioner also seeks liberty of this court for dispensing with the words ‘and reduced’.

6. Publication containing the advertisement of hearing of the petition was effected in one issue of English daily "Business Standard", Chennai Edition, on 16.10.2015 and also in one issue of Tamil daily “Malai Malar”, Chennai Edition on 16.10.2015.

7. Notice has been issued to the Regional Director, Ministry of Corporate Affairs, Chennai, for filing his objection. The Regional

Director has filed his report stating no objection for the proposed reduction.

8. As stated in the petition and as seen from the financial statements filed, the decision taken to have a true reflection of the financial position of the company is purely a commercial decision. Considering the fact that such move has been approved at the Annual General Meeting, apart from the facts that such reduction does not involve the diminution of any liability in respect of unpaid share capital of the petitioner company, and proposed utilization of the subscribed and paid up equity capital will in no manner prejudice the creditors of the petitioner company and the proposed reduction of the share capital does not in any way adversely affects the ordinary operations of or the ability of the petitioner company to honour its commitments or to pay its debts in the ordinary course of business, this Court does not find any impediment in granting the relief prayed for herein. Consequently, this petition seeking approval to the special resolution passed on 30.09.2015 at the Annual General Meeting is hereby granted.

9. Clause (a) of sub Section (2) of Section 102 of the Companies Act, 1956, provides that the Court may, for any special reason, if it thinks proper so to do, direct the company to add the words "and reduced" to its name on the last words thereof during the period commencing from the date of the Court's order till such time as the court specifies in its order. The purpose of such inclusion is only to put on notice the investing public the state of affairs of the company and that it has gone for reduction of the capital. Taking note of the circumstances warranting the course for reduction of capital, the procedure laid down under Section 100 of the Companies Act,1956 fully complied with, there is no impediment in granting the prayer confirming the reduction of share capital as resolved by the company in its special resolution dated 30.09.2015 and also approving the minute. The words "and reduced" pursuant to the reduction approved, is dispensed with. In the light of the above said facts, the prayers sought for herein are granted and the petition is allowed.

10. A certified copy of the order including the minutes as approved be delivered to the Registrar of Companies within twenty one

days and the notice of the registration order by the Registrar of Companies and of the said minutes as approved by this Court be published in one issue of English daily "The New Indian Express" and also in one issue of Tamil Daily "Dinamani" within four weeks from the date of receipt of copy of the order.

11. The petitioner company is hereby directed to pay a sum of Rs.5,000/- (Rupees five thousand only) towards fee to the Central Government Standing Counsel for Regional Director.

28.10.2015

Index : yes / no
Internet : yes / no
mra

PUSHPA SATHYANARAYANA, J.

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