

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 113/2011

Coram:

Shri V.S. Verma, Member

Shri M. Deena Dayalan, Member

Date of Order : 7.8.2013

In the matter of

Approval of panel for appointment as Independent Directors on the Board of Indian Energy Exchange (IEX).

And

In the matter of

Indian Energy Exchange Ltd.

Applicant

ORDER

The petitioner, Indian Energy Exchange Limited ("IEX") was accorded approval by the Commission to establish and operate a Power Exchange vide order dated 31.8.2007 in Petition No. 38/2007. The petitioner started its operation with effect from 27.6.2008. Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (hereinafter "Power Market Regulations") came into force from 21.1.2010. In terms of the first proviso to Regulation 14 of the Power market Regulations, the petitioner is deemed to be registered under the Power Market Regulations.

2. The petitioner is required to comply with *inter alia* the requirements of ownership and governance structure as laid down in the Power Market



Regulations. Clause (ii) of Regulation 22 of the Power Market Regulations provides as under:

"(ii) Independent Directors – At least one third of the members of the Board or a minimum of two directors, whichever is higher, shall be independent directors selected from a panel constituted by the Power Exchange and approved by the Commission out of which one person will have professional qualification and experience in finance. The panel shall be constituted of persons of repute and integrity from academics, professionals, industry representatives, public figures none of whom should have any interest in any Member of Power Exchange and any fiduciary relationship with any shareholder of Power Exchange."

3. Thus according to the above provisions, the petitioner is required to comply with the following requirements while appointing the Independent Directors:

- (a) The number of Independent Directors of the Power Exchange shall be at least one-third of the members of its Board or two whichever is higher;
- (b) The Independent Directors shall be selected from a panel decided by the Power Exchange and approved by this Commission;
- (c) One of the Independent Directors should have professional qualifications and experience in Finance;
- (d) The panel should consist of persons of repute and integrity from academics, professionals, industry representatives, public figures;
- (e) None of the persons in the panel should have any interest in any Member of the Power Exchange and fiduciary relationship with any shareholders of the Power Exchange.

4. The petitioner in its letter dated 20.12.2010 sought approval of the Commission to a panel of four persons. The applicant's letter dated 20.12.2010 was treated as a petition and the petitioner was directed to file additional information in Form 24-AA of the Companies Act, 1956 (Notice by the Interested Directors) in respect of the persons proposed in the panel vide order dated 19.4.2011. The petitioner in its letter dated 25.5.2011 contested the directions of the Commission stating that there is no provision in the Power Market regulations mandating filing of application in accordance with Central Electricity Regulatory commission (Conduct of business) Regulations, 1999 for approval of the panel of Independent Directors and justified its action to seek approval through a letter. The petitioner further submitted that it should not be levied any fee for the purpose. The petitioner however submitted the information in respect of a panel of Independent Directors consisting of four, namely, Shri Venkat Chary, Shri Joseph Massey, Shri S K Tuteja, Mrs Asha Das. The Commission vide its order dated 3.5.2010 in Petition No. 138/2010 had observed that the panel size and actual number of Independent Directors appointed on the Board shall be in the ratio of 2:1. Accordingly, IEX proposed the six additional names for including in the panel for appointment as Independent Directors vide letter dated 7.7.2011. Subsequently, the petitioner filed the necessary information in the form of a petition accompanied by the prescribed fees vide affidavit dated 3.9.2012 in which approval was sought for a panel of Independent Directors consisting of nine persons as per the details given below:



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|-----------------------------|-------------------------|
| (a) Shri Venkat Chary | (f) Shri A. G. Joshi |
| (b) Shri Joseph Massey | (g) Shri P.R. Barpande |
| (c) Mrs. Asha Das | (h) Shri Shashi Shekhar |
| (d) Dr. K. Cherian Varghese | (i) Prof. K T Chacko |
| (e) Shri G. Subbarao | |

5. The petitioner in its affidavit dated 25.6.2013 has submitted the fiduciary declarations in Form 24AA of the Companies Act, 1956 in respect of the above nine persons whose names have been included in the panel for Independent Directors In compliance with Regulation 22(ii) of the Power Market Regulations:

6. We have considered the request of the petitioner and perused the documents on record. As per the petitioner, the Board of Directors of IEX consists of 11 members and therefore one-third of the same comes to 4. We have decided in our order dated 3.5.2010 in Petition No. 138/2010 that the panel should at least be double the number of the Independent Directors required to be appointed. The petitioner has submitted the names of nine eminent persons in the field of business, finance, public service to be included in the panel.

7. The term 'Independent Director' has not been defined in the Power Market Regulations or Companies Act, 1956. The Judicial Dictionary defines Independent Director to mean a non-executive Director who apart from receiving Director's remuneration, do not have any material/pecuniary relationship or

transaction with the company, its promoters, its directors, its senior management or its holding company, its subordinates or associates which in the judgement of the Board may affect the independence of the judgement of the Director. According to Clause 49 of the Listing agreement, the definition of the term 'Independent Director' would mean a non-executive director who:

- (a) Does not have a pecuniary relationship with the company, its directors, its promoters, senior management or affiliate companies;
- (b) Is not related to the promoters or senior management;
- (c) Is not a partner or executive of the auditors/lawyers/consultants of the company for the last three years;
- (d) Is not a supplier, service provider or customer of the company;
- (e) Does not have more than 2% of the shares of the company.

8. Further Regulation 22(ii) of the Power Market Regulations provides that none of the persons in the panel should have any interest in any Member of the Power Exchange and have fiduciary relationship with any shareholders of the Power Exchange and have fiduciary relationship with any shareholders of the Power Exchange. Fiduciary relationship has not been defined in the Power Market Regulations. According to Law Dictionary, fiduciary relationship exists when one person places complete confidence in another person in regard to any particular transaction or general affairs or business. In the context of the Power Market Regulations, none of the persons included in the panel of Independent Directors should have any interest in any member of the exchange or be involved in the general affairs or business of any shareholder of the exchange.

9. In the light of the above requirements for being considered as Independent Directors, the panel of names submitted by the petitioner has been considered:

(a) Shri Venkat Chary (IAS Retd) is an Independent Non-Executive Chairman of the Board of Directors of IEX and Chairman of the Audit Committee of IEX. He holds a masters Degree in Commerce, Bachelor's Degree in Law and Post Graduate diploma in Economics and Finance and has vast experience in corporate matters related to finance, legal and administration. He holds 0.06% of the paid up capital of IEX in his name which is within 2% limit. He is Chairman of Multi Commodity Exchange of India Ltd and Global Board of Trade Ltd. Shri Chary fulfills the conditions for appointment as Independent Director of IEX.

(b) Shri Joseph Massey holds a Master's degree in Economics and Master's degree in Financial Management. He has vast experience in financial services and management of the exchange. He is a non-executive director on the Board of IEX. He is the Managing director and CEO of MCX Stock Exchange Limited, Chairman of MCX-SX Clearing Corporation Limited and Director in 12 other companies including Multi-Commodity Exchange of India Limited. He holds 0.04% of paid-up capital in IEX which is within 2% limit. It is noted that Shri Massey is the Managing Director and CEO of MCX Stock Exchange Limited and Director in a number of companies promoted by Financial Technologies Ltd. Since Financial Technologies Ltd. is holding 33% share in the IEX, we are of the

view that an executive Director in other companies promoted by Financial Technologies should not be appointed as an Independent Director in IEX.

(c) Mrs Asha Das (IAS Retd) holds a masters degree in History and MS in Rural Sociology and Diploma in Development administration and has wide experience administration and social welfare. She is a non executive Director in the Board of the IEX. She holds 0.04% of the shares in IEX which is within the 2% limit. She has no interest in any other company. She fulfills the conditions to be appointed as Independent Director of IEX.

(d) Dr K Cherian Varghese is a Ph. D in Commerce and has wide experience in working in senior positions in Banks. He does not hold any share in the IEX. He has interest in Federal Bank Ltd. as Director/Member Finance Committee and Risk Management committee and in Union KBC Trustee Co. Pvt. Ltd. as Chairman of the Board/Member Audit Committee. He is eligible to be appointed as Independent Director of the IEX.

(e) Shri G Subba Rao, (IAS Retd.) holds a masters degree in Economics, Masters in Rural Development and Post Graduate Diploma in Public administration. He has worked in various capacities in Government including Chairman of Gujarat Electricity Regulatory Commission. He does not hold any share in IEX and does not have any interest in any company. He fulfills the conditions for appointed as Independent director of IEX.

(f) Shri Sashi sekhar, IAS is presently working as Joint secretary in the Ministry of New and Renewable Energy, Government of India. He has vast experience in power sector having worked as Joint Secretary Ministry of Power and DG Bureau of Energy Efficiency. While working as Director in PTC, he has served as a nominee of PTC in the Board of IEX. He holds no share in IEX. Presently he does not have interest in any company. However, as a serving IAS officer, previous sanction of the Government is required under Rule 13(1)(e) of the All India Service (Conduct) Rules, 1968 to take part in the registration or promotion or management of any company registered under the Companies Act, 1956 except in discharge of his official duties. Since the previous sanction of the Govt. is not available, Shri Sashi Sekhar, IAS cannot be appointed as Independent director of IEX.

(g) Shri A S Joshi has a Masters in science and a diploma in Business Management. He has worked in various positions in Bank of Maharashtra. He is Independent Director on the Board of 13 companies at present. He does not hold any share in the IEX. He fulfills the conditions for appointment as Independent Director of IEX.

(h) Shri P R Barpande is a Fellow of Chartered Accountant and holds graduate degree in commerce and law. He has served in various leading business groups in the country. He is not holding any equity share in his name in IEX. Presently he

is serving as Directors in nine companies and Additional director in one company. He fulfills the conditions to be appointed as Independent Director of IEX.

(i) Prof K T Chacko (IAS Retd) holds Masters in Economics and Public administration. He has held several important positions including the post of Director General of Foreign Trade. Presently he is the Director/Vice-Chancellor of the Indian Institute of Foreign Trade (Deemed University). Prof Chacko does not hold any share in IEX or does not have any interest directly or indirectly, through any relative in any company or firm. He fulfills the conditions for appointment as Independent Member of IEX.

9. In view of the above, we accord our approval to the panel of Independent Directors submitted by IEX as mentioned in para 4 above except Shri Joseph Massey and Shri Sashi Sekhar, IAS. The petitioner is directed to submit on affidavit that the persons approved for inclusion in the panel of Independent Directors do not have any fiduciary relationship with any of the existing shareholders of IEX or any interest in any member of IEX within one month of the issue of this order.

10. The Petition No.113/2011 is disposed of with the above directions.

Sd/-
(M. Deena Dayalan)
Member

sd/-
(V.S. Verma)
Member

