

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 216/PX/2011

Coram:

Dr Pramod Deo, Chairperson

Shri S Jayaraman, Member

Shri V S Verma, Member

Shri M Deena Dayalan, Member

Date of Hearing: 27.11.2012

Date of Order : 16.01.2013

In the matter of

Application for grant of permission for setting up and operating a Power Exchange

And in the matter of

Marquis Energy Exchange Limited, Ahmedabad

.....**Petitioner**

Parties present:

Shri Devendra Jain, MEX

Shri Neminath Patil, MEX

Shri Mohmmmed Zaki, MEX

Shri Winston Christian, MEX

Shri S. K. Sinha, MEX

ORDER

The petitioner, Marquis Energy Exchange Limited (MEX for short) has filed the instant petition under Central Electricity Regulatory Commission (Power Market) Regulations, 2010 seeking permission for setting up and operation of a Power Exchange.

2. As per the Power Market Regulations, the following criteria are required to be fulfilled by the applicant for registration for setting up and operation of the Power Exchange:

- (a) A company limited by shares incorporated as a public company or a consortium of companies having an agreement to set up a special purpose vehicle incorporated as a public company limited by shares is eligible to apply for registration under Power Market Regulations. (Regulation 19(i)(a) &(b) of Power Market Regulations).
- (b) The main object of the company shall be to set up and operate the power exchange, though it may have other incidental objects relating to power sector. In that event, the company needs to maintain separate accounts for other businesses. (Regulation 19(ii) of PMR).
- (c) The Company shall have minimum networth of Rs.25 crore and maintain the same throughout the operation of the power exchange after its registration. For calculation of networth of an applicant, the minimum of networth for the preceding three years or for such lesser period for which the applicant may have been registered or formed or incorporated shall be taken into account. In case the power exchange separates its clearance function to a Clearing Corporation, it shall be required to have a minimum networth of ₹5 crore {Regulation 18(i) & (ii) of PMR}.
- (d) The shareholding pattern of equity in the power exchange shall be as follows:
- (i) Any shareholder other than a member can have 25% maximum shareholding whether directly or indirectly;
 - (ii) A member of the power exchange can have a maximum of 5% of shareholding directly or indirectly;
 - (iii) All members shall have a maximum of 49% of the shareholdings directly or indirectly. {Regulation 19(1)(i) to (iii) of PMR}

(e) There shall be clear demarcation between ownership, management/operations and participation in trading. The total strength of the Board of Directors of the company shall be in accordance with the Companies Act, 1956. One third of the directors subject to a minimum of two shall be Independent Directors. Not more than one fourth of the Board of Directors shall be represented by members of the power exchange. {Regulation 22 (i) to (iv) of PMR}

(f) The Managing Director of Power Exchange shall be responsible for day to day operation of the Power Exchange. The Managing Director shall be a professional with adequate qualification and at least 10 years of experience in the relevant field. {Regulation 22(v) of PMR}. The senior management of the Power Exchange shall comprise of at least two full time professional having proficiency in Power System Operations and finance/commerce/accounts. {Regulation 25(i) of the PMR}

(g) The Power Exchange shall function according to the Bye-laws and Rules as approved by the Commission. {Regulation 24 of PMR}

3. The Power Market Regulations provides for the following procedure to be complied with by an applicant for registration of the Power Exchange by the Commission:

“16. Procedure for filing Application

(i) Application for grant of registration to establish and operate a Power Exchange shall be filed in the form of a petition to the Commission in accordance with the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and as amended from time to time.

(ii) The salient details of the applicant, proposed transaction platform and website address where the full application is accessible shall be published in all editions of at least two national daily newspapers including one economic daily newspaper within 7 days of filing of the application inviting public comments/objections, if any, upto a period of 30 days.

(iii) The application as filed and the information as sought by the Commission shall be posted and kept on the web site of the applicant at least for a minimum period of 30 days from the date of publication of notice in newspapers.

(iv) The applicant shall file before the Commission its reply to the objections or suggestions received in response to the public notice within 45 days of its publication in the newspaper.

(v) The Commission after consideration of the objections or suggestions received in response to the notice published by the applicant and his reply may propose to grant registration to the applicant.

(vi) When the Commission proposes to grant registration, it shall publish a notice of its proposal in two daily newspapers, as the Commission may consider appropriate, stating the name and address of the person to whom it proposes to grant the registration with such other details as the Commission considers appropriate, to invite further objections or suggestions to its proposal.

(vii) On consideration of further objections or suggestions received and the reply of the applicant thereto, if any, the Commission may grant registration or reject the application, for reasons to be recorded in writing if the application does not conform to the provisions of the Act or the regulations thereunder

Provided that no application shall be rejected, unless the applicant has been given an opportunity of being heard.

17. Applicants seeking registration to set up and operate a Power Exchange shall submit the following documents along with the application, to the Commission:

(i) Memorandum and Articles of Association of the company making the application;

(ii) In case of a consortium of companies, a formal agreement amongst the members of the consortium to set up a Power Exchange shall be submitted;

(iii) Details of the existing business of the consortium members;

(iv) Copies of the Annual Report and/or audited accounts of the applicant for the last three years, to the extent applicable;

(v) A Project Report containing the following details:

(a) Constitution of the proposed Power Exchange;

(b) Funding sources of the proposed Power Exchange;

(c) Management and Administrative structure of the proposed Power Exchange;

(d) Infrastructural facilities available/proposed to be acquired by the Power Exchange;

(vi) The draft rules of the proposed power Exchange relating in general to the constitution of the proposed Power Exchange and in particular, that relating to:

I. The board of directors of the Power Exchange, its constitution and powers;

II. Management of the Power Exchange and the manner in which its business is to be transacted;

(vii) The draft bye laws of the proposed Power Exchange covering the aspects specified in Regulation 24 hereof.

4. The petitioner submitted its application for registration as a power exchange vide its affidavit dated 21.11.2011. The application contained the following documents:

- a) Certificates of incorporation, Memorandum and Articles of Association
- b) Networth
- c) Audited balance sheet with IT return 2010-11
- d) Details of shareholding pattern
- e) List of shareholders
- f) Introduction of the company and Organization structure
- g) Approach and Methodology
- h) Resume of Executives
- i) Board Resolution for undertaking Power Exchange License
- j) Affidavit for not undertaking Transmission Business/License
- k) Rules, Bye Laws and Business Rules of MEX

5. The petitioner published a notice about the application in Business Standard on 29.11.2011 and in Financial Express on 1.12.2011. Indian Energy Exchange in its letter dated 17.12.2011 had submitted that the address of the Commission given in the public notice is not correct and the application cannot be downloaded from the website of the petitioner. The petitioner vide its affidavit dated 20.12.2011 placed the copies of the newspaper clippings of the public notice issued and the corrigendum to the public notice rectifying the address of the Commission published on 8.12.2011. The petitioner in its

affidavit dated 16.1.2012 submitted that it had rectified the address by issuing the corrigendum to the public notice. Vide its affidavit dated 17.1.2012, the petitioner has submitted that it had not received any objections/suggestions from any person in response to the public notice. The Commission has not received any suggestions/objections to the public notice.

6. Regulation 21(i) of the Power Market Regulations provides as under:

“(i) The Commission may, after making such inquiries as may be necessary in this regard and after obtaining such further information as it may require, grant registration subject to such conditions as deemed fit, for setting up and operation of a Power Exchange.”

7. In the light of the above provisions, the staff of the Commission carried out the technical validation of the application and various documents submitted by the petitioner to ascertain that the application conforms to the requirements of the Power Market Regulations for grant of registration for setting up of the power exchange. The process continued for almost a year as described as under:

(a) The petitioner was asked to submit certain clarification vide letter dated 22.12.2011 and was asked to make a detailed presentation before the staff of the Commission covering on the overall business model ,bidding process and price discovery methods in different methods , margining and risk management, clearing and settlement process, Settlement guarantee fund and default handling mechanism, membership criteria, IT and technology of the proposed Exchange.

(b) The petitioner made a presentation before the staff of the Commission on 2.2.2012. The gaps observed in the proposal of the petitioner were pointed out during the

presentation. Further clarifications covering such aspects as MEX holding inter-State trading licence and how demarcation between ownership/management/operations of the power exchange and its participation in trading in the exchange would be ensured, information related to core business of its anchor shareholders, relationship between the different shareholders, details of IT infrastructure and experienced senior management were asked vide letter dated 1.3.2012. The information was submitted by the petitioner vide its affidavit dated 15.5.2012.

(c) After examination of the documents submitted, the petitioner was asked vide letter dated 27.7.2012 to submit further clarifications on its compliance to shareholding structure prescribed under the Power Market Regulations, the details of business of promoters, details of technology partnerships.

(d) In response to the letter for clarification, the petitioner submitted its revised documents on 14.8.2012. The Staff of the Commission had discussion with the officials of MEX on 21.8.2012 in which pending compliances of Power Market Regulations were highlighted followed by a letter dated 13.9.2012. The major non-compliances pointed out were as follows:-

(i) Mr. Devendra G. Jain and Kalpana D. Jain are the promoters of the company and together are holding 51.17% of the total shareholding. They have a husband and wife relationship and hence a common economic interest. As per Regulation 19 of CERC (Power Market) Regulations, 2010, an individual entity cannot hold more than 25 % equity in the power exchange. This would be construed to be parties “acting in concert” and having a higher share holding than prescribed in the regulations.

(ii) Another promoter M/s Gas Alberta Energy Private limited has 22.45 % stake. The nature of business of this company and the promoter details need to be submitted by MEX and verified. Similarly M/s. Gujarat Solar Pvt. Ltd. is the other promoter of MEX. Their promoters and nature of business needs to be provided. A due diligence of the promoter is important as trading members deposit a large capital with the exchange and exchange as a trustee of this money should keep it in safe custody.

(iii) MEX is a Category III Trading licensee. If the same company operates an Exchange, there may be conflict of interest in these two businesses. Also, as per Regulation 19 (ii), a Trading member of the exchange cannot hold more than 5 % equity in the exchange. This will be triggered in case the licensee entity takes up membership in the exchange.

(iv) As per the Power Market Regulations, the CEO cum Managing Director with the minimum of 10 years of experience and at least two full time professional employees, one power system expert and another expert in the area of finance, commerce, accounts with minimum 10 years experience are required to be employed. Confirmation letter and acceptance of appointment by the senior management- CEO, COO, Head of Business- are required to be submitted. The petitioner was asked to make the presentation on the Business model of MEX by the appointed senior management (who are expert in power /finance) since the representatives of the petitioner could not satisfactorily explain the viability of the proposed business model.

(v) The petitioner was asked to corroborate its claims regarding its technology partnership with TCS and IIT Bombay and consultancy services of M/s Deloitte with supporting documents.

(vi) The petitioner was asked to confirm that it is a company limited by shares and incorporated as a public company in terms of Regulation 15 (i) (a) of the Power Market Regulation.

(e) The petitioner submitted its reply on 23.11.2012 giving information on the above points. In its letter dated 27.11.2012, the petitioner sought time to submit its networth certificate from the statutory auditor.

8. The petition was taken up for hearing on 27.11.2012. During the course of the hearing, the representative of the petitioner in response to our query submitted that senior management team has been appointed and the Chief Operating Officer and Head of Business were present in the hearing. As regards the shareholding of 25% each by Mr. Devendra Jain and Mrs Kalpana Jain, it was submitted that the shareholding of both partners has been reduced to 13% and 12% respectively. We had pointed out that the petitioner company did not meet the networth requirement of Rs.25 crore as required under the Power Market Regulations and directed the petitioner to comply with the requirement and submit audited balance sheet in support of the networth.

9. The petitioner has submitted the required information as per the Record of Proceedings for the hearing on 27.11.2012 vide its affidavit dated 14.12.2012.

10. We have perused the application of the petitioner and all the documents submitted by the petitioner in response to the queries and discussion with the staff of

the Commission and in response to our queries during hearing. The petitioner has complied with the procedural requirements of issuing public notice about the application, hosting the application on its website etc. No comments/suggestions/objections have been received in response to the public notice. On perusal of the certificate of incorporation of the petitioner company, we notice that the company was originally incorporated as World Solar Power Private Limited on 28.3.2011. The company has changed its name to Marquis Energy Exchange Limited and a fresh certificate of incorporation was issued on 18.11.2011 by the Registrar of Companies, Maharashtra, Mumbai. Though in its affidavit dated 24.11.2012, the petitioner has claimed it to be a company limited by shares and incorporated as a public company. From the website of the Ministry of Corporate Affairs, it is seen that the status of the company is public limited company. So therefore, the company fulfils the requirement of the Regulation 19 (i) (a) and (b) of Power Market Regulations.

11. The petitioner had submitted the shareholding pattern in its application filed vide affidavit dated 24.11.2011 as under:

| Sl. No. | Name of Shareholder | % of shareholding |
|----------------|--|--------------------------|
| 1 | Devendra G. Jain | 26.32 |
| 2 | Kalpana D. Jain | 24.85 |
| 3 | Gas Alberta Energy Pvt. Ltd. | 22.45 |
| 4 | Gujarat Solar City Corporation Pvt. Ltd. | 25.51 |

Subsequently, the petitioner vide its affidavit dated 12.12.2012 has submitted the revised shareholding pattern as given overleaf.

| Sl. No. | Name of Shareholder | % of shareholding |
|----------------|---|--------------------------|
| 1. | Matrubhumi Seva Trust | 14.11 |
| 2. | Devendra Raol | 10.08 |
| 3. | Gujarat Solarcity Corporation Pvt. Ltd. | 9.60 |
| 4. | Navin Patel | 7.52 |
| 5. | Arvind Lunkar | 4.31 |
| 6. | Jitendra Shah | 4.25 |
| 7. | Gautam Shah | 4.08 |
| 8. | Mayank Bafna | 4.03 |
| 9. | Mukesh Jain | 4.03 |
| 10. | Pradip Bhansali | 4.03 |
| 11. | Tapsi Chopda | 4.03 |
| 12. | Vijay Jain | 4.03 |
| 13. | Sanjay Khanna | 3.91 |
| 14. | Gajendra Mehta | 3.83 |
| 15. | Hiralal Salecha | 3.67 |
| 16. | Bhanupratap Singh | 2.94 |
| 17. | Sanjay Soni | 2.90 |
| 18. | Rajendra Vadodariya | 2.46 |
| 19. | Kushalkumar Bhansali | 2.42 |
| 20. | Kishor Jain | 2.39 |
| 21. | Dipak Shah | 1.15 |
| 22. | Ashwinbhai Patel | 0.05 |
| 23. | Aditya A. Patel | 0.05 |
| 24. | Jay A. Patel | 0.05 |
| 25. | Kundanben A. Patel | 0.05 |
| 26. | Rajul Sheth | 0.04 |
| 27. | Bhagyesh Soneji | 0.00 |
| 28. | Arvindkumar Shah | 0.00 |
| | Total | 100 |

It is observed that though the shareholding of each of the partners has been kept below 25% as required under the Power Market Regulations, the shares of the original shareholders have been transferred to entities/individuals mentioned above. The Power Market Regulations provide that no shareholder can hold more than 25% share directly or indirectly in the company seeking registration as a power exchange. The petitioner has not furnished the details of the relationship between these shareholders and in the absence of these details, compliance of Regulation 19(1)(i) cannot be verified.

12. As per Regulation 18(i) of the Power Market Regulations, a power exchange shall always maintain a minimum networth of ₹ 25 crore. Networth has been defined in Regulation 2(v) of the Power Market Regulations as under:-

"Networth means aggregate value of the paid up equity capital and free reserves (excluding reserves created out of revaluation) reduced by the aggregate value of accumulated losses, deferred expenditure (including miscellaneous expenses) not written off and loans and advances to the associates"

The petitioner vide its letter dated 11.5.2012 had furnished a networth certificate issued by a Chartered Accountant wherein the paid up capital of the company was shown as ₹37.12 crore without supporting audited balances and other relevant documents. The petitioner has submitted the balance sheet for the year 2011-12 vide its letter dated 23.11.2012. The computation of networth on the basis of the said balance sheet is as under:

| (₹ in lakhs) | |
|---|----------------|
| Particulars | 2011-12 |
| Share Capital | |
| Paid up Capital | 1500 |
| Share Premium | 0 |
| Reserve and Surplus | -60.67 |
| Sub Total 1 | 1439.33 |
| Misc. Expenses to the extent not written off or adjusted | 0 |
| Loans and Advances to associates | 0 ** |
| Sub Total 2 | 0 |
| Net worth (1-2) | 1439.33 |

** The applicant has not given the details of Loans and Advances given to associates. However, as per balance sheet there are Inter- Corporate deposits amounting to ₹ 15.89 crore. If the same is considered as Loans and Advance to associates, the net worth of the applicant as on 31.3.2012 is worked out to (-) ₹ 1.50 crore.

The applicant has submitted Audited Special Balance Sheet as on 12.12.2012 vide affidavit dated 12.12.2012 and the networth certificate vide letter dated 12.12.2012. On scrutiny of the said documents, it is observed that as per the networth certificate dated 12.12.2012, the paid up capital of the petitioner company is ₹24.81 crore which is in contradiction to the figures of the paid up capital of ₹37.12 crore as given in the CA certificate dated 11.5.2012. Since there was contradiction in the figures of the paid up capital of the petitioner company, the status was verified from the website of the Ministry of Corporate Affairs. It has come to light that the authorized capital of the petitioner company is ₹25 crore and paid up capital is ₹15 crore as on 20.12.2012. It appears that the petitioner company has been submitting contradictory information regarding its networth at different point of time. Notwithstanding the same, the networth of the petitioner company has been calculated on the basis of the balance sheet as on 12.12.2012 as given as under:-

| (₹ in lakh) | |
|--|-------------------|
| Particulars | 12.12.2012 |
| Share Capital | 2481.37 |
| Paid Up Capital | 536.22 |
| Reserve and Surplus | -73.78 |
| Subtotal 1 | 2943.81 |
| Misc. Expenses to the extent not written off or adjusted | 0 |
| Loans and Advances to associates* | 2968.49 |
| Subtotal 2 | 2968.49 |
| Net worth (1-2) | -24.68 |

* Loans and advances given to Devendra G Jain, Kalpana D Jain and Marquis Industries Private Limited has been treated as Loans and Advances to associates as they are claimed to be promoters of the company.

Based on the above calculation, the networth of the petitioner company is (-) ₹ 24.68 lakh and the petitioner does not meet the basic requirement of networth for registration as a Power Exchange in accordance with the Power Market Regulations.

13. Since the petitioner company does not meet the networth required under the Power Market Regulations for registration for setting up and operation of a Power Exchange, its application is rejected. Since we have rejected the application on the ground of networth, it is not necessary to go into the non-compliance of the petitioner with other requirements of the Power Market Regulations.

14. Before we part, it is considered appropriate to mention about the conduct of the petitioner's company as an inter-State trading licensee. World Solar Power Limited, as the petitioner was earlier known, was granted a Category III licence for inter-State trading by this Commission vide order dated 25.10.2011. The name of the licensee was changed to "Marquis Energy Exchange Limited" vide order dated 2.2.2012 in Petition No.138/TDL/2011. As per Regulation 7(m) of the Trading Licence Regulations, a licensee shall regularly pay the licence fee specified by the Commission from time to time. Marquis Energy Exchange Limited, the licensee, was required to deposit the licence fee for the year 2012-13 by 30.4.2012. As it failed to deposit the fees despite reminders, a notice under section 19(3) of the Act was issued vide order dated 11.9.2012. Since no response to the notice was received, the licence of the petitioner's company has been revoked vide order dated 21.12.2012 in Petition No.182/2012(Suo Motu). The petitioner company by not paying the licence fee has not only violated the provisions of the Act, the Regulations of the Commission and the terms and conditions

of the licence, but has exhibited its lack of bonafide to carry out any business within the parameters of the Act and the regulations framed thereunder.

15. Petition No.216/PX/2011 is disposed of in terms of the above.

sd/-
(M. Deena Dayalan)
Member

sd/-
(V.S. Verma)
Member

sd/-
(S. Jayaraman)
Member

sd/-
(Dr. Pramod Deo)
Chairperson