

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 316/RC/2013

Coram:

**Shri Gireesh B.Pradhan, Chairperson
Shri M. Deena Dayalan, Member
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member**

Date of Order : 27.10.2014

In the matter of:

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

And In the matter of:

Indian energy Exchange Limited
100 A/1 Ground Floor, Capital Court
Olof palme Marg, Munirka
New Delhi-110 067

.....Applicant

Order

This petition has been filed by the Indian Energy Exchange Limited (IEX) for inclusion of the names of two additional persons in the panel of Independent Directors to be appointed on the Board of the Exchange.

2. IEX which was accorded approval by the Commission to establish and operate a power exchange, vide order dated 31.8.2007 in Petition No. 38/2007, is deemed to have been registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (hereinafter "Power Market Regulations") which came into force from 21.1.2010.



According to Regulation 22(ii) of the Power Market Regulations, the petitioner is required to have 1/3rd of its members of the Board as Independent Directors subject to minimum of two. The said Regulation is extracted hereunder:-

"(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. The Commission, in its order dated 7.8.2013 in Petition No. 113/2011, while approving the panel of Independent Directors discussed the requirements for appointment as Independent Directors in the said order and they are as follows:-

"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. 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."

4. The petitioner's Board of Directors consists of eleven members according to the petitioner, and as per Regulation 22(ii) of the Power Market Regulations the petitioner's Board should consist of four Independent Directors. The Commission in order dated 3.5.2010 in Petition No.138/2010 has held that the panel for appointment of Independent Directors should be double the number of Independent Directors required to be appointed. On the date of application there were three Independent Directors and the petitioner was required to appoint one more Independent Director.

5. The petitioner had initially sought approval of the Commission for inclusion of Shri Tantra Narayan Thakur and Shri Anil Kumar Lakhina in the panel of Independent Directors of IEX. The Commission after considering the proposal directed the petitioner to furnish additional names for consideration of empanelment as Independent Directors vide letter dated 5.6.2014. The petitioner, vide affidavit dated 31.7.2014, has proposed the names of Shri Anil Singhvi and Shri Som Mittal for inclusion in the panel of Independent Directors in place of the names earlier proposed. The petitioner was further directed vide letter dated 8.9.2014 to submit on affidavit that provisions of Regulation 22(ii) of the Power Market Regulations have been complied with in respect of the persons proposed for appointment as Independent Directors. In response, the petitioner has confirmed, vide affidavit dated 14.10.2014, that inclusion of Shri Anil Singhvi and Shri Som Mittal in the panel of Independent

Directors of IEX is as per the provisions of Regulation 22(ii) of the Power Market Regulations. Further, the petitioner vide letter dated 4.10.2014 has submitted that Shri Venkat Chary, Independent Director has resigned from the Board of Directors of IEX on 30.9.2014 and the same has been accepted by its Board on 7.10.2004.

6. The profiles of the persons proposed for empanelment of Independent Directors are as under:-

(a) Shri Anil Singhvi is a Chartered Accountant and has a rich experience of over 30 years in Corporate Sector. He has varied professional experience in manufacturing, banking, capital & share market, housing & construction and education sectors. He is the Chairman of Ican Investments Advisors Pvt. Ltd., a Corporate Advisory firm. He is also a Director in companies like Hindustan Construction Co. Ltd., Capital First Ltd, Subtex Ltd., Institutional Investor Advisory Services India Ltd., Steiner AG, Zurich, Greatship (India) Limited, Lavasa Corporation Ltd. and Foundation for Liberal and Management Education.

(b) Shri Som Mittal holds a Bachelor Degree of Science in Engineering from IIT, Kanpur and MBA from IIM, Ahmedabad. He has rich experience in the field of IT, engineering, manufacturing and automotive industries. He was Chairman and President of NASSCOM. He was member of the Indian Prime Minister's Committee on National e-Governance. He is also a member of Board of Directors/Advisory

councils of Axis Bank, Cyient Limited, EXL Service Holdings, NIIT Univ and IIT, Indore.

7. The petitioner has also placed on record the affidavits dated 18.9.2014, and 14.10.2014 submitted by Shri Anil Singhvi and Shri Som Mittal respectively. Both Shri Anil Singhvi and Shri Som Mittal have stated that they do not have any interest in any member and fiduciary relationship with any of the shareholders of IEX. They have further stated that they do not suffer from any of the disqualifications prescribed under Power Market Regulations for being eligible for appointment or continuation as Independent Director in the Power Exchange.

8. The proposal for empanelment of Shri Anil Singhvi and Shri Som Mittal for appointment as Independent Directors has been considered in the light of the Power Market Regulations and the requirements laid down by the Commission in its order dated 7.8.2013 in Petition No.113/201. After going through the profiles of Shri Anil Singhvi and Shri Som Mittal and after being satisfied that they do not have any fiduciary relationship with any of the existing of shareholders of IEX or any interest in any member of IEX, we are of the view that both persons fulfill the requirement for inclusion in the panel for appointment as Independent Directors in IEX. Accordingly, we accord our approval for inclusion of both of them in the panel for appointment of Independent Directors in terms of Regulation 22(iii) of the Power Market Regulations.

9. The petition is disposed of in terms of the above.

sd/- sd/- sd/- sd/-
(A.S. Bakshi) (A. K. Singhal) (M. Deena Dayalan) (Gireesh B. Pradhan)
Member Member Member Chairperson