

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 24/RP/2014 in RC/003/2014 &  
RC/322/2014**

**Coram:**

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

**Date of Hearing: 30.09.2014**

**Date of Order : 03.12.2014**

**In the matter of**

Review Petition under Section 94(f) of Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for Review of Order dated 2.7.2014 in Petition No. 322/RC/2013 and Petition No. RC/003/2014

**And**

**In the matter of**

Power Exchange India Limited  
5<sup>th</sup> Floor, Tower 3,  
Equinox Business Park (Peninsula Techno Park)  
Off Bandra Kurla Complex,  
LBS Marg, Kurla (West),  
Mumbai – 400070

**.....Review Petitioner**

**For review petitioner** : Shri Abhishek Tripathi, Advocate, PXIL  
Shri M. G. Raoot, PXIL  
Shri Pawan Agarwal, PXIL  
Shri Kapil Dev, PXIL

**ORDER**

This is a review petition filed by Power Exchange India Limited (PXIL) seeking review of the combined order dated 2.7.2014 in Petition No.



322/RC/2013 and RC/003/2014. Petition No.322/RC/2013 deals with the extension of time for PXIL's to comply with the requirement to minimum net worth of ₹25 crore and Petition No. RC/003/2014 deals with the compliance of shareholding pattern as specified under Regulations 18 and 19 of the Central Electricity Regulatory Commission (Power Market Regulations), 2010 ("Power Market Regulations") respectively. The Commission, in the impugned order, directed the review petitioner to make efforts to attract new shareholders who would infuse equity capital into PXIL to comply with the Power Market Regulations, besides other directions. The Commission held as follows:-

"31. The situation of PXIL is extraordinary which calls for extra ordinary solutions. In view of the above, the Commission in exercise of its power under Regulation 63 (ii) of Power Market Regulations directs the following:

(a) PXIL shall make all out efforts to attract new shareholders who would infuse equity capital in PXIL. Necessary financial restructuring including increase in authorized capital should be done to comply with minimum net worth requirement of ₹25 crore and to accommodate new shareholders.

(b) In the scenario of the above not materializing, the Commission is relaxing Regulation 19(1)(i) of the Power Market Regulations regarding maximum shareholding of 25% shareholding for any shareholder (who is not a member of Power Exchange) to upto 74% of the equity capital. Hence, NSE and NCDEX which are the promoter shareholders of PXIL can invest upto 74% of equity capital. This will remove the present regulatory constraint on the promoters and facilitate further equity infusion by the promoter in PXIL. The equity capital infusion is expected to restore the net worth of the company to ₹25 crore and manifest the commitment of the anchor investors in the company which they have been reiterating time and again. To allay any concerns, NSE and NCDEX being premier market infrastructure institutions of the country are professionally run, well managed and are under regulatory oversight. A higher promoter stake by these institutions for a limited period to address the critical issue of capital infusion will not adversely affect public interest. Further, NSE and NCDEX which are leading Stock and Commodity Exchanges respectively, are expected to play a lead role in supporting and guiding the management of PXIL to improve its business performance and create a sustainable business. While allowing higher equity stake to promoters presently, the Commission is of the view that the diversified equity holding structure of the Power Exchange, which is a market infrastructure, is maintained in larger public interest and hence, directs that the voting rights of each promoter shareholder (who is not a member of Power Exchange) be capped at the existing limit of 25% of equity capital. These promoter shareholders will however to allowed corporate benefits which accrue out of higher shareholding. PXIL is also directed to enhance its equity capital, if need be, to increase its net worth, to make all necessary financial restructuring to bring back the net worth to ₹25 crore.



(c) Section 48 of the Companies Act, 2013 allows for variations for shareholders rights. Accordingly, we direct PXIL to take necessary steps to ensure that our directions are complied with by taking appropriate action under the relevant provisions of the Companies Act, 2013.

(d) PXIL is directed to make necessary amendments to its Articles of Association to effect this structural change through necessary board resolution/AGM.

(e) PXIL is also directed to submit its financial restructuring plan to the Commission within one month of the issue of this order and report compliance with ₹25 crore net worth at the end of 3 months of the order. It is clarified that the relaxation of shareholding structure for promoters shall be valid for a period of 3 years from the date of this order. The anchor investors shall reduce their shareholding to 25% at the end of 3 years."

2. The review petitioner has sought review of the impugned order on the following grounds:-

(a) The impugned order does not adequately take into consideration efforts made by the petitioner for infusion of equity;

(b) The impugned order does not take into account the restrictions placed under the Companies Act, 2013 and the rules and regulations framed thereunder on issuance of shares with differential rights. To comply with the impugned order, the petitioner would have to issue shares with differential rights in accordance with Sections 43 and 48 of the Companies Act, 2013 read with Rule 4(1), (3), (4) of the Companies (Share Capital and Debenture) Rules, 2014 (hereinafter "Rules"). As per the said Rules, the shares issued with differential rights cannot exceed more than 26% of the total post issue paid up equity share capital of a company including equity shares with differential rights issued at any point of time. Rule 4(1)(d) of the said Rules prescribes that only a company with consistent track record of distributable profits for three preceding



financial years can issue shares with differential rights. Since the petitioner has not earned profits in the three preceding financial years, the petitioner cannot issue shares with differential rights as the same would constitute a violation of Companies Act, 2013;

- (c) To comply with the impugned order, the petitioner would have to convert shares of promoters in excess of 25%, i.e. 5.95% since both NSE and NCDEX have equity share of 30.95% each, with voting rights into equity share holding without any voting right. Rule 4(3) of the aforesaid Rules does not allow such conversion;
- (d) The Commission has inadvertently omitted to take notice of the various provisions of the Companies Act, 2013 that are applicable to PXIL while passing the impugned order;
- (e) PXIL is governed by Companies Act, 2013 and in the absence of a specific waiver in the Companies Act, 2013 the same cannot be excluded automatically. It is a settled principle of law that when any other Statute or any instrument having the force of Statute is not in conflict with the Electricity Act, 2003 then both the Acts will have their corresponding role to play in their respective spheres. Accordingly, in the absence of any specific provisions under the Electricity Act, 2003 and Power Market Regulations the issue of shares with differential voting rights will be governed by the provisions of the Companies Act, 2013 and the Rules made thereunder;

(f) In the absence of any specific notification by the Central Government waiving the application of the Companies Act, 2013 to companies engaged in the business of operating a power exchange, the same shall be applicable. There is no provision in the Companies Act, 2013 and the Electricity Act, 2003 waiving the application of Section 43 and 48 of the Companies Act, 2013;

(g) Various courts have considered the question whether a mistake of law can be rectified in a review petition. Order XLVII of the Code of Civil Procedure, 1908 provides for a civil court to review its own order if there is an error apparent on the face of the record. Hon'ble Allahabad High Court in Kamta Choudhary Vs Lal Chandra Mool Bahadur Lal (AIR 1945 All 284) held that an obvious mistake caused due to failure to notice a provision or part thereof a statute can be corrected by the court. Similarly, Hon'ble Supreme Court in Surjit Singh Vs Union of India (1997) in an appeal filed against an order of the Central Administrative Tribunal observed that if a patent error is brought to the notice of the tribunal, the tribunal is duty bound to correct, with grace, its mistake of law by way of review of its order/directions. Therefore, the error of law in the impugned order can be corrected in a review by the Commission

3. The review petitioner has made the following prayers:-



- (a) allow the present Review Petition and pass appropriate directions recalling the order dated 2.7.2014 passed by the Commission;
- (b) allow time upto 31.3.2016 for complying with Regulation 19(1) (read with regulation 20) of the Power Market Regulations;
- (c) permit PXIL to increase the networth to ₹10 crore by 31.3.2015 and to ₹25 crore by 31.3.2016; and
- (d) waive the condition for reduction in equity share holding to 25% by the anchor investor/promoters at the end of 3 years.

4. The petition was heard on 16.9.2014. PXIL was directed to submit a specific workable proposal regarding infusion of equity which is specific in nature and in compliance with the Companies Act, 2013. In response, PXIL vide affidavit dated 25.9.2014, has submitted that PFC and GUVNL, who were earlier approached to infuse additional equity have declined to presently contribute towards Equity Share Capital of the company and responses of the other existing shareholders on equity infusion are awaited. PXIL further submitted that in the AGM held on 24.9.2014, ways and means of achieving the required networth within a short time were discussed and the promoters expressed the view that they may have to take up the matter with their respective Boards as the issues are conflicting with other statutes and NCDEX would require prior approval of Forward Market Commission (FMC). However, the shareholders approved increase of Authorized Equity Share capital from ₹80 crore to ₹100 crore. PXIL has also submitted that it would continue to pursue the issue of equity infusion with the new investors.



5. During the hearing on 30.9.2014, the learned counsel for the petitioner has submitted that though the promoters support the petitioner, the promoters being institutions themselves require to take appropriate decision for investment in view of the regulatory challenges like 25% restriction on voting rights of the promoters, divestment of excess stake being linked to the performance of the petitioner. He further submitted that the preference shares with PXIL are not being considered towards networth as per the Power Market Regulations and requested to consider the preference shares for the purpose of calculation of the networth calculation. He further submitted that the networth of the petitioner presently is about ₹(-)10 crore along with preference share of ₹10 crore. PFC had invested to the tune of ₹42 lakh to meet the shortfall in equity. NCDEX had invested ₹2 crore after approval of the FMC. PXIL has executed terms sheets with GEPL and MPL for infusion of equity. The dispensation sought by PXIL is only for certain duration and requested the Commission to provide relief to the review petitioner.

6. We have considered the submissions of PXIL. First of all, we will deal with the prayer of the petitioner for review of the order of the Commission dated 2.7.2014

7. The provision of Regulation 19(1)(i) of the Power Market Regulations was relaxed so that PXIL could increase the shareholding of the shareholders (non-member shareholders) upto 74% from the specified 25% shareholding of its equity holding, while restricting the voting rights of the non-members to the existing limit of 25% of the equity capital. This was done with a view to remove the regulatory constraint on the promoters and facilitate the promoters of PXIL to infuse upto 74% of the equity capital. However, PXIL has submitted it cannot issue shares with differential rights more than twenty-six percent of the total post-issue paid up equity



share capital of a company including equity shares with differential rights issued at any point of time for not meeting the conditions of Rule 4 (1) (c) of the Companies (Share Capital and Debenture) Rules, 2014. PXIL has further submitted that a company having consistent track record of distributable profits for the last three profits as per Rule 4 (1) (d) can only issue shares with differential rights upto twenty six percent of the total post-issue paid up equity share capital. These provisions of the Companies (Share Capital and Debenture) Rules, 2014 were not brought to the notice of the Commission while issuing the impugned order. After going through the relevant statutory provisions, we are of the view that as per the provisions of Section 43 and 48 of the Companies Act, 2013 read with Rule 4 (1), (3) and (4) of Companies (Share Capital and Debenture) Rules, 2014, PXIL cannot issue more than twenty six percent of the total post-issue paid up equity share capital and accordingly the directions issued in para 31 (b) to (e) of the impugned order cannot be implemented. In view of the same, we withdraw the directions in Para 31 (b) to (e) of the impugned order in exercise of our power under review.

8. The Commission had directed PXIL in Para 31 (a) of the impugned order to make all out efforts to attract new shareholders for infusing equity and to carry out necessary financial restructuring to achieve the required network of ₹25 crore. PXIL has prayed for grant of time upto 31.3.2015 to increase its network to ₹10 crore and upto 31.3.2016 to increase its network to ₹25 crore. PXIL has submitted that it has taken various steps to increase its network and as a result PFC and NCDEX have contributed towards equity of ₹42 lakh and ₹2 crore respectively. PXIL has submitted it offered equity shares to various companies and State governments like Global Energy Power Limited, Manikaran Power Limited, Uttarakhand Power Corporation Limited Government of Himachal Pradesh, MPPMCL and Tata Power Trading





Company Limited, GUVNL, JSW Energy Limited, etc and some of the companies have declined the offer to contribute towards the equity share capital of PXIL. PXIL has further submitted that its core operating revenues, total revenues and its market share in REC segment and physical segment have increased and its staff costs and other operating costs have decreased during the past two years. We have taken into consideration the efforts made by PXIL to increase its network. The Power Market Regulations were notified on 21.1.2010 and the PXIL is required to maintain a minimum net worth of ₹25 crore as per Regulation 18 of the Power Market Regulations. The minimum network of ₹25 crore is one of the basic requirements of a Power Exchange and PXIL has not complied with this requirement inspite of granting repeated extension of time to comply with Regulation 18 of the Power Market Regulations. Accordingly, the impugned order was passed by the Commission directing PXIL to comply with the minimum network of ₹25 crore in three months. Taking into consideration the difficulties and the constraints experienced by PXIL in finding entities to infuse equity, we are inclined to grant one last opportunity to PXIL to comply with the minimum network requirement of ₹25 crore before 30.9.2015. We would like to make it clear that no further extension of time shall be allowed in this regard.

**9. Summary of our findings:-**

- (a) The impugned order is modified partially;
- (b) The directions issued by us in para 31 (b) to (e) of the impugned order dated 2.7.2014 are withdrawn;
- (c) PXIL is directed to comply with the minimum network requirement of ₹25 crore on or before 30.9.2015; and



(d) No further time extension shall be granted. If PXIL fails to achieve the requirements, the Commission shall proceed to take further necessary action in accordance with the Power Market Regulations and other relevant laws as may be considered necessary.

10. Review Petition No. 24/RP/2014 is disposed in terms of above.

sd/-  
(A. S. Bakshi)  
Member

sd/-  
(A. K. Singhal)  
Member

sd/-  
(M. Deena Dayalan)  
Member

sd/-  
(Gireesh B. Pradhan)  
Chairperson

