

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. SM/341/2013

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri M Deena Dayalan, Member

Shri A.K. Singhal, Member

Date of Order: 13.5.2014

In the matter of

Regulatory oversight of the management and governance of Indian Energy Exchange Limited (IEX)

ORDER

The Indian Energy Exchange (IEX) has been established and is being operated in accordance with the provisions of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (Power Market Regulations). Financial Technologies India Limited (FTIL) is one of its promoter shareholders of IEX and has two Directors on the Board of the IEX.

2. FTIL has been declared as “not fit and proper person” by Forward Market Commissions (FMC) which is a Regulatory Authority under the Forward Contract Regulations Act, 1952. FMC in its order dated 17.12.2013 in Reference No. 4/5/2013-MKT-I/B had issued the following directions:

"15.1.4 Keeping in view the foregoing observations and the facts which reveal misconduct, lack of integrity and unfair practices on the part of FTIL in planning, directing and controlling the activities of its subsidiary company, NSEL, we conclude that FTIL, as the anchor investor in the Multi-Commodity Exchange Ltd., (MCX) does not carry a good reputation and character, record of fairness, integrity or honesty to continue to be a shareholder of the aforesaid regulated exchange. Therefore, in the public interest and in the interest of the Commodities Derivatives Market which is regulated under FCRA, 1952, the Commission holds that Financial Technologies (India) Ltd. (FTIL) is not a 'fit and proper person' to continue to be a shareholder of 2% or more of the paid-up equity capital of MCX as prescribed under the guidelines issued by the Government of India for capital structure of commodity exchanges post 5-years of operation. It is further ordered that neither FTIL, nor any company/entity controlled by it, either directly or indirectly, shall hold any shares in any association /



Exchange recognized by the Government or registered by the FMC in excess of the threshold limit of the total paid-up equity capital of such Association / exchange as prescribed under the commodity exchange guidelines and post 5-year guidelines."

3. The Commission in its order dated 3.1.2014 had directed the Indian Energy Exchange (IEX) to inform the Commission about the action being taken by the Board of the Company with regard to Shri Jignesh Shah and the shareholding of FTIL in IEX in light of the directions issued by Forward Market Commission dated 17.12.2013. In response to the above order, IEX vide its affidavit dated 17.1.2014 stated that the Board of IEX would meet post 7.2.2014 (i.e. date of hearing before the Bombay High Court) to discuss and take any steps on basis of the outcome of the hearing of the writ petition filed against the order of FMC in the High Court of Bombay. Subsequently, IEX vide its affidavit dated 31.1.2014 clarified that the Board of IEX through circulation had decided to take further action with regard to the directions of the Commission after the outcome of the hearing in the Bombay High Court. IEX vide affidavit dated 13.3.2014 informed the Commission that Shri Jignesh P. Shah tendered his resignation from the Board of IEX vide letter dated 7.3.2014.

4. SEBI in its order dated 19.3.2014 passed in Reference No. WTM/RKA/MRD-DSA/11/2014 has issued the following directions;

"18. I, therefore, in exercise of the powers conferred upon me under Section 19 of the read with sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 and section 12A of the Securities Contracts (Regulation) Act, 1956, read with regulations 20 (2) and 49 of the Securities Contracts (Regulation)(Stock Exchanges and Clearing Corporations) Regulations, 2012, hereby issue the following directions:

(a) FTIL is not a "fit and proper person" to acquire or hold any equity share or any instrument that provides for entitlement for equity shares or rights over equity shares at any future date, in a recognized stock exchange or clearing corporation, either directly or indirectly;

(b) FTIL shall divest the equity shares and/or any instrument that provides for entitlement for equity shares or rights over equity shares at any future date, held by it, directly or indirectly, in MCX-SX, MCX-SX CCL, DSE, VSE and NSEIL within 90 days from the date of this order through sale of shares and/or instrument, and

(c) FTIL and the entities through whom it indirectly holds equity shares or any instrument entitling voting rights in MCX-SX, MCX-SX CCL, DSE, VSE and NSEIL shall cease to be entitled to exercise voting rights in respect of those shares or instruments, with immediate effect."

5. Further, FMC through Reference No.1/1/2014-MD-I/B dated 6.5.2014 has brought out the Revised Norms regarding Shareholding, Ownership, Net worth, Fit and Proper Criteria etc of the Nationwide Multi Commodity Exchanges. Clause of the Revised Norms provides as under:

"6. Consequences of ceasing to be a "fit and proper person":

In the event of any person ceasing to be a "fit and proper person" or being declared so by the Commission, such person shall forthwith divest his shareholding. Further, pending divestment of shares, the voting rights of such person shall stand extinguished and any corporate benefit in lieu of such holding shall be kept in abeyance/withheld by exchange. The exchange shall take necessary steps as it may deem fit so as to ensure that the shareholding of such person is divested forthwith."

Further vide its Reference No. 1/1/2014-MD-I/B dated 6.5.2014, FMC has issued directions under section 10 of the Forward Contracts (Regulation) Act, 1952 read with Rule 7(2)(II) of the Forward Contract (Regulations) Rules, 1954 for compliance of the revised norms by all National commodity exchanges by amending their rules including the memorandum and articles of associations within 45 days.

6. Examination of the orders issued by SEBI and FMC shows that FTIL which has been declared as "not fit and proper person" shall have to divest all its shares in the security exchanges as well as commodity exchanges controlled by SEBI and FMC respectively and pending divestment of shares, FTIL shall have no voting rights. In the light of the above developments, we are of the view that such decision by SEBI and FMC have direct bearing on the power market due to the following reasons:-

(a) IEX is an important market infrastructure institution playing a major and pivotal role in promoting the power market in the country with more than 95%

of the market share. There is a need to ensure transparent and professional management of the IEX in order to inspire public trust and confidence in the exchange.

(b) The regulatory objectives of the power exchanges are similar to that of the commodity and stock exchanges in so far as the investor/consumer protection, market integrity, transparency, fairness and governance are concerned.

(c) Systems and processes such as electronic trading platform, clearing and settlement and risk management are similar in these exchanges.

(d) The Power Exchange as well as the Commodity exchanges and the stock exchange are market infrastructure institutions needing the same level of integrity and governance.

7. In view of the above, FTIL which has been declared as "not fit and proper person" to hold shares in the commodity exchange and stock exchange cannot be considered as fit and proper person to hold the shares in the power exchange. Such a person poses same risk to the interests of the power market and its participants. The Commission is of the view that FTIL should not hold any share in the IEX or have any representation in the Board of the IEX.

8. The Commission issued an amendment to the Power Market Regulations on 3.4.2014 after following the due procedure through public consultation. Regulation 22A of the Power Market Regulations provides as under:

"22A Qualifications and Disqualifications for appointment as Director in the Board of Power Exchange



(1) A person shall be considered as qualified to be appointed as a Director in the Board of Power Exchange if such person has a record of fairness and integrity, good reputation and character, and honesty.

(2) A person shall be considered as disqualified for appointment as Director of the Power Exchange, if:-

(a) he is convicted by a court of any offence involving moral turpitude or fraud or any economic offence or any offence against any law and a period of five years has not elapsed from the date of expiry of the conviction:

Provided that if the person is convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a Director in any Power Exchange; or

(b) he is found guilty in any proceedings for non-compliance of any of the provisions of the Act or the rules or the regulations made thereunder or any order made by the Appropriate Commission or the Appellate Tribunal for Electricity and a period of five years has not elapsed from the date of the order; or

(c) an order restraining, prohibiting or debarring him to hold the post of Director in the Board of a Company has been passed by any other Regulatory Authority constituted under any law in force in India under their respective Acts or regulations; or

(d) an adverse order has been passed against him by a competent court/tribunal in a winding up proceedings; or

(e) he is an undischarged insolvent; or

(f) he has applied to be adjudicated as an insolvent and his application is pending; or

(g) he is found to be of unsound mind by a court of competent jurisdiction and the finding is in force.

(3) No person who suffers from any of the disqualifications prescribed under Companies Act, 2013 shall be eligible for appointment or continuation as Director of the Power Exchange.

(4) The qualifications and disqualifications specified in this regulation shall also be applicable to the existing Directors of the Power Exchanges.

(5) If any shareholder of the Power Exchange suffers from any of the disqualifications as mentioned in clauses (2) and (3) of this regulations, such shareholder or his nominee shall be debarred from being appointed as Director in the Board of the Power Exchange.

(6) If any question arises as to whether a person is qualified/ disqualified to be a Director in a Board of the Power Exchange, the decision of the Central Commission on such question shall be final."

9. In accordance with Regulation 22A(2)(c) and 22A(5) of the Power Market Regulations, where a shareholder of the Power Exchange has been prohibited,



restrained or debarred by any Regulatory Authority constituted under any law in force in India from holding the post of Director in the board of a Company, such shareholder or his nominee shall be debarred from being appointed as Director in the Power Exchange. In the case of FTIL, both SEBI and FMC which are Regulatory Authorities under the Securities and Exchange Board of India Act, 1992 and Forward Contract (Regulations) Act 1952, have held FTIL as "not fit and proper person". SEBI has directed FTIL to divest its shares or other instruments held directly or indirectly in the stock exchanges and clearing corporations within 90 days and further directed that FTIL and the entities through which it indirectly holds the equity shares or any instruments shall cease to be entitled to exercise voting rights in respect of those shares or instruments with immediate effect. Similarly, FMC has directed the commodity exchanges including multi commodity exchange to comply with the fit and proper criteria which required that in the event of a person ceasing to be a fit and proper person, such person shall forthwith divest such shareholding and pending divestment of shares, the voting person of such person shall stand extinguished and any corporate benefit in lieu of such holding shall be kept in abeyance/withheld by exchange. The directions of SEBI and FMC in our view amount to debarment of representation of FTIL in the Boards of the commodity exchanges and the stock exchanges and therefore, the provisions of Regulation 22(A)(2)(c) of the Power Market Regulations have been satisfied and in accordance with Regulation 22(A)(5), FTIL is not entitled to nominate its representative on the Board of IEX. However, it is noted that there is no provision in the Power Market Regulations directing a shareholder of the power exchange to divest its shares. The Commission has the power under Section 63 (i) of Power Market Regulations to make such orders as may be considered necessary for meeting the ends of justice.



Keeping in view the public interest and the interest of the power market participants, the Commission is of the view that FTIL should divest its entire shares in the IEX. Accordingly, the Commission in exercise of its powers under Regulation 22 (A) and Regulation 63 (i) of the Power Market Regulations direct the following for compliance by IEX:-

(a) IEX shall ensure that FTIL divests its entire shareholding from the IEX by 30.9.2014.

(b) Pending divestment of shares, the voting rights of FTIL shall stand extinguished and any corporate benefit in lieu of such shareholding shall be kept in abeyance or withheld by the exchange.

(c) IEX shall ensure that no nominee of FTIL is represented in the Board of IEX.

(d) IEX is directed to ensure compliance of the above directions with immediate effect and submit monthly report to the Commission.

10. Petition no. SM/341/2013 is disposed of in terms of the above.

sd/-
(A.K. Singhal)
Member

sd/-
(M. Deena Dayalan)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson

