

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 9/MP/2014

Coram:

Shri Gireesh B.Pradhan, Chairperson

Shri M. Deena Dayalan, Member

Shri A.K.Singhal, Member

Date of Hearing: 08.5.2014

Date of order: 11.6.2014

In the matter of

Petition under Regulations 63 and 64 Central Electricity Regulatory Commission (Power Market) Regulations, 2010 for extension of time for compliance with Regulation 19 (1) (i) read with Regulation 20 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 relating to maximum shareholding limits prescribed therein.

And

In the matter of

Indian Energy Exchange Limited
First Floor, Malkani Chambers,
Off Nehru Road, Vile Parle (East)
Mumbai-400 099

...Petitioner

Parties Present:

For petitioner: Shri Vishrov Mukherjee, Advocate, IEX
Shri Gaurav Maheshwari, IEX
Ms. Shruti Bhata, IEX

ORDER

The petitioner, Indian Energy Exchange (IEX) has filed this petition for extension of time for compliance with Regulation 19 (1) of the Central

Electricity Regulatory Commission (Power Market) Regulations, 2010 (Power Market Regulations). The petitioner has made the following specific prayers:

"(i) Grant a further extension in the time frame for the period of at least 1 years for compliance of the Shareholding pattern norms stipulated under Regulations 19 and 20 of the Power Market Regulations;

(ii) Extend the compliance of shareholding pattern by at least 1 years upto 20.1.2015; and

(iii) Pass such other order as this Hon`ble Commission may deem fit in the interest of justice and facts and circumstances of this case."

2. The petitioner has submitted that as on 31.12.2013, the shareholding pattern of IEX on fully diluted basis was as under:

Shareholding pattern of IEX as on 31.12.2013 (on fully diluted basis)			
Equity Share Capital			
S.No.	Name of Equity Shareholder	No of equity shares held	% of paid up capital
Resident shareholding			
1.	Financial Technologies (India) Limited	9,140,302	30.14
2.	PTC India Financial Services Limited	1,516,431	5.00
3.	Multiples Private Equity Fund , India	2,429,878	8.01
4.	Lanco Infratech Limited	1,250,000	4.12
5.	The Tata Power Company Limited	1,250,000	4.12
6.	Jindal Power Limited	1,250,000	4.12
7.	Reliance Infrastructure Limited	1,250,000	4.12
8.	Adani Enterprises Limited	1,250,000	4.12
9.	Rural Electrification Corporation Limited	1,250,000	4.12
10.	Infrastructure Development Finance Company Limited	1,250,000	4.12
11.	IEX ESOP Trust	282,502	0.93
12.	Share transferred to employees pursuant to ESOP Scheme	324,070	1.07
	Sub-total	22,443,183	74.00
Non-resident shareholding			
1.	Multiples Private Equity Fund Limited, Mauritius	1,819,717	6.00
2.	Lightspeed Venture Partners VIII Mauritius	3,032,862	10.00
3.	Bessemer Venture Partners Trust	3,032,862	10.00
	Sub-total	7,885,441	26.00
	Total Equity Share Capital	30,328,624	100.00

3. The petitioner has submitted that Financial Technologies (India) Limited (FTIL) and IEX have undertaken the following measures to comply with the Commission`s order dated 25.2.2013 to reduce FTIL`s shareholding in IEX to 25%:

(a) The audited accounts were approved by the Board on 10.5.2013 to ensure proper valuation of the share and to give an accurate overview of the financial standing of IEX to potential investors; and

(b) Some of the foreign investors of IEX commenced the process of selling their stake. IEX actively participated in the same by signing non-disclosure agreements with prospective purchasers with a view to ensure that the base price would be determined to enable IEX to obtain the correct valuation for sale of shares and expedite the process for other prospective investors once the base price was established.

4. The petitioner has submitted that the share dilution process is in advance stage and is expected to be completed within next 3-4 months.

5. The petitioner, vide Record of Proceedings for the hearing dated 27.2.2014, was directed to file status of the steps taken by it to achieve the shareholding pattern in compliance with Regulation 19 of the Power Market Regulations.

6. The petitioner vide its affidavit dated 26.3.2014 has submitted that FTIL's stake in the Power Exchange has been reduced from 30.14% to 25.64% on diluted basis which is 0.64% in excess of the prescribed limit under Regulation 19 of the Power Market Regulations. The petitioner had assured to make all efforts to comply with Power Market Regulations.

7. In the meantime, Forward Market Commission, which is a Regulatory Authority under the Forward Contract Regulations Act, 1952, vide its order dated 17.12.2013 in Reference No. 4/5/2013-MKT-I/B declared FTIL as "not fit and proper person". The Commission vide its order dated 13.5.2014 in Petition No. SM//341/2013 decided that FTIL should not hold any share in IEX or have any representation in the Board of IEX and directed the petitioner to ensure that FTIL divests its entire shareholding from the IEX by 30.9.2014. Relevant portion of the said order dated 13.5.2014 is extracted as under:

"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"

8. The petitioner vide its affidavit dated 30.5.2014 has submitted that two representative Directors of FTIL, namely Shri Miten Narendra Mehta and Shri Prashant Desai have resigned from the Board of IEX with immediate effect vide their letters dated 19.5.2014. The petitioner has further submitted that the Board of IEX has decided the following for compliance with the directions of the Commission:

(a) FTIL shall comply with directions issued by the Commission and divest its entire shareholding from 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 submit a status update report on a monthly basis in compliance with the Commission`s order dated 13.5.2014 in Petition No. SM/341/2013.

9. The petitioner has submitted that IEX vide its letter dated 26.5.2014 has also communicated the decision of the Board to FTIL and requested FTIL to comply with the directions of the Commission and submit a regular update on monthly basis.

10. In view of the order of the Commission dated 13.5.2014 in Petition No. SM/341/2013 directing IEX to ensure divestment of entire shares held by FTIL by 30.9.2014, the present petition seeking time for compliance of Regulation 19 of the Power Market Regulations has been rendered infructuous. Accordingly, the petition is disposed of without any directions.

Sd/-
(A.K.Singhal)
Member

Sd/-
(M. Deena Dayalan)
Member

sd/-
(Gireesh B.Pradhan)
Chairperson