

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**I.A. No. 20/2015
in
Petition No. 341/SM/2013**

Coram:
Shri Gireesh B.Pradhan, Chairperson
Shri A.K.Singhal, Member
Shri A.S.Bakshi, Member

Date of Hearing: 25.6.2015
Date of Order: 26.6.2015

In the matter of

Regulatory oversight of the management and governance of Indian Energy Exchange Limited

**And
In the matter of:
Financial Technologies (India) Limited**

.....Applicant

**And
In the matter of:**
Indian Energy Exchange Limited
4th Floor, TDI Centre,
Plot No. 7, Jasola,
New Delhi-110025

..... Petitioner

Vs

Financial Technologies India Limited
FT Tower,
CTS No. 256 and 257, Suren Road,
Chakal, Andheri (East)

..... Respondent

Parties Present:
Shri Vikas Singh, Senior advocate, FTIL
Shri Vishrov Mukherjee, FTIL
Ms Raveena Dhamija, FTIL
Ms Shruti Bhatia, IEX
Shri Gaurav Maheswari, IEX



ORDER

The Applicant, Financial Technologies (India) Limited (FTIL) has filed the present Interlocutory Application seeking further extension of 60 days time to complete divestment of the Applicant's shareholdings in Indian Energy Exchange in compliance with the directions of the Commission in order dated 19.5.2015 in IA No. 18 of 2015 in Petition No.341/SM/2013.

2. The Applicant has submitted that the Commission vide order dated 19.5.2015 in IA No.18/2015 in Petition No. 341/SM/2013 had issued the following directions:

(a) Applicant to place on record all relevant documents pertaining to the proceedings initiated by Economic Offence Wing (EOW) and the actions taken by the Applicant to expedite the divestment process;

(b) Applicant to ensure that divestment of its shareholding in Indian Energy Exchange Limited (IEX) is completed by 18.6.2015 and submit a compliance report on or before 20.6.2015; and

(c) IEX to ensure divestment of the Applicant's shareholding by 9.7.2015 in the event the Applicant fails to do so within the prescribed period and submit a compliance report on or before 20.6.2015.

2. The Applicant has submitted that on 3.6.2015, the Applicant has filed an affidavit in compliance with the directions of the Commission placing all relevant documents pertaining to EOW proceedings and the action taken by the applicant with regard to the same. The Applicant has further submitted that on 3.6.2015, some of the purchasers

with whom the Applicant had entered into a Share Purchase Agreement (SPA) on 5.11.2014 issued a letter to the Applicant that they would not purchase any of the Sale shares due to non-fulfillment of certain conditions precedent before the long stop date. The Applicant has submitted that Hon'ble High Court of Bombay opened on 8.6.2015 after summer vacation and on the same day, the Applicant filed Writ Petition No. 2187 of 2015 impugning the EOW notice imposing an embargo on the sale of the Applicant's assets. The Applicant has submitted that on 12.6.2015, the Hon'ble High Court granted an interim stay on the operation of the directions of EOW notice on the condition that that the Applicant deposits ₹ 84 crore in the High Court from the sale proceeds arising out of the divestment of its shareholdings in IEX within a period of four weeks from the date of completion of sale. The Applicant has further submitted that on 18.6.2015, the Applicant entered into a new Share Purchase Agreement with DCB Power Ventures Limited, M/s Kiran Vypar Limited, Agri Power and Engineering Solutions Private Limited, Aditya Birla Capital Advisors Pvt, Ltd., etc. for sale of 16.6% equity stake on a fully diluted basis in IEX. The Applicant has submitted that the Applicant and certain Purchasers have agreed in the New SPA that they would endeavour on best effort basis to sell the balance stake held by the Applicant in IEX. It has also been agreed in the new SPA that pending the completion of the transactions, the shares will be kept in escrow as per the terms of the New SPA and an escrow agreement will be executed between Applicant and the purchasers for the same. The Applicant has submitted that on 18.6.2015, the Applicant has informed the Stock Exchanges about the update on divestment in IEX.

3. The Applicant has submitted that in the light of the facts as enumerated and various challenges, the Applicant is praying for an extension of time of 60 days for complying with the process of divestment of shares. The Applicant has submitted that no prejudice would be caused to IEX if the extension is granted and there would not be any interference by FTIL in the operation of IEX since FTIL (i) does not have any of its nominees on the Board of IEX; (ii) does not play any role in the day of day management of IEX; (iii) does not have any voting rights; and (iv) the corporate benefits have been kept in abeyance.

4. IEX vide its affidavit dated 22.6.2015 has submitted that in pursuance to the Commission's order dated 17.4.2015, IEX vide its affidavit dated 11.5.2015 had submitted to undertake certain measures towards accomplishing the divestment of shareholding of FTIL in IEX. It has been submitted that IEX has accomplished the following measures after 11.5.2015:

(a) On 19.5.2015, Extra Ordinary General Meeting (EGM) of the shareholders of IEX was convened wherein amendment to the Article of Association (AoA) of IEX was approved.

(b) On 22.5.2015, Resolution was circulated to the Board of Directors for approval of the Trust Structure, Trust Deed, etc.

(c) On 3.6.2015, the Trust was incorporated and the 'DEED OF TRUST' was registered with Sub-Registrar, New Delhi on 8.6.2015.

(d) On 9.6.2015, Application for the PAN and TAN of the 'IEX Regulatory Shares Trust' was applied to the Income Tax Departments.

(e) On 10.6.2015, Bank Account of Trust was opened.

(f) On 10.6.2015, IEX wrote to the Depository M/s HDFC Bank Limited inquiring about requirement from IEX for transferring shares from FTIL demat account to Trust Demat account.

(g) In response to IEX letter dated 10.6.2015, M/s HDFC Bank Limited vide its letter dated 17.6.2015 has stated that it can only act as per the order of competent authority (CERC) and requested IEX to arrange a specific instruction/order from competent authority (CERC) to transfer shares from the Beneficial Owner (BO) on account of FTIL to target demat account.

(h) In response, IEX wrote a letter to M/s HDFC Bank Limited requesting the latter to facilitate the required demat services in pursuance of amendment in the Article of Association of IEX.

5. The matter was heard on 25.6.2015. Learned Senior Counsel appearing on behalf of the Applicant submitted that pending stay of the EOW Notice, it was not legally possible to complete the transactions of divestment. As soon as the Hon'ble High Court opened after vacation, the Applicant moved the Writ Petition on 8.6.2015 and the Hon'ble High Court granted stay on EOW notice on 12.6.2015 with the condition that ₹84 crore out of the sale proceeds would be deposited in the Court within four weeks of the date of sale. Learned Senior Counsel submitted that the order of the Hon'ble High

Court is open ended as no time limit has been set in the said order to effectuate the sale. In response to our query that as per the New SPA, only 16.6% of the shareholdings has been proposed to be sold to the purchasers and for the balance shares, new purchasers have to be found which would take long time for sale, learned Senior Counsel submitted that the balance shares would be transferred to an Escrow account to be opened with the Axis Bank and therefore, the Applicant would not have exclusive control of these shares. Learned Senior Counsel further submitted that the Applicant has challenged the Commission's order dated 13.5.2014 in the Hon'ble Supreme Court on the issue of jurisdiction of the Commission to issue directions for divestment of shares and if the entire shareholding is divested, the appeal before the Supreme Court would become infructuous. Learned Senior Counsel requested that divestment of shares by the Applicant in IEX in pursuance of the order of the Commission be made subject to the outcome of the appeal before the Hon'ble Supreme Court.

6. The representative of IEX took us through the affidavit of IEX dated 22.6.2015 and particularly drew our attention to a letter dated 17.6.2016 written by HDFC Bank Ltd., Depository Services (Annexure VII) and submitted that HDFC Bank has requested IEX to arrange specific instruction/order from the competent authority i.e. CERC to transfer the shares from the BO account of FTIL to target demat account or alternatively, HDFC Bank has offered to act upon receipt of suitable instructions from FTIL for transfer of shares. The representative of IEX further submitted that IEX vide its letter dated 19.6.2016 (Annexure VIII) has informed HDFC Bank that the directions of the Commission in order dated 19.5.2015 are clear that after 18.6.2015, IEX should

ensure divestment of shares held by FTIL and HDFC Bank Ltd., Depository Services should facilitate the same. The representative of IEX submitted that reply from HDFC Bank Ltd., Depository Services has not yet been received and requested that specific directions from the Commission or from FTIL are necessary to the depository for transfer of shares. Learned Senior Counsel submitted that there was no direction to IEX in the original order of 13.5.2015 to sell the shares of FTIL and was confined to only ensuring that FTIL divests its shares in the IEX.

7. During the hearing, the Commission suggested the following to the learned Senior Counsel appearing for the Applicant:

“The Applicant should immediately transfer its shares in IEX into the Trust Demat Account opened by IEX. The Applicant shall be permitted to go ahead with the sale of its stake in IEX and permission will be granted for actual transfer of shares to the purchasers after the Applicant completes all formalities for sale. If the sale does not take place within stipulated time or balance shares remain to be sold, then IEX will take steps to sell the shares under the directions of the Commission and transfer the sale proceeds to the Applicant.”

8. Learned Senior Counsel on instruction from the representative of the Applicant submitted that the proposed arrangement is acceptable but it should be made subject to the outcome of the Civil Appeal filed by FTIL in Hon’ble Supreme Court.

9. We have considered the submissions of learned Senior Counsel for the Applicant and the representative of IEX. Hon’ble High Court of Bombay in its order dated

12.6.2015 has granted a stay on the EOW notice to enable the Applicant to comply with the order of the Regulatory Authority i.e. CERC. In order to protect the interest of the investors, Hon'ble High Court has directed the Applicant to deposit ₹84 crore in the High Court out of the proceeds from sale of shares. Therefore, there is no embargo on the Applicant to go ahead with the sale of shares to completely exit from IEX. The Applicant has entered into a New SPA with purchasers for 16.6% of the shares and as per the SPA, the balance shares would be kept in an escrow till a new purchaser is found. In our view, the Commission cannot allow indefinite time to the Applicant to comply with our directions. Our order has to be complied with within a definite time schedule. As regards the submission of the learned Senior Counsel that there was no direction to IEX to sell the shares in the original order dated 13.5.2014 and the proposed directions would amount to review of the original order, it is clarified that in the order dated 13.5.2014, IEX was directed to ensure that FTIL divests its shareholding from IEX. Since FTIL failed to divest the shares despite being granted several extension, the Commission in order dated 17.4.2015 directed the following:

“(b) If FTIL fails to divests its shares in IEX within three weeks, IEX is directed to ensure divestment of FTIL’s shares within a period of 3 (three) weeks thereafter (not later than 1.6.2015) to effectively implement the order of the Commission.”

Subsequently, the Applicant filed IA No.18/2015 for further extension of time which was granted till 18.6.2015 with corresponding extension of time to IEX to sell the shares till 9.7.2015 in the event of failure of the Applicant to sell its shares. Neither in IA No.18/2015 nor in the present IA, the Applicant has questioned the directions of the

Commission to IEX to sell the shares of FTIL in the event of failure of FTIL to comply with our directions within the stipulated time. In our view, the directions to IEX to act in the event of failure of FTIL to comply with our directions directly flows from and is incidental to our directions in the order dated 13.5.2014 to IEX to ensure divestment of shares by FTIL in IEX. As regards the submission of the learned Senior Counsel that any order passed by the Commission should be made subject to the outcome of the civil appeal pending in the Supreme Court, we are of the view that the Commission is under notice in the said appeal and it goes without saying that the directions of the Hon'ble Supreme Court shall prevail over the order of the Commission.

10. In the light of the above discussion, the Commission has decided to grant time to the Applicant subject to certain conditions. Accordingly, the following directions are issued:

- (a) FTIL is directed to transfer its entire shareholding in the Trust Demat Account of IEX by 2.7.2015;
- (b) If the direction at (a) is not complied with, HDFC Bank Limited, Depository Service is directed to transfer the shares of FTIL in IEX into the Trust Demat Account of IEX by 3.7.2015.
- (c) Actual transfer of shares from the Trust Demat Account of IEX to the account(s) of the purchaser(s) can be done only with the prior approval of the Commission;

(d) FTIL is directed to complete the sale of its entire shareholdings in IEX by 20.7.2015 failing which IEX will take steps to sell the shares by 5.8.2015 in a fair and transparent manner.

(e) After the formalities for sale are complete either by FTIL or by IEX, as the case may be, IEX will seek permission from the Commission for transfer of shares from the Trust Demat Account into the Demat Account(s) of the purchaser(s).

(f) IEX is directed to submit reports on the compliance of the above directions on 6.7.2015, 22.7.2015 and 7.8.2015.

11. A copy of the order shall be endorsed to HDFC Bank Limited, Depository Services for compliance of our directions.

12. I.A. No. 20/2015 in Petition No. 341/SM/2013 is accordingly disposed of.

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B Pradhan)
Chairperson