

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 211/RC/2015

**Coram:
Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member**

Date of Order: 29th of September, 2016

In the matter of

Petition seeking additional time period to comply with the Commission`s directions regarding Net worth Norms and Shareholding Pattern as prescribed under Regulations 18(i), 19(1) and 20 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010.

And

In the matter of

Power Exchange India Limited
5th Floor, Tower 3
Equinox Business Park (peninsula Techno Park)
Off Bandra Kurla Complex, LBS Marg,
Kurla (West), Mumbai-400070

.....**Petitioner**

Following were present:

Shri S. Venkatesh, Advocate, PXIL
Shri M.G. Raoot, PXIL
Shri Pawan Agarwal, PXIL
Shri Kapil Dev, PXIL

ORDER

The petitioner, Power Exchange India Limited, has filed the present petition for extension of time for compliance with the Net worth criteria and shareholding pattern as required under the provisions of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (hereinafter referred to as "Power Market Regulations). Power Market Regulations were notified in the Gazette of India on 21.1.2010 and came into effect from that date.

2. Power Exchange of India Limited was accorded permission to set up and operate Power Exchange vide order dated 25.7.2008 in Petition No. 21/2008 in accordance with the provisions of the guidelines issued by the Commission in order dated 6.2.2007 in Petition No. 122/2006 (suo-motu). In terms of first proviso to Regulation 14 of the Power Market Regulations, "Power Exchanges which have been granted approval/in-principle approval by the Commission prior to the date of notification of these regulations shall be deemed to be registered under these regulations subject to payment of annual charges." Accordingly, Power Exchange of India Limited is registered under Power Market Regulations and has to comply with the provisions of the said regulations.

3. The net worth and shareholding pattern requirements as specified in the Power Market Regulations are extracted as under:

"18 (i).A Power Exchange shall always have a minimum networth of Rs. 25 crore:

Provided that the Power Exchange shall always maintain the above networth and in case the same depletes due to payment made by the power Exchange to sellers / buyers in default including by the usage of the SGF impacting its networth, the Power Exchange shall increase its networth to comply with the above networth criteria within 3 months from the date of depletion.

Provided that if and when a Power Exchange separates its clearing function to a Clearing Corporation, it shall be required to have a minimum networth of Rs. 5 crore.

Provided further that the Commission may, by general order, review the networth criteria from time to time."

19. Shareholding Pattern of Power Exchange (1) The shareholding pattern for equity holders in the Power Exchange shall be as follows:

(i) Any shareholder other than a Member of the Power Exchange can have a maximum (whether directly or indirectly) of 25% shareholding in the Power Exchange.

(ii) A Member of the Power Exchange can have a maximum (whether directly or indirectly) of 5 % shareholding in the Power Exchange.

(iii) In total, a Power Exchange can have a maximum of 49% of its total shareholding owned by entities (whether directly or indirectly) which are Members of the Power Exchange.

(2) The share holding pattern shall be reported to the Commission from time to time."

20. Notwithstanding Regulation 19, the Power Exchanges granted approval or in principle approval prior to the date of notification of these regulations, shall within a period not exceeding three years from the date of notification of these regulations, ensure the structure/shareholding pattern as specified in Regulation 19."

4. In accordance with the above provision, an operating Power Exchange is required to always maintain a minimum net worth of Rs. 25 crore as per the last audited balance sheet. Further, the Regulations provide that any shareholder other than a member of the Power Exchange can have a maximum of 25% shareholding in the Power Exchange, and a member can hold maximum of 5% share and all members taken together can hold 49% of the share in the Power Exchange. This shareholding pattern was required to be achieved by 20.1.2013.

5. The petitioner filed Petition No. 134/2010 seeking extension of time to raise additional equity share capital to achieve the prescribed net worth of Rs. 25 crore as provided under Regulation 18 (i) of the Power Market Regulations. The Commission vide order dated 25.5.2010 allowed the petitioner a period of one year from the date of notification of Power Market Regulations i.e. till 20.1.2011 to achieve the prescribed net worth. The petitioner subsequently filed Petition No. 101/MP/2011 for further extension of timeline for complying with the net worth criteria. The Commission after considering the relevant facts and prayer of the petitioner vide order dated 27.10.2011 allowed time till 31.3.2013 to achieve the net worth. The petitioner again filed Petition No. 52/MP/2013 under Regulation 63 (i) of the Power Market Regulations for grant of additional time of 3 years from 31.3.2013 to achieve the net worth prescribed by the Commission. The Commission vide order dated 8.6.2013 directed PXIL to increase its net worth to Rs.25 crore by 20.1.2014 and at least Rs.10 crore within one month from the date of issue of the order. The petitioner

filed an Interlocutory Application No.17/2013 in Petition No. 52/MP/2013 seeking suspension of the Commission's order dated 8.6.2013 and for extension of time upto 31.3.2014 to increase its net worth to Rs.10 crore and time upto 31.3.2015 to increase its net worth to Rs. 25 crore. The Commission vide its order dated 25.7.2013 directed the petitioner to achieve net worth of Rs. 10 crore by 31.12.2013 and Rs.25 crore of net worth by 31.3.2014.

6. Subsequently, the petitioner filed 3/RC/2014 and 322/RC/2014 along with IA 17/2013 seeking extension of time to achieve net worth of Rs. 10 crore by 31.3.2015 and Rs. 25 crore by 31.3.2016. The Commission vide its common order dated 2.7.2014 directed the petitioner to make all out efforts to attract new shareholders who would infuse equity capital into PXIL to comply with the Power Market Regulations. The petitioner filed review petition seeking review of the order dated 2.7.2014 inter-alia to allow time upto 31.3.2016 to comply with Regulation 19 of the Power Market Regulations. The Commission vide order dated 2.12.2014 in Petition No. 24/RP/2014 allowed the petitioner time up to 30.9.2015 to comply with the minimum requirement of Rs. 25 crore.

7. The petitioner has filed the present petition seeking extension of time for a period of three years to comply with the net worth norms and shareholding pattern as specified in the Power Market Regulations. The petitioner has made the following specific prayers:

“(a) pass an interim order suspending the operation of the Order dated 3.12.2014 passed by the Hon'ble Commission in review petition bearing no. 24/MP/2014 till the pendency of the present Interim Application;

(b) pass suitable removal of difficulties order to modify the definition of networth, to include preference share capital in the computation of networth;

(c) grant additional time period of four (4) years for complying with the minimum networth requirement under Regulation 18 of the PMR;

(d) pass suitable removal of difficulties order to relax the applicability of the shareholding pattern prescribed under Regulations 19 and 20 of the PMR for a period of three (3) years after attaining the requisite minimum networth under Regulation 18 of the PMR.”

Submissions made by the petitioner

8. The petitioner has submitted the following reasons for seeking extension of time to achieve the networth and shareholding pattern as per the Power Market Regulations:

(a) Business Performance- Renewable Energy Certificate (REC) Segment:

Market share in REC segment doubled from 23.11% in financial year 2012-13 to 49.46% in financial year 2014-15. Number of RECs traded has increased by nearly 18% i.e. from 25.89 lakh RECs in financial year 2012-13 to 30.62 lakh REC in financial year 2014-15. Hon`ble Supreme Court vide its judgment dated 13.5.2015 upheld the power of SERCs to formulate Regulations specifying RPO on captive power plants and open access consumers. Appellate Tribunal for Electricity vide its judgment dated 20.4.2015 directed SERCs to enforce provisions with the RPO compliance by obligated entities. Therefore, large scale participation from obligated entities is expected to revive REC market.

(b) Business Performance - Physical Segment: Average traded volume increased from less than 2 MUs per day in financial year 2012-13 to nearly 3 MUs per day in financial year 2014-15. 65% of PXIL's traded volume were executed in term ahead contracts in financial year 2014-15. Implementation of Extended Market Session can lead to trade by number of distribution licensees for contingency requirement.

(c) Financial Performance: Cash loss reduced to Rs 0.07crore (financial year2014-15) from Rs 5.78 crore (Financial year 2012-13)

(d) The shareholding pattern of PXIL is as under:

Shareholder Name	Equity Amount	As a % of paid up capital
GMR Energy Limited	40,000,000	8.25%
Gujarat Urja Vikas Nigam Limited	25,000,000	5.16%
JSW Energy Limited	12,500,000	2.58%
MP Power Management Company Limited	10,000,000	2.06%
NSICL - Mr. J Ravichandran	100	0.00%
Mr. MK Ananda Kumar	100	0.00%
Mr. Nirmalendu A jajodia	100	0.00%
NSICL - Mr. N. Murlidaran	100	0.00%
NSICL - Mr. Yatrik Vin	100	0.00%
National Commodity & Derivatives Exchange Limited	150,000,000	30.95%
NSE Strategic Investment Corporation Limited (NSICL)	150,000,000	30.95%
Power Finance Corporation Limited	32,200,000	6.64%
Tata Power Trading Company Limited	25,000,000	5.16%
West Bengal State Electricity Distribution Company Limited	40,000,000	8.25%
TOTAL (A)	484,700,500	100%

Promoters hold Optionally Convertible Redeemable Preference Shares (Cumulative) ('OCRPS') worth of Rs. 5 crore each.

(e) Authorized share capital increased from Rs100 to Rs 120 crore in September, 2014. Equity infusion is linked with business and financial performance and it has become immensely difficult to attract new investors. PXIL made the following efforts in attracting equity investment since 2013:

(i) Board of NSE did not increase its shareholding in view of prescribed shareholding limit. NCDEX infused Rs 2crs on 29.5.2014 after approval from FMC. NSE and NCDEX hold 30.95% of equity share capital.PFC, in 2013, infused additional equity share capital of Rs. 42 lakhs. PFC in 2014 denied contributing additional equity shares.

(ii) Madhya Pradesh Management Co. Ltd., TPTCL, GUVNL, JSW, Global Energy (P) Ltd and Manikaran Power Ltd declined to take up offer of (additional) equity shares. UPCL, GoHP, Chhattisgarh Power Trading Co. Ltd., PTC, Torrent Power, Essar Power and Kalpatru Power are yet to take a decision. Dialogues with Bajaj Finserv, Build India Capital and Oman India Joint Investment Fund failed in absence of regulatory clarity over commercial viability of PXs. 5% equity investment limit under FDI norms has deterred interest of FIIs such as EPEX-Spot, CME, etc.

- (f) The provisions under the Companies Act, 2013 inter alia consider paid up capital while determining the net worth of a company. As per Section 43 of the Companies Act, 2013, share capital of a company limited by equity share include preference share capital;
- (g) As per Clause 3.03 of “Guidance Note on terms Used in Financial Statements”, capital generally refers to the amount invested in an enterprise by its owners e.g. paid-up share capital in a corporate enterprise and used to refer to the interest of owners in the assets of an enterprise. As per paragraph 64 of “Framework for the Preparation and Presentation of Financial Statements” enterprise can reflect the fact that parties with ownership interest in an enterprise have differing rights in relation to the receipt of dividends or the repayment of capital.
- (h) As per explanation provided on equity in the Guidance Note, preference capital can be considered as part of the capital in computing the net worth.

- (i) Power Market Regulations provides only paid up equity capital, which by implication excludes preference share capital while calculating the net worth of the Power Exchange. As on 31.3.2015, the net worth of the petitioner based on the definition given in the Companies Act, 2013, is Rs. (-) 68,29,114. However, as per the definition given in the Power Market Regulations, the net worth of the petitioner is Rs. (-) 10,68,29,114/-. The Commission in the Statement of Reasons to the Power Market Regulations has not given clarification or rationale for not including the preference share capital while considering the networth under the provisions of the Power Market Regulations. The inclusion of preference share capital, while considering the networth, would enable the petitioner to work towards bridging the gap between the current networth and the prescribed networth by issuing preference share capital without modifying the petitioner`s equity shareholding structure.
- (j) The petitioner has a robust risk management mechanism, wherein at least 100% margin is taken from the buyers before execution of transaction on its platform. The petitioner is maintaining Settlement Guarantee Fund for settlement of any defaults of its members.
- (k) The petitioner`s operational cash expenses are met by the revenues earned. However, any additional capital expenditure to meet the minimum networth of Rs. 25 crore prescribed under Power Market Regulations would only result in regulatory capital as no major capital expenditure is envisaged by the petitioner.
- (l) The requirement of networth and diversified shareholding are interlinked. The Commission vide order dated 2.7.2014 observed that the requirement for maintaining the networth is considered to be of prime importance, and the

diversification of shareholding is an object that should be targeted only after the objective of networth is attained. Therefore, any requirement for diversification of shareholding should be insisted upon only after the networth has been achieved, it would be reasonable to expect certain time frame, thereafter, to achieve the same.

(m) External factors and structural flaws in market design such as transmission corridor allocation, NLDC operating charges, No Objection Certificate for trading on PX platform, Renewable Energy Certificate, open access restrictions, uncertainty regarding new products affecting the growth of the petitioner which are beyond control of the petitioner.

(n) As compared to the power sector, the regulatory bodies in the following sectors have given sufficient time to grow and expand the market prior to ensuring compliance of capital adequacy and prudential norms:

- (i) Commodity Market: No networth or shareholding requirements were prescribed at the time of granting license to Nationwide Multi Commodity Exchanges (NMCEs) in 2003. In 2009, Government of India issued guidelines prescribing minimum networth and shareholding pattern for the first time for all the existing NMCEs which had completed five years of operations. As per the revised norms issued by Forward Market Commission on 6.5.2014, any NMCE having a lesser networth than the prescribed one has been directed to achieve the minimum networth within a period of three years from the date of issue of the directions.
- (ii) Insurance Sector: Section 6AA of the Insurance Act, 1938 provides that no promoter shall at any time hold more than 26% of the paid-up equity

capital. However, proviso to Section 6AA provides that in case of Indian company commences the business of life or general or reinsurance, the promoters holding more than 26% of the paid up equity share shall divest the share capital in excess of 26% of the paid up equity share capital in a phased manner after ten years from the date of start of business.

- (iii) Banking Sector: As per Guidelines for Licensing of Small Finance Banks in the Private Sector issued by Reserve Bank of India on 27.11.2014, minimum initial contribution to the paid-up equity capital by the promoters is at least 40% and is allowed to gradually bring it down to 26% within 12 years from the date of start of business. RBI had adopted similar approach while issuing the Guidelines for Licensing of Payment Banks on 27.11.2014. As per the above guidelines, diversified ownership structure is not mandatory and the promoters of the payments bank should hold at least 40% of its paid up equity for the first five years from the commencement of its business.

9. The petitioner has submitted that the following new initiatives have been taken up by it to improve its business performance:

- (a) Launch of new trading system: After successful launch of PIOUS-22, the Mixed Integer Linear Program based matching engine operating in collective segment on 22.10.2013, the petitioner is upgrading its trading platform and is offering PXIL-NeML Efficient Smart and Secure Trading System. The new P-NEST trading system is being developed to meet increasing needs of market participants and to serve evolving needs of the electricity market in the best possible manner. The

petitioner has completed the User Acceptance Test of the P-NEST system and is in the process of initiating a nation-wide major market connect programme.

(b) Advance order Features: The petitioner has proposed three types of flexible orders to help market participants in clearance of their submitted bids such as flexible block bid with constant volume across all time slots; Flexible block bid with variable volume across all time slots; and flexi time block order with variable time block.

(c) Proposed new products: Two Day Ahead Spot and Evening Day Ahead Spot
The petitioner has developed two new products, namely Two Day Ahead Spot and Evening Day Ahead Spot to offer opportunity to market participants to arrange for their power requirements two day before the actual date of delivery and to fulfill next day's requirement in case they are not able to fulfill their requirement in the existing DAS market and to cater to contingent requirements arising after the auction if closed in DAS.

10. The petitioner has requested the Commission to exercise inherent power given under the Act read with Regulation 63 of the Power Market Regulations, power of removal of difficulties under Regulation 64 for modifications in the Power Market Regulations by (i) amending the definition of networth to include preference share capital in the computation of networth, (ii) providing time to comply with the requirement of minimum networth, and (iii) amending Regulations 19 and 20 by providing more time to comply with the requirement of diversified shareholding in the exchanges.

11. The Commission vide Record of Proceedings for the hearing dated 17.9.2015 directed the petitioner to submit concrete proposal on increasing the networth and whether the promoters are ready to infuse additional preference share capital.

12. The petitioner vide its affidavit dated 23.9.2015 has submitted as under:
- (a) The promoter companies have been investing in the petitioner venture from time to time, both in the form of equity share capital and preference share capital depending upon the need of the venture and the regulatory framework defined in the Power Market Regulations.
 - (b) The promoters have infused Rs. 40 crore (Rs. 20 crore in the form of equity and Rs. 5 core in the form of preference share capital) out of total issued and paid up share capital of Rs. 58.47 crore and their shareholding in the petitioner company is already in excess of the prescribed limits under the Power Market Regulations.
 - (c) The promoters have been actively engaged with the potential investors, including leading players in the power market, to bring in additional capital with a view to help the petitioner achieve minimum net worth and comply with the provisions of the Power Market Regulations.
 - (d) The promoters have been extending support to the petitioner by providing technological solutions through their subsidiaries since the beginning of its operations.
 - (e) The petitioner has enhanced its authorized share capital to Rs.120 crore to accommodate capital from existing shareholders and new investors.
 - (f) The promoters have keen interest in pursuing the PXIL venture provided they see that necessary regulatory steps are being taken with a long term vision of building a competitive power market in the country.

(g) The promoters have been actively engaged with a leading player in the power market to bring in additional capital with a view to help the petitioner to achieve minimum net worth and comply with the provisions of the Power Market Regulations.

Analysis and Decision

13. The Commission through notification of Power Market Regulations in January 2010 has sought to ensure that Power Exchanges are subjected to appropriate and effective regulation, supervision, and oversight. The mandatory net worth requirement and the shareholding norms are a part of this regulatory approach. As per Regulation 18 of the Power Market Regulations, an operating Power Exchange is required to always have a minimum networth of Rs. 25 crore as per the last audited balance sheet. Regulation 19 provides that any shareholder other than a member of the Power Exchange can have a maximum of 25% shareholding in the Power Exchange, a member can hold maximum of 5% share and all members taken together can hold 49% of the share in the Exchange.

14. As on 31.7.2015, the net worth of PXIL was Rs. (-)12.26 crore and the details of shareholders who have shareholding in excess of prescribed norms are as under:

Shareholder Name	Member / Non-member	%age shareholding
NSE Strategic Investment Corporation Ltd (NSICL)	Non-member	30.95
NCDEX	Non-member	30.95
WBSEDCL	Member	8.25
GMR Energy	Member	8.25
PFC	Member	6.64
TPTCL	Member	5.16
GUVNL	Member	5.16

15. The Commission vide order dated 3.12.2014 in Petition No. 24/RP/2014 directed the petitioner to comply with the minimum networth requirement of Rs. 25 crore on or

before 30.9.2015. It is noted that no new investment has since been made in PXIL. The petitioner has submitted that equity infusion is linked with business and financial performance and in view of various macro and micro issues faced by it, it has become difficult for PXIL to attract new investors. It is noticed that as on 30.9.2014, the net worth of PXIL was (-) Rs. 10 crore. However, in the last one year, networth has decreased to (-) Rs. 12.26 crore as on 31.7.2015.

16. The petitioner, vide Record of Proceedings for the hearing dated 24.9.2015 was directed to submit a concrete proposal for increasing the networth after consultation with the promoters. PXIL vide its affidavit dated 9.11.2015 has submitted that Board meeting of the petitioner was held on 28.10.2015 and has placed on record the decision of the Board as under:

- (a) Suitably relax the equity shareholding limit of 25% per shareholding as provided in regulation 19(1)(i) of the PMR in order to enable Promoter shareholder(s) to bring in further share capital in the form of Equity and/or Preference without any restrictions in respect of voting, dividends etc;
- (b) Promoters are not compelled to reduce their equity stake, both current and future, in the Company in the next few years especially till the time the Company attains commercial & financial maturity;
- (c) Consider all forms of Preference Share Capital for computing net-worth of the Company under the provisions of PMR.
- (d) Commission to dispose of various petitions filed by the Company which will help creation of a competitive power market and level playing field for all the

power exchanges, current and future, in the country and also attract equity from other prospective investors.

17. The Board has urged the Commission to dispose of various petitions filed by PXIL which would help in creation of competitive power market and level playing field. It is noted that all petitions filed by PXIL regarding reservation in transmission corridor, exchange neutral NOC and RLDC operating charges, etc. have been disposed of with suitable directions. The Board has requested for suitable relaxation of equity shares holding and for an assurance that for the next few years, the shareholding shall be maintained. The petitioner has also prayed to relax the equity shareholding limit of 25% per shareholding as provided in Power Market Regulations to enable the promoter shareholder(s) to bring in further shares capital in the form of equity and/or preference without any restrictions in respect of voting, dividends, etc. The promoters of PXIL have not given any categorical commitment for further infusion of equity, and at the same time have sought an assurance that the promoters would not be compelled to reduce their equity stake both current and future till the time the PXIL attains commercial and financial maturity. In other words, the promoters have requested for an indefinite relaxation of the shareholding norms. In our view, such sort of relaxation will defeat the very purpose of prescribing the shareholding norms which seeks to ensure that the management and control of the exchange is not monopolized in the hands of one or two promoters. Without a firm commitment from the promoters to infuse equity capital so as to meet the networth requirement of Power Market Regulations, the Commission is not inclined to relax the provisions of Regulation 19 of the Power Market Regulations. The Board of PXIL, particularly the promoter members should make efforts to improve the efficiency and competitiveness of the power exchange which will attract investment as well enhance its market share in terms of trading in the exchange.

18. The petitioner has submitted that regulatory bodies in other sectors have been given sufficient time to ensure compliance of capital adequacy and prudential norms. In case of PXIL, the Commission has allowed more than six and half years since the notification of the Power Market Regulations to achieve the required net worth. Instead of achieving the required net worth, the net worth of PXIL is going down year after year. The market share of PXIL in various segments since the commencement of business has been depicted in the table as under:

Physical Segment

Year	Electricity Transacted through IEX (BUs)		Electricity Transacted through PXIL (BUs)		Electricity Transacted through PXIL	
	Day Ahead Market	Term Ahead Market	Day Ahead Market	Term Ahead Market	Volume (BUs)	% market share
2008-09	2.62		0.15		0.15	5%
2009-10	6.17	0.095	0.92	0.003	0.923	13%
2010-11	11.8	0.91	1.74	1.07	2.81	18%
2011-12	13.79	0.62	1.03	0.11	1.14	7%
2012-13	22.35	0.48	0.68	0.04	0.72	3%
2013-14	28.92	0.34	1.11	0.3	1.41	5%
2014-15	28.12	0.22	0.34	0.72	1.06	4%
2015-16	33.96	0.33	0.14	0.58	0.72	2%

REC segment

Period	Market size (in lakh)	PXIL market share
FY 11-12	10.15	6%
FY 12-13	25.90	23%
FY 13-14	27.49	52%
FY 14-15	30.62	49%
FY 15-16	49.55	37%

It is noticed that from a market share of 18% in physical segment in the year 2011-12, the present market share is merely 2% in 2015-16. PXIL has submitted that external factors and structural flaws in market design are affecting growth of PXIL which do not appear to be correct.

19. The petitioner has prayed to consider all forms of preference share capital for computing networth of the Company. In this connection the petitioner has submitted that as per the provisions of the Companies Act, 2013, preference share capital is a form of paid up share capital and is considered for computation of net worth. Accordingly, the petitioner has prayed to consider the preference share capital for computation of net worth, notwithstanding the fact that the definition of net worth in Power Market Regulations only includes equity share capital. "Net worth" has been defined in section 2(57) of the Companies Act, 2013 as under:

"(57) "net worth" means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation."

Further, "paid-up share capital" has been defined in section 2(64) of the Companies Act, 2013 as under:

"(64) "Paid-up share capital" or "share capital paid-up" means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called."

Section 43 of the Companies Act, 2013 provides that the share capital of a company limited by shares shall be of two kinds, namely, equity share capital with voting rights or with differential rights as to dividends, voting or otherwise in accordance with the rules as may be prescribed and preference share capital. In the Explanation under section 43, preference share capital has been defined as under:

'Preference Share Capital', with reference to any company limited by shares means that part of the issued share capital of the company which carries or would carry a preferential right with respect to :

- (a) Payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income tax; and
- (b) Repayment, in the case of winding up or repayment of capital, of the amount of the shares capital paid-up or deemed to have paid-up whether or not, there is a preferential right to the payment of any fixed premium on any fixed scale, specified in the memorandum or article of the company.”

Proviso under sub-section (2) of section 47 of the Companies Act 2013 provides that “the proportion of the voting rights of the equity shareholders to the voting rights of the preference shareholders shall be in the same proportion as the paid-up capital in respect of the equity shares bears to the paid-up capital in respect of the preference shares”. Therefore, since preference share capital is part of the paid-up share capital of a company, it shall be counted towards “net worth” of the company in terms of section 2(57) of the Companies Act, 2013.

20. However, Regulation 2(1)(v) of the Power Market Regulations defines “net worth” as under:

"(v) "Networth" means aggregate value of the paid up equity capital and free reserves (excluding reserves created out of revaluation) reduced by the aggregate value of accumulated losses, deferred expenditure (including miscellaneous expenses) not written off and loans and advances to the associates"

According to the above definition, net worth includes “equity share capital” but not “preference share capital”. The question is whether the provisions regarding “net worth” as defined in section 2(57) of the Companies Act, 2013 shall prevail over the provisions of “net worth” in the Power Market Regulation which has been notified by the Commission in exercise of its power under the provisions of the Electricity Act, 2003. Section 173 of the Electricity Act, 2003 provides that nothing contained in the Act or any rule or regulation made thereunder shall have any effect in so far as it is inconsistent with the provisions of the Consumer Protection Act, 1986, or the Atomic Energy Act, 1962 or the Railways Act, 1989. However, section 174 of the Electricity

Act, 2003 provides that except as provided in section 173, the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. In the light of the provisions of section 174 of the Electricity Act, 2003, Power Market Regulations which have been specified under section 66 of the Electricity Act, 2003 can have provisions regarding net worth which is at variance with the Companies Act, 2013. The Commission after considering the risk involved in management and operation of power exchange has consciously decided that net worth shall include paid-up equity share capital and not paid-up preference share capital. In our view, the paid-up preference share capital cannot be considered for computation of net worth of power exchange in the light of the provisions of Regulation 2(1)(v) of the Power Market Regulations. Accordingly, the third prayer of the Board of the petitioner is rejected.

21. The petitioner has submitted that due to external factors and structural flaws in the market design, growth of PXIL has been affected and the said issues have been taken up with the Commission. The Board of PXIL in para (d) of the resolution has stated as under:

“(d) The Commission to dispose of various petitions filed by the Company which will help creation of a competitive power market and level playing field for all the power exchanges, current and future, in the country and also attract equity from other prospective investors.”

It is pertinent to mention that the Commission through the Power Market Regulations and its various orders has endeavored to create competitive power market and level playing field for both the exchanges to operate. PXIL has not been able to take advantage of the regulatory environment to have a respectable market share. It is noted that all the issues raised by PXIL in its various petitions have been addressed with appropriate directions. It is now for PXIL to take advantage of the

favourable regulatory dispensations, improve its market share, achieve the required net worth and emerge as a self-sustaining and robust market institution in the power sector.

22. After considering the facts and circumstances in totality, we do not find any merit in any of the prayers of the petitioner. However, the Commission feels that facilitating competition in the power exchange business is necessary to foster competition and provide alternatives to the stakeholders and ultimately the consumers. PXIL has to ensure a robust risk management process and should charge risk based capital from participants separately to address market risk and credit risk of participants. PXIL has also to ensure that Settlement Guarantee Fund is sufficient for settlement of defaults of its members. Besides PXIL needs to hold sufficient liquid net assets funded by equity to cover the existing and potential business losses so that it can continue with its operation and provide services as a going concern. The Commission in view of the above has no other alternative than to grant some more time to enable PXIL to take advantage of the various orders issued by the Commission creating favourable business environment such as granting priority of 10% in the corridor allocation meant for exchange transactions, rationalization of operating charges, exchange neutral NoCs etc. and achieve the net worth requirement as per the Power Market Regulations. Accordingly, in exercise of our power under Regulation 64 of the Power Market Regulations, we grant time till 30.9.2018 to PXIL to achieve the net worth requirement as specified in Regulation 18 of the Power Market Regulations. PXIL is directed to submit a report every six months (by 5.4.2017, 5.10.2017, 5.4.2018 and 5.10.2018) regarding the status of its net worth for information of the Commission. PXIL shall ensure that no transaction on Power Exchange is undertaken unless the same is backed up by cash available with

them on behalf of the customer. If PXIL fails to achieve the required net worth by 30.9.2018, the Commission shall be constrained to initiate measures as may be deemed appropriate in accordance with the provisions of Power Market Regulations, as amended from time to time.

23. Petition No. 211/RC/2015 is disposed of with the above.

sd/-
(Dr. M.K. Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson