

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 12/SM/2016

- Subject : Non-compliance of the provisions of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009 and the Central Electricity Regulatory Commission (Power Market) Regulations, 2010.
- Date of hearing : 2.8.2017
- Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member
- Petitioner : Commission on its own motion
- Respondents : Manikaran Power Limited and Other.
- Parties present : Shri Sanjay Sen, Senior Advocate, MPL
Ms. Shikha Ohri, Advocate, MPL
Shri Vedant Sonkhiya, MPL
Shri Sneh Ashish, MPL
Shri Jasmeet Singh Kalsi, MPL
Shri Sat Prakash, MPL
Shri Amit Kapur, Advocate, IEX
Shri Akshat Jain, Advocate, IEX
Shri Ashutosh Srivastava, Advocate, IEX
Shri Indranil Chatterjee, IEX

Record of Proceedings

At the outset, learned senior counsel for Manikaran Power Limited (MPL) submitted that MPL has not willfully or otherwise violated the provisions of Regulation 26 (i)(c), 26 (iii) and 27 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (Power Market Regulations) . Learned senior counsel for MPL further submitted as under:

- a) There is only one account of MPL with the Indian Energy Exchange (IEX). MPL does not have multiple accounts with the Exchange. The direct settlement accounts are opened by the clients.
- b) On 26.12.2012, the Commission granted a Category-IV trading licence to MPL to carry out inter-State trading in electricity. MPL vide its letter dated 10.7.2012 requested IEX for change of membership from professional to trader. IEX processed MPL's request for change in category from professional member to trader member

and took certain steps, namely: i). the request for change in membership was accepted with immediate effect and a certificate was issued as a trader member; ii).MPL was requested to return the certificate for professional membership.

c) On 10.7.2012, when MPL was granted trader membership by IEX, the professional membership of MPL with IEX ceased to exist. On the same day, IEX issued a circular regarding sub-grouping and direct settlement in the day ahead market segment which inter-alia provides that trader/proprietary members of IEX shall be provided with one more option of financial settlement whereby the direct settlement of client portfolio obligations will be allowed. A separate account was required to be opened by the clients, the details of which were required to be forwarded by members to the Exchange. Client-wise operational limit will be provided as per the bank balance limit kept in the settlement account.

d) As per Sub-Rule (2) of the Rules of the Exchange, a legal entity having multiple plans registered with the Exchange through the same member could settle its financial obligations through one single bank settlement account. As per the IEX circular dated 10.7.2012, the Exchange would form a sub-group of such clients and map them against a single settlement account as provided by the Member. Group-wise operational limit after application of haircut factors would be provided as per the bank balance limit kept in the settlement account.

e) In accordance with the IEX circular, all other formalities of the client would remain the same. The Members would have to send the requisite client registration form separately for each client even if they belonged to the same company. Client-wise separate standing clearance would have to be given. The trading will be done by the trader/ proprietary Member on behalf of the clients portfolios irrespective of the fact whether it is a direct plan or a sub-group. Obligations, reports and scheduling would be done at the client level.

f) IEX issued the Circular as a facilitator and continued to facilitate transactions for its clients with a bonafide belief that the same was permissible. MPL maintained complete transparency in the process and as such, helped in the development of power market by facilitating clients to conduct transactions on their own account. MPL's membership category with IEX was converted from professional to trader on 10.7.2012 and the circular was issued on the same day. MPL does not have a past conduct to hide. This was a sanction protocol.

g) Though the Power Market Regulations provide that a Trader Member may provide various services to its clients, it does not obligate a Trader Member to provide such services to all its clients. The trading licensee can arrange its affairs in compliance with the applicable law. Such licensee in its sole discretion could provide the entire bouquet of services and in that case, the licensee settles their transactions directly with IEX. The circular was issued by IEX only to facilitate that the clients of Trader Members have the option of direct settlement with IEX.

h) Apart from MPL, other similarly placed members of IEX and their clients also have the option of direct settlement with the IEX. This does not imply that IEX

permitted dual membership to its members. The trader member of IEX is required to report its transactions directly to the Commission under Regulation 9 of the Trading Licence Regulations. Thus, the reporting of the trading member is not to IEX or through IEX but directly to the Commission. Therefore, the extant regulatory regime does not mandate IEX to monitor the transactions of a trading licensee.

i) Under Regulation 26 (i) of the Power Market Regulations, three types of memberships of the Exchange are possible (i) as an Electricity Trader, or (ii) as a Distribution Licensee or (iii.) as a member who is neither an Electricity Trader nor a Distribution Licensee (Professional Member). Third category is a non-license category. The Commission does not have control over such category and they can only provide the following services: IT Infrastructure for bidding on electronic platform or skilled personnel, advisory services, facilitation of procedure on behalf of his client for delivery of power. MPL has not provided any credit or financing facility to its clients and has not violated the provisions of Regulation 27 of the Power Market Regulations.

j) Regulation 26 of the Power Market Regulations, in no manner bars a single member from holding dual membership. There is no provision barring a professional member to subsequently qualify under Regulation 26(i)(a) or (b). Such subsequent qualification also in no manner automatically leads to revocation of membership under Regulation 26(i)(c). It is a settled principle of law that ineligibility or exclusion must flow from a specific provision of law designed to deny eligibility or to lay down disqualification or exclusion. In the present case, there is no specific provision in the Trading Licence or Power Market Regulations barring dual memberships of the Exchange. MPL facilitated transactions for Group/Self clearing accounts by virtue of the circular issued by IEX on 10.7.2012 which authorized a trader member to provide services similar to those provided by a Professional Member.

k) No credit or financing facility has been provided to such clients. Further, such transactions have been accounted through the settlement account of the client only. MPL has only provided IT infrastructure and skilled personnel for bidding on the Exchange along with facilitation of procedures and has not violated the provisions of Regulation 27 of the Power Market Regulations.

l) IEX's circular dated 10.7.2012 is active and alive even today. MPL had a set of clients, some of whom migrated to trading and some continued under the circular. There is no wilful default or violation by MPL of the Power Market Regulations. Besides MPL, there are 12 other trading licencees who are operating under the said settlement and they may also be made parties to the present proceedings to consider their interpretation of the circular as well as their conduct on the basis of the circular.

2. In its rebuttal, learned counsel for IEX submitted as under :

a). MPL vide its letter dated 10.7.2012 requested IEX to change its membership from professional member to trader member. IEX processed MPL's request for change in membership category from professional to trader membership and issued the certificate of membership admitting MPL as a trader member on 10.7.2012.

Simultaneously, the account of MPL maintained with IEX was also duly changed from that of a Professional Member to a Trader Member.

b). It is the bonafide understanding of IEX that the membership categories are mutually exclusive such that no single member can have more than one category of membership at a given point in time.

c). Though the Power Market Regulations provide that a Trader Member may provide various services to its clients, it does not obligate a Trader Member to provide such services to all its clients. It is upto the trading licensee to arrange its affairs in compliance with the applicable law. Such licensee in its sole discretion could provide the entire bouquet of services to some of its clients whereas to other clients, offering a more limited set of services. In the latter case, the clients could transact through IEX and settle their transactions directly with IEX and in the former, they may do through the Trader Members' Account.

d). On 10.7.2012, IEX issued a circular regarding sub-grouping and direct settlement in Day Ahead Market (DAM) segment. The circular was issued as a facilitative- alternative for its trader and proprietor members as an extended option of direct settlement with the Exchange. IEX was entitled to do so within its Rules, Bye Laws and Business Rules as approved by the Commission.

e). An Exchange as a public entity can only function within the square corners of of the Regulations. Unlike a statutory authority which has powers to investigate, the Exchange's complete canvass is defined by the Regulations. A licensee is responsible to comply with the provisions of the Trading Licence Regulations.

f). As an Exchange, there are 11 touch points of IEX's obligations culled out under the Regulations and IEX has complied with all of them. As an Exchange, IEX is a neutral platform. The compliance or non-compliance of the regulatory regime is between the Commission and the licensee. Ultimately, the doctrine of proportionality applies. Once a person takes a trading licence, he cannot simultaneously maintain the status of both a professional member and a trader member in terms of Rules of the Exchange. The opening page of client registration form says "we request you to register the following entity as our client". The registration form submitted by MPL to IEX is for the clients of MPL.

g). Once a member is a trader member, then, it is outside the zone of professional member. The trader member of the IEX is required to report transactions directly to the Commission under Regulation 9 of the Trading Licence Regulations. Thus, the reporting by the trader member is not to IEX or through IEX, but directly to the Commission. Therefore, the extant regulatory regime does not mandate IEX to monitor the transactions of MPL as a trading licensee. In terms of the applicable regulations, a Power Exchange has no role in overseeing the activities of a trader vis-à-vis its trading licence. Should the Commission so direct, IEX shall put in place a suitable mechanism to assist the Commission.

3. Learned senior counsel for MPL submitted that the client registration form is given to MPL by IEX and not prepared by MPL. MPL has only one account (Trader)

and not multiple accounts with IEX. MPL introduces non trader clients to IEX. Such clients open direct settlement accounts with IEX. MPL acts as a facilitator for such clients at a fee and does not maintain their settlement accounts. For the Financial Year 2013 to 2015, the Exchange had conducted inspection/audit of the books of MPL on 15/16.12.2015 and issued a report. IEX cannot now say that MPL is trying to defend its past conduct under the circular. MPL is entitled to charge a higher amount under its trading licence. For the trades taking place through MPL's trading license, MPL charged as per the Trading Margin Regulations, 0.75% fee as a facilitator in cases of direct settlement under the circular, which is lower than what is admissible under the Trading Margin Regulations. It is not in MPL's interest to circumvent the Regulations and does not help it commercially too.

4. After hearing the learned senior counsel for MPL and learned counsel for IEX at length, the Commission reserved the order in the petition.

By order of the Commission
Sd/-
(T. Rout)
Chief (Legal)