

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 12/SM/2016**

**Coram:**

**Shri A.K. Singhal, Member**

**Shri A.S. Bakshi, Member**

**Dr. M.K. Iyer, Member**

**Date of Order: 9<sup>th</sup> of May, 2018**

**In the matter of:**

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

**And**

**In the matter of:**

**The Commission on its own motion**

**Versus**

1. Manikaran Power Limited  
A/3, Astha, 460, E.M. Bypass,  
Kolkata, 700 017, West Bengal

2. Indian Energy Exchange Ltd.  
Unit No.3,4,5& 6, Fourth Floor,  
Plot No. 7, TDI Centre,  
District Centre, Jasola, New Delhi- 110025

**....Respondents**

**Parties Present:**

Shri Sanjay Sen, Senior Advocate, Manikaran Power Limited  
Ms. Shikha Ohri, Advocate, Manikaran Power Limited  
Shri Amit Kapur, Advocate, Indian Energy Exchange Limited  
Shri Akshat Jain, Advocate, Indian Energy Exchange Limited  
Shri Ashutosh Kumar Srivastava, Indian Energy Exchange Limited  
Shri Indranil Chatterjee, Indian Energy Exchange Limited



## ORDER

Manikaran Power Limited (hereinafter referred to as “Manikaran Power”) was registered as a Professional Member with Indian Energy Exchange Limited (hereinafter referred to as “IEX”) on 30.11.2007. As per the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 as amended from time to time (hereinafter referred to as “Power Market Regulations”), Professional Member falls within the category of “Member who is neither an Electricity Trader nor a distribution licensee including deemed distribution licensee nor a grid connected entity”. This category of member cannot provide any credit or financing or working capital facility to their clients and their services are limited to providing (a) IT infrastructure for bidding on electronic Exchange platform or skilled personnel; (b) Advisory services related to power prices and the follow on bidding strategy (e.g. weather related information, demand supply position, etc.); (c) Facilitation of procedures on behalf of his client for delivery of power (e.g. standing clearances of State Load Despatch Centre, coordination with National Load Despatch Centre, etc). Further, this category of member is entitled to charge member service charge @ 0.75% of the transaction value for providing services to the clients in day ahead and term-ahead markets.

2. Manikaran Power was granted a Category ‘IV’ trading licence on 29.6.2012 for carrying out inter-State trading in electricity in accordance with the provisions of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009 (hereinafter “Trading Licence Regulations”). Manikaran Power applied for the up-gradation of its licence to a higher category, and the Commission vide its order dated 8.1.2013 allowed the up-



gradation of trading licence from Category IV to Category III and by order dated 8.6.2013 allowed up-gradation of the licence from Category III to Category II. Manikaran Power, vide its Petition No. 441/RC/2014 had applied for up-gradation of its trading licence from Category II to Category I.

3. In order to consider the case for up-gradation of category of licence, Manikaran Power was directed to submit the details of volume of power traded by it on the Power Exchange during 2012-13 and 2013-14. Manikaran Power, vide its affidavit dated 23.1.2015, submitted the volume of electricity traded in the Power Exchange during 2012-13 and 2013-14 as under:

	DAM		TAM	
	Drawal (MUs)	Injection (MUs)	Drawal (MUs)	Injection (MUs)
<b>Member Clearing</b>				
FY 2012-2013	249.35	6.79	-	-
FY 2013-2014	897.16	4.17	349.00	-
<b>Total</b>	1146.51	10.96	349.00	-
<b>Group &amp; Self Clearing</b>				
FY 2012-2013	2631.99	164.38	3825.50	-
FY 2013-2014	3558.39	186.95	6350.00	-
<b>Total</b>	6190.39	351.32	10175.50	-

4. From the data furnished, the Commission observed that Manikaran Power has segregated the transactions between Member (Clearing) and Member (Group/Self Clearing) and reported only the transactions carried out as Member (Clearing) in its monthly reports to the Commission under the provisions of Trading Licence Regulations.

5. Manikaran Power was directed to explain the provisions of the Power Market Regulations under which it has segregated the transactions between Member (Clearing) and Member (Group/Self Clearing) and also to explain why the entire transactions made by Manikaran Power should not be considered for computing the trading volume under the relevant category of licence held by Manikaran Power during 2012-13 and 2013-14. The Power Exchanges were also directed to submit on affidavit whether there were trading licensees who were doing business on the Power Exchange as Trading Member as well as Professional Member and to furnish the details thereof.

6. Manikaran Power vide letter dated 24.3.2015 submitted that segregation of transactions between Member (Clearing) and Member (Group/Self Clearing) can be made under Regulation 26 of the Power Market Regulations. Manikaran Power further submitted that while on account of being a trading licensee, Manikaran Power had to purchase electricity for resale in case of "Member Clearing", there is no purchase for resale in case of "Self/Group Clearing" and therefore, there is no necessity for obtaining licence to facilitate transactions on the Power Exchange as a Member (Group/Self Clearing). Manikaran Power also submitted that it maintained separate accounts for transactions entered into as a trading licensee and as a member of the exchange. Manikaran Power submitted that since there was no necessity of licence for Self-Clearing for a Professional Member, Manikaran Power did not include the exchange related transactions within the transactions involving the trading licence.

7. IEX, vide affidavit dated 30.3.2014, submitted that no member has dual membership i.e. trading membership and professional membership in the IEX and

accordingly, no Member who is a licensed trader is doing business as a Trader Member as well as a Professional Member. IEX further submitted that in order to give the clients of the Trader Member more hold on their financial transactions with the exchange, IEX vide its circular dated 10.7.2012 extended the optional facility of direct settlement with the exchange for which the clients of Trader Member were required to open separate settlement accounts with the exchange.

8. The Commission, after considering the submissions of Manikaran Power and IEX, vide order dated 30.12.2016 observed that Manikaran Power has violated the provisions of Regulation 26 (i) (c), Regulation 26 (iii) and Regulation 27 of the Power Market Regulations for the reasons explained and issued show cause notice to Manikaran Power under Section 142 of the Act to explain as to why Manikaran Power should not be held liable for contravention of the provisions of the Power Market Regulations and Trading Licence Regulations. Manikaran Power was further directed to explain as to why appropriate action under the Act read with Trading Licence Regulations should not be taken against it for revocation of licence on account of contravention of the provisions of the Power Market Regulations and terms and conditions of the licence. IEX was also directed to explain as to how Manikaran Power was allowed to maintain separate accounts as Member (Clearing) and Member (Group/Self Clearing) and whether the Power Exchange has put in place mechanism to detect such abnormalities and undertake corrective actions with suitable penalties.

9. Relevant portion of the said order dated 30.12.2016 is extracted as under:-

“7. (a) Regulation 26 (i) provides for three categories of members of the power exchange i.e. (i) member who is an electricity trader; (ii) member who is a distribution licensee including a deemed distribution licensee or grid connected entity; (iii) member who is

neither an electricity trader nor a distribution licensee including deemed distribution licensee nor a grid connected entity. Under the Business Rules of IEX, the third category of Member bears the nomenclature of “Professional Member”. Therefore, an electricity trader cannot act as a Professional Member in accordance with Regulation 26 (i)(c) of the Power Market Regulations. After being granted the licence for an inter-State trading, Manikaran Power has continued to act as a Professional Member which is in violation of the provisions of Regulation 26 (1) (a) read with 26 (1) (c) of the Power Market Regulations.

(b) Regulation 26 (iii) provides that a member who is an electricity trader shall trade or clear on its own account or trade and clear on behalf of its clients. The provision “clear and trade on behalf of its clients” does not enable a trading licensee to work as a Professional Member, since, in this case also, the trading licensee is entitled to trade and clear on behalf of its clients. Therefore, this provision does not enable Manikaran Power to function as a Professional Member and show the transactions separately from that of the transactions carried out as a Trading Member.

(c) Regulation 27 and first proviso provides as under:

“Member Service Charge for providing services to their clients in day ahead and term ahead markets in Power Exchange shall not be more than 0.75% of transaction value. This ceiling would be an overall ceiling including the service charges of any subordinate service providers.

Provided that Member Service charge to their clients in day ahead and term ahead market in Power Exchange for Electricity Traders who are members of Power Exchange shall be the trading margin only as per CERC (Fixation of trading margin) Regulations 2006 and as amended from time to time.”

As per the above provisions, a Trading Member can only charge Trading Margin and not the Member Service Charge. Manikaran Power instead of charging the trading margin on all transactions carried out on the IEX has claimed the member service charges not exceeding 0.75% of the transaction value which is violation of the provisions of the Power Market Regulations.

8. Considering the reasons mentioned in para 7 above, the Commission is of the *prima facie* opinion that Manikaran Power has violated the provisions of Regulation 26 (i)(c), 26 (iii) and 27 of the Power Market Regulations. These contraventions of Power Market Regulations are covered under Regulation 14 (A)(2)(a) and (b) of the Trading Licence Regulations apart from being in contravention of terms and conditions of licence.

9. In view of the above, we direct issue of notice under Section 142 of the Act read with Regulation 14B(1) of the Trading Licence Regulations to Manikaran Power with direction to explain as to why Manikaran Power should not be held liable for contravention to the provisions of the Power Market Regulations and Trading Licence Regulations and to further explain as to why appropriate action under the Electricity Act, 2003 read with Trading Licence Regulations should not be taken against it for revocation of licence on account of contravention of the provisions of the Power Market Regulations and terms and conditions of the licence.

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11. IEX is directed to explain as to how Manikaran Power was allowed to maintain separate accounts as Member (Clearing) and Member (Group/Self Clearing) and whether the Power Exchange has put in place mechanism to detect such abnormalities and undertake corrective actions with suitable penalties.”

10. Replies to show cause notice have been filed by Manikaran Power and IEX vide their affidavits dated 24.1.2017 and 16.1.2017 respectively.

11. Manikaran Power, vide its reply affidavit dated 24.1.2017, has submitted as under:

(a) Manikaran Power has not wilfully violated any provision of the Power Market Regulations read with the Rules and Bye-Laws of the IEX.

(b) Manikaran Power started functioning as a Professional Member on the IEX with effect from 20.11.2007 and since then, Manikaran Power has been effectively implementing the power trading concept in India and has successfully demonstrated its capability in optimally utilizing the existing infrastructure within the country for the benefit of small and marginal consumers. Manikaran Power started with 5 clients in 2008-09 and introduced over 1500 clients to the IEX platform since the financial year 2012-13.

(c) Manikaran Power was granted category IV inter-State trading licence on 29.6.2012, category III on 8.1.2013 and category II on 8.6.2013. At no stage, Manikaran Power has made any wrongful or erroneous disclosures to the Commission in its capacity as an electricity trader.

(d) IEX vide its Circular dated 10.7.2012 introduced that “Trader/Proprietary members of IEX will be provided with one more option for financial settlement of their clients whereby, direct settlement of a client/portfolio obligations will also be allowed. The client will have to open a separate settlement account. The Member will have to forward such details to the exchange.” Through this circular, IEX permitted direct settlement by the Trader Members in a manner similar to the facilities provided by the Professional Members. Manikaran Power continued to facilitate transactions for its clients with a *bona fide* belief that the same was permissible. The transactions were carried out with the full knowledge and participation of the IEX.

(e) The circular bearing No. IEX/MO/103/2012 dated 10.7.2012 of IEX is extracted as under:

**“Sub Grouping and Direct settlement in DAM Market segment**

Dear Members,

In pursuance of Rules, Bye-Laws and Business Rules of the Exchange, the Members of the Exchange may kindly note that the concept of Sub Group and Direct Client is now being introduced in Day Ahead (DAM) market segment.

A company having multiple injection/drawl points gets separate SLDC Standing Clearance for each of its injection/drawl points. IEX considers each separate point of injection/drawl as a separate client (portfolio). Currently, this creates a situation where the same company or legal entity needs to open a separate Bank Settlement account for each of its clients registered with the Exchange through Professional Members, thereby increasing operational complexities for such entities.

**Sub Grouping**

It has now been decided that all Members of IEX will be provided with one more option (sub group) for financial settlement of their clients trades (in case of DAM) whereby, legal entity having multiple clients registered with the Exchange through the same member can settle their financial obligation through one single bank settlement account of the said legal entity. Exchange will form a sub group of such clients and map them against single settlement account as provided by the member. Client wise Obligation will

be netted off under the same sub group. Group wise operation limit (exposure) after application of hair cut factor for these clients will be provided as per the morning bank balance limit kept in the settlement account.

### **Direct Settlement**

Trader/Proprietary Members of IEX will be provided with one more option for financial settlement of their clients' whereby, direct settlement of a client/Portfolio obligation will also be allowed. The client will have to open a separate settlement account. The member will have to forward such details to the exchange. Client wise operation limit (exposure) will be provided as per the morning bank balance limit kept in the settlement account.

All other formalities of a client getting registered with the exchange will remain same. Member will have to send the requisite client registration forms separately for each client even if they belong to same Company/Legal entity. Client wise separate Standing Clearance (NOC) will have to be given. The trading (bidding) will still be done by the Trader/Proprietary member on behalf of his clients/portfolios irrespective of the fact whether it is a direct client or under a sub group. Obligation reports and scheduling will be done at the client level only as is the current practice.

Currently Sub Grouping and Direct client facility will not be available for Term Ahead market (TAM) segment.

Members are requested to install and download the new trading software Power/ARMS™ (2.5.4.1) kept in ftp server using URL <ftp://ftp.lexindia.com> located in 'Common/DAM LIVE/' folder in the FTP server. Refer Annexure A for further details.

Power ARMS™ (2.5.4.1) will go live from trading day 11<sup>th</sup> July, 2012."

- (f) As per Regulation 26(1) of Power Market Regulations, three types of memberships of the Exchange are possible, namely (a) an electricity trader, (b) distribution licensee including grid connected entity, and (c) as a member who is neither an electricity trader nor a distribution licensee (Professional Member). The above Regulations in no manner bar a single member from holding dual membership. For example, a distribution licensee member also qualifies as an electricity trader member. To hold otherwise would be in contravention to the last proviso of Section 14 of the Act which provides that a distribution licensee shall not require a licence to undertake trading in electricity. In other words, a

distribution license which is a deemed electricity trader by virtue of Act holds dual membership under the provisions of the Power Market Regulations. Manikaran Power 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. This was on the premise that a Trader Member having a higher standing could well be in a position to encourage “direct settlement” transactions, which brings in more competition in prices and results in better utilization of the exchange platform.

(g) For all the cleared units of a client, as a Group/Self clearing account, only member facilitation charges (0.75%) have been charged. No credit or financing facility has been provided to such clients. Such transactions have been accounted through the settlement account of the client only.

(h) In the present case, Manikaran Power was registered as a Professional Member with the IEX on 20.11.2007 and was subsequently granted a Category IV trading licence by this Commission on 29.6.2012. This trading licence was upgraded from Category IV to Category III on 8.1.2013 and from Category III to Category II on 8.6.2013. There is no provision in the Power Market Regulations barring a Professional Member to subsequently qualify under Regulation 26 (i)(a) or 26(i)(b). Further, 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 Regulations or Power Market Regulations barring dual membership of the exchange.

- (i) Regulation 26(ii) to (iv) of the Power Market Regulations enumerate the services which the three categories of members are permitted to provide under the provisions of the Power Market Regulations. These regulations also in no manner bar a Professional Member from obtaining membership as an Electricity Trader and providing services in accordance with the regulations. Manikaran Power has enumerated the differences in the qualification, services and financial transactions permitted to be undertaken by a Professional Member and an Electricity Trader as under:

S. No.	Electricity Trader	Professional Member
1.	Section 2 (6) of Act defines the electricity trader as under: “Electricity trader means a person who has been granted a licence to undertake trading in electricity under Section 12”;	Member who is neither an Electricity Trader nor distribution licensee including deemed distribution licensee nor a grid connected entity
1.	Electricity Trader shall be entitled to undertake transactions on the Renewable Energy Certificates (REC).	A Professional Member shall be entitled to undertake transactions on the Renewable Energy Certificates (REC)
3.	Member who is a Trader Member shall trade and clear on their own account or trade and clear on behalf of their clients. Such Member shall be entitled to transact the electricity, right to which has been obtained through an agreement from a grid-connected entity. In such cases, the electricity trader will be treated as client and the delivery shall be undertaken by the party on the other side of agreement i.e. grid connected entity	The Professional Member shall not be entitled to trade for himself. He shall have the right to act for and/on behalf of his Clients but shall not settle and clear the contracts on the Exchange for such Clients in accordance with the Power Market Regulations.
4.	Member who is an Electricity trader shall trade and clear on its own account or trade and clear on behalf of its clients. This category of members may provide any credit or financing or working capital facility to their clients.	Member who is neither an Electricity Trader nor distribution licensee including deemed distribution licensee nor a grid connected entity can only provide the following services to

		<p>its clients:-</p> <p>(a) IT Infrastructure for bidding on electronic Exchange platform or skilled personnel.</p> <p>(b) Advisory services related to power prices and the follow on bidding strategy (e.g. weather related information, demand supply position etc.)</p> <p>(c) Facilitation of procedures on behalf of his client for delivery of power (e.g. State Load Despatch Centre standing clearances, coordination with National Load Despatch Centre etc.) In no case, such a member shall provide any credit or financing or working capital facility to their clients.</p>
5.	Member Service charge to their clients in day ahead and term ahead market in Power Exchange for Electricity Traders who are members of Power Exchange shall be the trading margin only as per CERC (Fixation of trading margin) Regulation 2006 and as amended from time to time.	Member Service Charge for providing services to their clients in day ahead and term ahead markets in Power Exchange shall not be more than 0.75% of transaction value. This ceiling would be an overall ceiling including the service charges of any subordinate service providers.

(j) Manikaran Power has taken the following steps to comply with the provisions of the Power Market Regulations and the Trading Licence Regulations:

(i) Educated its Clients regarding the difference between Member Clearing Account and Group/Self Clearing Account and the trade Settlement Mechanism followed for each form of Membership.

(ii) Accepted requests for Migration from Group/Self Clearing Accounts to Member Clearing Accounts, subject to volume restrictions applicable to Electricity Trader member category.

(iii) Separate accounts have been maintained for each trade cleared as for Member Clearing Account and Self/Group clearing Account.

(iv) For all the cleared units of a client, as a Group/Self Clearing Account, only member facilitation charges have been charged. No credit or financing facility has been provided to such clients. Such transactions have been accounted through the Settlement Account of the client only. Manikaran Power has only provided IT Infrastructure and skilled Personnel for bidding on the exchange along with facilitation of procedures. No clearing has been done through Manikaran Power's account for such transactions.

(v) For all cleared units of a client as an Electricity Trader, trading margin is being charged as per the Trading Margin Regulations.

(k) Manikaran Power is charging Member Service Charge only for the services provided for Group/Self Clearing Accounts and not for the units cleared in its capacity as an Electricity Trader. For the units cleared for Group/Self Clearing Accounts, Manikaran Power would have in fact benefitted monetarily by claiming trading margin instead of Member Service Charge which is clear from the fact that while providing service to the Group/Self clearing accounts, Manikaran Power has incurred losses during the financial years 2013 to 2014.

(l) Manikaran Power has at no stage acted in wilful disobedience or contravention of any provisions of the Act or Regulations framed thereunder and therefore, the

show cause notice be recalled and the present proceeding against it be dismissed.

12. Indian Energy Exchange vide its affidavit dated 16.1.2017 has submitted as under:

(a) Before the grant of trading licence, Manikaran Power was admitted as a Professional Member of IEX on 30.11.2007. Pursuant to grant of licence on 29.6.2012, Manikaran Power applied for conversion of its membership from Professional Member to a Trader Member. IEX vide its letter dated 10.7.2012 confirmed the change in membership of Manikaran Power from Professional Member to a Trader Member. Accordingly, the account of Manikaran Power maintained with IEX was duly changed from that of a Professional Member to that of a Trader Member and was maintained only as a Trader Member with IEX.

(b) Power Market Regulations provides that a Trader member may provide various services to its clients. The trading licence, however, does not obligate the trading licensee to provide all of such services to all its clients. Some of his clients could transact through Exchange and may be willing to settle their transactions directly with the exchange whereas others may do so through the Trader Member account. In this backdrop, IEX vide its Circular dated 10.7.2012 extended option of direct settlement with IEX to the clients of a Trader Member. As on date, besides Manikaran Power, there are 12 other trading licensees who are

operating under the aforementioned mode of settlement, the list of which has been submitted to the Commission.

(c) With regard to the contention of Manikaran Power that IEX was aware that these transactions were not being carried out against the trading licence, IEX has submitted that all transactions carried out by Manikaran Power, whether for direct settlement or for member settlement, were always considered by IEX against its Trader Membership.

(d) IEX has denied the contention of Manikaran Power that IEX was aware about maintenance of two separate accounts by Manikaran Power for transactions entered into as a trading licensee and as a member of IEX. IEX has explained that a Trader Member is permitted to open one settlement account for IEX transactions exclusively with the IEX empanelled banks and mapping of such account is done by the banks on request of IEX. Therefore, only one settlement account i.e. Trader Member Account is being maintained by Manikaran Power with IEX. Therefore, Manikaran Power was not allowed to maintain separate accounts as Member (Clearing) and Member (Group/Self-Clearing) at IEX at any point of time.

(e) In response to the Commission's query whether IEX has put in place a mechanism to detect such abnormalities and undertake corrective actions with suitable penalties, IEX has submitted that as per the Trading Licence Regulations, a Trader Member of the exchange is required to report transactions directly to the Commission, and such reporting is not to IEX or through IEX. As

on date, no mechanism has been put in place by IEX to detect such abnormalities. IEX has submitted that suitable mechanism would be instituted and implemented to ensure compliance of the trading limits to the extent of transactions on IEX platform, if directed by the Commission.

**Submission during the hearing:**

13. During the hearing, learned senior counsel for Manikaran Power submitted as under:

(a) There is only one account of Manikaran Power with IEX. Manikaran Power does not have multiple accounts with IEX. The direct settlement accounts are opened by the clients.

(b) On 29.6.2012, the Commission granted a Category-IV trading licence to Manikaran Power to carry out inter-State trading in electricity. Manikaran Power vide its letter dated 10.7.2012 requested IEX for change of membership from Professional Member to Trader Member. On 10.7.2012, IEX issued Trader Member certificate to Manikaran Power and asked Manikaran Power to return the professional membership certificate. From that date, the professional membership of Manikaran Power with IEX ceased to exist. On the same date, IEX issued the Circular that enabled trade through the direct settlement mechanism. Manikaran Power believed that Circular and subsequent actions taken by Manikaran Power were in accordance with law.

- (c) IEX circular dated 10.7.2012 provided that Trader Members/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 IEX. Client-wise operational limit were to be provided as per the bank balance limit kept in the settlement account.
- (d) As per Sub-Rule (2) of the Business Rules of the IEX, 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 limits 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 Trading/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. Manikaran Power acted on the basis of the Circular with a *bonafide*

belief that the same was permissible. Manikaran Power 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 accounts.

(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 all such services to all its clients. The Trader Member 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) No credit or financing facility has been provided by Manikaran Power to such clients. Further, such transactions have been accounted through the settlement account of the client only. Manikaran Power 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.

(i) IEX's circular dated 10.7.2012 is active and alive even today. Manikaran Power 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 Manikaran Power of the Power Market Regulations. Besides Manikaran Power, there are 12 other trading licensees 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.

(j) For the Financial Year 2013 to 2015, the Exchange had conducted inspection/audit of the books of Manikaran Power on 15/16.12.2015 and issued a report. IEX cannot now say that Manikaran Power is trying to defend its past conduct under the circular.

(k) Manikaran Power is entitled to charge a higher amount under its trading licence. For the trades taking place through Manikaran Power's trading license, Manikaran Power charged as per the Trading Margin Regulations, while 0.75% fee was charged 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 Manikaran Power's interest to circumvent the Regulations and does not help it commercially too.

14. Learned counsel for IEX submitted that IEX was permitted by the Commission on 31.8.2007 to set up and operate a power exchange in terms of the guidelines in order dated 6.2.2007 in Petition No.155/2006 (Suo Motu). At that time, two membership categories namely, Trading cum Clearing Member (Proprietary) and Trading cum Clearing Member (Client) were permitted by the Commission. On 9.6.2008, the Rules and Bye-Laws of IEX were approved by the Commission and IEX was permitted to start operation. On 20.1.2010, the Commission notified the Power Market Regulations which prescribed in Regulation 26 three categories of membership, namely, Electricity Trader, distribution licensee including deemed distribution licensee or a grid connected entity,

and Member who does not fall under any of the previous two categories. The above categories of members have been specified in Clause 4.3 of the Rules of IEX consistent with Regulation 26 of the Power Market Regulations. The Rules, Bye-Laws and Business Rules of IEX were approved by the Commission on 22.12.2012. Learned counsel for IEX submitted 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 since inter se membership between Trader and Professional Member, between Professional and Proprietary Member, and between Proprietary Member and Trader is not permissible. Learned counsel further submitted that IEX has always complied with the reporting requirements of Power Market Regulations and in terms of the applicable regulations, a Power Exchange has no role in overseeing the activities of a trader vis-a-vis trading licensee. With regard to the membership of Manikaran Power with IEX, learned counsel submitted as under:

- (a) On 27.6.2008, IEX admitted Manikaran Power as a Professional Member and a Membership Certificate was issued, inter alia, stating that the certificate should be returned to IEX on termination/cessation of membership. Manikaran Power was granted a Category IV licence for carrying out trading in electricity in accordance with the provisions of law including the Trading Licence Regulations. Manikaran Power vide its letter dated 10.7.2012 requested IEX to change its membership from Professional Member to Trader Member. IEX processed Manikaran Power's request and issued the certificate of membership admitting Manikaran Power as a Trader Member on 10.7.2012 and requested Manikaran Power to return the membership certificate for Professional Member. When

Manikaran Power was granted membership as a Trader Member, its membership as a Professional Member ceased to exist. The account of Manikaran Power maintained with IEX was also duly changed from that of a Professional Member to a Trader Member.

(b) On 10.7.2012, IEX issued Circular No. IEX/MO/103/2012 regarding Sub Grouping and Direct Settlement in Day Ahead Market (DAM) segment which inter alia provided that “Trader/Proprietary Members of IEX are being provided with one more option of financial settlement whereby direct settlement of a client/portfolio obligation will be allowed. The clients have to open a separate settlement account, members will forward such details to the exchange.” The Circular was issued as a facilitative alternative for its Trader and Proprietary Members. IEX was entitled to do so within its Rules, Bye Laws and Business Rules as approved by the Commission. This does not imply that IEX has allowed dual membership of the exchange.

(c) An Exchange as a public entity can only function within the four corners 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.

(d) 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 and 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 Manikaran Power to IEX is for the clients of Manikaran Power.

(e) 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 Manikaran Power 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.

### **Analysis and Decision:**

15. We have heard the learned counsels for Manikaran Power and IEX and perused documents on record. Manikaran Power was admitted as a Professional Member of IEX on 30.11.2007 and had been functioning as a Professional Member under the provisions of the Power Market Regulations. Subsequently, Manikaran Power was granted Category ‘IV’ licence on 29.6.2012, Category ‘III’ licence on 8.1.2013 and Category ‘II’ licence on 8.6.2013. Subsequent to the issue of inter-State trading licence

on 29.6.2012, Manikaran Power applied vide its application dated 9.7.2012 for change in Membership category from Professional Member to Trader Member. IEX vide its certificate dated 10.7.2012 admitted Manikaran Power as a Trader Member with effect from 9.7.2012 and further advised Manikaran Power to return the professional membership certificate to the exchange. The said facts have been confirmed by Manikaran Power in its written submission.

16. Based on the said Circular dated 10.7.2012, Manikaran Power was trading some quantum of power on its own account and the balance quantum of power on behalf of its clients. Further, Manikaran Power was reporting the transactions made on its own account to the Commission in terms of the Trading Licence Regulations and transactions made on behalf of its clients were not being reported to the Commission. Manikaran Power applied for up-gradation of its licence to Category-I. While examining the case, it was noticed that Manikaran Power had carried out the transactions as Member Group/Self Clearing and such transactions have not been reported to the Commission. After examining the explanations received from Manikaran Power and IEX, the Commission vide order dated 30.12.2016 issued a show cause notice to Manikaran Power under Section 142 of the Act for violation of Regulations 26 (1)(c), 26 (iii) and 27 of the Power Market Regulations. IEX was also directed to show cause as to how Manikaran Power was allowed to maintain separate accounts as Member (Clearing) and Member (Group/Self Clearing).

17. Both Manikaran Power and IEX have made their submissions. The matter was also argued at length by the learned Senior Counsel for Manikaran Power and learned



counsel for IEX. The basic contention of Manikaran Power is that utilisation of IEX platform for engaging in direct settlement of clients and settlement through the trader settlement account was sanctioned/permitted by IEX through its Circular dated 10.7.2012. Manikaran Power has submitted that the Circular enables direct settlement by trading members in a manner similar to the facilities provided by a Professional Member. Manikaran Power has submitted that it maintains a single account, namely, the trader settlement account and for their direct settlements, the clients maintain their own accounts with IEX and trade at the exchange directly. According to Manikaran Power, the clients are introduced by Manikaran Power to IEX who then processes the applications resulting in opening of the client settlement accounts in the name of the clients (self-clearing account). Manikaran Power has stated that the facilities provided by it are only limited to informing the client on market issues and also the limit/extent of trade they can do, based on the input received from IEX relating to the client's opening operational account for the day. Once IEX recognises and enables clients of trading members to have settlement with IEX, these transactions would not be very different from the transactions carried out by Professional Member. Manikaran Power has submitted that the direct settlement routes by the clients are a legacy of the past which was protected under the circular of IEX dated 10.7.2012 and therefore, these trades were not reflected in the trading member account maintained by Manikaran Power. IEX has submitted that the membership categories under Regulation 26 of Power Market Regulations are mutually exclusive such that no single member can have more than one category of membership. Therefore, Manikaran Power cannot act both as a Trader Member and Professional Member. IEX has further submitted that the Circular dated



10.7.2012 was issued as a facilitative alternative for its Trader Member and Proprietary Members which IEX was entitled to issue in accordance with the Power Market Regulations and the Rules, Bye Laws and Business Rules of IEX as approved by the Commission.

18. Based on the show cause notices issued and submissions of the Respondents thereon, the following issues arise for our consideration:

(a) Issue No.1: Whether Manikaran Power has violated the provisions of Regulations 26 (1) (c), 26 (iii) and 27 of the Power Market Regulations?

(b) Issue No.2: Whether Manikaran Power has violated the provisions of Regulation 14 (A)(2)(a) and (b) of the Trading Licence Regulations?

(c) Issue No.3: Whether the Circular dated 10.7.2012 issued by IEX allowing Trader Member to simultaneously act as a Professional Member in the matter of settlement of accounts with IEX and permitting the Trader member to maintain separate account for clients is in conformity with PMR and Rules of IEX?

(d) Issue No.4: Whether Manikaran Power is liable for action for contravention of the provisions of Power Market Regulations and Trading Licence Regulations?

(e) Issue No. 5: What are the corrective actions?

The above issues have been dealt with in the succeeding paragraphs.

**Issue No.1: Whether Manikaran Power has violated the provisions of Regulations 26 (1) (c), 26 (iii) and 27 of the Power Market Regulations?**

19. Manikaran Power has been issued a show cause notice for violation of the provisions of Regulation 26 (i)(c), Regulation 26 (iii) and Regulation 27 of the Power Market Regulations. Further, these contraventions are covered under Regulation 14 (A) (2) (a) and (b) of the Trading Licence Regulations. Accordingly, the show cause notice has been issued under Section 142 of the Act read with Regulation 14 (B)(1) of the Trading Licence Regulations.

20. Regulation 26 (i) (c) conceives a category of Member who is neither an Electricity Trader nor a Distribution Licensee including a deemed distribution licensee/grid connected entity. The Commission has approved this category of Member as Professional Member in Rule 4.3 of the Rules of IEX. Regulation 26 (ii) of Power Market Regulations clearly provides that the Professional Member can provide only three specific facilitative services to its clients and in no case can provide any credit or financing or working capital facility to its clients. Manikaran Power was granted a trading licence by this Commission and is accordingly covered under Regulation 26(i) (a) of the Power Market Regulations. Regulation 26 (iii) provides that an Electricity Trader shall trade and clear on its own account or trade and clear on behalf of its clients. This Regulation does not permit an Electricity Trader to provide the services of a Professional Member.

21. Thus, the actions of Manikaran Power to allow its clients to directly trade and provide such clients the services akin to a Professional Member is in violation of the

Power Market Regulations. Since, Manikaran Power is not entitled to provide the service as a Professional Member, it should have traded and cleared on behalf of its clients instead of facilitating the settlement of the clients directly with the exchange.

22. Manikaran Power has contended that a distribution licensee acts as a Trader Member as well as a grid connected entity and therefore, the distribution licensee as a deemed trading licensee is permitted to discharge the functions of another category of Member. In this connection, it is pertinent to note that a distribution licensee is a deemed trading licensee in terms of last proviso to section 14 of the Act. Further, a distribution licensee is a grid connected entity as it is connected to the transmission systems of State Transmission Utility or Central Transmission Utility for drawal or injection of power. Therefore, a distribution licensee is statutorily permitted to carry out trading in electricity in addition to being a grid connected entity.

23. Regulations 26 (iii) relates exclusively to the Trader Member, and not to the Professional Member. A Trader Member can trade and clear on its own account or trade and clear on behalf of its clients. The Trader Member is also required to comply with the Trading Licence Regulations and the terms and conditions of its license. As per the Trading Licence Regulations, certain volume of electricity has been permitted to be traded by the Trading Licensee as per the category to which it belongs. Therefore, a trading licensee while trading and clearing on its own account or trading and clearing on behalf of its clients is required to ensure that its trade volume should not exceed the capped volume permitted under respective category of the trading licence held by the Trader Member. Once the trading is undertaken by a Trader Member whether on its

own account or on behalf of its clients, all such trades shall be accounted for as trade by a trading licensee and shall be governed by the provisions of Trading Licence Regulations and Trading Margin Regulations of the Commission.

24. Thus, the actions of Manikaran Power by opening and maintaining two separate accounts, segregating the trade into two categories instead of accounting as one, and not reporting to the Commission about the trade carried out by clients through direct settlement with the exchange are in violation of Regulation 26 (iii) of the Power Market Regulations.

25. Regulation 27 of Power Market Regulations provides that a Trading Member shall be entitled to charge only the trading margin to its clients in day ahead and term ahead market. Regulation 27 is extracted as under:

“27. Member Service Charge for providing services to their clients in day ahead and term ahead markets in Power Exchange shall not be more than 0.75% of transaction value. This ceiling would be an overall ceiling including the service charges of any subordinate service providers.

Provided that Member Service charge to their clients in day ahead and term ahead market in Power Exchange for Electricity Traders who are members of Power Exchange shall be the trading margin only as per CERC (Fixation of trading margin) Regulations 2006 and as amended from time to time.”

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While the main provision regarding Member Service Charge is applicable in case of Professional Members, proviso under the said regulation carves out an exception in case of Trader Member who is permitted to charge trading margin in accordance with Power Market Regulations from its clients in the day ahead and term ahead market in the Power Exchange. The said provision does not make any distinction between the

transactions made by a Trader Member on its own accounts or transaction made directly by its clients through the exchange. As Trader Member has to necessarily trade on its own or on behalf of its clients, it shall be entitled to charge only trading margin on the entire volume.

26. Manikaran Power, in the instant case, instead of charging the trading margin on all transactions carried out on the IEX, has claimed the member service charges. Therefore, Manikaran Power has acted as a Professional Member while holding a trading licence. Manikaran Power by charging the Member Service Charge, instead of trading margin, has violated the provisions of proviso to Regulation 27 of the Power Market Regulations.

27. Manikaran Power after grant of trading licence and after being enrolled as a trader member in IEX had ceased to be a Professional Member of the IEX. Professional Members can neither trade on their own accounts nor on the accounts of their clients and are permitted to provide only three support services as provided in Regulation 26(ii) of the Power Market Regulations. Manikaran Power, though a Trading Member, has claimed that it has acted in a manner that is akin to a Professional Member, while permitting its clients to directly trade on the exchange. Further, Manikaran Power was entitled to charge only trading margin in terms of proviso to Regulation 27 of the Power Market Regulations whether trading on its own account or on behalf of its clients. By charging Member Service Charge, which is applicable in case of Proprietary Member and Professional Member, Manikaran Power has violated Regulation 27 of the Power Market Regulations. Hence, we are of the view that the charges against Manikaran

Power for violation of Regulations 26 (iii) and 27 of the Power Market Regulations are proved.

**Issue No.2: Whether Manikaran Power has violated the provisions of Regulation 14 (A)(2)(a) and (b) of the Trading Licence Regulations?**

28. Manikaran Power has also been issued a show cause notice for contravention of Regulation 14 (A)(2)(a) and (b) of the Trading Licence Regulations, apart from being in contravention of terms and conditions of licence.

29. Regulation 14(A)(2)(a) and (b) of the Trading Licence Regulations provide as under:

“14. A. Contravention by Licensee

(2) Serious contraventions shall cover the following:

(a) Violations and non-compliance of the provisions of the Act, Rules and the Regulations specified by the Commission, particularly, Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009, Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2010, Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010, Central Electricity Regulatory Commission (Grant of Connectivity, Long-Term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009, Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012 and Central Electricity Regulatory Commission (Power Market) Regulations, 2010 as amended from time to time or any subsequent amendment thereof;

(b) Deliberate under-reporting of transaction volume in monthly reporting.”

30. We have already come to the conclusion that Manikaran Power has violated Regulation 26 (iii) and 27 of the Power Market Regulation and therefore, the violation of Regulation 14 (A)(2)(a) stands established.

31. As regards 14(A)(2)(b), Regulation 9 of the Trading Licence Regulations provides as under:

“9. Submission of Information

The licensee shall-

- (a) Supply such information, as may be called for by the Commission from time to time;
- (b) Furnish monthly information in Forms IV-A, IV-B, IV-C, IV-D, IV-E, IV-F, IV-G and IV-H in respect of inter-State trading, intra-State trading on the basis of the inter-State trading licence, trading through power exchanges and long term trading, cross border trading and banking transactions so as to reach the Commission before 15<sup>th</sup> of the succeeding month:

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- (bc) Submit annual return of inter-State transactions detailing total volume transacted (in MU and Rupees) and the total trading margin charged thereon, total volume transacted in intra-State transactions on the basis of the inter-State trading licence in MU and Rupees, total volume transacted on Power Exchange and the total trading margin charged thereon.....”

As per the above provisions, the licensee is required to submit monthly information in respect of inter-State trading, intra-State trading on the basis of the inter-State trading licence, trading through power exchanges and long term trading, cross border trading and banking transactions.

32. However, Manikaran Power has maintained the transactions under two heads, namely, Member (Clearing) and Member (Self & Group Clearing) and reported only the translations carried out as Member (Clearing) in its monthly reports to the Commission under the provisions of the Trading Licence Regulations. The details of trading licence and the volume of trading permitted and actually transacted by Manikaran Power are as under:

Year	Category	Date of issue of licence	Volume Capped as per Regulations	Combined volume actual traded
2012-13	Category IV	29.6.2012	100 MU	3066.75
2013-14	Category III	8.1.2013	500 MU	4871.06
	Category II	8.6.2013	1500MU	
2014-15	Category II	-	1500MU	4624.57



2015-16	Category II	-	1500MU	7756.47
2016-17	Category II	-	1500MU	5601.80

It is clear from the above that the volume traded by Manikaran Power at IEX during the years 2012-13 and 2016-17 was exceeding the volume allowed under the applicable category of trading licence granted to Manikaran Power. Despite the same, Manikaran Power has not reported the actual transactions to the Commission and its actions are in contravention of Regulation 9 of Trading Licence Regulations. On account of deliberate under-reporting of transactions in monthly reporting, the charge against Manikaran Power under Regulation 14(A)(2)(b) stands established.

33. In view of the above discussion, we hold that Manikaran Power has violated the provisions of Regulation 14 (A)(2)(a) and (b) of the Trading Licence Regulations.

**Issue No.3: Whether the Circular dated 10.7.2012 issued by IEX allowing Trader Member to simultaneously act as a Professional Member in the matter of settlement of accounts with IEX and permitting the Trader member to maintain separate account for clients are in conformity with Power Market Regulations and Rules of IEX?**

34. Regulations 26 and 27 of the Power Market Regulations provide as under:

**“Regulation 26: Membership in Power Exchange**

(i) Membership in Power Exchange shall be of the following three categories:

(a) Member who is an Electricity Trader or;

(b) Member who is a distribution licensee including deemed distribution licensee or a grid connected entity or

(c) Member who is neither an Electricity Trader nor distribution licensee including deemed distribution licensee nor a grid connected entity.

(ii) Member who is neither an Electricity Trader nor distribution licensee including deemed distribution licensee nor a grid connected entity can only provide the following services to its clients:-

- (a) IT infrastructure for bidding on electronic Exchange platform or skilled personnel
- (b) Advisory services related to power prices and the follow on bidding strategy (e.g. weather related information, demand supply position etc)
- (c) Facilitation of procedures on behalf of his client for delivery of power (e.g. State Load Despatch Centre standing clearances, coordination with National Load Despatch Centre etc)

In no case, such a member shall provide any credit or financing or working capital facility to their clients.

(iii) Member who is an Electricity Trader shall trade and clear on their own account or trade and clear on behalf of their clients. This category of members may provide any credit or financing or working capital facility to their clients.

(iv) Member who is distribution licensee including deemed distribution licensee or grid connected entities shall transact and clear their own account only.

**Regulation 27:** Member Service Charge for providing services to their clients in day ahead and term ahead markets in Power Exchange shall not be more than 0.75% of transaction value. This ceiling would be an overall ceiling including the service charges of any subordinate service providers.

Provided that Member Service charge to their clients in day ahead and term ahead market in Power Exchange for Electricity Traders who are members of Power Exchange shall be the trading margin only as per CERC (Fixation of trading margin) Regulations 2006 and as amended from time to time.

Provided further that the Commission may, by order, review the members service charge criteria from time to time:

Provided also that the Commission may, by order, notify the member service charges separately for derivative contracts:

Provided also that member service charge shall not include any charges levied by Power Exchange, transmission (open access) charges, other charges payable to National Load Despatch Centre/Regional Load Despatch Centre/State Load Despatch Centre, statutory taxes, etc.”

35. The Rules, Bye-Laws and Business Rules of IEX were approved by the Commission vide order dated 9.6.2008 in Petition No. 38/2007 in accordance with the Guidelines. After the Power Market Regulations were notified in January 2010, IEX modified its Rules in accordance with the regulations and submitted for approval by the

Commission on 1.8.2011 which were approved by the Commission on 22.10.2012. Rule 4.3 of the Rules of the IEX dealing with its membership provides as under:

“4.3. For the present, the Membership of the Exchange are classified into three categories as under:-

4.3.1. **Proprietary Member** means a Member who is a grid connected entity and shall include distribution licensee, generator, end user and open access consumer;

Proprietary Member shall have right to trade for its own account, and clear the same Contracts through the Clearing House as a Clearing Member. The Proprietary Member shall also be entitled to undertake transaction on the Renewable Energy Certificates.

4.3.2. **Trader Member** means a Member holding a valid and subsisting interstate Trading Licence from the Commission.

Member who is a Trader Member shall trade and clear on their own account or trade and clear on behalf of their clients. Such Member shall be entitled to transact the electricity, right to which has been obtained through an agreement from a grid-connected entity. In such cases, the electricity trader will be treated as client and the delivery shall be undertaken by the party on the other side of agreement i.e. grid connected entity. A Trader Member shall also be entitled to undertake transaction on the Renewable Energy Certificates.

4.3.3. **Professional Member** means a Member who is neither a grid connected entity nor holding a valid and subsisting interstate Trading License from the Commission;

The Professional Member shall not be entitled to trade for himself. He shall have the right to act for and/on behalf of his Clients but shall not settle and clear the contracts on the Exchange for such Clients in accordance with the Power Market Regulations. In particular, the Professional Member shall only provide the following services:

- (a) IT infrastructure for bidding on electronic exchange platform or skilled personnel.
- (b) Advisory services related to power prices and the follow on bidding strategy (e.g. weather related information, demand supply position etc.)
- (c) Facilitation of procedures on behalf of his client for delivery of power (e.g. SLDC standing clearances, coordination with NLDC etc.)

The Professional Members shall not provide any credit or financing or working capital facility to their clients. The Professional Members shall also be entitled to undertake transactions on the Renewable Energy Certificates in the same manner as in the case of other transactions....”

36. Regulation 26(i) provides for three categories of members, namely, (a) Electricity Trader, (b) Distribution Licensee including deemed distribution licensee and grid



connected entity, and (c) Member who is neither a Distribution Licensee including deemed distribution licensee and grid connected entity nor an Electricity Trader. The third category member is one who can neither be an electricity trader nor a distribution licensee and grid connected entity. Therefore, there is a statutory bar on the third category member to be either an electricity trader or a distribution licensee/grid connected entity. In other words, an Electricity Trader or a Distribution Licensee/Grid connected entity cannot discharge the functions of the third category member nor the third category member can discharge the functions of Electricity Trader or Distribution Licensee/Grid connected entity. It is noteworthy to mention that as per Regulation 26(iii), the Member who is an Electricity Trader has the right to trade and clear on its own account or trade and clear on behalf of its clients, apart from providing any credit or financing or working capital facility to its clients. On the other hand, the third category Member (who is neither a Trading Member nor a distribution licensee/grid connected entity) is neither permitted to trade on its own account nor on the account of its clients. Its activities are confined to providing certain facilitative services as IT infrastructure, advisory services and facilitation of procedure on behalf of the clients such as standing clearances from State Load Despatch Centres, etc.

37. The Commission has approved three categories of members for IEX, namely, Proprietary Members, Trader Members and Professional Members. As may be seen from Para 4.3 of the approved Rules of IEX, the Proprietary Member is a grid connected entity which includes distribution licensee, generator or open access consumer which corresponds to Regulation 26 (i)(b) of the Power Market Regulations. The Proprietary Members have the right to trade on their own account and this corresponds to

Regulation 26(iv) of the Power Market Regulations. The second category of Member is a Trader Member which corresponds to Regulation 26(i)(a) of the Power Market Regulations. Trader Members have the right to trade and clear on their own account or trade and clear on behalf of their clients. The third category of Member is called the Professional Member which neither a grid connected entity nor a trading licensee and corresponds to Regulation 26 (i) (c) of the Power Market Regulations. This category of Member is not entitled to trade on the Exchange but has the right to act for and on behalf of its clients. The Professional Member shall not settle and clear the contracts on the Exchange on behalf of the clients. It is therefore noticed that there is the fundamental distinction between a Trader Member and Professional Member in that while the Trader Member shall trade and clear on its own account or trade and clear on behalf of its clients, the Professional Member can neither trade for itself nor settle and clear the contracts on the exchange on behalf of the clients. The Professional Member is only entitled to provide three facilitative services to its clients.

38. After Manikaran Power was granted a trading licence by the Commission, it applied for Membership as a Trading Member of IEX. IEX granted Trading Membership to Manikaran Power and withdrew the Certificate of Professional Member of IEX. Therefore, Manikaran Power ceased to exist as a Professional Member of IEX. Manikaran Power as a Trader Member can trade on its own account or on the account of its clients within the trading volume limit allowed on its licence.

39. Manikaran Power is claiming that the Circular of 10.7.2012 issued by IEX permitted Manikaran Power to discharge functions akin to that of a Professional Member.

40. Perusal of the Circular dated 10.7.2012 extracted in Para 14 above shows that IEX had introduced the concept of sub-grouping and direct settlement in the day ahead market segment. As per the said Circular, a Company having multiple injection/drawal points gets separate SLDC standing clearances for each of its injection/drawal points. Each of the separate points of injection/drawal is considered as a separate client portfolio. IEX has introduced the sub-grouping of all the clients of a Professional Member and mapped them against single settlement account as provided by the Member. Client-wise obligations will be netted off against the same sub-group. The option of direct settlement has been made available to only Trader/Proprietary Members of IEX. Under this scheme, the Trader/Proprietary Members are given with one more option of financial settlement of their clients by allowing direct settlement of client/portfolio obligation. The client is required to open a separate settlement account through the Exchange. Manikaran Power has submitted that the Circular of IEX permitting the clients of the Trader Member to directly settle their obligations is same as the clients of a Professional Member being permitted to settle their accounts directly with the IEX and the Professional Member only providing the facilitative services. Since the clients are making direct settlement through the Exchange and Manikaran Power as the Trader Member is providing only facilitative services, the said transactions have not been included in the trading volume by Manikaran Power.

41. In our view, the circular of IEX dated 10.7.2012 is not in compliance with the provisions of the Regulation 26 of the Power Market Regulations and para 4.3 of the Rules of IEX. As per the Regulation, the distribution licensee or the grid connected entities shall transact and clear on their own accounts only. Further, the Electricity Trader is permitted to trade and clear on its own account or trade and clear on behalf of its clients. The Regulations do not permit a distribution licensee or grid connected entity or an electricity trader for direct settlement of the portfolio by their clients. Similar provisions have been approved in the Rules of the IEX. In our view, the IEX Circular dated 10.7.2012 permitting the clients of the Trader Member or Proprietary Member to directly settle their accounts is not in accordance with the Power Market Regulations and the Rules of the Exchange as approved by the Commission.

**Issue No.4: Whether Manikaran Power is liable for action for contravention of the provisions of Power Market Regulations and Trading Licence Regulations?**

42. As already discussed above, Manikaran Power has contravened the provisions of the Regulations 26 (iii) and 27 of the Power Market Regulations. Manikaran Power has also contravened Regulation 9 of the Trading Licence Regulations. Therefore, Manikaran Power has committed serious contravention in terms of Regulation 14A (2)(a) & (b) of the Trading Licence Regulations.

43. Manikaran Power is claiming that the circular of 10.7.2012 issued by IEX permitted Manikaran Power to discharge functions akin to that of a Professional Member. As discussed in paras 34 to 41, the circular of IEX dated 1.7.2012 is not in compliance with the provisions of Regulation 26 of Power Market Regulations and Para

4.3 of the Rule of IEX. Further, Manikaran Power on the basis of the said circular of 10.7.2012 cannot contravene any provisions of the Trading Licence Regulations.

44. Regulation 14C (1) of the Trading Licence Regulations provides for the penalty for the charges of serious contravention as under:

“14 C. Penalties for Contravention and non-compliance

(1) Where the charge of serious contraventions is established against the licensee, the Commission may:

(a) Direct that the licensee shall pay, by way of penalty, a sum which shall not exceed rupee one lakh for each contravention; and/or

(b) Debar the licensee, from trading in short term market or medium term market or through power exchanges for a period not exceeding one year; or

(c) Suspend the licence for trading in electricity for a period not exceeding one year; or

(d) Revoke the licence of the licensee; or

(e) Issue such other directions or impose such other condition as the Commission may deem appropriate:

Provided that in case of debarment or suspension, NLDC or concerned RLDC or SLDC, as the case may be, shall take appropriate action with regard to scheduling and despatch of electricity in respect of the transactions of the licensee.”

45. Manikaran Power has committed serious contravention in terms of Regulations 14(A)(2) (a) & (b) of Trading Licence Regulations having violated the provisions of Regulations 26 (iii) and 27 of Power Market Regulations and Regulation 9 of Trading Licence Regulations. We have kept in view the role played by Manikaran Power in aggregating the demands of buyers and sellers of electricity and promoting the development of market through power exchange. Though there are multiple contraventions, we have taken a lenient view and accordingly, impose the penalty of

Rs. one lakh under Section 142 of the Act read with Regulation 14(C)(1)(a) of the Trading Licence Regulations, without prejudice to the action that may be considered necessary after receipt of the report from IEX in terms of para 50 of the order.

46. Notwithstanding the penalty imposed in para 45 above, Manikaran Power is liable to pay the licence fee to the Commission based on the actual volumes of transactions made during the relevant year. In this connection, Proviso to Regulation 7 (b) of the Trading Licence Regulations provides as under:

“(b) The licensee shall not exceed the volume of trading authorized under the licence, but may, in exceptional circumstances, undertake trading in electricity up to the maximum of 120 per cent of the volume of trade authorized under the licence granted to him:

Provided that the licensee, on exceeding the volume of trading authorized in a year under the licence granted to him shall pay licence fee applicable to the higher category for that particular year.”

As per the above provisions, the licensee shall not exceed the volume of trading authorized under the licence. Further, the licensee, on exceeding the volume of trading authorized in a year under the licence granted to him is required to pay licence fee applicable to the higher category for that particular year.

47. In terms of the above Regulation, Manikaran Power is liable to pay the differential amount of licence fee to the Commission for the years 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17 since the combined volumes of trading transactions carried out as Member (Clearing) and Member (Self & Group Clearing) exceeds the volumes of trade authorised to Manikaran Power by virtue of the category of licence held by him at relevant point of time. It is noted that Manikaran Power has paid the licence fee for

Category-I for the year 2017-18. As per the Payment of Fees Regulations, the fees for the appropriate category of licence are required to be paid by 30<sup>th</sup> April of the corresponding financial year and payment beyond 30<sup>th</sup> April shall carry a late payment surcharge @ 1% per month. Since, the combined transaction of Manikaran Power between the years 2012-13 to 2016-17 exceeded the trading volume sanctioned under its licence held at relevant point of time, Manikaran Power shall be liable to pay the late payment surcharge @ 1% per month on the differential amount of licence fee applicable to the category of licence he was holding and the category of licence corresponding to the actual traded volumes. Accordingly, Manikaran Power shall be liable to pay the differential amount of licence fee and late payment surcharge as under:-

Year	Date of Receipt	Amount paid (Rs. in lakh)	Amount actually payable as per Category Licence corresponding to actual volume of trade (Rs. in lakh)	Balance amount due (Rs. in lakh)	Surcharge upto months and year	Duration in Months for which surcharge is to be calculated	Surcharge payable (Rs. in lakh)	Total Amount due (Rs. in lakh)
2012-13	3.7.2012	2.27	30.25	27.98	10.12.2012	4	1.12	43.55
	10.12.2012	2.27		25.71	30.4.2018	65	16.72	
2013-14	16.4.2013	6.00	40.00	34.00	3.7.2013	2	0.68	40.18
	3.7.2013	9.00		25.00	30.4.2018	58	14.50	
2014-15	1.5.2014	15.00	40.00	25.00	18.2.2015	9	2.25	28.31
	18.2.2015	6.25		18.75	30.4.2018	39	7.31	
2015-16	23.4.2015	6.00	40.00	34.00	10.9.2015	4	1.36	34.36
	10.9.2015	9.00		25.00	30.4.2018	32	8.00	
2016-17	29.4.2016	15.00	40.00	25.00	14.7.2016	2	0.50	0.50
	14.7.2016	25.00		0.00	30.4.2018	22	0.00	
2017-18	21.4.2017	15.00	40.00	25.00	14.7.2017	2	0.50	0.50
	14.7.2017	25.00		0.00	30.4.2018	10	0.00	
	<b>Grand Total</b>			<b>94.46</b>			<b>52.94</b>	<b>147.40</b>

Manikaran Power is directed to pay the licence fee and the late payment surcharge as calculated above by 15.6.2018.

**Issue No.5: What are the corrective actions?**

48. We have already come to the conclusion that the IEX Circular dated 10.7.2012 is not in conformity with the Power Market Regulations and Rules of IEX as approved by the Commission. We are of the view that there is a deviation in the Circular as the Trading Member has been permitted to allow its clients to make direct settlement through their accounts which is neither permitted in the Power Market Regulations nor in the Rules of the Exchange. Therefore, we direct IEX to withdraw the operation of the said Circular dated 10.7.2012 with immediate effect.

49. We express our displeasure as Circular dated 10.7.2012 was introduced without seeking prior approval of the Commission. We direct that in future, IEX should seek the approval of the Commission for any Circular issued by it, if it involves any deviation from the Power Market Regulations or Rules approved by the Commission.

50. Manikaran Power has submitted that it was charging member service charges for group/self-clearing which is less than the trading margin. IEX is directed to investigate whether member service charges collected by Manikaran Power during period of question is exceeding the limit specified in Trading Margin Regulations within two months from the issue of the order and submit a report in this regard within fifteen days thereafter.

51. The prime responsibility of the IEX is to ensure compliance of the Regulations by all the Members appointed by it.

52. It is noted that IEX, from time to time, inspects the accounts of Members of Power Exchange. For the 2013 to 2015 Financial years, IEX had conducted inspection/audit of the books of Manikaran Power on 15/16.12.2015 and issued a report in this regard. The Inspection Report also covers Member Service Charges. It is, however, noticed that IEX has not considered the Member Service Charges collected by Manikaran Power and not reported the same to the Commission. Accordingly, we direct IEX and PXIL to conduct annual inspection of their Members (Professional and Trader Members) through the engagement of third party conversant with the power sector. The inspection shall cover compliance with the regulations and rules of the Exchanges by the Trader Members and Professional Members, the volume transacted by Trader Members and Professional Members, the trading margin or Member Service Charge collected by Trading Members or Professional Members, as the case may be, and non-compliance with the regulations, if any. The Power Exchanges are directed to file their reports under affidavit within three months from the date of issue of this order. Power Exchanges are directed to incorporate the necessary provisions with regard to annual inspection of their members in their Rules, Business Rules and Bye Laws and submit the same for approval of the Commission.

53. We direct the staff to examine whether there is any requirement for continuing with the category of Member covered under Regulation 26(i)(c) of the Power Market Regulations and submit a report to the Commission within a period of 2 months from the date of issue of this order.

54. Manikaran Power and IEX have submitted that besides Manikaran Power, certain other trading licensees acted in accordance with the Circular dated 10.7.2012 and have permitted their clients to directly settle their accounts with the exchange. IEX is directed to carry out a detailed investigation on the transactions of such Trading Member and submit a report containing the following aspects within a period of two months from the date of issue of this order:

(a) Whether the combined transactions carried out by the clients of the Trader Members directly and transactions carried out by the Trader Members in a year exceed the volume permitted by the licence of such Trader Members?;

(b) If so, the excess quantum of trade year-wise;

(c) Whether the Trader Members have charged Member Service Charge in excess of the trading margin as per the Trading Margin Regulations in such cases?

55. On receipt of the reports of the staff (para 53) and report of IEX (para 50 & 54), the Commission will take further view on these aspects.

56. Petition No. 12/SM/2016 is disposed of in terms of the above.

**Sd/-**  
**(Dr. M. K. Iyer)**  
**Member**

**sd/-**  
**(A.S. Bakshi)**  
**Member**

**sd/-**  
**(A.K. Singhal)**  
**Member**