

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.287/MP/2018

Subject : Petition under Regulation 16 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 as amended, for grant of registration to establish and operate a Power Exchange in accordance with the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

Petitioner : Pranurja Solutions Limited (PSL)

Respondents : Indian Energy Exchange (IEX) and Anr.

Date of Hearing : 11.6.2020

Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member

Parties present : Shri Parag Tripathi, Sr. Advocate, PSL
Shri Paritosh Goel, Advocate, PSL
Ms. Rimali Batra, Advocate, PSL
Shri Chandra Mohan Verma, PSL
Shri M. G. Ramachandran, Sr. Advocate, IEX
Ms. Ranjitha Ramachandran, Advocate, IEX
Shri Shubham Arya, Advocate, IEX
Shri Jogendra Behera, IEX
Shri Gaurav Maheshwari, IEX
Shri Sakya Singha Chaudhuri, Advocate, PXIL
Ms. Nithya Balaji, Advocate, PXIL
Shri Yasir Altaf, PXIL
Shri Shekar Rao, PXIL
Shri Anil Kale, PXIL

Record of Proceedings

The matter was part heard through video conferencing.

2. Learned senior counsel for the Petitioner submitted that the present Petition has been filed, inter-alia, seeking grant of registration to operate the Petitioner Company, Pranurja Solutions Limited, as a Power Exchange in terms of Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (in short 'Power Market Regulations'). Learned senior counsel submitted as under:

(a) The Petitioner approached the Commission for grant of registration/licence to establish and operate a Power Exchange by way of the instant Petition in



September, 2018 and the same has been pending at the preliminary stage for more than one and a half years.

(b) The Petitioner has published a public notice regarding its application in terms of Regulation 16 (ii) of the Power Market Regulations inviting comments from the stakeholders. Two stakeholders, namely, Indian Energy Exchange (IEX) and Power Exchange India Limited (PXIL) have filed their objections to the Petition. IEX has filed its objections within the stipulated time limit whereas, PXIL approached the Commission on 12.3.2020 seeking permission to file its objection i.e. after 18 months from the filing of the Petition.

(c) Objectors have mainly contended that the Petitioner is not complying with the shareholding pattern as stipulated in Regulation 19 of the Power Market Regulations. However, the Petitioner, by virtue of being a mere applicant applying for registration as a Power Exchange, is not required to comply with the shareholding requirements prescribed under Regulation 19 of the Power Market Regulations. The said Regulation stipulates the shareholding pattern of a Power Exchange and not of an applicant.

(d) The Petitioner shall meet the requirements set out under Regulation 19 of the Power Market Regulations post grant of registration by the Commission but prior to the starting of its operations as a Power Exchange. The Petitioner has already submitted to the Commission a proposal for divesting the existing shareholding of PTC and BSE to 25% in compliance with Regulation 19 of the Power Market Regulations.

(e) Accordingly, the Commission may pass an order proposing to grant registration to the Petitioner in line with Regulation 16 (v) of the Power Market Regulations, pursuant to which, all parties including IEX and PXIL would be entitled to submit their objections/comments.

3. Learned senior counsel for IEX submitted as under:

(a) PTC India, an inter-State trading licensee, is the largest single shareholder in the proposed Power Exchange, having 49.02% shareholding, which is clearly contrary to Regulation 19 of the Power Market Regulations.

(b) Trading Licensee becoming a promoter shareholder of a Power Exchange will lead to conflict of interest and is bound to be perpetuated for a long time even if divestment is carried out at a later stage.

(c) The proposal of the Petitioner to reduce its shareholding to 25% cannot be accepted as PTC being the highest category trading licensee can influence its clients to participate directly in the Power Exchange.

(d) Contention of the Petitioner that Regulation 19 of the Power Market Regulations applies only after the Power Exchange comes into existence and not before, is baseless and is liable to be rejected. The Power Market Regulations provide for the shareholding pattern for filing the Petition itself. The non-compliance amounts to absence of qualification to file the Petition.

(e) Regulations 16 to 21 of the Power Market Regulations are to be read together as a scheme and the Petitioner is required to comply with Regulation



19 of the Power Market Regulations before requesting for of grant of registration.

(f) Whenever there is grant of licenses, approvals and sanctions, etc., the conditions are to be satisfied as a pre-condition when the Petition is filed. For example, the capital adequacy norms and the capital worthiness specified for grant of licence under Section 15 of the Electricity Act, 2003 cannot be deferred to be complied after the grant of licence. It will make the provision meaningless and redundant.

(g) There is a purpose for complying with the qualification requirements provided under Regulation 19 of the Power Market Regulations. The Commission and the public at large should know the principal/real shareholders of the Power Exchange which should not be changed immediately after the grant of registration. For this purpose, Regulation 17 of the Power Market Regulations requires the financial details of all the consortium members to be duly disclosed.

(h) The Commission ought not to proceed on a mere representation that a statutory compliance which is now required to be done would be done at a future date. Until the dilution of shareholding percentage of PTC Limited and BSE takes place, there is no certainty of the members of the consortium/shareholders. After considering the above aspects, the Commission in its order dated 28.5.2019 has already taken a view that the Petitioner is required to comply with Regulation 19 of the Power Market Regulations within a period of 3 months. However, the Petitioner has not complied with the same.

4. Learned counsel for the Respondent PXIL, adopted the submissions made by learned senior counsel IEX and submitted as under:

(a) Only after considering similar contentions of the Petitioner with regard to the compliance of shareholding pattern as provided in Regulation 19 of Power Market Regulations, the Commission had, vide its RoP dated 28.5.2019, directed the Petitioner to comply with Regulation 19 within three months. The Petitioner has not filed any appeal/review against the said direction and has instead, filed affidavit dated 25.11.2019, claiming to comply with the said order.

(b) Regulations 16 to 21 of the Power Market Regulations, which provide for the procedure for registration, have to be read seriatim. The requirement of shareholding under Regulation 19 comes before grant of registration under Regulation 21.

(c) The affidavit dated 25.11.2019 filed by the Petitioner in compliance of the Commission's directions vide RoP dated 28.5.2019, deserves to be ignored since the Petitioner has not complied with the directions which specifically ordered for compliance with the requirement of shareholding pattern under Power Market Regulations. The binding letters of commitment from interested investors do not amount to a compliance with shareholding pattern stipulated under Regulation 19 of Power Market Regulations.



(d) Even as per the revised shareholding pattern as proposed by the Petitioner, PTC is proposed to hold 25% shareholding in the Power Exchange. However, PTC, as an electricity trader, is likely to fall into the category as specified under Regulation 19(1)(ii) of the Power Market Regulations. Therefore, if it is registered as a Member of the proposed Power Exchange, it cannot hold a significant shareholding i.e. more than 5% shareholding, in the proposed Power Exchange.

(e) PTC cannot be allowed to be a substantial stakeholder in the consortium forming a Power Exchange, while also being one of the members on the same platform as the same will result in a conflict of interest and potential for preferential and selective trading at the Petitioner's Power Exchange.

(f) As per the Project Report, the Petitioner's marketing strategy involves diverting the entire volume being traded by PTC through existing Power Exchanges to the proposed Power Exchange. The Consortium Agreement entered into between BSE, ICICI and PTC is also anti-competitive in nature. Also, the various clauses of the Shareholder's Agreement clearly highlight the conflict of interest for PTC as a shareholder, participant, service provider and promoter of the Petitioner.

5. Based on the request of learned senior counsel for IEX and learned counsel for PXIL, the Commission directed the Respondents/objectors to file their respective written submissions by 20.6.2020 with copy to the Petitioner who may file its response, if any, on or before 24.6.2020.

7. The Petition shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

**Sd/-
(T.D. Pant)
Deputy Chief (Law)**

