

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 95/RC/2019

CORAM:

Shri P. K. Pujari, Chairperson

Dr. M. K. Iyer, Member

Shri I.S. Jha, Member

Date of Order: 25 of April, 2019

In the matter of:

Approval of the panel for appointment as Independent Directors on the Board of Indian Energy Exchange Ltd.

And

In the matter of

Indian Energy Exchange Ltd,
4th Floor, TDI Centre,
Plot No. 7, Jasola
New Delhi – 110025

.....Petitioner

ORDER

The Petitioner, Indian Energy Exchange Limited (hereinafter referred to as "IEX") has filed the present petition for seeking approval of the Commission for inclusion of name of Mrs. Sudha Pillai in the panel of Independent Directors for the appointment on the Board of the IEX. The Petitioner has also filed the brief profile, declaration under Section 149(7) read with Section 149(6) of the Companies Act, 2013, details in "Form MBP-1" of the Companies Act, 2013 and declaration of Mrs. Sudha Pillai in terms of Regulations 22(ii) of the Central Electricity Regulatory Commission (Power Market), 2010 (hereinafter referred to as the "Power Market Regulations").



2. The Petitioner has submitted that as per the amended provisions of Regulation 17(1)(a) of the SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015, it is required that the Board of Directors of the top 500 listed entities shall have at least one woman independent director by 1.4.2019. The Petitioner has further submitted that in its CERC approved panel of independent directors, Mrs. Asha Das is the only woman independent director. However, as she has already crossed the maximum age limit of 75 years prescribed under SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015, the alternate name of Mrs. Sudha Pillai may be considered for inclusion in the panel of independent directors.

3. Regulation 22(ii) of the Power Market Regulations which deals with the Independent Directors to be appointed in the Power Exchange, provides as under:-

"(ii) Independent Directors – At least one third of the members of the Board or a minimum of two directors, whichever is higher, shall be independent directors selected from a panel constituted by the Power Exchange and approved by the Commission out of which one person will have professional qualification and experience in finance. The panel shall be constituted of persons of repute and integrity from academics, professionals, industry representatives, public figures none of whom should have any interest in any Member of Power Exchange and any fiduciary relationship with any shareholder of Power Exchange."

4. The Commission, in its order dated 7.8.2013 in Petition No. 113/2011, while approving the panel of Independent Directors discussed the requirements for appointment as Independent Directors in the said order and they are as follows:-

"7. The term Independent Director" has not been defined in the Power Market Regulations or Companies Act, 1956. The Judicial Dictionary defines Independent Director to mean a non-executive Director who apart from receiving Director's remuneration, do not have any material/pecuniary relationship or transaction with the company, its promoters, its directors, its senior management or its holding company, its subordinates or associates which in the judgement of the Board may affect the independence of the judgement of the Director. According to Clause 49 of the Listing agreement, the definition of the term „Independent Director" would mean a non-executive director who: (a) Does not have a pecuniary relationship with the company, its directors, its promoters, senior management or affiliate companies; (b) Is not

related to the promoters or senior management; (c) Is not a partner or executive of the auditors/lawyers/consultants of the company for the last three years; (d) Is not a supplier, service provider or customer of the company; (e) Does not have more than 2% of the shares of the company.

8. Further Regulation 22(ii) of the Power Market Regulations provides that none of the persons in the panel should have any interest in any Member of the Power Exchange and have fiduciary relationship with any shareholders of the Power Exchange. Fiduciary relationship has not been defined in the Power Market Regulations. According to Law Dictionary, fiduciary relationship exists when one person places complete confidence in another person in regard to any particular transaction or general affairs or business. In the context of the Power Market Regulations, none of the persons included in the panel of Independent Directors should have any interest in any member of the exchange or be involved in the general affairs or business of any shareholder of the exchange."

5. The Companies Act, 2013 came into existence consolidating and amending the laws related to companies. Subsection (4), (6) and (7) of Section 149 of the Companies Act 2013 provides for appointment of Independent Director as under:

“(4) Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.

(6) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—

(a) Who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

(b)(i) who is or was not a promoter of the company or its holding, subsidiary or associate company;

(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

(c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

(d) None of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

- (e) Who, neither himself nor any of his relatives—
- (i) Holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
 - (ii) Is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—
 - (A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
 - (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;
 - (iii) Holds together with his relatives two per cent. or more of the total voting power of the company; or
 - (iv) Is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. Or more of the total voting power of the company; or
- (f) Who possesses such other qualifications as may be prescribed.

(7) Every independent director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence as provided in sub-section (6).”

6. The Petitioner being a listed company is governed by the SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015. SEBI vide notification dated 9.5.2018 has amended the above Regulations for improving the standards of corporate governance of listed companies in India. The relevant amendments related to the inclusion of condition of ‘at least one woman independent director’ and ‘age limit of non-executive director’ is reproduced below:

“17. (1) The composition of board of directors of the listed entity shall be as follows:

(a) Board of directors shall have an optimum combination of executive and non-executive directors with at least one woman director and not less than fifty percent of the board of directors shall comprise of non-executive directors;

Provided that the Board of directors of the top 500 listed entities **shall have at least one independent woman director** by April 1, 2019 and the Board of directors of the top 1000 listed entities shall have at least one independent woman director by April 1, 2020.

(1A) No listed entity shall appoint a person or continue the directorship of any person as a non-executive director **who has attained the age of seventy five years** unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.”

7. The Petitioner has proposed the name of Mrs. Sudha Pillai for inclusion in the panel of Independent Directors. The brief profile of Mrs. Sudha Pillai is as under:

Mrs. Sudha Pillai, IAS (Retd.), had served as Secretary of Ministry of Labour and Employment, GoI. She has 45 years of rich experience in policy formulation relating to Technology Transfer, Foreign Investment and Competition Law, National Skill Development Policy and Safety, Health & Environment at Workplace. She served as Joint Secretary, Department of Company Affairs, Additional Secretary, Ministry of Mines and other positions under Govt. of India.

She is a Retd. IAS of Kerala Cadre. She joined the Indian Administrative Services in 1972 with Second Rank on all India basis. She served as Sub-Collector and District Collector, Trivandrum, Chairman and Managing Director of Kerala Finance Corporation, Secretary Finance (Coordination), Government of Kerala and Principal Secretary (Finance), Govt. of Kerala.



She has contributed immensely in promoting reforms and legal system in India. She has contributed to liberalise industrial licensing regime. She has also contributed in drafting of the Companies Bill, 1993, Panchayats Extension to Scheduled Areas Act, 1996, processing amendment of the Constitution of India, enactment of Unorganized Workers' Social Security Law, 2008, implementation of Bundelkhand Package 2009-12, formulation and implementation of New Land Use Policy for Mizoram 2009-12 and implementation of Integrated Action Plan for Naxal affected districts 2010-12. She served as Member Secretary of Planning Commission (India) in the rank of Minister of State and served as a Member of high powered bodies on infrastructure development.

She holds a BA Honors Degree in English Literature from Punjab University. Mrs. Pillai has a Master's Degree in Psychology (gold medalist) from Punjab University and a Master's degree in Public Administration from Kennedy School of Government School at Harvard University, USA with special areas of interest in Impact of Foreign Direct Investment on Employment & Growth, Macro Economic Policy, World Food System, Equity in Rural Development Policy, Leadership & Mobilization of Group Resources.

8. The Petitioner has placed on record the declarations submitted by Mrs. Sudha Pillai dated 18.3.2019. Pursuant to Regulation 22(ii) of Power Market Regulations, Mrs. Sudha Pillai has given declaration that she does not have any interest in any Member and fiduciary relationship with any of the shareholders of IEX. She has stated that she does not suffer from any of the disqualifications prescribed under the Power Market Regulations for continuation as Independent Director of the Power Exchange. She has further stated that she meets the criteria of Independent Director as specified under sub-section (6) of Section 149 of the Companies Act, 2013. Mrs. Sudha Pillai has also



submitted the notice of interest by director and list of relatives in 'Form MBP-I' in terms of Section 184(1) of the Companies Act, 2013.

9. Further, the Petitioner has submitted that the Nomination and Remuneration Committee of the company in its meeting held on 15.3.2019 has considered the profile of Mrs. Sudha Pillai for Independent Director of the company. The Nomination and Remuneration Committee felt that Mrs. Sudha Pillai with her expertise and experience will bring a lot of values to the Company's Board and accordingly recommended for induction of Mrs. Sudha Pillai as Independent Director on the Board subject to approval by the Commission. Further, the Petitioner has confirmed that Mrs. Sudha Pillai fulfils all criteria as laid down by CERC in the Power Market Regulations for engagement as Independent Director.

10. The proposal for empanelment of Mrs. Sudha Pillai for appointment as Independent Director has been considered in the light of the Power Market Regulations, the requirements laid down by the Commission in its order dated 7.8.2013 in Petition No.113/2011, provisions of the Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015. After going through the profile of Mrs. Sudha Pillai and after being confirmed by IEX that Mrs. Sudha Pillai does not have any fiduciary relationship with any of the existing shareholders of IEX or any interest in any Member of IEX, we are of the view that Mrs. Sudha Pillai fulfils the requirement for inclusion in the panel for appointment as Independent Directors in IEX. Accordingly, we accord our approval for inclusion of Mrs. Sudha Pillai in the panel for appointment of Independent Directors in terms of Regulation 22(iii) of the Power Market Regulations. This is in addition to the panel already approved by the Commission vide its earlier orders dated 7.8.2013,

27.10.2014, 20.2.2015, and 12.2.2019 pertaining to Petition nos. 113/2011, 316/RC/2013, 568/RC/2014, and 353/RC/2018 respectively. The panel of Independent Directors approved by the Commission thus far for the Petitioner shall be valid till 31.3.2021.

11. Petition No.95/RC/2019 is disposed of in terms of the above.

Sd/-
(I.S.Jha)
Member

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

Sd/-
(P.K.Pujari)
Chairperson

