

# 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 Power Exchange India Ltd.
- Date of Hearing : 9.7.2020
- 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  
Ms. Nikita Choukse, Advocate, PSL  
Shri Ravi Kishore, Advocate, PSL  
Shri Piyush Chourasia, PSL  
Shri Ajit Kumar, 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 Prabhajit Sarkar, PXIL  
Shri Yasir Altaf, PXIL  
Shri Shehar Rao, PXIL  
Shri Anil Kale, PXIL

### Record of Proceedings

The matter was heard through video conferencing.

2. At the outset, learned senior counsel for the Petitioner submitted as under:



(a) The objector's contention that the Petitioner has not fulfilled the requirement prescribed under Regulation 19 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (in short 'Power Market Regulations') is misplaced. The Petitioner, at present, unless granted registration under Regulation 21 of the Power Market Regulations, is merely an 'Applicant' under Regulation 16 and not 'Power Exchange' as defined in Regulation 2(cc) so as to mean as Power Exchange registered under the Regulations. Regulations 15 to 21 of Power Market Regulations clearly distinguish between the 'Applicant' and the 'Power Exchange'.

(b) Regulation 19 Power Market Regulations applies only to 'Power Exchange' and not to the 'Applicant'. The Petitioner is only an applicant at this stage and is not yet a Power Exchange. In similar issue, Hon'ble Supreme Court in its judgment dated 9.11.1994 in Civil Appeal Nos. 7230-31 of 1994 in the matter of New Horizons Limited and ors. v Union of India and others had differentiated between the expression 'tenderer' and 'successful tenderer' in respect of certain requirements to be met by the parties under tender.

(c) After attaining registration as a Power Exchange, the Petitioner will ensure that any of the shareholder does not have more than 25% shareholding in compliance with Regulation 19 of Power Market Regulations. The objection of the Respondents that PTC, who is a trader in the power market, must necessarily have 5% shareholding is flawed as the cap of 5% will be applicable only when PTC becomes a Member of Power Exchange.

(d) Contention relating to conflict of interest on account of PTC being a prominent trader is also misplaced. Regulation 22 of Power Market Regulations clearly demarcates the ownership from the operations of the Power Exchange and the Power Exchange will have to work in a demutualized and ring-fenced manner with no shareholders dominating the proceedings of the Power Exchange. The Commission has power to withdraw or cancel the registration granted to Power Exchange under Regulation 37 and has wide powers of market oversight under Chapter 7 of the Power Market Regulations.

(e) The Respondent's contention that Consortium Agreement and Share Holders Agreement (SHA) entered into between the promoter shareholders is anti-competitive in nature and ought to be referred to the Competition Commission of India is misplaced and extraneous to the subject matter.

(f) As regards the contention that the SHA provides for lock-in period for the original shareholders, it may be noted that the Clause 10.1(g) of the SHA itself makes an exception to Clause 10.1 of SHA as it provides that the regulatory framework including Power Market Regulations will override the Clause 10 of the SHA.

(g) Contention of the Respondents that the Petitioner seeks to sell its shares at a profit after being granted registration is misconceived. Power Exchange is



yet not operational and the shareholding has no value. It would be also commercially meaningless that any prospective investor would invest Rs. 25 crore or Rs. 50 crore in the proposed Power Exchange without there being commercially realistic chance that it would be granted registration. Further, the new shareholders can also be inducted into the company through issuance of new shares.

(h) The Commission's direction vide Record of Proceedings (RoP) dated 28.5.2019 to comply with the shareholding pattern as prescribed in Regulation 19 of Power Market Regulations has been complied with by the Petitioner vide affidavit dated 25.11.2019. In the said affidavit, the Petitioner has explained the steps taken by it to reduce the shareholding of its promoters by introducing fresh infusion of capital from proposed investor along with their binding letters of commitment to invest in the proposed Power Exchange.

(i) It is a well settled principle that order/judgment ought not to be read as statute. Accordingly, the contention of the objectors that the Commission's direction in the said RoP has to be read as the requirement of shareholding pattern specified under Regulation 19 of the Power Market Regulations is also applicable at the application stage is misplaced. In this regard, reliance has been placed on the judgment of Hon'ble Supreme Court dated 31.1.2006 in Civil Appeal No. 919 of 2002 in the matter of State of Karnataka and Ors. v. C. Lalitha [ (2006) 2 SCC 747].

(j) Power Exchange of India Limited (PXIL) is itself yet to comply with the net worth requirement stipulated under the Regulation 18 of Power Market Regulations and has sought relaxation from the Commission from time to time

(k) As on date, there are only two Power Exchanges in the power market and 98% of the market share is with Indian Energy Exchange (IEX), whereas PXIL has only market share of meagre 2%. PXIL is in operation only by virtue of proviso to Regulation 35 of the Power Market Regulations.

(l) Fourteenth (14<sup>th</sup>) Standing Committee on Energy, constituted for 'Evaluation of Role, Performance and Functioning of Power Exchanges' in its report has acknowledged that out of two Power Exchanges in the country, one (IEX) has monopoly in the sector, which is not in the interest of the sector. The Committee has recommended to the Ministry of Power and the Commission to come up with effective guidelines to ensure healthy competition in the Power Market, to set up Power Exchange in every zone of the country to facilitate competition and that the Power Exchanges need to be made effective so as to pave way for a level playing field among themselves.

(m) In view of the above, the Commission may dispense with the requirement prescribed under Regulation 16(v) to (vii) (i.e. Proposal to grant Registration) and may directly proceed to grant of registration under Regulation 21 of the Power Market Regulations by exercising its power under



Regulation 63(2) of the Power Market Regulations subject to such conditions as the Commission may deem fit.

3. Learned senior counsel for IEX submitted as under:

(a) IEX is not objecting to the Petitioner's application seeking permission to operate as Power Exchange, so long as it complies with the provisions stipulated in the Power Market Regulations. IEX market share has no bearing on the grant of registration to the proposed Power Exchange.

(b) Reliance placed on the 14<sup>th</sup> Standing Committee on Energy is misplaced. The said report is of April, 2016 and does not have any legal enforceability. Also, no amendments have been carried out in the Electricity Act, 2003 or in the Power Market Regulations pursuant to the Committee's recommendations therein. The scope of the present Petition is limited as to whether the Petitioner complies with the requirements provided under the Power Market Regulations or not.

(c) The Commission in its order dated 16.1.2013 in Petition No. 216/PX/2011 has also rejected the application for registration for setting up and operation of Power Exchange at threshold on the ground of non-compliance to meet the requirement of net worth criteria by the Petitioner therein under the Power Market Regulations. Similarly, in the present case also, the Petitioner has failed to comply with the requirement of shareholding pattern as per Regulation 19 of the Power Market Regulations.

(d) Shareholding pattern provided in Regulation 19 of the Power Market Regulations is the qualification condition to be satisfied and maintained from the beginning when the Petitioner entity is incorporated, at the time of filing of the Petition and throughout thereafter. It cannot be that the shareholding pattern can be different from than what is provided under Regulation 19 of the Power Market Regulations in the beginning and can be changed later to comply with Regulation 19 after registration of Power Exchange.

(e) The intent and object behind introducing Regulation 19 in the Power Market Regulations is clear from the Statement of Objects and Reasons to the Power Market Regulations.

(f) The judgment of Hon'ble Supreme Court dated 9.11.1994 in Civil Appeal Nos. 7230-31 of 1994 as relied upon by the Petitioner has to be seen in light of the facts of that particular case. In the above case, tender conditions specified as to what ought to be complied with/fulfilled by 'tenderer' and 'successful tenderer'. However, in the present case, the issue is whether the Petitioner is complying with the qualifying conditions specified in the Statutory Regulations i.e. Power Market Regulations.

(g) The Petitioner is indirectly seeking to defer the compliance of Regulation 19 of Power Market Regulations by exercise of power to relax.



However, the present case is not a fit case for relaxing the mandate of Regulation 19 as it is not a case where the Petitioner is having any difficulty in implementing the regulation.

4. In response, learned senior counsel for the Petitioner submitted that the Commission's order dated 16.1.2013 in Petition No.216/PX/2011 as referred to by IEX dealt with the requirement of net worth under Regulation 18 of the Power Market Regulations. However, in the present case, issue is related to the compliance of Regulation 19 of the Power Market Regulations which provides for shareholding pattern of a Power Exchange.

5. Learned counsel for the Respondent, PXIL submitted as under:

(a) PXIL has complied with the net worth requirement as prescribed in the Power Market Regulations. As on 31.3.2020, net worth of PXIL with contingent liability of dividend to Preference Shareholders is Rs. 23.65 crore and is Rs.30.89 crore without the said liability. Learned counsel sought permission to place on record above details.

(b) The Petitioner's specific plea that Regulation 19 of Power Market Regulations is not applicable at the stage of application for Power Exchange has not been accepted by the Commission. Vide RoP dated 28.5.2019, the Petitioner was directed to comply with the requirement of shareholding pattern specified in Regulation 19 of the Power Market Regulations within three months and approach the Commission for grant of registration. Neither a review application nor an appeal has been preferred against the said direction and the said direction has, therefore, attained finality.

(c) The Petitioner vide its affidavit dated 25.11.2019 has claimed compliance with such direction by referring to binding letters of commitment from different entities to buy shares of the Petitioner at later date, on grant of registration. However, binding letters of commitment from interested investors does not amount to a compliance with the Regulation 19 of the Power Market Regulations.

(d) Provisions of Consortium Agreement include exclusivity clause wherein the parties have agreed to act exclusively with each other with respect to proposed Power Exchange. The said Agreement indicates that one of the objects of the Company/Exchange is to expand its ambit to the other countries including SAARC countries. Considering the fact that PTC as on date being a nodal agency for cross border transactions, the above provisions of the consortium agreement in addition to the provisions of the Business Plan clearly hint at serious conflict of interest.

(e) Initially, IEX was promoted by PTC and the entire volume of PTC was traded through IEX. However, subsequent to enactment of the Power Market Regulations, PTC divested its shares therein at huge profits. Thus, conduct of



PTC seeking to set-up Power Exchange once again indicates the intent of PTC to indulge in arbitrage.

(f) Learned counsel sought permission to place on record a chart relating to PTC's trading activity on existing Power Exchanges in support of his contentions.

6. Based on the request of learned counsel for PXIL, the Commission permitted PXIL to file an affidavit by 20.7.2020 indicating details of its net worth and the chart as sought to be placed on record.

7. Subject to the above, the Commission reserved order in the matter.

**By order of the Commission**

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

