

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 287/MP/2018 along with IA No.30/2021

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.

Date of Hearing : 8.4.2021

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

Petitioner : Pranurja Solutions Limited (PSL)

Respondents : Indian Energy Exchange Limited (IEX) and Anr.

Parties Present : Shri Parag Tripathi, Sr. Advocate, PSL
Ms. Rimali Batra, Advocate, PSL
Shri Ravi Kishore, Advocate, PSL
Shri M. G. Ramachandran, Sr. Advocate, IEX
Ms. Ranjitha Ramachandran, Advocate, IEX
Shri Shubham Arya, Advocate, IEX
Shri Sakya Singha Chaudhuri, Advocate, PXIL
Shri Nithya Balaji, Advocate, PXIL
Dr. Rajib K Mishra, PSL
Shri Piyush Chourasia, PSL
Shri Suresh P, PSL
Shri C. M. Verma, PSL
Shri Jogendra Behera, IEX
Shri Gaurav Maheshwari, IEX
Shri Prabhajit Kumar Sarkar, PXIL
Shri Shekhar Rao, PXIL
Shri Anil V Kale, PXIL
Shri Kapil Dev, PXIL
Shri Sunil Hingwani, PXIL

Record of Proceedings

Case was called out for virtual hearing.

2. Learned senior counsel for the Petitioner submitted that the present Petition has been filed, *inter-alia*, for grant of registration to establish and operate a Power Exchange in terms of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (in short, '2010 Power Market Regulations'). Learned senior counsel mainly submitted the following:

(a) After hearing the parties on 11.6.2020 and 9.7.2020, the Commission vide its order dated 31.7.2020 had directed the Petitioner to comply with the shareholding pattern as specified under Regulation 19 of the 2010 Power Market Regulations.

(b) In compliance with the aforesaid order, the Petitioner vide its affidavit dated 24.9.2020 placed on record the new shareholding pattern of the Petitioner company in accordance with Regulation 19 of the 2010 Power Market Regulations. The Petitioner also filed an additional affidavit dated 2.3.2021 to place on record issuance of additional equity shares to three new shareholders.

(c) Taking note of the Petitioner's aforesaid compliance and upon being *prima facie* satisfied that the Petitioner as an applicant fulfils the requirements specified in the 2010 Power Market Regulations, the Commission vide its order dated 11.2.2021 proposed to grant registration to the Petitioner to establish and operate a Power Exchange under Regulation 16(v) of the 2010 Power Market Regulations. Accordingly, a public notice to this effect was also published by the Commission under Regulation 16(vi) of the 2010 Power Market Regulations inviting further suggestions or objections to the aforesaid proposal.

(d) In response, again the Respondents 1 and 2, IEX and PXIL, i.e. existing Power Exchanges, have filed the objections raising the same set of objections as raised during the earlier stage of proceedings, which were already considered by the Commission while passing the order dated 31.7.2020.

(e) Such repetitive objections appear to have been filed with the sole intention of delaying the process of grant of registration to the Petitioner to operate a Power Exchange. It is well settled position of law that raising the same plea/ objection over and over again is nothing but an abuse of process of law. In this regard, reliance was placed on the decision of Hon'ble Supreme Court in the case of K. K. Modi v. K. N. Modi [(1998) 3 SCC 573].

(f) As to the objections regarding shareholding of PTC India Limited (PTC), it has been already stated that PTC is not member of the Petitioner's proposed Power Exchange. Moreover, the Petitioner has categorically and unequivocally undertaken that the shareholding of PTC shall be brought down to 5% as permitted under the 2010 Power Market Regulations as and when it becomes a member of the Petitioner's Power Exchange.

(g) IEX has submitted that BSE Ltd., a shareholder of the Petitioner, is required to take approval of SEBI for investment in the proposed Power Exchange of the Petitioner. In this regard, the Petitioner has furnished the approval granted by SEBI to BSE Ltd. dated 10.8.2018 for investment in the Petitioner.

(h) Since the Petitioner has complied with the provisions of the 2010 Power Market Regulations, the Commission may grant registration to the Petitioner to establish and operate a Power Exchange in accordance with the provisions of the 2010 Power Market Regulations.

(i) The Petitioner has filed IA No.30/2021 seeking a review and recall of the Commission's ex-parte order dated 12.3.2020 in the instant Petition, whereby PXIL was impleaded as party to the Petition. However, without prejudice to its rights, the Petitioner seeks liberty to withdraw the said IA.

3. At the outset, learned senior counsel for the Respondent, IEX submitted that the Respondent has not at all repeated its objections raised earlier in its response to the public notice issued by the Commission and the Respondent has raised only following three issues:

(a) BSE India Limited or its subsidiary BSE Investment Limited ought to have taken prior approval from SEBI for investing in the proposed Power Exchange of the Petitioner. However, the approval of SEBI has now been furnished by the Petitioner.

(b) There is a conflict of interest with PTC, a trading licensee being the promoter of Power Exchange. Regulation 17(11) of the Central Electricity Regulatory Commission (Power Market) Regulations, 2021 (in short 'the 2021 Power Market Regulations') provides that no member of Power Exchange or its client shall be on the Board of Directors of any Power Exchange. Accordingly, while considering the grant of registration, it should be ensured that PTC is not on the Board of the proposed Power Exchange.

(c) During the pendency of the present Petition which has been filed under the provisions of the 2010 Power Market Regulations, the Commission has issued the 2021 Power Market Regulations keeping in view the changed market conditions and taking into account the stakeholders' comments/ suggestions. Accordingly, the grant of registration to the Petitioner ought to be considered under the provisions of new Regulations rather than 2010 Power Market Regulations.

4. Learned counsel for the Respondent, PXIL submitted that PXIL is in no way attempting to impede the entry/ establishment of new Power Exchange. It was also conceded by the learned counsel that PXIL that it has repeated some of its earlier objections as such objections, though have been recorded in the order dated 31.7.2020, have not been dealt with. Learned counsel further submitted the following:

(a) Since the Petitioner has not indicated the technology or software that is proposed to be adopted, the Commission may consider carrying out a software/ technology audit of the Petitioner to ensure that 'Market Coupling' as provided in 2021 Power Market Regulations can be carried out in seamless manner.

(b) Regulation 22 of the 2010 Power Market Regulations provides for clear demarcation between the ownership, management/ operation and participation in trading. However, certain clauses of the Shareholders Agreement (in short, 'SHA') are in contravention to this Regulation.

(c) PTC being an original shareholder enjoys the rights under SHA that allows it to participate in decision making and consequently influence decision with regard to the important aspects of day to day operation of the Petitioner.

(d) Clause 8 of the SHA provides for the consent of the original shareholders for taking decisions by the Petitioner, for any resolution of Board or Committee thereof and for any resolution of shareholders relating to "original shareholders' consent items" as enumerated in Schedule 3 of the SHA. These rights exist with PTC until such time the shareholding of PTC does not fall below 5%. This, in effect, implies that even after PTC becomes a trading member with 5% shareholding, it will continue to enjoy the rights of original shareholders.

(e) Perusal of items 1, 4, 5, 8, 9, 13, 14 and 16 of the Schedule 3 of the SHA indicates that the PTC being original shareholder shall continue to exert its veto rights in the matters relating to day to day functioning of the Petitioner till the time it hold at least 5% shareholding. Also, as per item 17, PTC exerts decisive voting rights with regards to any change in senior management including key

management employees until it holds minimum of 3% shareholding in the Petitioner.

5. In response, learned senior counsel for the Petitioner submitted that as regards the applicability of the 2021 Power Market Regulations, the said regulations are yet to be notified and thus, no direction/ relief can be sought under the same. As and when the said regulations are notified, all the exchanges will require to comply with the same. It was further submitted that the interpretation of the SHA as sought to be pressed by PXIL is incorrect and the Petitioner has already responded to such submissions in its reply dated 26.3.2021. It was also submitted that it is a well settled law that the SHA being a private agreement between the shareholders has to yield to the provisions of law/regulations.

6. After hearing the learned senior counsels for the Petitioner and the Respondent IEX and learned counsel for the Respondent, PXIL, the Commission directed the Respondent, PXIL to upload its suggestions/ objections already submitted through mail, in response to the public notice issued by the Commission on the e-filing portal within two days of issuance of the ROP.

7. Based on the request of learned senior counsel for the Petitioner, the Commission directed the Petitioner to upload its written submissions on the e-filing portal within a week.

8. The Commission further permitted the Petitioner to withdraw the IA No.30/2021 and accordingly IA No. 30/2021 stands disposed of as withdrawn.

9. The matter was reserved for order.

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Law)