

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No. 287/MP/2018

Coram:

Shri P. K. Pujari, Chairperson

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 12th May, 2021

In the matter of

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.

And

In the matter of

Pranurja Solution Limited (PSL)
25th Floor, P.J. Towers,
Dalal Street, Fort,
Mumbai – 400001

Petitioner

Vs

1. Indian Energy Exchange Limited (IEX)
C-001/A/1, 9th Floor, Max Towers,
Sector 16B, Noida 201301

2. Power Exchange India Limited (PXIL)
9th Floor, 901, Sumer Plaza,
Marol Maroshi Road, Marol Andheri (East),
Mumbai 400059, India

Respondents

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

ORDER

The present Petition has been filed by the Petitioner, Pranurja Solution Limited (hereinafter referred to as 'PSL' or 'the Petitioner' or 'the applicant') for grant of registration to establish and operate a Power Exchange under Regulation 16 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (hereinafter referred to as "the PMR 2010").

Background

2. PSL, having its registered office at Mumbai, was incorporated on 24.4.2018 as a consortium of PTC India Limited (PTC), BSE Investments Limited (BSEIL) and ICICI Bank (ICICI) with the fully paid-up share capital of Rs.1,00,000/- and shareholding pattern of 49.00%, 41.10% and 9.90%, respectively.

3. During the hearing held on 8.1.2019, the learned senior counsel for the Petitioner submitted that subsequent to filing an application under Regulation 16(i) of the PMR 2010 for grant of registration to establish and operate a Power Exchange, it has published a public notice regarding its application as per Regulation 16(ii) of the PMR 2010 inviting public comments and objections. In response to the public notice, Indian Energy Exchange (IEX) filed its objections on

which the Petitioner filed its response. After hearing the Petitioner, the Commission admitted the Petition and directed the Petitioner to submit its net worth and shareholding pattern in a sealed cover envelope on or before 10.2.2019. The same was submitted by the Petitioner.

4. On 26.4.2019, the Petitioner Company executed the Share Holder Agreement ('SHA') and Share Subscription Agreement ('SSA') with its Consortium Members. The Consortium Members infused capital in PSL amounting to net worth of Rs. 25.50 crore. On 30.4.2019, the Petitioner filed copies of both SHA and SSA before the Commission.

5. The matter was further heard on 28.5.2019. During the hearing, the learned senior counsel for the Petitioner submitted that the details of net worth and shareholding pattern have been filed before the Commission. Based on the submissions, the learned senior counsel for the Petitioner requested the Commission to grant registration to establish and operate a Power Exchange. Considering the submissions made by the learned senior counsel, the Petitioner was directed to comply with the shareholding pattern in accordance with the provisions of Regulation 19 of the PMR 2010 within three months.

6. On 25.11.2019, the Petitioner submitted that it has made substantial progress on meeting the requirements under Regulation 19 of the PMR 2010 with the following proposed shareholding pattern:

Sr. No.	Entity	Number of Shares	Amount (in Rs.)	Percentage Shareholding
1.	PTC India Limited	12,49,99,000	12,49,99,000	25.00%
2.	BSE Investments Limited	12,49,96,100	12,49,96,100	25.00%
3.	ICICI Bank Limited	4,95,04,900	4,95,04,900	9.90%
4.	Greenko Energies Private	2,50,00,000	2,50,00,000	5.00%

	Limited			
5.	Kirti Telenet Private Limited	2,50,00,000	2,50,00,000	5.00%
6.	Subrashi Vinimay Private Limited	2,50,00,000	2,50,00,000	5.00%
7.	Jindal Power Limited	1,00,00,000	1,00,00,000	2.00%
8.	Chamaria Enterprises	1,55,00,000	1,55,00,000	3.10%
9.	Tollman International Private Limited	2,50,00,000	2,50,00,000	5.00%
10.	Varanium Capital Advisors Private Limited	2,50,00,000	2,50,00,000	5.00%
11.	Lord Dholakia	2,50,00,000	2,50,00,000	5.00%
12.	Meenakshi Power	2,50,00,000	2,50,00,000	5.00%
TOTAL		50,00,00,000	50,00,00,000	100%

7. The Petitioner has submitted that the net worth of PSL is expected to increase to Rs.50 crore. It, however, submitted that it is unable to proceed further with the expected infusion of capital and proposed subscription of shares due to pendency of the present application before the Commission. The Petitioner further submitted that since, as an applicant, it has fulfilled the requirements of the provisions of Regulation 16(i), 16(ii), 16(iii) and 16(iv) of the PMR 2010, the Commission may propose grant of registration under Regulation 16(v) of the PMR 2010. The Petitioner undertook that once the registration as an 'exchange' is granted, it will comply with the requirements stipulated under Regulation 19 of the PMR 2010.

8. During the course of hearings dated 20.1.2020 and 12.3.2020, the Petitioner was directed to implead IEX and Power Exchange India Limited (PXIL) as parties to the Petition. IEX and PXIL were directed to file their submissions with copy to the Petitioner. In response to the received submissions from IEX and PXIL, the Petitioner had filed its rejoinder.

9. The matter was called out for virtual hearing on 11.6.2020. During the course of hearing learned senior counsel and learned counsel for IEX and PXIL, as respondents requested for time to file additional comments. Considering the request, the respondents were directed to file their written submissions with copy to the Petitioner. In response to the received submissions, the Petitioner filed its response.

10. The matter was further called out for virtual hearing on 9.7.2020. The Commission, after considering the submissions of the Petitioner and the Respondents and on examining the documents available on record, in its order dated 31.7.2020 observed that, *prima facie*, the Petitioner Company meets the requirements of the PMR 2010 for grant of registration, subject to fulfillment of the shareholding pattern specified in Regulation 19 of the PMR 2010. The Commission also observed that further action under Regulation 16(v) and 16(vi) of the PMR 2010 would be taken only after the Petitioner meets the requirements of Regulation 19 of the PMR 2010. Accordingly, the Petitioner was directed to comply with the requirements of Regulation 19 of the PMR 2010. Relevant portion of the order dated 31.7.2020 is extracted as under:

“15. The Commission notes that the Petitioner has complied with the requirements as per Regulation 16 (i), 16(ii) and 16(iii) of the Power Market Regulations 2010. As required under Regulation 16 (iv) of the Power Market Regulations 2010, the Petitioner has filed its reply to the objections or suggestions received in response to its public notice. The Petitioner has also met the net worth requirement of Rs.25 Crore as per Regulation 18(i) of the Power Market Regulations 2010.

16. However, the Commission notes that the Petitioner is yet to comply with the shareholding pattern as required under Regulation 19 of the Power Market Regulations 2010. The Petitioner, in its affidavit, has submitted that it will comply with Regulation 19 of the Power Market Regulations 2010 within a period of 8 weeks, as and when the Commission proposes to grant registration under Regulation 16 of the Power Market Regulations 2010.

17. After considering the objections or suggestions received in response to the public notice issued by the Petitioner and the reply to the objections or suggestions

filed by the Petitioner, the Commission is prima facie satisfied that the Petitioner Pranurja Solutions Limited meets the requirements of the Power Market Regulations 2010 for grant of registration, subject to fulfilment of the share holding pattern under Regulation 19 of the Power Market Regulations 2010. The Commission notes that the Petitioner, in its affidavit, has submitted that it will comply with Regulation 19 of the Power Market Regulations 2010 within a period of 8 weeks, as and when the Commission proposes to grant registration under Regulation 16 of the Power Market Regulations 2010. The Commission further notes that under Regulation 16(v) of the Power Market Regulations 2010, the Commission may propose to grant registration and under Regulation 16(vi) of the Power Market Regulations 2010, if the Commission so proposes to grant registration, it shall publish a notice of its proposal to invite further objections or suggestions to its proposal. The Commission is of the view that without the details required under Regulation 19 of the Power Market Regulations 2010, such a proposal of the Commission would be incomplete and inviting further objections or suggestions to such an incomplete proposal would not be fair to the stakeholders. Considering the above facts, the Commission, exercising its inherent power under Regulation 63 of the Power Market Regulations 2010, decides that further action under Regulation 16(v) and Regulation 16(vi) of the Power Market Regulations 2010 can be taken by the Commission only after the Petitioner meets the requirements of Regulation 19 of the Power Market Regulations 2010. Accordingly, the Petitioner is directed to comply with the requirements of Regulation 19 of the Power Market Regulations 2010 within a period of 8 weeks from the date of issue of this order, as per the undertaking given by the Petitioner vide its affidavit dated 25.11.2019. Only on compliance of the requirements of Regulation 19 of the Power Market Regulations 2010 by the Petitioner, the Commission will take further necessary action for grant of registration or otherwise in accordance with the Power Market Regulations 2010.”

11. The Petitioner, through an affidavit dated 24.9.2020, submitted that for complying the Commission’s direction, as a first step, it approached the entities, who had already given binding offers and whose names were declared in the affidavit dated 25.11.2019. However, on account of the passage of time and owing to the present pandemic situation, some of the entities informed the Petitioner Company about their inability to invest or their intention to invest a lesser amount. Therefore, the Petitioner offered fresh shares to certain new entities. Simultaneously, the ‘Original Shareholders’ also agreed to invest in further equity to the extent permissible under Regulation 19 of the PMR 2010. The Petitioner Company received the share subscription amount from ‘New Investors’ and ‘Original Shareholders’ along with the requisite information/ documents. In its Board meeting held on 21.9.2020, the Petitioner approved the allotment of further

equity shares to 'New Investors' as well as to the 'Original Shareholders'. The Petitioner has submitted that the present shareholding pattern of PSL has confined each investor's holdings to 25% or less in line with the Regulation 19 of the PMR 2010. The Petitioner submitted that its shareholding pattern in compliance of Regulation 19 of the PMR 2010 is as follows:

Sr. No.	Entity	Number of Equity Shares	Amount Invested (in Rs.)	Percentage Shares
Category A : Original Investors				
1.	PTC India Limited	12,50,00,000	12,50,00,000	25.00%
2.	BSE Investments Limited (including Nominees)	12,50,00,000	12,50,00,000	25.00%
3.	ICICI Bank Limited	4,99,50,000	4,99,50,000	9.99%
	Sub- total (Category A)	29,99,50,000	29,99,50,000	59.99%
Category B : Investors, who submitted Binding Letters prior to 31.07.2020				
4.	Greenko Energies Private Limited	2,50,00,000	2,50,00,000	5.00%
5.	Lebnitze Real Estates Private Limited (RPG Group)	2,50,00,000	2,50,00,000	5.00%
6.	Varanium Dynamic Trust	2,50,00,000	2,50,00,000	5.00%
7.	Jindal Power Limited	2,00,00,000	2,00,00,000	4.00%
8.	Chamaria Enterprises Private Limited	1,30,50,000	1,30,50,000	2.61%
9.	Lord Navnit Dholakia	50,00,000	50,00,000	1.00%
	Sub- total (Category B)	11,30,50,000	11,30,50,000	22.61%
Category C : New Investors				
10.	Manikaran Power Limited	1,75,00,000	1,75,00,000	3.50%
11.	HV impex Private Limited	2,50,00,000	2,50,00,000	5.00%
12.	Mercados Energy Markets India Private Limited	1,75,00,000	1,75,00,000	3.50%
13.	Rachana Raj Transport Associates Private Limited	2,00,00,000	2,00,00,000	4.00%
14.	PSL Infratech Private Limited	70,00,000	70,00,000	1.40%
	Sub-total (Category C)	8,70,00,000	8,70,00,000	17.40%
	Total (Categories A+B+C)	50,00,00,000	50,00,00,000	100%

12. The Commission, after considering the submissions of the Petitioner and after perusal of documents available on record, vide order dated 11.2.2021 observed that the Petitioner Company, as an applicant for registration of Power Exchange, is complying with the shareholding pattern under Regulation 19 of the

PMR 2010. The Commission further observed that the Petitioner as an applicant fulfills the requirements specified in Regulations 16(i), 16(ii), 16(iii), 16(iv), 18(i) and 19 of the PMR 2010. Thus, the Commission proposed grant of registration to the Petitioner Company to establish and operate a Power Exchange under Regulation 16(v) of the PMR 2010. The Commission directed that a notice under Regulation 16(vi) of the PMR 2010 be issued inviting further suggestions or objections to the proposal of the Commission. Relevant portion of the order dated 11.2.2021 is extracted as under:

“11. We observe that the promoter companies i.e. PTC India Limited, BSE Investments Limited (including Nominees) and ICICI Bank Limited are now having the shareholding of 25%, 25% and 9.99% respectively. In addition, there are 11 other investors/ shareholders (6 from originally proposed shareholders and rest 5 being new) each of whom is having shareholding of 5% or less. In support, the Petitioner has placed on record, the extract of the Board Resolution dated 21.9.2020 along with the brief profile of investors and certificate by an independent practicing company secretary certifying the shareholding pattern as on 21.9.2020.

12. After considering the present shareholding pattern and documentary evidences submitted by the Petitioner, the Commission is prima facie satisfied that the Petitioner Company, as an applicant for registration of Power Exchange, is complying with the shareholding pattern under Regulation 19 of the Power Market Regulations.

13. In view of the above and in terms of the order dated 31.7.2020, we are satisfied that the Petitioner as an applicant, fulfills the requirements specified in Regulations 16 (i), 16(ii), 16(iii), 16(iv), 18(i) and 19 of the Power Market Regulations. Thus, the Commission proposes to grant registration to the Petitioner Company to establish and operate a Power Exchange under clause (v) of Regulation 16 of the Power Market Regulations. The Commission directs that a notice under Clause (vi) of Regulation 16 of the Power Market Regulations be issued inviting further suggestions or objections to the proposal of the Commission.”

13. Public notice under Regulation 16 (vi) was published on 14.2.2021 in Indian Express and Hindustan (Hindi). In response to the public notice, IEX and PXIL have filed their objections. The Petitioner has filed its response to the objections of IEX and PXIL.

14. Major submissions of IEX and responses of the Petitioner thereon are as follows:

(a) IEX has submitted that BSE is required to take approval of SEBI for investment in PSL. In response, the Petitioner has submitted that BSE has got approval from SEBI and that it has placed on record the copies of the relevant documents.

(b) IEX has submitted that there is a conflict of interest with PTC as a trading licensee and the promoter of PSL and that as per the provisions of the PMR 2021, PTC should not be on the Board of PSL. In response, the Petitioner has submitted that as on date, PTC is not a Member of the Exchange and it is governed by the provisions of the PMR 2010.

(c) IEX has submitted that grant of registration to PSL should be under the provisions of the PMR 2021 and not under the provisions of the PMR 2010. In response, the Petitioner has submitted that since the PMR 2021 is yet to be notified, no relief/ direction can be sought under the same.

15. Major submissions of the PXIL and response of the Petitioner thereon are as under:

(a) PXIL has submitted that PSL may be directed to place on record the Service Agreement executed between PSL and PTC and disclose the contents of the same. In response, the Petitioner has submitted that no Service Agreement has been entered into between PSL and PTC.

(b) PXIL has submitted that PSL may be directed to provide necessary information of their shareholders by lifting the corporate veil for the proper determination of the nature of affiliation of the shareholders with PSL or the original shareholders. In response, the Petitioner has submitted that a brief profile of the shareholders had been provided to confirm that there is no cross holding amongst the shareholders.

(c) PXIL has submitted that the power traded by PTC in other Power Exchanges should not be allowed to be diverted to trade in PSL till PTC's shareholding remains more than 5%. In response, the Petitioner has submitted that the choice of Power Exchange is the prerogative of the client(s) and a direction cannot be issued in this regard.

(d) PXIL has submitted that PTC should not be allowed to participate as a trading licensee at the proposed Power Exchange until PTC's shareholding in PSL is curtailed to 5%. In response, the Petitioner has submitted that it confirms and undertakes that as and when PTC chooses to become a trading member of the proposed Power Exchange, it will dilute its shareholding to 5%.

(e) PXIL has submitted that PTC should not be allowed to appoint any Nominee Director on the Board of PSL. If the Nominee Director is allowed, then he/ she should not participate as a member of any of the Committees constituted by the Board of PSL. In response, the Petitioner has submitted that under clause 5.2 of SHA, all shareholders, including PTC, have the right to nominate a Director on the Board of Directors of PSL until their shareholding falls below 5%.

(f) PXIL has submitted that the proposed technology to be adopted by PSL as a Power Exchange should be audited and vetted before commencement of operation of the proposed Power Exchange. In response, the Petitioner has submitted that as per Regulation 31(v) of the PMR 2010, the Commission has power to audit the software used by the Power Exchange. Power Exchanges are also mandated to carry out periodic system audits and to submit the reports to the Commission under Regulation 31(vi) of the PMR 2010.

16. Meanwhile, the Petitioner through an affidavit dated 15.2.2021, submitted that the Petitioner Company has allocated additional equity shares to: i) West Bengal State Electricity Distribution Company Ltd, ii) Uttar Haryana Bijli Vitran

Nigam Ltd, iii) SJVN Ltd. After allotment of additional equity, the net worth of PSL stands at Rs.55.25 crore. The present shareholding pattern of the Petitioner Company is as follows:

Sr. No.	Entity/Company Name	Number of Equity Shares	Amount Invested (in Rs.)	Percentage Shares
Category A : Original Investors				
1	PTC India Limited	125,000,000	125,000,000	22.62%
2	BSE Investments Limited	125,000,000	125,000,000	22.62%
3	ICICI Bank Limited	49,950,000	49,950,000	9.04%
Category B : Other Investors				
4	Greenko Energies Private Limited	25,000,000	25,000,000	4.52%
5	Lebnitze Real Estates Private Limited (RPG Group)	25,000,000	25,000,000	4.52%
6	Varanium Dynamic Trust	25,000,000	25,000,000	4.52%
7	Jindal Power Limited	20,000,000	20,000,000	3.62%
8	Chamaria Enterprises Private Limited	13,050,000	13,050,000	2.36%
9	Lord Navnit Dholakia	5,000,000	5,000,000	0.90%
10	Manikaran Power Limited	17,500,000	17,500,000	3.17%
11	HV Impex Private Limited	25,000,000	25,000,000	4.52%
12	Mercados Energy Markets India Private Limited	17,500,000	17,500,000	3.17%
13	Rachana Raj Transport Associates Private Ltd.	20,000,000	20,000,000	3.62%
14	PSL Infratech Private Limited	7,000,000	7,000,000	1.27%
15	WBSEDCL (West Bengal State Electricity Distribution Company Limited)	17,500,000	17,500,000	3.17%
16	UHBVN (Uttar Haryana Bijli Vitran Nigam Limited)	17,500,000	17,500,000	3.17%
17	SJVN Limited	17,500,000	17,500,000	3.17%
	Total (Categories A+B)	552,500,000	552,500,000	100.00%

17. The Petition was finally called out for virtual hearing on 8.4.2021. During the course of hearing, the learned senior counsel and learned counsel appearing on behalf of IEX and PXIL reiterated their comments filed in response of the public notice dated 14.2.2021 published by the Commission. In response, the learned

senior counsel of the Petitioner pointed out that the same objections were raised during earlier stage of proceedings. After hearing the parties, the Commission directed the Respondents to upload their objections and the Petitioner to file its response on the e-filing portal, if the same is not submitted through e-filing portal earlier. The matter was reserved for order.

Analysis and Decision

18. We first analyze the Petitioner’s compliance to the provisions of the PMR 2010 for grant of registration as a Power Exchange. The relevant regulations and the compliance thereof by the Petitioner have been discussed in the subsequent paragraphs.

19. Regulation 14 of the PMR 2010 provides that no Power Exchange shall operate without obtaining registration under these regulations. Regulation 15 of the PMR 2010 provides the eligibility criteria and objective of applicant for making application for registration of Power Exchange. The relevant portion of Regulation 14 and Regulation 15 are reproduced as under:

“14. No Power Exchange shall operate without obtaining registration under these regulations.

.....
.....

15. The eligibility criteria for making application for registration of Power Exchange shall be as follows:

(i) (a) Any company limited by shares incorporated as a public company within the meaning of the Companies Act, 1956;

(b) A consortium of companies having an agreement amongst themselves to set up a power exchange through a special purpose vehicle (“SPV”) incorporated as a public company limited by shares within the meaning of the Companies Act, 1956;

Provided that the process for registration may be commenced in case a consortium applies for registration by submitting a copy of such an agreement entered into amongst the consortium members, but registration shall be granted only when consortium has incorporated the SPV as aforesaid.

(ii) The main objects of the applicant company shall be to primarily set up and operate Power Exchange though the other and incidental objects may be to undertake other businesses related to energy sector and its ancillaries with the prior approval of the Commission.

Provided that such a company shall maintain separate accounts for separate businesses.”

20. In compliance of Regulation 14 of the PMR 2010, the Petitioner Company filed the present Petition for obtaining registration as a Power Exchange. In accordance with the Regulation 15(i)(b), the Petitioner Company was incorporated on 24.4.2018 as a Public Company limited by shares within the meaning of the Companies Act, 2013 by the Consortium Members i.e., PTC, BSEIL and ICICI and, therefore, the Petitioner is eligible for making an application for registration of Power Exchange.

21. The main objective of the Petitioner Company and incidental objects as provided in the Memorandum of Association are in accordance with the Regulation 15(ii) of the PMR 2010. The main objective of the Petitioner Company is to establish and operate a Power Exchange. The incidental objects are as under:

“1. To levy, charge, recover and receive security deposits, admission fees, transaction fees, fund subscriptions and levies and any other fees and/or sums from the participants, companies partners, and/or customers.

2. To employ experts, consultants, advisers and appoint agents and constituted attorneys in connection with the business of the Company.

3. To form other company or companies, subsidiaries for carrying out the operations of the Company or for carrying out some business or operation ancillary or incidental or expedient in the interest of the company in India or outside India.

4. To open branches, sub offices, in any state of India or outside India and to appoint agents, sub agents and brokers to procure business in which this company may be dealing.

5. To make arrangements through relevant methods of mechanism for resolving disputes and to decide all questions of practices, usages or customs for conduct of business of the Company.

6. To form, constitute, promote, manage or assist in forming, constituting, promoting, managing entities of all kinds for the purpose of acquiring any undertaking or any

property, whether movable/immovable, whether with or without liability of such undertaking for advancing directly or indirectly the objects hereof and to take or otherwise hold and dispose of shares, debentures and other securities in or of any such undertaking.

7. To purchase, take on lease or, hire and otherwise acquire any immovable or movable property, patents, license, rights and privileges which the Company may think necessary or convenient for the purpose of its business and in particular any land, tenements, building and easements and to pay for the same either in cash or in shares or securities and to sell, mortgage, let or under lease or otherwise dispose of or grant rights over any immovable property belonging to the Company

8. To promote any other company or Companies for the purpose of acquiring all or any of the property right and liabilities of this Company, for carrying on any business which this company is authorized to carry on or for any other purposes which may seem directly or indirectly calculated to benefit this Company or to promote or advance the interest of this Company.

9. To sell the undertaking of the Company or any part thereof for such consideration as the Company may think fit and in particular for shares, debentures or securities of any other Company having objects altogether or in part similar to those of this Company.

10. To give guarantees and indemnities for the payment of money or the performance of contracts or obligations and to enter into undertakings, obligations, agreements, contracts and other instruments in connection with the business of the Company.

11. To borrow moneys for the objects and purposes of the Company from the members or from any other persons, firms, companies, corporations, Government agencies, institutions or banks, multilateral and/or other international financial institutions and banks and secure the repayment of money, with or without security, in such manner as the Company shall think fit.

12. To open accounts with any bank or banks and to draw, make, issue, accept and to endorse, discount and negotiate promissory notes, hundies, bills of exchange, bills of lading, delivery orders, warrants, warehouse keeps, certificates and other negotiable or commercial or mercantile instruments connected with the business of the Company.

13. To create any Reserve Fund, Insurance Fund or any other such special funds whether for depreciation, repairing, improving, and research, extending or maintaining any of the properties of the Company or for any other purpose conducive to the main object of the Company.

14. To invest surplus funds of the Company in any manner as the Company deems fit.

15. To enter into agreements and contracts with Indian or foreign individuals, companies or other organizations for technical, financial or any other assistance of carrying out all or any of the objects of the Company.

16. To invest and deal with the Company's property or sell, improve, manage, develop, lease, sub lease, pledge, mortgage, dispose of, or otherwise deal with, all or any part of the property and right of the Company.

17. To refer to arbitration any disputes present or future between the Company and any such other Company, firm, individuals or any other such body and to submit the same to arbitration in India or abroad either in accordance with Indian or any Foreign system of Law.

18. To guarantee the payment of money secured by or payable under or in respect of any debentures, debenture stock, bond, mortgage, charge, security, contract or obligation of any person, persons or corporations or any authority.

19. To pay out of the funds of the Company all expenses which the Company may lawfully pay in respect to the formation and registration of the Company or the issue of its capital, including brokerage and commission for obtaining applications for or taking, placing or underwriting or procuring the underwriting of shares, debentures or other securities of the Company.

20. To pay for any rights or property acquired by the Company and to remunerate any person, firm or body corporate rendering services to the Company either by cash payment or by allotment to him or them of shares or securities of the company as paid up in full or in part or otherwise.

21. To take or otherwise acquire and hold, re-sale or dispose off shares in any other company having objects altogether or in part similar to those of the Company or carry on any business capable of being conducted so as directly or indirectly to benefit the Company.

22. To adopt any or all means of making known the business of the company as seem expedient, and in particular by advertising in the press, interne, radio, television, mobile, hand held devices, kiosks, third party display walls and cinema, by circulars, by purchase, construction and exhibitions of work or at or general interest, by publication of books and periodicals, and by granting prizes, rewards and donations and by propaganda of all kinds, subject to the provisions of the Act.

23. To apply for, purchase or otherwise acquire and protect, prolong and renew, whether in India or in any part of the world, for the purpose of using in its business, any trademarks, patent rights, copy rights, sophisticated technology, designs, licenses, concessions and the like, conferring any exclusive or non-exclusive or limited right to use any secret, technical or other information as to any invention which may seem capable of being used for any of the purposes of the Company or the acquisition of which may directly or indirectly benefit the Company.

24. To enter into any arrangements with any Government Authority (Central, State, Municipal, local or others) or Company (whether incorporated in India or outside India) or firm or person that may seem conducive to the attainment of Company's objects or any of them and to obtain from any such Government or other authorities any orders, charters, licenses, authorisations, rights, privileges and concessions which the Company may think desirable to obtain and to carry out, exercise and comply with any arrangements, rights, privileges and concessions.

25. To amalgamate or merge with any entity, or allow amalgamation or merger of any entity with this Company, for the purpose of attainment of the objects of this Company.

26. To purchase or otherwise acquire and undertake the whole or any part of the business property, goodwill, trademarks, patent rights, assets and liabilities of any

firm, company or person carrying on any business which this Company is authorised to carry on or possess or to purchase or acquire any property or right suitable for any of the purposes of the Company.

27. To formulate and implement any scheme of reconstruction or arrangement.

28. To acquire, purchase, takeover assets, businesses or undertakings of other Companies or entities, which may conveniently or advantageously be with the business of the Company.

29. To undertake and execute any trusts, undertakings of which may seem to the Company desirable and either gratuitous or otherwise.

30. To donate or gift, in cash or kind, for any national charitable, benevolent, public purposes or to any institutions, club, society, research association, fund, university, college or any other person or body.

31. To subscribe, contribute, make donations or grants or guarantee money for any general or useful object and to aid any association, body or movement, subject to compliance with provisions of the Act.

32. To promote, sponsor, undertake and carry out rural development, including any program for promoting the social and economic welfare of, or the upliftment of people in any rural area and to incur any expenditure on any program or rural development and to assist promotion or execution thereof, either directly or through an independent agency or by making contributions or giving donations or in any other manner.

33. To undertake all or any of the above activities, in any part of the world either as principals, agents, contractors, trustees or otherwise, by or through agents, subcontractors, trustees or otherwise, either alone or in conjunction with others and to do all such activities as are incidental or conducive to the attainment of the above objects. To provide for the welfare of employees or ex-employees, directors or ex-directors of the Company and families or the dependents of such person, by grant of money/ pension, allowances, bonus or other payments or by creating and from time to time subscribing or contributing to provident fund and other associations, institutions, trust and by providing or subscribing towards medical or other assistance as the Company shall think fit and to subscribe or to contribute or otherwise assist charitable, benevolent, national and / or other institutions or objects.

34. To distribute any of the Company's property among the members in specie or otherwise or any proceeds of sale or disposal of any property of the company on the event of the winding up subject to the Act.

35. To do all and everything necessary, suitable or proper or incidental or conducive to the accomplishment of any of the purposes or the attainment of any of the objects or the furtherance of any of the powers herein before set forth, either alone or in association with other corporate bodies, firms, or individuals and to do every other act or thing incidental or appurtenant to or arising out of or connected with the business or powers of the Company or part thereof, provided the same be lawful.”

22. Regulation 16 of the PMR 2010 provides procedure for filing application for grant of registration to establish and operate a Power Exchange as under:

“16. Procedure for filing Application

(i) Application for grant of registration to establish and operate a Power Exchange shall be filed in the form of a petition to the Commission in accordance with the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and as amended from time to time.

(ii) The salient details of the applicant, proposed transaction platform and website address where the full application is accessible shall be published in all editions of at least two national daily newspapers including one economic daily newspaper within 7 days of filing of the application inviting public comments/objections, if any, upto a period of 30 days.

(iii) The application as filed and the information as sought by the Commission shall be posted and kept on the web site of the applicant at least for a minimum period of 30 days from the date of publication of notice in newspapers.

(iv) The applicant shall file before the Commission its reply to the objections or suggestions received in response to the public notice within 45 days of its publication in the newspaper.

(v) The Commission after consideration of the objections or suggestions received in response to the notice published by the applicant and his reply may propose to grant registration to the applicant.

(vi) When the Commission proposes to grant registration, it shall publish a notice of its proposal in two daily newspapers, as the Commission may consider appropriate, stating the name and address of the person to whom it proposes to grant the registration with such other details as the Commission considers appropriate, to invite further objections or suggestions to its proposal.

(vii) On consideration of further objections or suggestions received and the reply of the applicant thereto, if any, the Commission may grant registration or reject the application, for reasons to be recorded in writing if the application does not conform to the provisions of the Act or the regulations thereunder Provided that no application shall be rejected, unless the applicant has been given an opportunity of being heard.”

23. Under Regulation 16(i), the Petitioner Company has filed the application for grant of registration to establish and operate a Power Exchange on 7.9.2018. In accordance with Regulation 16(ii) of the PMR 2010, on 10.10.2018, the Petitioner has published its salient details, proposed transaction platform and website address where the full application is accessible, in all editions of two national daily newspapers, namely, 'The Hindu' and 'Financial Express (economic daily)', for

inviting public comments/ objections. Regarding the proposed transaction platform, it has undertaken that PSL is in the process of identifying and shortlisting its technology partners who will provide the technology for the proposed Power Exchange in line with the PMR 2010. As per Regulation 16(iii) of the PMR 2010, the Petitioner has posted the Petition and other relevant information on its website: <https://www.pranurja.com>.

24. Under Regulation 16(iv) of the PMR 2010, the Petitioner has filed its reply on 13.12.2018 to the objections received from IEX in response to the public notice published under Regulation 16(ii) of the PMR 2010. In addition, the Petitioner has also filed its reply to the objections received from the respondents, IEX and PXIL.

25. Under Regulation 16(v) of the PMR 2010, after considering the objections or suggestions received in response to the notice published by the applicant and reply of the Petitioner thereon, the Commission in its order dated 11.2.2021, had proposed to grant registration to the Petitioner. While proposing grant of registration under Regulation 16(vi) of the PMR 2010, the Commission directed that a notice (stating the name and address of the person to whom it proposes to grant the registration and other necessary details) be issued inviting suggestions or objections to the proposal of the Commission. In compliance of the above direction, a public notice was published in two daily newspapers on 14.2.2021. In response to the public notice, IEX and PXIL filed their comments and the Petitioner filed its response to the comments.

26. We are, thus, satisfied that the Petitioner has fulfilled the requirements under Regulations 16(i), (ii), (iii), (iv), (v) and (vi) of the PMR 2010.

27. In accordance with Regulation 17 of the PMR 2010, the applicant is required to submit the following documents along with the application. Extract of Regulation 17 of the PMR 2010 is as under:

17. Applicants seeking registration to set up and operate a Power Exchange shall submit the following documents along with the application, to the Commission:

- (i) Memorandum and Articles of Association of the company making the application;*
- (ii) In case of a consortium of companies, a formal agreement amongst the members of the consortium to set up a Power Exchange shall be submitted;*
- (iii) Details of the existing business of the consortium members;*
- (iv) Copies of the Annual Report and/or audited accounts of the applicant for the last three years, to the extent applicable;*
- (v) A Project Report containing the following details:
 - (a) Constitution of the proposed Power Exchange;*
 - (b) Funding sources of the proposed Power Exchange;*
 - (c) Management and Administrative structure of the proposed Power Exchange;*
 - (d) Infrastructural facilities available/proposed to be acquired by the Power Exchange;**
- (vi) The draft rules of the proposed power Exchange relating in general to the constitution of the proposed Power Exchange and in particular, that relating to:
 - I. The board of directors of the Power Exchange, its constitution and powers;*
 - II. Management of the Power Exchange and the manner in which its business is to be transacted;**
- (vii) The draft bye laws of the proposed Power Exchange covering the aspects specified in Regulation 24 hereof.*

28. Under Regulation 17(i) of the PMR 2010, the Petitioner has submitted the copies of the Memorandum of Association and Articles of Association of PSL in Annexure P-5 and Annexure P-6 to the Petition respectively. Under Regulation 17(ii) of the PMR 2010, the Petitioner has enclosed the copy of Coordination and Consortium Agreement entered into between PTC, ICICI and BSEIL as Annexure P-4 to the Petition. In addition, the copies of Memorandum of Association and

Articles of Association of BSEIL, PTC and ICICI have been submitted in Annexure P-7, Annexure P-8 and Annexure P-9 to the Petition respectively.

29. We have also noted that PSL, being a consortium of companies, does not have annual statements and/ or audited accounts. In this regard, the Petitioner has provided the last three years' Annual Reports of its consortium members i.e., BSE, PTC and ICICI as Annexure P-10, Annexure P-11 and Annexure P-12 to the Petition, respectively and *inter-alia* satisfies the requirements of Regulation 17(iii) and Regulation 17(iv) of the PMR 2010.

30. Under Regulation 17(v) of the PMR 2010, the Petitioner has enclosed the Project Report of the proposed Power Exchange as Annexure P-13 to the Petition. As required under clauses (a), (c), and (d) of Regulation 17(v) of the PMR 2010, Chapter-4 of the Project Report covers the details about constitution of the proposed Power Exchange, management and administrative structure of the proposed Power Exchange and infrastructure facilities available/ proposed to be acquired by the Power Exchange. As required under clause (b) of Regulation 17(v) of the PMR 2010, Chapter-5 of the Project Report contains the details on funding sources of the proposed Power Exchange.

31. As required under Regulation 17(vi) of the PMR 2010, the Petitioner has submitted the draft Rules of the proposed Power Exchange in Annexure P-14 to the Petition. Details pertaining to the Board of Directors of the Power Exchange and Management of Power Exchange are provided in Chapter-3 while the manner in which its business is to be transacted is provided in Chapter-4 and Chapter-5 of the draft Rules. As required under Regulation 17(vii) of the PMR 2010, the Petitioner has submitted a copy of the draft Bye-Laws for the proposed Power

Exchange as Annexure P-15 to the Petition. The draft Rules and Bye-Laws, *inter-alia*, cover the aspects specified in Regulation 24 of the PMR 2010.

32. We, thus, note that the requirements under Regulation 17(i), (ii), (iii), (iv), (v), (vi) and (vii) of the PMR 2010 have been fulfilled by the Petitioner.

33. Regulation 18 of the PMR 2010 provides Prudential Norms for establishment of Power Exchange as under:

“18. Prudential Norms for establishment of Power Exchange

(i) A Power Exchange shall always have a minimum networth of Rs. 25 Crore

....

Provided further that the Commission may, by general order, review the networth criteria from time to time.

(ii) For an applicant the networth to be considered shall be minimum in three years immediately preceding the year in which the application is made or such lesser period during which the applicant may have been incorporated, registered or formed and on the date of special balance sheet accompanying the application for grant of registration.”

34. We have noted that the Petitioner Company, since the infusion of share capital by consortium members, had minimum net worth of Rs.25.50 crore. Presently, the applicant company has attained the net worth of Rs.55.25 crore. Therefore, *inter-alia* the requirements under Regulation 18(i) and Regulation 18 (ii) of the PMR 2010 have been fulfilled by the Petitioner.

35. Regulation 19 of the PMR 2010 provides Shareholding Pattern of Power Exchange as under:

“19. Shareholding Pattern of Power Exchange

(1) The shareholding pattern for equity holders in the Power Exchange shall be as follows:

(i) Any shareholder other than a Member of the Power Exchange can have a maximum (whether directly or indirectly) of 25% shareholding in the Power Exchange.

(ii) A Member of the Power Exchange can have a maximum (whether directly or indirectly) of 5 % shareholding in the Power Exchange.

(iii) In total, a Power Exchange can have a maximum of 49% of its total shareholding owned by entities (whether directly or indirectly) which are Members of the Power Exchange.”

36. Based on the documentary evidence available on record, it is observed that the promoter companies of PSL i.e. PTC India Limited, BSE Investments Limited (including Nominees) and ICICI Bank Limited are now having shareholding of 22.62%, 22.62% and 9.04% respectively. In addition, there are 14 other investors/ shareholders (6 from originally proposed shareholders and rest 8 being new) each of whom is having shareholding less than 5%. Therefore, in view of the above and as noted in the order dated 11.2.2021, the Commission is satisfied that the Petitioner Company, as an applicant, is complying with the shareholding pattern under Regulation 19 of the PMR 2010.

37. The matter was called out for virtual hearing on 8.4.2021. Relevant portion of the Record of Proceedings of the hearing held on 8.4.2021 is as under:

“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:

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(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.

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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.

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38. During the course of hearing held on 8.4.2021, the learned senior counsel appearing on behalf of IEX raised the issue of compliance of the Petitioner to the provisions of the PMR 2021 and that registration of the Petitioner as Power Exchange should be considered under the PMR 2021 and not under the PMR 2010. The learned counsel of PXIL submitted that software of the proposed Power Exchange of the Petitioner should allow seamless integration as regards market coupling as envisaged in the PMR 2021. We note that since the PMR 2021 is still not in force, contentions of IEX and PXIL have no merit.

39. Learned counsel for PXIL while stating that PXIL does not intend to hinder entry of the Petitioner as a Power Exchange, pointed to certain provisions of SHA under which PTC as promoter and original shareholder would continue to enjoy certain rights in the management and operation of the Petitioner which vitiates the provisions of Regulation 22 of the PMR 2010 which provides for clear demarcation between the ownership, management/ operation and participation in trading and consequently gives rise to conflict of interest as a trading licensee. In response, the learned senior counsel of the Petitioner submitted that provisions of SHA as interpreted by PXIL is incorrect and that SHA being a private agreement between the shareholders has to be in accordance with the provisions of laws/ regulations.

40. We have considered the submissions of PXIL and the Petitioner. We are of the view that there is force in the submissions of PXIL and apprehensions expressed by PXIL need to be addressed.

41. Regulation 21 of the PMR 2010 provides for grant of registration to Power Exchange as under:

“21. Grant of Registration to Power Exchange

(i) The Commission may, after making such inquiries as may be necessary in this regard and after obtaining such further information as it may require, grant registration subject to such conditions as deemed fit, for setting up and operation of a Power Exchange.

(ii) The registration of a power exchange shall continue to be in force for a period of twenty five (25) years from the date of commencement of operations unless such registration is revoked or cancelled.”

42. Regulation 21(i) of the PMR 2010 provides that Commission can stipulate such conditions as deemed fit for setting up and operation of a Power Exchange. Therefore, the Commission, in exercise of the powers under this Regulation, deems it fit to stipulate the following conditions:

PTC shall not at any point of time have veto rights in the matters relating to day to day functioning of the Petitioner as per items 1, 4, 5, 8, 9, 13, 14 and 16 of the Schedule 3 of the SHA and decisive voting rights with regards to any change in senior management including key management employees as per item 17 of the Schedule 3 of the SHA. And for this purpose, necessary amendments in the SHA shall be effected by the Petitioner. Further, consequential changes as required shall also be incorporated in Rules, Bye-Laws, Business Rules and other such documents by the Petitioner.

43. In terms of the orders dated 31.7.2020 and 11.2.2021; analysis as regards to the compliance of the Petitioner with various provisions (Regulations 14, 15, 16, 17, 18 and 19) of the PMR 2010; and having considered the objections of IEX and PXIL; the Commission, under Regulation 21(i) of the PMR 2010 and as provided under Regulation 16(vii) of the PMR 2010, grants registration to the Petitioner Company to establish and operate a Power Exchange subject to complying with the conditions stipulated in paragraph 42 above within three months from the issuance of this order.

44. On complying with the conditions stipulated in paragraph 42 above, in accordance with the Regulation 21(ii) of the PMR 2010, the registration of the Power Exchange shall continue to be in force for a period of twenty-five (25) years from the date of commencement of operation unless such registration is revoked or cancelled.

45. The commencement of operation of the Power Exchange is subject to approval of the Bye-Laws, Rules, and Business Rules and the technology including trading software in accordance with various provisions of the PMR 2010. The Petitioner had submitted the draft Rules and Bye-Laws at the time of filing the Petition. The Petitioner is directed to submit, after carrying out necessary amendments in the SHA and incorporating consequential changes appropriately in

terms of paragraph 42 above, the updated Rules and Bye-Laws along with the Business Rules and the documents in support of the technology to be adopted for operation of the Power Exchange *inter-alia* including the contracts which the Petitioner intends to introduce, within three months from the issuance of this order, failing which the Petitioner will be liable for action in accordance with law. Subsequent only to such approval, the applicant is permitted to commence the operation of the Power Exchange from a date to be announced by it in advance.

46. The Commission is of the view that once the proposed Power Exchange is operational, the status of PSL will be changed from 'applicant' to 'Power Exchange'. As a Power Exchange, the PSL is required to comply with the provisions of the PMR 2010 and all other applicable regulations of the Commission in letter and spirit.

47. The Petition No. 287/MP/2018 is disposed of in terms of above.

**Sd/-
(P.K. Singh)
Member**

**sd/-
(Arun Goyal)
Member**

**sd/-
(I.S. Jha)
Member**

**sd/-
(P.K. Pujari)
Chairperson**