

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 228/MP/2022

Coram:

**Shri Jishnu Barua, Chairperson
Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P.K. Singh, Member**

Date of Order: 6th December, 2023

IN THE MATTER OF:

Petition under Regulation 17(12) of the Central Electricity Regulatory Commission (Power Market) Regulations, 2021 and under Regulations 54, 55 and 56 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2021 seeking additional time period in order to meet the compliances set out under Regulations 17 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2021.

And in the matter of

Hindustan Power Exchange Ltd
(Formerly Pranurja Solution Ltd)
25th Floor, P J Towers
Dalal Street, Mumbai - 400 001

... **Petitioner**

Parties Present:

Shri Ravi Kishore, Advocate, HPX
Shri Keshav Singh, Advocate, HPX
Shri Parvesh Sharma, HPX

ORDER

The Petitioner, Hindustan Power Exchange Limited (Hereinafter referred to as HPX) operates a Power Exchange after obtaining the approval of this Commission. The Petitioner filed the present petition seeking additional time in order to achieve the compliances set out under Regulation 17 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2021.



The Petitioner has made the following prayers:

- a. *allow the present petition;*
- b. *grant extension of six months for appointment of an Independent Director and a Managing Director;*
- c. *pass such other and further order(s) as this Hon'ble Commission may deem fit and proper under the facts and circumstances of the present case and in the interest of justice.*

Background

1. Hindustan Power Exchange Limited is a company incorporated under the provisions of the Companies Act, 1956 and has its registered office at 25th Floor, P J Towers, Dalal Street, Mumbai - 400001.

2. The Commission, vide order dated 12.05.2021 in Petition No 2018, granted registration to the Petitioner to establish and operate a power exchange. Subsequently, vide order dated 27.06.2022 in Petition No.159/MP/2022, accorded permission to the Petitioner to commence operations of its Power Exchange. The Petitioner commenced operation on 06.07.2022.

Background of case

3. On 15.02.2021, the Commission issued the Central Electricity Regulatory Commission (Power Market) Regulations, 2021 ("**PMR 2021**"). Regulation 17 of PMR 2021 for the Governance structure of the Power Exchange reads as under: -

- " 17. *Governance structure of Power Exchange*
- (1) *The Board of Directors of the Power Exchange shall have the following categories of Directors:-*
 - (a) *Shareholder Director;*
 - (b) *Independent Director; and*
 - (c) *Managing Director.*
 - (2) *The number of Independent Directors shall not be less than the number of Shareholder Directors on the Board of the Power Exchange: Provided that for this purpose, the Managing Director shall be included in the category of Shareholder Directors.*



- (3) *A minimum of two names shall be submitted by the Board of the Power Exchange to the Commission for approval for each vacancy of Independent Directors.*
- (4) *The Power Exchange shall ensure that Independent Directors are selected from diverse fields of work and while deciding to propose name of a particular person as an Independent Director, the Power Exchange shall also take into account the following factors:*
 - (a) *Persons having qualification in the area of law, finance, accounting, economics, management, administration or any other area relevant to the power markets, may be considered;*
 - (b) *At least one person having experience and background in finance or accounts, shall be inducted;*
 - (c) *Persons currently holding positions of trust and responsibility in reputed organisations or persons who have retired from such positions, may be considered;*
 - (d) *Persons who are likely to have interested positions in commercial contracts and financial affairs of the Power Exchange, shall be excluded;*
 - (e) *Persons who are directors in the board of the promoter entity of the Power Exchange, shall be excluded;*
 - (f) *Persons who are in any fiduciary relationship with any member of Power Exchange, shall be excluded.*
- (5) *The Managing Director shall be a professional qualified in the fields of power sector or finance or management or information technology and hold sufficient experience.*
- (6) *The Managing Director shall function as the Chief Executive of the Power Exchange and all powers in respect of day-to-day affairs of the Power Exchange shall be vested with him.*
- (7) *The Managing Director or any employee of the Power Exchange shall not be directly or indirectly associated with any member of the Power Exchange or client or participant of the Power Exchange or with a holding or subsidiary company thereof.*
- (8) *The Managing Director shall ensure that the details of individual bids of members of the Power Exchange are not shared with the Board of Directors.*
- (9) *The names of persons to be appointed as Shareholder Directors shall be approved by the Board of Directors of the Power Exchange, followed by shareholders' approval and thereafter shall be submitted to the Commission for information.*
- (10) *The manner of election, appointment, tenure, resignation and vacation of Shareholder Directors shall be governed by the relevant provisions of the Companies Act, 2013.*
- (11) *No member of Power Exchange or their client shall be on the Board of Directors of any Power Exchange.*



(12) *The Power Exchanges which have been granted registration by the Commission prior to the date of coming into force of these regulations, shall within a period not exceeding one year from the date of coming into force of these regulations, align the governance structure as specified in this Regulation.”*

4. The above provisions of Regulation 17 of PMR 2021 mandate three categories of Directors, namely:-

- (a) Shareholder Director;
- (b) Independent Director; and
- (c) Managing Director.

5. Presently, HPX Ltd. has the following Directors:-

Shareholders Directors

- i. Mr. Piyush Chourasia of BSE Investments Limited
- ii. Dr Rajib Mishra of PTC India Limited*.
- iii. Mr Suresh Polumahanti of ICICI Bank Limited

**Presently, PTC India Limited is neither a member nor a client of the Power Exchange being operated by the Petitioner Company*

Independent Directors

- i. Mr Niraj Nabh Kumar - Independent Director
- ii. Mr Shyam Dhar Dubey - Independent Director

6. The present shareholding pattern of the Petitioner Company is as under:-

Sr. No.	Name of the Shareholders	Number of Equity Shares allotted	%
1.	PTC India Limited (Promoter Shareholder)	12,50,00,000	22.62
2.	BSE Investments Limited (Promoter Shareholder)	12,49,99,996	22.62
3.	ICICI Bank (Promoter Shareholder)	4,99,50,000	9.04
4.	Shri Shankar Jadav (Nominee of BSE Investment) (Promoter Shareholder)	1,	0*
5.	Sh. Nayan Mehta (Nominee of BSE Investment) (Promoter Shareholder)	1	0*
6.	Shri Neeraj Kulshrestha (Nominee of BSE Investment) (Promoter Shareholder)	1	0*



7.	Shri Vishal Bhat (Nominee of BSE Investment) (Promoter Shareholder)	1	0*
8.	Greenko Energies Private Limited	2,50,00,000	4.52
9.	Lebnitze Real Estate Private Limited	2,50,00,000	4.52
10.	Varanium Dynamic Trust	2,50,00,000	4.52
11.	Jindal Power Limited	2,00,00,000	3.62
12.	Chamaria Enterprises Private Limited	1,30,50,000	2.36
13.	Manikaran Power Limited	1,75,00,000	3.17
14.	H K Shah and Sons Private Limited	2,50,00,000	4.52
15.	Mercados Energy Markets India Private Limited	1,75,00,000	3.17
16.	Rachana Raj Transport Associates Private Limited	2,00,00,000	3.62
17.	PSL Infratech Private Limited	70,00,000	1.27
18.	Lord Navnit Rai Dholakia	50,00,000	0.90
19.	West Bengal State Electricity Distribution Company Limited	1,75,00,000	3.17
20.	Uttar Haryana Bijili Vitran Nigam Limited	1,75,00,000	3.17
21.	SJVN Limited	1,75,00,000	3.17
	TOTAL	55,25,00,000	100.00

** Negligible shareholding as a percentage of the total paid-up Equity Share Capital*

7. The profile of independent Directors is as under:-

i. Mr. Niraj Nabh Kumar

Mr. N. N. Kumar is a superannuated civil Servant from the 1984 batch of Indian Revenue Service. Mr. Kumar has worked in various capacities with the Department of Revenue, Ministry of Finance, Government of India, Ministry of Shipping and Road Transport, Government of India and NITI Ayog. Mr Kumar was Chairman of the largest container port in the country, namely “Jawaharlal Nehru Port” (JNPT) Mumbai.

During his long association with the Government of India, Mr Kumar spearheaded various key Policy initiatives like e-governance projects and successfully implemented large complex infrastructure projects with a special thrust on PPP Mode.

Mr Kumar’s expertise is in all areas of management, including financial & regulatory tasks. Mr Kumar has a proven record of unprecedented accomplishment having the highest level of experience in executive decision-making, policy direction, strategic business planning, fiscal regulations and personnel management.

Mr. Kumar was also closely involved with the Ministry of External Affairs for setting up CHABHAR port projects in Iran as the founder Chairman of



“India Ports Global Ltd.” [Govt. of India overseas arm for Setting up port projects in Iran.]

Mr Kumar is a postgraduate and later completed his Professional and Management qualifications from the National Academy of Direct Taxes in Nagpur. He also did various development courses from reputed institutions such as - the Treasury Department, Federal Govt., USA, Indian Institute of Management, Ahmedabad, Indian Institute of Management, Bangalore, and Wharton School of University of Pennsylvania, USA.

ii. Mr. Shyam Dhar Dubey

Mr Dubey graduated from MNR Engineering College, Allahabad in First Class with Honours in the year 1977. After two years stint in BHEL, Haridwar, joined Central Electricity Authority (CEA) through Central Power Engineering (Group-A) Service. Mr Dubey has over 43 years of service in different capacities in CEA, APTEL, Royal Government of Bhutan, Govt. of Bihar, BHEL, etc.

Mr. Dubey was a Technical Member in APTEL for 3 years. During his tenure, Mr Dubey finalized and pronounced about 330 judgments/orders and most of the judgements have been upheld / confirmed by the Hon'ble Supreme Court of India and attained finality. In process of pronouncing the judgements, Mr Dubey had interpreted various provisions of the Electricity Act 2003, Policies, Rules & Regulations pertaining to the Power Sector involving divergent aspects like various modes of power generation (Thermal, Hydro, Wind, Solar, Biomass etc.), transmission, distribution, trading etc. Before joining the Appellate Tribunal of Electricity (APTEL) Mr Dubey was the Chairperson, Central Electricity Authority, Ministry of Power & Ex-Officio Secretary to the Government of India. As Chairperson, CEA he was responsible for the discharge of CEA's statutory functions and duties which are enshrined under the Electricity Act, 2003 and broadly include formulation of National Power Policy & Plans; Integrated resource planning and optimization of resource utilization, Policies for safe, secure and economic operation of regional and national grid, Techno-economic evaluation of power projects, renovation and modernization schemes, investigation of accidents on electrical installations, environmental aspects of generation projects, monitoring of rural electrification and optimization of Distribution network, regulatory, legal and financial matters co-operation with neighbouring countries for development of water resources, cross boarder power transmission, etc. He also held the responsibility of Member (Power System) in the Central Electricity Authority.

8. From the profile of the present Directors, including independent Directors of the Petitioner Company, it is evident that the Directors have adequate experience and rich knowledge including that of the Power Sector.



9. The Petitioner also submitted that the Power Exchange being operated by them became operational only on 06.07.2022 and is at a very nascent stage, where revenues from the operation have just started but are presently not sufficient to meet the operating expenses of the Exchange as the volumes are yet to grow substantially.

10. As per PMR, 2021, the Petitioner is required to have one more Independent Director to match the number of Shareholders Directors. The Petitioner has filed the present petition for an extension of another six months.

11. As regards the requirement of having a Managing Director, the Petitioner has submitted that presently it has personnel with adequate knowledge and experience to operate the Power Exchange of the Petitioner Company.

12. As already stated, the Power Exchange being operated by the Petitioner Company commenced operation only on 06.07.2022 and the volumes are yet to achieve the critical level. It has been submitted that the requirement of having a Managing Director may be extended by another six months.

13. The Commission has powers under Regulations 54, 55, and 56 of the PMR, 2021, specifically under Regulation 56, where this Commission has the power to relax.

14. The Commission had previously granted extensions to other Power Exchanges to enable them to meet the requirement of PMR 2021.

Hearing dated 07.02.2023

15. The matter was heard for admission on 16.02.2023. The learned counsel for the Petitioner submitted that as per the PMR 2021, the Board of Directors of the Petitioner's exchange is required to have three categories of Directors, namely, Shareholder Director, Independent Director, and Managing Director and further the number of Independent Directors cannot be less than the number of Shareholders Directors. Accordingly, it has prayed for a grant of extension of six months for the appointment of an Independent Director and a Managing Director (MD). He further



informed that the Petitioner has already advertised the vacancy for MD and has received some applications which are presently under consideration. In response to a specific query of the Commission regarding the management of its day-to-day affairs presently, learned counsel submitted that the Petitioner has a Chief Operating Officer. In response to a further query about the requirements under the Companies Act, 2013, learned counsel sought liberty to file an additional affidavit indicating the requirements under the Companies Act, 2013.

Hearing dated 16.03.2023

16. The Petitioner's counsel submitted that the petition is for seeking additional time to achieve the compliances set out under Regulation 17 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2021. The learned counsel submitted that the Petitioner has prayed for a grant of extension of six months for the appointment of an Independent Director and a Managing Director. The learned counsel also submitted that as far as the requirements of the Companies Act 2013 are concerned, one of the 'Key Managerial Personnel' can be appointed as Chief Executive Officer or the Managing Director or Manager, and the said Act does not provide that a Company should have a Managing Director. The Petitioner has filed an affidavit documenting compliance with RoP dated 09.02.2023, directed by the Commission in the hearing dated 07.02.2023.

Analysis and Decision

17. The Petitioner has filed the present petition under Regulation 17 (12) of the Power Market Regulation 2021, seeking additional time for appointing Managing Director and Independent Director. The Commission vide RoP dated 07.02.2023 admitted the petition and directed them to file the following information on the affidavit:

- “(i) MBP-1 form and declaration form of the existing Independent Directors as required under PMR 2021 and Companies Act 2013;
- (ii) Details of efforts taken since August 2022 to fill the vacant posts of an Independent Director and a Managing Director. In case of non-fulfilment, submit the concrete plan to fill the vacant posts so as to comply with Regulation 17(2);



- (iii) The Petitioner has expressed concern over its financial ability to meet its operating expenses. Regulation 14 of PMR 2021 provides that “A Power Exchange shall have a minimum Net worth of Rs. 50 crores at all times”. Submit the Statement of Income and Expenditure as on 31 January 2023;
- (iv) Detailed list of all the members on its platform, including Proprietary, Trading and Facilitator members as on 31st January 2023.”

18. The Petitioner has drawn attention to the following provisions of the Companies Act 2013 about the Managing Director:

- Section 2 (51) — “key managerial personnel”, in relation to a company, means— (i) the Chief Executive Officer or the managing director or the manager;
- Section 2 (54) — “managing director” means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

19. The Petitioner has submitted that as per the Companies Act, one of the “key managerial personnel” can be appointed as Chief Executive Officer or the Managing Director or Manager. Further, the Companies Act does not provide the requirement of a Managing Director, and as far as compliance w.r.t. appointment of key managerial personnel is concerned, the Petitioner has already appointed a Manager. A Chief Operating Officer has been appointed, who is entrusted with the power to run the day-to-day affairs of the Company. As far as the requirement of appointment of a Managing Director as per the PMR 2021, it has already been stated in the petition that the Petitioner Company started its operations in July 2022, and the operations are at a nascent stage, and it had initiated the process for the appointment of a Managing Director.

20. The Petitioner has stated that during August 2022, there have been some changes in the composition of the Board of Directors i.e. two of the promoter Directors representing BSE and ICICI Bank resigned, and the new Directors were



appointed in August 2022 and September 2022. Subsequently, the Board of Directors appointed M/s ABC Consultant Pvt. Ltd. in the meeting held on 27.10.2022, as recommended by the Nomination and Remuneration Committee for the appointment of Managing Director. Further, on 15.12.2022, the Job Description along with the procedure for appointment of Managing Director, including but not limited to the advertisement of the vacancy, and shortlisting of the candidates, was approved by the Board of Directors, as recommended by the Nomination and Remuneration Committee in consultation with M/s ABC Consultant Pvt. Ltd. On 22.12.2022, the advertisement was placed in leading daily newspapers, namely The Economic Times, New Delhi, and Mumbai editions, for the post of Managing Director. The last date for submitting the application for the post of Managing Director was 21.01.2023.

21. The Petitioner has submitted that the whole process of appointment of the Managing Director may take some time as the interview of the shortlisted candidates is to be done, and then the final process for appointment, including the approval of the Nomination and Remuneration Committee and the Board of Directors. The selected candidate may also take some time to join after completing the necessary formalities.

22. The Board of Directors of HPX, in its meeting held on 27.10.2022, had formulated a policy on Independent Director(s), which also contains the manner of appointment/ re-appointment of the Independent Director(s). HPX is in the process of appointing the Managing Director and is likely to commence the process of identifying suitable candidate(s) to be appointed as Independent Director(s). Once the suitable candidates are identified, they will file the appropriate application before the Commission as per PMR 2021 for the appointment of Independent Directors.

23. Because the whole process of appointment of an Independent Director is time-consuming, a further period of six months is being requested. The Petitioner company has submitted copies of the MBP-1 and Declaration Forms of the existing Independent Directors.

24. HPX commenced its operation only on 06.07.2022 and the volumes are yet to achieve the threshold/break-even level. The Petitioner Company had to make substantial investments in getting the technology and creating other infrastructure. Given the same, the net worth of the Petitioner Company has reduced and has come down below the statutory requirement as per PMR 2021. The Petitioner has filed a separate petition vide Petition No. 313/MP/2022 and sought additional time in order to achieve the compliances set out under Regulation 17 of PMR 2021. The Commission, vide its order dated 16.07.2023 granted one year's time to achieve the net worth.

25. In compliance with the direction of the Commission, a list of all members on the platform, including Proprietary, Trading and Facilitator members as on 31.01.2023 of the Petitioner Company has been submitted.

26. The Petitioner, in the instant petition, has requested an extension of time for six months in order to make the appointment of the Managing and independent directors in alignment with PMR 2021. The relevant extract of Regulation 17 of the PMR 2021 is reproduced below:-

“17. Governance structure of Power Exchange

- (1) The Board of Directors of the Power Exchange shall have the following categories of Directors:-
 - (a) Shareholder Director;*
 - (b) Independent Director; and*
 - (c) Managing Director.**
- (2) The number of Independent Directors shall not be less than the number of Shareholder Directors on the Board of the Power Exchange: Provided that for this purpose, the Managing Director shall be included in the category of Shareholder Directors.*
- (3) A minimum of two names shall be submitted by the Board of the Power Exchange to the Commission for approval for each vacancy of Independent Directors. ”*

27. The Commission is of the view that the governance structure of Power Exchanges is required to be strengthened to achieve the objectives of better corporate governance and ensure greater transparency in the functioning of Power Exchanges. Accordingly, the presence of a Managing Director and an equal number



of Independent Directors on the Board of the Power Exchange is an essential condition for achieving the said objectives.

28. The Commission has noted the efforts made by the Petitioner to comply with the provisions of appointment of a Managing Director and Independent Director stipulated in the PMR 2021. The Commission also notes that the Petitioner's Exchange is at a nascent stage in comparison to the other two Exchanges. In order to ensure multiple Exchanges, operate in the sector, the Commission in the past has granted relaxation to the other Exchange (s). Accordingly, the Commission feels the Petitioner's case also deserves consideration.

29. Regulation 56 of the PMR 2021 provides the Power to Relax as under:

"56. Power to Relax

The Commission may in appropriate cases and for reasons to be recorded in writing relax any of the provisions of these regulations."

30. In view of the submissions as stated above, we are inclined to invoke our power to relax. In the exercise of the powers under Regulation 56 of PMR 2021, the Commission hereby grants the Petitioner time up to 31.03.2024 to align its requirement of the appointment of a Managing Director and alignment of the number of independent directors as per the requirement under Regulation 17 of PMR 2021.

31. Petition No. 228/MP/2022 is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I.S. Jha)
Member

Sd/-
(Jishnu Barua)
Chairperson

