

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 376/RC/2022

Coram:

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

Date of Order: 3rd January, 2023

In the matter of

Petition seeking approval to appoint Independent Directors on the Board of Power Exchange India Limited.

And in the matter of

Power Exchange India Limited
8th Floor, 901, Sumer Plaza,
Marol Maroshi Road, Marol Andheri (East)
Mumbai – 400059 India

... Petitioner

ORDER

The Petitioner, Power Exchange India Limited (hereinafter referred to as “PXIL”) has filed the present petition for seeking approval of the Commission to appoint Independent Directors on the Board of the PXIL. The Board of the PXIL has recommended two names, i.e., Mr. Ashok Sethi and Mr. Ashok Kumar Aggarwal for consideration of the Commission for appointment on the Board of the PXIL as Independent Director. PXIL has also filed the brief profile, declaration under Section 149(7) read with Section 149(6) of the Companies Act, 2013, details in "Form MBP-1" of the Companies Act, 2013 and affidavits of Mr. Ashok Sethi and Mr. Ashok Kumar Aggarwal in terms of Regulations 17(4) of the Central Electricity Regulatory Commission (Power Market) Regulations, 2021 (hereinafter referred to as the “Power Market Regulations”).

2. Regulation 17(3) of the Power Market Regulations deals with the Independent



Directors to be appointed by the Power Exchange. Regulation 17 of the Power Market Regulations provides 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.*

...

(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.”

3. The Power Market Regulations provide definition of Independent Director, in Regulation 2(1)(y) as under:

““Independent Director” means a Director as defined in sub-section 47 of Section 2 of the Companies Act, 2013.”



4. The Companies Act, 2013 under section 2(47) defines the term “Independent Director” as under:

““Independent Director” means an Independent Director referred to in sub-section (6) of section 149.”

5. Further, sub-section (6) of Section 149 of the Companies Act 2013 provides for appointment of Independent Director as under:

“(6) An Independent Director in relation to a company, means a Director other than a managing Director or a whole-time Director or a nominee Director-

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

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

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

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

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

(e) Who, neither himself nor any of his relatives—

(i) Holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

(ii) Is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;

(iii) Holds together with his relatives two per cent or more of the total voting power of the company; or

(iv) Is a Chief Executive or Director, by whatever name called, of any non-profit organisation that receives twenty-five percent or more of its receipts from the company, any of its promoters, Directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the company; or

(f) Who possesses such other qualifications as may be prescribed.”



6. We have considered the submissions of the Petitioner. At the time of filing of the present petition, the Petitioner had three Shareholder Directors, namely Mr. Yatrik Vin, Mr. Atul Roongta and Mr. Ashok Kumar Prusty, one Managing Director namely Mr. Prabhajit Kumar Sarkar, and three Independent Directors, namely Mr. Vijay Kumar Aggarwal, Dr. Kirit Parikh and Mr. Pramod Kumar Vaishya. Therefore, it is observed that the structure of the Board of the Company is not in accordance with the Regulations 17(1) and 17 (2) of the Power Market Regulations as the number of Independent Directors is less than the number of Shareholder Directors (including Managing Director) on the Board of the PXIL.

7. Further, Regulation 17(12) requires that the Power Exchange which have been granted registration by the Commission prior to the date of coming into force of these regulations to align their governance structure as specified in this Regulation within a period not exceeding one year from the date of coming into force of these regulations.

8. The PMR, 2021 Regulations came into force w.e.f. 15th August, 2021. Accordingly, the Petitioner had initiated the selection process for appointment of Independent Director. The Petitioner has stated that the process involved in selection of appropriate person for the appointment to the post of Independent Director is time consuming and has to be in line with the requirements under Section 149(6) of the 2013 Act read with Section 150 thereof along with the requirements prescribed in PMR,2021 Regulations.

9. Consequently, the Petitioner requested the Commission, via letters dated 12.08.2022 and 25.08.2022, to give the Petitioner an additional period of time until 30.11.2022 to fulfill the requirement that the number of Independent Directors be matched to the number of Shareholder Directors and to apply for approval.

10. In this regard, we have noted the submissions made by the PXIL including the reasons for delay in fulfilling the requirement of matching the number of Independent Directors with the number of Shareholder Directors. We have also observed that in compliance of Regulation 17(11) which provides that *No member of Power Exchange or their client shall be on the Board of Directors of any Power Exchange*, the PXIL has withdrawn the nomination of one of the Shareholder Directors (non-executive) on the Board of PXIL. Therefore, considering the efforts made by the PXIL towards fulfillment of the compliance and the reasons submitted



for delay in fulfillment of the requirement of matching the number of Independent Directors with the number of Shareholder Directors, we, in exercise of the powers conferred under Clause 56 (Power to Relax) of the Regulation, condone the delay made by PXIL in complying to the Regulation 17(12).

11. Regulation 17(3) requires the Power Exchange to propose at least two names against each vacancy of Independent Director for consideration of the Commission. As per the submission made by the Petitioner, one vacancy of the Independent Director has arisen after the resignation of one of the Independent Directors (non-executive) towards fulfillment of the Regulation 17(11). Accordingly, the Board of the PXIL has recommended two names, viz., Mr. Ashok Sethi and Mr. Ashok Kumar Aggarwal, for consideration of the Commission for appointment on the Board of the PXIL as Independent Directors. Their profiles are as follows:

(a) Mr. Ashok Sethi has served as the Chairman of the Board of Tata Consulting Engineers Limited and Chief Operating Officer & Executive Director on Board of Tata Power Co. Ltd. He has extensive experience of about 44 years across power sector and held leadership positions in thermal and renewable generation, transmission, distribution & trading. He has over a decade of experience as a Board member of seven key Tata Power Subsidiaries & JVs including Chairman of CGPL, MPL, IEL, WREL (Renewable), TPTCL (Trading) & AGL. He is certified as an Independent Director by Institute of Directors. He has done B.Tech. from IIT Kharagpur and was subsequently trained at Ashridge, UK in Advance Management.

(b) Mr. Ashok Kumar Aggarwal has more than 43 years of experience in Power sector development having in-depth knowledge of Transmission, Distribution, Tariff Fixation, Regulatory and Grid Operation. He has worked as Advisor/Consultant in Water & Power Consultancy Services (India) Ltd. from 2011 to 2019. Prior to that, he has served as the Member Secretary of Northern Regional Power Committee (NRPC), and held various positions in the Central Electricity Authority (CEA) including the post of Chief (Engineer) in the Load Dispatch and Telecommunications Division. He has also worked as a part-time Board Member of Haryana Vidyut Prasaran Nigam Ltd. He has done Master of Science, Electrical Engineering (Power System) and Bachelor of Science, Electrical Engineering with Hons., both from Punjab Engineering College, Chandigarh.



12. The Petitioner has also placed on record the affidavits submitted by Mr. Ashok Sethi (dated 28.11.2022) and by Mr. Ashok Kumar Aggarwal (dated 28.11.2022). Both Mr. Sethi and Mr. Aggarwal have stated that they do not have any conflict of interest in commercial contracts and financial affairs of the PXIL; they do not hold Director position in the Board of the promoter entity of the PXIL; they don't have any fiduciary relationship with any member of the PXIL; and also they have not suffered from any of the disqualifications prescribed under the Power Market Regulations for consideration for appointment or continuation as Independent Director of the Power Exchange.

13. The proposal of PXIL for appointment of Independent Directors on its Board has been considered in the light of the Power Market Regulations. The Commission finds that currently there is one vacancy of Independent Director in PXIL as discussed in paragraph 6-8 of this Order. The intent of the Petitioner seems to seek approval of the Commission against the vacancy for appointment of an Independent Director. We have perused the documents on record, profiles of Mr. Ashok Sethi and Mr. Ashok Kumar Aggarwal, and after being confirmed by PXIL that they do not have any fiduciary relationship with any of the existing of shareholders of PXIL or any interest in any member of PXIL, we are of the view that both persons fulfill the requirement for appointment as Independent Director in PXIL. Accordingly, we accord our approval to the proposal of PXIL for appointment of Independent Directors in terms of Regulation 17(3) of the Power Market Regulations. The Board of PXIL may appoint either of the above-mentioned persons against the vacancy of Independent Director on its Board and intimate the same to the Commission.

14. Petition No. 376/RC/2022 is disposed of in terms of the above.

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

Sd./-
(Arun Goyal)
Member

Sd./-
(I. S. Jha)
Member

