

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Suo motu Petition No. 143/2011

Coram

- 1. Dr. Pramod Deo, Chairperson**
- 2. Shri. S. Jayaraman, Member**
- 3. Shri. V.S.Verma, Member**
- 4. Shri M.Deena Dayalan, Member**

DATE OF ORDER: 6.6.2011

IN THE MATTER OF

Implementation of the order of the Commission dated 3.6.2010 in
Petition No. 26/2010 by Indian Energy Exchange.

AND IN THE MATTER OF

Indian Energy Exchange Ltd, New Delhi

..... Respondent

ORDER

The Commission by its order dated 3.6.2010 in Petition No. 26/2010
(*suo motu*) directed the respondent as under:

“20. We direct the Respondent No.1 to stop the practice of the clients depositing the money in the Settlement Funds Accounts of the Members-Facilitators with immediate effect as this is in the violation of Power Market Regulations, 2010. As regards the practice followed from 25.12.2010 till date, the First Respondent has submitted that the Members-Facilitators have not exceeded the limit of the deposits made by the clients and under no circumstances these members have extended any credit facility to any of the clients. We direct that the Secretary of the Commission shall arrange to get a special audit carried out into the accounts of respondent No.1 within a period of one month by a firm of Chartered Accountants. Respondent No.1 is directed to provide the relevant record and cause the Members-Facilitators to allow access to their records for audit. Any instance of non-cooperation by Respondent No.1 or any of its facilitator-members will be construed as contravention of the directions of the Commission by Respondent No.1 and will be dealt with sternly.”



2. Subsequently, the respondent filed Interlocutory Application (I.A. No. 25/2010) praying for extension of time for implementation of the above directions issued vide order dated 3.6.2010. After examining the submissions of the respondent including the steps taken to comply with the directions of the Commission, the Commission by its order dated 15.7.2010, directed as under:

'In view of the above, we direct the applicant exchange to establish and demonstrate within three working days on the basis of documentary evidence that our order dated 3.6.2010 has been complied with in letter and spirit in relation to the working of the fourth member'

3. The respondent filed Appeal No.154/2010 before the Appellate Tribunal for Electricity ('the Tribunal') challenging the above orders dated 3.6.2010 and 15.7.2010. The Appellate Tribunal by its judgment dated 28.3.2011 dismissed the said appeal, thereby confirming the orders of the Commission dated 3.6.2010 and 15.7.2010 respectively. The summary of findings of the Appellate Tribunal is extracted below:

"42. SUMMARY OF OUR FINDINGS.

(i) The para 16 of the order dated 24.12.2009 passed by the Central Commission gives positive mandate that the Facilitator Members can do only 3 types of activities mentioned in (a), (b) and (c) of the Para 16. Handling the money of clients does not fall within any of the 3 types of activities permitted by the Central Commission as mentioned in para 16 of the order. Unless any such activity is permitted by para 16 of the order and does not fall foul of the para 17, such activity cannot be undertaken by the Facilitator Members of the Appellant.

(ii) In the order dated 30.3.2010 the Central Commission held that in case the Indian Energy Exchange (Appellant), clients have deposited money in the Settlement Bank Account of the Facilitator Members who in turn have transferred the money to the bank account of the exchange and this act would mount to the contravention of the Central Commission order dated 24.12.2009. Since both the orders dated 24.12.2009 and 30.3.2010 have not been implemented in letter and in spirit, the Central Commission had correctly issued show cause notice to the Appellant which culminated into impugned order.

(iii) The Actions of the Appellant do not confirm to the Statutory Regulations so long as the Appellant permits the clients of the Facilitator Members to undertake to deposit the money in the settlement bank account of the Facilitator Members and subsequent transfer of this money to the bank account of the Power Exchange.

(iv) Subsequent to the order passed on 24.12.2009, the Central Commission had notified CERC Power Market Regulations 2010 on 20.01.2010. The Regulation 26 (ii) of this Power Market Regulations clearly specifies the functions which have been permitted to be carried out by the Facilitator Members of the Appellant which are contained in the order dated 24.12.2009. So by virtue of the Regulations also the action of the Appellant permitting the clients of the Facilitator Members to undertake deposition of the money into the bank account of the Facilitator Members and transfer this money to the bank account of the Power Energy Exchange (Appellant) is not in accordance with the orders dated 24.12.2009, 30.3.2010 and the Regulations.

(v) According to the Appellant, the Bye-Laws of the Exchange approved by the Central Commission provide for the facilities relating to the banking role on the part of the Professional Members for their clients including deposit of the money and as such the same is not illegal. These Bye-Laws would not be of any help to the Appellant in as much as the activities of the professional or Facilitator Members specifically demarcated in the order passed by the Central Commission on 24.12.2009 and the statutory Regulations notified on 20.01.2010. Both Bye-Laws as well as Regulations would clearly provide in the case of conflict between the provisions of the Bye-Laws and the Regulations the Regulations framed under the Act shall prevail. Therefore, the reliance by the Appellant on the Bye-Laws is misplaced.

(vi) Appellant's contention is that the provisions relating to IT infrastructure for bidding or electronic exchange would include handling the moneys on the basis of the Regulation 31. This cannot be accepted. The IT infrastructure is the provision for hardware and not for the provision of service. Nothing in Regulation 31 would indicate that IT infrastructure would include the handling of the moneys. Further, Regulations 30 and 31 cannot be read in isolation and they have to be

read together along with the Regulation 26 which provides for membership of the Exchange.

(vii) The conditions relating to provisions referred to in the impugned order dated 3.6.2010 passed by the Central Commission is only a restatement of what was stated in the orders dated 24.12.2009 and 30.3.2010 and the Regulation 26(ii) of the Power Market Regulations. In the absence of the challenge to these orders and Regulations, the findings on these aspects have attained the finality. Therefore, Impugned Order dated 3.6.2010 which alone is challenged does not call for interference.

(viii) In regard to the order dated 15.7.2010 passed by the Central Commission rejecting the prayer of the Appellant praying for the extension of time for compliance of the implementation of the order dated 3.6.2010 it is noticed that the Appellant who was required to show sufficient reason for extension of time has not convinced and demonstrated to the Central Commission that the Appellant has been complying with the portion of the directions of the Commission. Therefore, Central Commission has correctly rejected the prayer for extension of time.”

4. The respondent by its letter No.IEX/MD/513/10-11 dated 31.3.2011 has placed on record the Circular No. IEX/MO/502/2011 dated 30.3.2011 and has intimated that the procedure of clients of Professional Members depositing money in their own Settlement Bank Accounts with the Exchange would be operative from 5.4.2011.

5. Perusal of the Circular dated 30.3.2011 reveals that the respondent has issued the revised procedure in purported compliance with the directions of the Commission as contained in orders dated 3.6.2010 and 15.7.2010 and the judgement of the Appellate Tribunal. Admittedly, the compliance to the Commission’s orders dated 3.6.2010 and 15.7.2010 has been effected by the respondent only from

5.4.2011 despite the undertaking given by the respondent before the Appellate Tribunal on 6.8.2010 which is extracted below:

“The leaned counsel for the appellant gives an undertaking on behalf of the appellant that the appellant will make all efforts to implement the order dated 3.6.2010 expeditiously. The undertaking is recorded.”

6. Though the respondent through an affidavit filed before the Tribunal had expressed its difficulties in implementing the orders of the Commission, the Appellate Tribunal in its judgment dated 28.3.2011 has rejected all contentions of the respondent and upheld the orders of the Commission dated 3.6.2010 and 15.7.2010. We are of the view that during the period from 3.6.2010 to 4.4.2011, the respondent has failed to comply with the orders of the Commission dated 3.6.2010 and 15.7.2010 and has thereby contravened Regulation 26 (ii) of the Power Market Regulations, 2010.

7. In view of the foregoing, we direct the respondent to show cause by 20.6.2011 as to why action under Section 142 of the Electricity Act, 2003, should not be taken against it for non-compliance of Regulation 26 (ii) of the Power Market Regulations, 2010 and our orders dated 3.6.2010 and 15.7.2010 during the period from 3.6.2010 till 4.4.2011.

8. The next point for our consideration is whether the procedure for handling the money of the clients of the Professional Members laid

down in the respondent's circular dated 30.3.2011 are in strict compliance with the orders dated 3.6.2010 and 15.7.2010 and Regulation 26 (ii) of the Power Market Regulations, 2010 as upheld by the Appellate Tribunal in the judgment dated 28.3.2011. In order to satisfy ourselves that the respondent has implemented our directions contained in orders dated 3.6.2010 and 15.7.2010 in letter and spirit, we direct the respondent to submit on affidavit, the following information:

- (a) Copy of the detailed procedure as referred in the respondent's circular dated 30.3.2011.
- (b) Change in the bidding process for facilitator members and their clients.
- (c) Change in the risk management and margining system of clients of facilitator members.
- (d) Change in the clearing and settlement process for facilitator members and their clients with regard to (i) handling of money and (ii) eventuality of clients defaults and process of handling it (initial deposit as clients contribution of SGF and their awareness of mutualisation of loss concept in case of default).
- (e) Changes in the IT system for operational compliance of the above.

(f) Changes in relevant sections of Rule/Bye-laws/Business rules for regulatory compliance, specifically changes required for compliance with Regulation 26(ii) of the PMR, 2010.

9. The information sought vide para 8 above shall be submitted by 20.6.2011.

Sd/-

[M.Deena Dayalan]
Member

sd/-

[V.S.Verma]
Member

sd/-

[S.Jayaraman]
Member

sd/-

[Dr. Pramod Deo]
Chairperson

