CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No.241/MP/2012

Coram:
Dr. Pramod Deo, Chairperson
Shri S. Jayaraman, Member
Shri V. S .Verma, Member
Shri M. Deena Dayalan, Member

Date of Hearing: 27.11.2012
Date of order :25.02.2013

In the matter of

Relaxation of the time frame for compliance of shareholding pattern under Regulation 20 read with Regulation 19(1)(i) of Central Electricity Regulatory Commission (Power Market) Regulations, 2010

And
In the matter of
Indian Energy Exchange Limited, New Delhi …Petitioner

Following were present:

Shri Amit Kapoor, Advocate, IEX
Shri Vineet Harlalka, IEX

ORDER

The petitioner, Indian Energy Exchange Limited (IEX) has filed this petition for extension of the time for compliance with Regulation 19(1) of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (hereinafter "Power Market Regulations"). The petitioner has submitted that it was granted permission by this Commission to establish and operate a power exchange vide order dated 31.8.2007 in Petition No.38/2007. In accordance with para 7(a) of the said order, the promoter shareholders together who have no interest in trading would hold 51% of shares and the total shareholding of all power sector participants in the exchange shall not exceed

49% in order to maintain the demutualised character of the company. The petitioner has submitted that as on 31.8.2007, Financial Technology (India) Limited was holding 100% equity shares in the petitioner company. The Commission accorded permission on 9.6.2008 to IEX to commence operation. The petitioner has submitted that as on 9.6.2008, the shareholding of FTIL was brought down to 44%. The power exchange started functioning from 27.6.2008.

2. The petitioner has submitted that as on 9.6.2008, the shareholding pattern of IEX was as under:

Sr. No.	Name of Shareholder	Percentage of Shares as on 09.06.2008
1.	Financial Technologies (India) Limited ('FTIL')	44.00%
2.	PTC India Financial Services Ltd. ('PTC')	26.00%
3.	REC Ltd	5.00%
4.	Reliance Energy Ltd.	5.00%
5.	Adani Enterprises Ltd	5.00%
6.	IDFC Ltd	5.00%
7.	Lanco Infratech Ltd	5.00%
8.	The Tata Power Limited	5.00%
	Total	100.00%

3. The petitioner has submitted that the Commission notified the Power Market Regulations which came into effect from 21.1.2010. Regulation 19 of the Power Market Regulations require that any shareholder other than a member of the exchange can have a maximum of 25% of shareholding and a member of the power exchange can have 5% shareholding subject to a maximum of 49% of shareholding by all members of the exchange taken together. Regulation 20 of Power Market Regulations provides that the power exchanges which have received approval prior to 21.1.2010 would be required to achieve the shareholding pattern within a period of three years i.e.by 20.1.2013. The petitioner has submitted that in compliance with the Regulation 19 of

Power Market Regulations, FTIL has reduced its shareholding to 30.14% and PTC India Financial Service Limited has reduced its shareholding to 5%. As on the date of the application, FTIL was required to further reduce its stake by 5.14% in order to maintain the shareholding as per Regulation 19(1) of Power Market Regulations.

4. The petitioner has submitted that FTIL has expressed its inability to bring down its shareholdings at the desired level and has requested the petitioner to seek further extension of time of three years. The petitioner has submitted that as per FTIL, one option to reduce the stake is to sell its 5.14% share through ‘Private Equity’ (PE) sale or ‘Offer of sale’ and the other option is to increase the Base Equity Capital of the exchange in order to bring down the FTIL stake to 25%. The petitioner has submitted that the base capital of the IEX can be increased either by issue of fresh equity on Preferential basis as per rules specified under the "Unlisted Public Company (Preferential Allotment) Rules 2003 or thorough accessing the capital market directly. However, the following difficulties are foreseen in further dilution of the equity:-

(a) No Private Equity investor would be willing/ interested in buying such a small quantum of shares.
(b) The quantum of Shares to be divested are very small and it will not be cost effective with such a small stake sale for making Offer of sale.
(c) However even if cost is ignored it is very unlikely to get support from public for Offer of sale for such a small % of shares.
(d) Current Market condition is not conducive for making offer for sale or any other mode due to deteriorating economic conditions and negative market sentiments.
(e) The Company has no requirement of any additional funds now to raise its capital base by issue of fresh shares on preferential basis or otherwise.

5. The petitioner has submitted that in either of the methods, it will take minimum 2-3 years to complete the process depending on the market conditions. The petitioner has further submitted that as per Government of India Guidelines, Foreign Investment is permitted up to 49 % in the Power Exchanges with subject to an FDI (Foreign Direct Investment) limit of 26 % and an FII (Foreign Institutional Investment) limit of 23 %. IEX has already got FDI investment of 26% which leaves option for investment only under the FII category. Further FII purchase is restricted to secondary market only and no non-resident investor/ entity, including person acting in concert, will be able to hold more than 5 % of the equity in these companies. The petitioner has also submitted that factors like limited volume (2% of the total generation of electricity) being traded in the exchanges, absence of long term contracts in the power exchanges, absence of clear defined policy on implementation of open access, stagnant volumes of trade in the power exchange, problem of coal etc. are matters of concern from the investors' point of view which has the impact on the fructification of either of the methods proposed to be adopted by the petitioner to bring the shareholding pattern in line with the Power Market Regulations. The Petitioner has submitted that IEX and FTIL are envisaging a strategy of primary expansion through a mix of IPO and secondary sale which will meet the organized requirement of enhanced capital and the share holding norm as required. The IPO process is very time consuming and will require correct market conditions for success. Accordingly the petitioner has made the following prayers:

> "(a) Extend further time frame for a period of 3 (three) years for compliance of Shareholding Pattern norms stipulated under Regulations 19 and 20 of the Power Market Regulations.

(b) Extend the compliance of shareholding Pattern to further 3 (three) years upto 20.01.2016.

(c) Pass any such further order or orders may deem fit in the interest of justice and facts and circumstances of the case."

6. During the hearing of the petition, learned counsel for the petitioner reiterated the submissions made in the petition and requested that a period of three years be granted to the petitioner to comply with Regulation 19 of Power market Regulations.

7. We have considered the submissions of the petitioner. Regulation 19(1) of the Power Market Regulations provides for the shareholding pattern of the power exchanges 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.

Explanation I – "indirectly" means through an associate where an associate is –
(i) one who owns or controls shares carrying not less than twenty-six percent of the voting rights of the shareholder intending to hold equity in the power exchange; or
(ii) in respect of whom the shareholder intending to hold equity in the Power Exchange owns or controls shares carrying not less than twenty-six percent of the voting rights; or
(iii) one who is under the same management as the shareholder intending to hold equity in the power exchange.
Explanation II: An associate shall be deemed to be under the same management:
(i) if the managing director or manager of the shareholder intending to hold equity in the power exchange is the managing director or manager of the associate; or
(ii) if a majority of the directors of the shareholder intending to hold equity in the power exchange constitute or any time within six months immediately preceding, constituted a majority of the directors of the associate; or

(iii) if not less than one third of the total voting power with respect to any matter relating to the shareholder intending to hold equity in the power exchange and the associate is exercised or controlled by the same individual or body corporate; or
(iv) if any of the directors of the shareholder intending to hold equity in the power exchange while holding the majority of shares of such shareholder also holds the majority of shares in the associate."

Further Regulation 20 provides opportunity to the power exchanges which were accorded approval prior to the Power Market Regulations to achieve the shareholding pattern within a period of three years i.e.by 20.1.2013. We have noticed that the petitioner has taken steps to dilute the stakes of major shareholders to comply with the requirements of Regulation 19 of Power Market Regulations. The shareholding pattern of the petitioner company as on 30.9.2012 is as under:

Shareholding Pattern as on 30th September 2012 (on fully diluted basis)		
Sr. No.	**Name of Equity Shareholder**	**% of paid up capital**
RESIDENT SHAREHOLDING		
1.	Financial Technologies (India) Limited	30.14%
2.	PTC India Financial Services Limited	5.00%
3.	Multiplies Private Equity Fund, India	8.01%
4.	Lanco Infratech Limited	4.12%
5.	The Tata Power Company Limited	4.12%
6.	Jindal Power Limited	4.12%
7.	Reliance Energy Limited	4.12%
8.	Adani Enterprises Limited	4.12%
9.	Rural Electrification Corporation Limited	4.12%
10.	Infrastructure Development Finance Company Limited	4.12%
11.	IEX ESOP Trust	1.71%
12.	Shares transferred to employees pursuant to ESOP Scheme	0.29%
	Sub-Total	74.00%
NON- RESIDENT SHAREHOLDING		
1.	Multiplies Private Equity Fund Limited, Mauritius	6.0%
2.	Lighspeed Venture Partners VIII Mauritius	10.0%
3.	Bessemer Venture Partners Trust	10.0%
Sub-Total		26.0%
	Total equity Share Capital	100.00%

8. It is observed from the above table that the stakes of FTIL have been brought down from 44% to 30.14% and the share of PTC Financial Services has been brought down to 5%. The shareholding of the shareholders except FTIL is in conformity with the Power Market Regulations. The petitioner's shareholding can be said to be in compliance with the requirement of the Power Market Regulations only when the share of FTIL is reduced to 25%. The petitioner has explained the difficulties faced by it in further diluting the share of FTIL for a variety of reasons as explained.

9. We note that the present shareholding pattern of the petitioner is quite diversified. The petitioner has appointed requisite number of independent directors in the board and the various management committees like risk management committee, market surveillance committee are functioning effectively which ensures that the standards of corporate governance are followed and public interest is safeguarded. The petitioner has expressed its difficulties in fully complying with Regulation 19 of Power Market Regulations. We are aware that the power markets are in the initial stages of development. The share of Power Exchanges is only 1.5- 2 % of the total electricity generated in the country. The liquidity in the exchanges is low as limited types of contracts are traded on the power exchanges. Therefore, the trading in the power exchanges has not grown as was expected while making the Power Market Regulations. The difficulties expressed by the petitioner to achieve the statutory shareholding pattern appear to us as genuine. We are of the view that the petitioner needs to be granted some further time to achieve the desired shareholding pattern.

10. Regulation 64 of the Power Market Regulations vests in the Commission the power to remove difficulties if any difficulty arises to give effect to the provisions of the regulations. Regulation 64 provides as under:

> "64. Power to remove difficulties
> If any difficulty arises in giving effect to the provisions of these Regulations, the Commission may, by order, make such provisions not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty."

As already noted, difficulties have arisen in giving effect to the Regulation 19(1) of the Power Market Regulations as the process for finding new investors in the power exchange will require further time under the existing statutory and policy framework. Accordingly in exercise of our power under Regulation 64 of the Power Market Regulations, we allow a period of one more year to the petitioner to achieve the shareholding pattern specified in the Regulation 19(1) of the Power Market Regulations.

11. In view of the above decision, the petitioner shall be required to achieve the shareholding pattern in compliance with Regulation 19 of Power Market Regulations by 20.1.2014.

12. Petition No. 241/MP/2012 is disposed of accordingly.

sd/-	sd/-	sd/-	sd/-
(M. Deena Dayalan)	**(V. S. Verma)**	**(S. Jayaraman)**	**(Dr. Pramod Deo)**
Member	**Member**	**Member**	**Chairperson**