

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 71/RC/2022

Coram:

Shri P. K. Pujari, Chairperson

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 31st March, 2022

In the matter of

Application for approval for appointment of Independent Director on the Board of Indian Energy Exchange Limited.

And in the matter of

Indian Energy Exchange Limited,
Plot No. C-001/A/1, 9th Floor,
Max Towers, Sector 16 B,
Noida, Gautam Buddha Nagar,
Uttar Pradesh – 201301

... Petitioner

ORDER

The Petitioner, Indian Energy Exchange Limited (hereinafter referred to as “IEX”) has filed the present petition for seeking approval of the Commission for appointment of Independent Director on the Board of the IEX. The Board of the IEX has recommended two names i.e. Mr. Rajeev Gupta and Mr. Anil Rustgi for consideration of the Commission for appointment on the Board of the IEX as Independent Director. IEX 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. Rajeev Gupta and Mr. Anil Rustgi 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 which 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.”*

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 per cent. 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 submission of the Petitioner. At the time of filing of the present Petition, the Petitioner had two Shareholder Directors namely Mr. Gautam Dalmia and Mr. Amit Garg, one Managing Director namely Mr. Satyanarayan Goel and 3 three Independent Directors namely Prof. Kayyalathu Thomas Chacko, Ms. Sudha Pillai, Mr. Tejpreet S. Chopra. Therefore, it is observed that the structure of the Board of the Company is in consonance with the Regulations 17(1) and 17 (2) of the Power Market Regulations as the number of Independent Directors is not less than the number of Shareholder Directors (including Managing Director) on the Board of the IEX. We also observed that the Board of IEX also consists of one women director in terms of section 149(1) of the Companies Act 2013.

7. Regulation 17(3) requires the Power Exchange to propose at least two names against each vacancy of Independent Director for consideration of the Commission. Board of the Petitioner in its meeting held on 24.01.2022 has recommended two names viz., Mr. Rajeev Gupta and Mr. Anil Rustgi for consideration of the Commission for appointment on the Board of the Petitioner as Independent Directors. Their profiles are as follows:

(a) Mr. Rajeev Gupta is Founding Partner of Arpwood Capital. He has 35 years of industry experience including 10 years of senior management roles in industrial businesses. He was Managing Director of Carlyle Asia and Head of India buyout team from 2005 to 2010, where he led Carlyle's \$650mm investment in HDFC Limited. Previously, he was the Head of M&A at DSP Merrill Lynch (from 1995 to 2005) where he successfully concluded several landmark M&A transactions for large Indian industrial groups and MNCs. Mr. Rajeev has also led industrial organizations as CEO of Cosmo Ferrites and the Indian subsidiary of St Gobain. Mr. Rajeev is an Independent non-executive Board member of United Spirits Limited (Diageo India), EIH Limited (Oberoi Hotels), TV Today (the leading news media group in India), Cosmo Films Limited, VIP Industries Limited and Small Business FinCredit (SBFC). He is a member of the advisory board of Bain & Co India Limited and TVS Funds. He has done his MBA from IIM Ahmedabad and B.Tech from IIT-BHU.

(b) Mr. Anil Rustgi is an Insolvency Professional, PCS, IBBI Regd Valuer (S&FA). He is an industry veteran with over 35 years of experience with wide and diverse exposure in Company Secretarial, Legal, Compliance Management, and Corporate Governance. He has exposure to Indian Global Corporates like Honda, Schneider, Maruti, Escorts, Uninor and others at senior positions. His areas of expertise include Corporate Laws, Litigation, Joint Ventures, Mergers Acquisitions, Contract Management and Compliance. In corporate sector, Mr. Anil has been responsible for all kinds of Litigation Corporate work (Vetting of agreements etc. all aspects of secretarial work, Corporate Governance, statutory compliances as per SEBI Regulations, Companies Act, other Corporate laws, Intellectual Property Rights (IPR) matters, Public Issues and Rights Issues, and Internal Audit. He has issued more than 110 Valuation Reports under Companies Act, 2013 and Insolvency Bankruptcy Code for Listed and Unlisted companies. He has been appointed Interim Resolution Professional in one listed entity, one unlisted entity,



Resolution Professional in one unlisted entity, and Liquidator for Voluntary Liquidation in three cases through Deloitte KPMG. He is also appointed as a Non-Executive Independent Director in one Indian Subsidiary of NYSE Listed entity. He is BSC, LLB, Company Secretary, Insolvency Professional and Registered Valuer.

8. The Petitioner has also placed on record the affidavits submitted by Mr. Rajeev Gupta (dated 09.02.2022) and by Mr. Anil Rustgi (dated 31.01.2022). Both Mr. Rajeev Gupta and Mr. Anil Rustgi have stated that they do not have any conflict of interest in commercial contracts and financial affairs of the IEX; they do not hold Director position in the Board of the promoter entity of the IEX; they don't have any fiduciary relationship with any member of the IEX; 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.

9. The proposal of IEX for appointment of Independent Director has been considered in the light of the Power Market Regulations. The Commission finds that currently there is no vacancy of Independent Director in IEX. The intent of the Petitioner seems to seek approval of the Commission against the likely vacancy or for appointment of an additional Independent Director. After going through the profiles of Mr. Rajeev Gupta and Mr. Anil Rustgi and after being confirmed by IEX that they do not have any fiduciary relationship with any of the existing shareholders of IEX or any interest in any member of IEX, we are of the view that both persons fulfil the requirement for appointment as Independent Directors in IEX. Accordingly, we accord our approval to the proposal of IEX for appointment of Independent Director in terms of Regulation 17(3) of the Power Market Regulations. The Board of IEX may appoint either of the above mentioned persons against the likely vacancy or as an additional Independent Director on its Board and intimate the Commission.

10. Petition No. 71/RC/2022 is disposed of in terms of the above.

Sd/-
(P. K. Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I. S. Jha)
Member

Sd/-
(P. K. Pujari)
Chairperson

