

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 341/RC/2023

Coram:

Shri Jishnu Barua, Chairman

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 5th February, 2024

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 the approval of the Commission to appoint Independent Directors on the Board of the PXIL. The Board of the PXIL has recommended four names for consideration by the Commission for appointment to the Board of the PXIL as Independent Directors. PXIL has also submitted brief profiles, declarations 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 the four candidates for appointment of Independent Director, in terms of Regulations 17(4) of the Central Electricity Regulatory Commission (Power Market)

Regulations, 2021 (hereinafter referred to as the “PMR 2021”) with the following prayer: -

- a. Accord approval to the proposal of the Petitioner to appoint any of the Independent Directors whose names and particulars as stipulated in Annexure 3 of pleading, in terms of Regulation 17(3) of the 2021 Regulations;
- b. Condone any inadvertent delay in filing the above Petition;
- c. Relax the requirement under Regulation 17(12), to the extent applicable to the facts and circumstances of the present case.
- d. Pass any other or further orders as this Hon’ble Commission deems fit and necessary in the interest of justice.

Background

2. The present petition has been filed seeking approval of the Commission to appoint Independent Directors on the Board of the Petitioner (PXIL). The Commission vide its Order dated 03.01.2023 in Petition No. 376/RC/2022, had approved the proposal for the appointment of Mr. Ashok Sethi and Mr. Ashok Kumar as Independent Directors.

3. At present, in terms of the number of directors nominated by the shareholders on the Board, two vacancies have arisen for the appointment of Independent Directors as against the total number of Shareholder Directors. The list of Directors at PXIL as on 09.10.2023 is as below.

S.No	Name of the Director	Category
1	Mr. Vijay Kumar Aggarwal	Chairman & Independent Director
2	Dr. Kirit Parikh	Independent Director
3	Mr. Pramod Kumar Vaishya	Independent Director
4.	Mr. Ashok Sethi	Independent Director
5	Mr. Yatrik Vin	Shareholder Director – NSE Investments Ltd (Non-Executive)
6	Mr. Atul Roongta	Shareholder Director -National Commodity Derivatives Exchange Ltd (NCDEX) (Non-Executive)

7	Mr. Ashok Kumar Prusty	Shareholder Director – GMR Energy Ltd (Non-Executive)
8.	Mr. Harish Ahuja	Shareholder Director – NSE Investments Ltd (Non-Executive)
9.	Mr. Avinash Mohan	Shareholder Director -National Commodity Derivatives Exchange Ltd (NCDEX) (Non-Executive)
10.	Mr. Satyajit Ganguly	Managing Director & CEO

4. Regulation 17(3) of the PMR 2021 deals with the Independent Directors to be appointed by the Power Exchange. Regulation 17 of the PMR 2021 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.”

5. The PMR 2021 provides a definition of an 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.”

6. 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”.

7. 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.”

8. We have considered the submissions of the Petitioner. At the time of filing the present petition, the Petitioner had six Shareholder Directors, namely Mr. Yatrik Vin, Mr. Atul Roongta, Mr. Ashok Kumar Prusty, one Managing Director, namely Mr. Satyajit Ganguly, Mr. Harish Ahuja and Mr. Avinash Mohan; and had four Independent Directors, namely Mr. Vijay Kumar Aggarwal, Dr. Kirit Parikh, Mr. Pramod Kumar Vaishya, and Mr. Ashok Sethi. Therefore, it is observed that the structure of the Board of the Company is not in accordance with Regulations 17(1) and 17(2) of the PMR 2021, as the number of Independent Directors is less than the number of Shareholder Directors (including Managing Director) on the Board of the PXIL.

9. In terms of Section 149(6) of the Companies Act 2013, the following persons have been recommended by the Board of Directors to be appointed as Independent Directors-

- (a) Mr. Pramod Agrawal
- (b) Mr. Deepak Lad
- (c) Mr. Pravin Bhai Patel
- (d) Mr. Rajiv Ranjan Mishra

10. The Petitioner has submitted brief profiles of the abovementioned

candidates. The Petitioner has also annexed the declaration furnished by each of the above candidates in terms of Section 149(6) and (7) of the Companies Act 2013.

11. Further, Regulation 17(12) of the PMR 2021 requires that the Power Exchange, which has been granted registration by the Commission before the date of coming into force of these regulations to align its governance structure as specified in this Regulation within a period not exceeding one year from the date of coming into force of these regulations.

12. The PMR 2021 came into force w.e.f. 15th August, 2021. Accordingly, the Petitioner had initiated the selection process for the appointment of an Independent Director. In Petition No. 376/RC/2022, the Petitioner had stated that the process involved in the selection of an 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.

13. After taking into consideration the selection process for appointment to the post of Independent Director as per the provision of the Companies Act, 2013 and PMR 2021, the Commission vide Order dated 03.01.2023 in Petition No. 376/RC/2022 had condoned the delay faced by the Petitioner. After the issue of the Order, two vacancies arose due to the appointment of Mr. Satyajeet Ganguly as Managing Director of PXIL and the new appointment of Shri Harish Ahuja (Shareholder Director- NSE Investment Ltd) as per the list of Directors provided by the Petitioner. The Petitioner, vide its letter dated 27.06.2023, had sought approval

of the Commission to grant additional time till 30.09.2023 for submission of an application seeking approval for the appointment of Independent Directors on the Board of the Petitioner along with the list 8 of Directors currently on the Board. The Petitioner further submitted that the shortlisting process and due diligence process of the said candidates require a considerable amount of time. Consequently, the Petitioner requested the Commission, via letter dated 29.09.2023, to give the Petitioner an additional one-month time till 31.10.2023 to apply for approval.

14. In this regard, we have noted the submissions made by the PXIL, including the reasons for the delay in fulfilling the requirement of matching the number of Independent Directors with the number of Shareholder Directors. We have also observed the compliance by the Petitioner with Regulation 17(11) of the PMR 2021, which provides that No member of Power Exchange or their client shall be on the Board of Directors of any Power Exchange. Therefore, considering the efforts made by the PXIL towards the fulfilment of the compliance and the reasons submitted for the delay in fulfilment of the requirement of matching the number of Independent Directors with the number of Shareholder Directors, we, in the exercise of the powers conferred under Clause 56 (Power to Relax) of the Regulation, condone the delay made by PXIL in complying to Regulation 17(12) of the PMR 2021.

15. Regulation 17(3) requires the Power Exchange to propose at least two names against each vacancy of Independent Director for consideration by the Commission. As per the submission made by the Petitioner, two vacancies of the Independent Director have arisen after the resignation of one of the Independent Directors (non-executive) towards the fulfilment of Regulation 17(11). Accordingly, the Board of the PXIL has recommended four names, viz., Mr. Pramod Kumar

Agrawal, Mr. Deepak Jinvardas Lad, Mr. Pravinbhai Patel, and by Mr. Rajiv Ranjan Mishra, for consideration by the Commission for appointment on the Board of the PXIL as Independent Directors. Their profiles are as follows:

(a) Mr. Pramod Agrawal has served as a member of Indian Administrative Services for 30 Years and recently has served at Coal India Limited as the Chairman and Managing Director. He was CMD of Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Limited; CEO, of Madhya Pradesh Rural Road Development Authority and District Collector, Morena & Mahasamund. As Principal Secretary, Madhya Pradesh, for 'Urban Development & Housing Department' coordinated land use planning, transportation, drinking water, infrastructure development, etc. He has extensive experience of more than 30 years in various sectors including the power sector. 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 the Institute of Directors. He has done B.Tech. from IIT Kharagpur and was subsequently trained at Ashridge, UK in Advance Management.

(b) Mr. Deepak Jinvardas Lad has vast experience in Power sector development. Mr. Deepak Lad has overall 45 plus years of experience in the Power Sector spanning across the Technical, Commercial, Financial, Administration, and Regulatory fields. He has worked with the Esteemed organisations - MSEDCL, Essar Group, and CIDCO. He was a Member of the Maharashtra Electricity Regulatory Commission. He was part of the management team which helped in regulating the electricity policy. He held the additional charge of Electricity Ombudsman for 3 years. His overall experience is a combination of exposure and very effective handling of activities related to Planning and monitoring of load management activities, Project implementation including Cost Benefit Analysis, Erection, Testing, Commissioning & O&M of EHV and Distribution Lines, Substations & PLCC Equipment, Experience in handling EHV Grid in Load Dispatch Centre,

Strategy planning for Major Infrastructure Plan, Individual Administrative control of almost 1000 officers & staff. He has done BE, LLB, and PGDBM.

(c) Mr. Pravin Bhai Patel has more than 45 years of experience in Power sector development, having in-depth knowledge of Transmission, Distribution, Tariff Fixation, Regulatory and Grid Operation. He was the Chairman Gujarat Electricity Regulatory Commission. He was a member Secretary in W.R.P.C., C.E.A., Mumbai, wherein he was responsible for facilitating the stability and smooth operation of the integrated grid and economy & efficiency in the operation of power systems in the western region. As a Superintending Engineer in S.R.E.B., C.E.A., Bangalore, he looked after commercial and legal aspects of the regional power system operation and preparation of regional energy accounts. As a Superintending Engineer in the Regional Inspectorate Organisation, C.E.A., Goa, he was into the Enforcement of Electricity Rules and approval for the energisation of HT equipment. He was also a Director in Narmada Control Authority, Indore (M.P.), where his duty was to monitor Hydro Power Projects being installed in Narmada Basin, including the prestigious Sardar Sarovar Project and the installation of an Energy Management Centre at Indore. He has done PGDFM and Bachelor of Science in Electrical Engineering.

(d) Mr. Rajiv Ranjan Mishra is an IAS batch 1987 from the Telangana cadre (Originally from Andhra Pradesh). He has done B Tech from IIT, Kanpur, Certificates in Advanced Studies in Public Administration from Maxwell School, Syracuse University, USA; Public Budgeting from Georgia State University, Atlanta; Project Management from University of California, Berkeley. His main area of work experience is in policymaking, program implementation, and research in sectors like Irrigation, River Rejuvenation, Water Management, Housing & Urban Development, Disaster Management, and Sustainability. He also possesses the experience of integrating and implementing PPP in different sectors, mentoring, training and organizational development. Mr. Rajiv Ranjan Mishra was a Joint Secretary and Mission Director of NMCG during 2013-15 and, as Director General from 2018 to December 2021, has contributed towards the conceptualization

and formulation of Namami Gange and also its successful implementation under the overall visionary leadership of the Hon'ble Prime Minister. As a Joint Secretary and Additional Secretary, MoHUA, (2015 to 2018) and Principal Secretary Municipal Administration & Urban Development, Andhra Pradesh (2012), he has contributed towards the enactment of the Real Estate (Regulation & Development) Act popularly known as RERA and also formulation of the Model Rules within the stipulated timeframe for states and development of the online portal. He facilitated sectoral policies such as affordable housing policy, rental housing policy, fiscal incentives, and inclusion of affordable housing in the list of infrastructures. In the irrigation sector as Secretary/ Principal Secretary, Irrigation (from 2006 to 2012), he successfully executed a large number of irrigation infrastructure projects with better project management and stakeholder involvement in the entire process, including land acquisition and R & R.

16. The Petitioner has also placed on record the declarations submitted by Mr. Pramod Kumar Agrawal (dated 04.10.2023), Mr. Deepak Jinvardas Lad (dated 30.08.2023), Mr. Pravin Bhai Patel (dated 02.09.2023) and by Mr. Rajiv Ranjan Mishra (dated 02.09.2023), and also 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.

17. The proposal of PXIL for the appointment of Independent Directors on its Board has been considered in the light of the PMR 2021. The Commission finds that currently there are two vacancies of Independent Directors in PXIL as discussed in the above paras of this Order. The intent of the Petitioner seems to seek approval of

the Commission against the vacancy for appointment of Independent Directors. We have perused the documents on record, profiles of Mr. Pramod Kumar Agrawal, Mr. Deepak Jinvardas Lad, Mr. Pravin Bhai Patel, and Mr. Rajiv Ranjan Mishra, 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 above four persons fulfil the requirement for appointment as Independent Directors in PXIL.

18. It has come to our notice that recently the Securities Exchange Board of India (SEBI) has approved the appointment of Mr Pramod Kumar Agrawal as the CMD of the Bombay Stock Exchange (BSE) w.e.f. 17.01.2024. With this new role, it is highly possible that due to his very busy schedule, Mr. Pramod Agrawal may not be in a position to pay full attention to the assignments of PXIL. In view of this, the Board of PXIL may appoint any two of the remaining three persons against the vacancies of Independent Directors on its Board and intimate the same to the Commission.

19. Subject to the above, we accord approval to the proposal of PXIL for the appointment of Independent Directors in terms of Regulation 17(3) of the PMR 2021.

20. Petition No. 341/RC/2023 is disposed of in terms of the above.

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

Sd./-
(Arun Goyal)
Member

Sd./-
(Jishnu Barua)
Chairman

