

DERC Holds Events in PPA to be Covered Under Force Majeure: No Compensations Due

SEI Renewable Energy Pvt. Ltd. & Ors. vs. Tata Power Delhi Distribution Ltd.



INTRODUCTION & FACTS

SEI Renewable Energy Private Limited, SEI Jyotishwaroop Power Private Limited and SEI Ravikiran Energy Private Limited (collectively referred to as **Petitioners**) filed Petition under Section 86(1)(b), (e) and (f) of the Electricity Act, 2003 read with Article 4.1.1 read with Article 7 of the Power Purchase Agreement dated 15.07.2015 seeking extension of Scheduled Delivery Date (SDD) from 20.04.2020 to 31.10.2020 of the respective 30 MW Solar Photovoltaic Power Generating Stations at District Shivpuri, Madhya Pradesh, i.e. cumulatively 90 MW capacity (collectively the **Project**) on account of Force Majeure events i.e. outbreak of novel Coronavirus (**Covid-19**) and consequent lockdown and various restriction imposed by Government of India.

The said Petition was filed in the backdrop of Ministry of New and Renewable Energy (MNRE) notification dated 13.08.2020 thereby directing

all Renewable Energy (RE) Projects shall be given an extension of 5 months from 25.03.2020 to 24.08.2020 without case-to-case examination.

Although, on 26.08.2020, Government of India lifted interstate travel restrictions, but problems persisted due to limited state travel restrictions. The Project commissioned on 09.10.2020, in terms of direction of Delhi Electricity Regulatory Commission (DERC), however, certificate for commissioning of Project was received on 27.10.2020.

Issues before the DERC:

1. Whether the claim with regard to extension of SDD of the respective 30 MW solar Photovoltaic Power Generating stations at District Shivpuri to 31.10.2020 is a force majeure event in terms of the PPA?
2. Whether Petitioners are eligible for extension to shift SDD as per PPA?

RULING

DERC while deciding on the Petition filed held that the delay caused to SPD between 25.03.2020 to 24.08.2020 is covered by the Notifications issued by MNRE. Further, as for the delay from 24.08.2020 to the actual date of commercial Operation i.e. 24.10.2020, DERC held as follows:-

(a) Covid 19 and its related restrictions constitute an event of Force Majeure under the PPA.

(b) After considering the totality of facts placed before the Commission, DERC held that the SPD cannot be faulted for on-action at any stage.

(c) Therefore, the consequent period from 24.08.2020 up to actual Commercial Operation was also considered as Force Majeure. DERC also held that no indemnification payment shall be made for the delay between 25.03.2020 to actual Commercial Operation date i.e. 27.10.2020.

Please find link to Order [here](#)

SKV Comment...

This is a significant order in relation to Covid-19 related delays caused to various SPDs on two counts:

a. Firstly, DERC has accepted the applicability of MNRE Notifications. As in some cases it has been so far seen the DISCOMs for intra state dispute seek to distinguish the said Notifications on the ground that it primarily applies to implementing agencies operating under the aegis of MNRE.

b. Secondly, the consequential delay in this case has also been considered for Force Majeure. It has been the usual practice to only consider the actual days of Force Majeure for the purpose of extension. However, this is one of the few cases where consequential impact of Force majeure has also been considered.