

Central Commission upheld that if loss suffered cannot be quantified, then there is no requirement to prove actual loss suffered if the parties have agreed on a genuine pre-estimate of damages under the contract



Central Electricity Regulatory Commission (CERC) on 16.09.2022 passed its Order in the case of *Parampujya Solar Energy Private Limited vs NTPC & Anr.*, Petition No. 62/MP/2020. The Petition was filed by Parampujya Solar Energy Private Limited (Solar Power Developer) seeking directions to NTPC (intermediary) to accept the impact of Force Majeure events and thereby extend the Scheduled Commissioning Date (SCOD) of the Project of Parampujya and that NTPC must prove the loss suffered to claim the compensation on account of delay.

Parampujya argued that the 23-day delay caused by Force Majeure events should be excused. NTPC, on the other hand, claimed that the 23-day delay is entirely the fault of Parampujya, and thus Parampujya is liable to pay NTPC Rs. 2.30 crores in liquidated damages. Accordingly, NTPC encashed the Performance Bank Guarantee (PBG) and Parampujya paid Rs. 2.30 Crores to NTPC.

CERC was pleased to hold in the favour of the intermediary that the delay is on the part of SPD and in terms of Section 74 of the Indian Contract Act and the principles laid down by Hon'ble Supreme Court in *Kailash Nath Associates Vs Delhi Development Authority & Ors.*, NTPC is not required to prove the loss or damage suffered on account of delay in commencement of supply of electricity by Parampujya in order to claim the compensation as the liquidated damages have already been pre-estimated in the Agreement signed between the parties.

The effect of the Order is that NTPC is not liable to return the amount paid by Parampujya and it further affirms the finding of the Hon'ble Apex court that aggrieved party do not need to prove the loss for claiming the compensation, when the same is pre-estimated.

Access the Order [Here](#).

The SKV Law Offices team comprising of Mr. Shri Venkatesh, Managing Partner; Mr. Ashutosh K. Srivastava, Senior Associate; and Mr. Abhishek Nangia, Associate represented NTPC Ltd. in the matter.