

ENERGY & DISPUTE RESOLUTION

Constructive Notice: Is Non-Issuance of Formal Notice a Bar to Claiming *Force Majeure*?

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Force Majeure clauses are common in long-term contracts in the Indian electricity sector, including Power Purchase Agreements, transmission agreements and implementation agreements. Broadly, a Force Majeure clause protects a party where performance is prevented or delayed by an event beyond its control and covered by the contract. Since Force Majeure is primarily contractual, the entitlement to relief depends on the agreement and the conditions it prescribes.

A common condition is the requirement to issue a Force Majeure notice. The affected party is generally required to notify the counterparty in writing of the event, its effect on performance and, sometimes, the relief claimed, within a specified period, often five or seven days. The purpose is to enable the counterparty to understand the impediment, assess its consequences, take mitigation measures and maintain a contemporaneous record.

The difficulty arises where no formal notice is issued, but the counterparty nevertheless knew of the event and its consequences. It may have participated in meetings, exchanged correspondence, taken steps to resolve the impediment, or itself been involved in the circumstances causing the delay. The affected party may then contend that the counterparty had constructive notice and that insisting upon formal notice would serve no substantive purpose.

Constructive notice, in this context, concerns circumstances in which the surrounding facts and conduct

establish that the counterparty was, in substance, aware of the relevant event and its effect despite the absence of the prescribed notice. The question is whether such knowledge can cure non-compliance with the contractual requirement.

The answer depends principally upon the contract. Where notice is expressly made a condition precedent to Force Majeure relief, failure to comply may defeat the claim. Where no such consequence is attached to non-compliance, the parties' conduct and the counterparty's knowledge may assume significance. Recent Supreme Court and APTEL decisions illustrate this distinction.

I. Force Majeure and the Contractual Requirement of Notice

In *Energy Watchdog v. Central Electricity Regulatory Commission*, (2017) 14 SCC 80, the Supreme Court recognised that where parties have incorporated a Force Majeure provision, the issue must be examined within the contractual framework. Thus, a claimant must establish both that the event falls within the contractual definition and that the procedural requirements for invoking the clause have been satisfied.

A notice may serve two related purposes: communicating the occurrence and effect of the event, and communicating the affected party's intention to invoke Force Majeure and seek relief. The distinction is important where the counterparty knew that a difficulty existed but was not expressly informed that contractual Force Majeure relief would be claimed.

II. Where Notice is a Condition Precedent

The clearest position arises where the contract expressly makes notice a condition precedent.

In *Chamundeshwari Electricity Supply Company Ltd. v. Saisudhir Energy (Chitradurga) Pvt. Ltd.*, 2025 INSC 1034, the PPA required notice of a Force Majeure event within seven days and expressly made such notice a precondition to claiming relief. No notice was issued. The Supreme Court held that the requirement was not merely directory but a condition precedent to invoking the Force Majeure provision. The Court also noted that the PPA contained a separate extension-of-time mechanism which had not been invoked.

Saisudhir therefore establishes that where parties expressly make notice a condition precedent,

knowledge of the underlying circumstances does not ordinarily substitute for the agreed contractual procedure.

III. When the Counterparty's Knowledge Becomes Relevant

A different consideration may arise where notice is not expressly made a condition precedent and the counterparty has itself acted upon the circumstances causing the delay.

In *Bangalore Electricity Supply Company Ltd. v. Hirehalli Solar Power Project LLP*, 2024 INSC 631, the Karnataka Electricity Regulatory Commission had rejected the Force Majeure claim, inter alia, for non-compliance with the notice requirement. APTEL reversed that finding, and the Supreme Court declined to interfere. The Court took into account the distribution licensee's conduct, including granting an extension after considering the relevant material and the manner in which the notice objection was raised.

Hirehalli does not establish that formal notice is universally unnecessary. It demonstrates instead that the notice requirement must be considered with the contractual language and the parties' conduct. Where the counterparty has acted upon the relevant circumstances, its subsequent reliance upon a formal defect may require closer examination.

IV. Constructive Notice: Knowledge of the Event versus Invocation of Relief

The distinction between knowledge of an event and invocation of contractual relief remains important.

In *Tamil Nadu Electricity Board v. PPN Power Generating Company Pvt. Ltd.*, Appeal No. 189 of 2017, decided on 3 September 2024, APTEL considered a claim arising from the December 2004 tsunami. The Tribunal did not accept the contention that a Force Majeure notice issued by one party could automatically substitute for the notice required from another party seeking relief. The decision illustrates that knowledge of an event does not necessarily establish that a particular party intends to invoke its contractual Force Majeure rights.

Thus, constructive notice is not a general substitute for contractual invocation. Knowledge that an event has occurred may, in appropriate circumstances, satisfy the substantive purpose of communicating the event, but does not automatically establish that the affected party has claimed contractual Force Majeure relief.

V. The 2026 APTEL Decision and the Emerging Position

The issue was considered most recently by APTEL in *Punjab Energy Development Agency v. Punjab State Electricity Regulatory Commission, PSPCL and Mihit Solar Pvt. Ltd.*, Appeal Nos. 280, 371 and 398 of 2017, decided on 18 May 2026 and in *Radiance Punjab Renewable Private Limited v. PSERC & Ors.*, Appeal No. 200 of 2018, decided on 3 July 2026.

The implementation agreement required written notice within five days. No formal notice was issued concerning certain grid-connectivity delays. However, the relevant agency had known of the issue for a considerable period, participated in meetings and actively intervened to resolve it. APTEL held that, in those circumstances, the notice was substantially a formality and that its absence could not be used to deny the claim.

The Tribunal reached a different conclusion concerning a separate delay arising from a civil-court stay order. No Force Majeure notice had been issued for that event, and relief was declined.

The contrasting outcomes demonstrate that constructive notice is fact-specific and event-specific. Knowledge of one impediment cannot cure the absence of notice concerning another. The relevant enquiry is whether, in relation to the particular event, the counterparty had sufficient knowledge and was sufficiently engaged with its consequences that the purpose of the notice requirement had effectively been achieved.

VI. Conclusion

The recent jurisprudence indicates that the effect of non-issuance of a Force Majeure notice depends upon the contractual language and the circumstances of the particular event.

Where the contract expressly provides that timely notice is a condition precedent, failure to issue notice may defeat the claim. *Saisudhir* is the clearest authority on this principle.

Where the contract does not expressly make notice a condition precedent, the counterparty's knowledge and conduct may become relevant. *Hirehalli* and the 2026 PEDDA decision demonstrate that participation in, and conduct concerning, the circumstances giving rise to delay may affect the consequences of non-compliance.

Constructive notice should nevertheless not be treated as an automatic substitute for formal notice. The claimant must still establish that the event falls within the contractual definition, actually affected performance and caused the delay claimed. Further, knowledge of an event is not necessarily equivalent to knowledge that Force Majeure relief is being invoked.

The prudent contractual approach therefore remains to issue the prescribed notice within the stipulated period, identifying the event, its effect on performance and the relief sought. Where a separate extension-of-time mechanism exists, it should also be invoked where applicable.

Constructive notice is best understood not as a general exemption from contractual notice requirements, but as a fact-specific principle relevant to determining whether the substantive purpose of the requirement has already been achieved through the counterparty's knowledge and conduct. Ultimately, the distinction between a contractual condition precedent and a procedural requirement turns upon the language of the agreement and the circumstances of the particular Force Majeure event.

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