

Supreme Court of India again enforces sanctity of Power Purchase Agreements: No relief without force majeure notice or invocation of correct contractual provision

The Hon'ble Supreme Court of India ("Supreme Court") in the case of *Chamundeshwari Electricity Supply Corporation Limited vs. Saisudhir Energy (Chitradurga) Private Limited and Anr.*¹ set aside the judgment passed by Appellate Tribunal for Electricity ("APTEL")² along with the order of the Karnataka Electricity Regulatory Commission ("KERC").

Supreme Court adjudicated on the issue related to extension of commercial operation date ("COD") of a solar power developer due to delay in construction/completion of evacuation system by a State Transmission Licensee which was cited as 'force majeure' by the developer.

Supreme Court held the developer must invoke the correct clause of the Power Purchase Agreement ("PPA") to claim extension, and omission to do so, including failure to issue a force majeure notice, does not entitle any relief to the developer.

Brief facts

Saisudhir Energy ("Saisudhir") i.e. a Section 63 solar power developer approached KERC and sought (a) restoration of its encashed Performance Bank Guarantee ("PBG") by Chamundeshwari Electricity Supply Corporation Limited ("CESC"); (b) extension of timelines for Conditions Precedent ("CPs") and Commercial Operation Date ("COD") of its project, and (c) continuance of the original tariff.

PPA was executed on August 30, 2012 between Saisudhir and CESC. The capacity contracted under the PPA was 10 (ten) MW. The tariff originally decided was INR 8.49 (Indian Rupees eight forty nine paise)/kWh. COD was to be achieved within 12 (twelve) months of the effective date subject to satisfaction of the CPs within 240 (two hundred and forty) days. CPs obligated Saisudhir to acquire land, secure statutory approvals, achieve financial closure, enter into connectivity agreements, and ensure readiness of the evacuation system in coordination with the Karnataka Power Transmission Corporation Limited ("KPTCL"), the State Transmission Utility of Karnataka. Saisudhir sought CESC's assistance for securing approvals and requested extension of the COD, citing delay in KPTCL's commissioning of the 220 (two hundred and twenty) kV lines.

Saisudhir approached KERC citing reason for delay as KPTCL's delay in completion of 220 (two hundred and twenty) kV evacuation lines which made COD impossible within the contractual time.

¹ (2025 INSC 1034)(decided on August 25, 2025)

² Judgment dated March 21, 2018 in Appeal No. 176 of 2015

KERC on January 28, 2015 passed its final order and held that the delay in completion of the evacuation system constituted a 'Force Majeure' event under the PPA and accordingly ordered: (a) restoration of the encashed performance security (by CESC) to Saisudhir; (b) extension of the contractual timelines and (c) renegotiation of the project tariff in the light of the revised commissioning schedule. APTEL on March 21, 2018, affirmed KERC's findings.

Issues

1. What is the effect of KPTCL's delay in commissioning the 220 (two hundred and twenty) kV evacuation system?
2. Whether it is CESC's entitlement to invoke and encash the PBG?
3. Whether KERC's finding of force majeure is sustainable in the absence of the contractual notice under Article 14.5 of the PPA?

Findings and analysis

The Supreme Court adjudicated on the issue related to extension of COD of a solar power developer due to delay in construction/completion of evacuation system by a State transmission licensee which was cited as 'force majeure' by the developer. Upon adjudication, Supreme Court held that:

1. contractual rights and remedies must be asserted within the framework of the agreement, not dehors it;
2. even if the delay in completion of the evacuation system was beyond the solar power developer's control, the appropriate provision for relief under the PPA ought to have been invoked;
3. requirement of notice under the force majeure clause is not merely directory; it is a condition precedent for invoking the clause;
4. PPA, being the product of a competitive bidding process and having received regulatory approval, must be construed and enforced strictly in accordance with its express stipulations. To permit otherwise, would be to allow KERC or the APTEL to override the parties' own allocation of risk under the contract; and
5. the jurisdiction of the regulatory bodies is to ensure compliance with law and to adjudicate disputes within the 4 (four) corners of the contract. It does not extend to recasting the contractual framework by directing restitution of amount lawfully realised under the PPA, or by mandating alterations to tariff and timelines in a manner inconsistent with the agreement.

The Supreme Court interpreted the clauses of PPA and effectively held that relief under PPA ought to be claimed under the correct provision failing which relief cannot be granted.

Conclusion

The judgment aligns with the Supreme Court's recent line of authority that PPAs must be interpreted and enforced strictly. However, the outcome in this judgment may be harsh. Despite acknowledging that the delay was in fact caused by KPTCL, and that the solar power developer was dependent on the evacuation infrastructure, the lack of procedural compliance, specifically, failure to issue notice or request an extension proved fatal. While upholding sanctity of competitively bid PPAs, this judgment limits the remedial discretion of regulatory commissions.

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