



Indian Electrical & Electronics Manufacturer's Association
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Director General

SEC/REP/S/130

3rd June 2021

Dear Sir,

Subject: Request for non-imposition of penalty for delay in execution of contracts during the period from February 2020 to March 2022

The Indian electrical industry has been undergoing through an unprecedented situation and difficult times, caused by the outbreak of deadly Covid 19 pandemic.

Taking cognizance of the seriousness of the situation, the Department of Expenditure, Ministry of Finance, vide its Office Memorandum F.18/4/2020-PPD, dated 19th February 2020, had declared the disruptions of the supply chains, due to spread of Covid-19 as Force Majeure.

Force majeure means events beyond the control of human individual and organization, such as, any act of God, Pandemic, Public hostility etc. Thus, the Government of India has been proactive in instructing invocation of Force Majeure clause, considering Covid-19, as a natural calamity.

Also, the provisions states that in the contracts under Force Majeure conditions, there should not be any financial implications on the Contractor / Supplier / Manufacturer / Service Provider by way of any provisions of the contract. It is further mentioned that that in case the Force Majeure conditions are prolonged beyond 90 days, either party can terminate the contract without any financial implications on the other party.

From the day of this Office Memorandum on Force Majeure in February 2020, the same conditions still prevails globally, which is beyond the control of any individual or organization. It is very much likely that this condition will continue till March 2022 or beyond.

Keeping in view the Force Majeure conditions, the Government of India had issued various advisories between February 2020 and December 2020 for:

1. Extension of completion period and refund of delay penalties.
2. Relaxation in Bank guarantees and release of bank guarantees
3. Various advisories to clear the outstanding payments etc.

However, despite the above central advisories issued since February 2020, many State Governments, Central PSUs and Electricity Generation / Transmission / Distribution Companies have neither enforced the Force Majeure Clause, nor extended completion period, nor returned the liquidated damages deducted from February 2020 till date.



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Some utilities, which have extended the completion period have adopted a cautious approach by partially extending the completion period. Moreover, the State Authorities are asking the suppliers to submit proofs and reasoning to justify the delays, during the time of Pandemic.

It is pertaining to note that many of the industry members have been struggling to normalize their supply chain during the last one year and some are not able to start their factories /work due to disruption in supply chain, leading to further loss along with fixed overheads, in the shape of salaries, maintenance/electricity expenses and bank interest, which cannot be avoided and were applicable even during the lockdown period.

We feel that if Government buyers keep on demanding proofs and reasoning, even under force majeure conditions, the very essence of this force majeure is diminished.

Almost all IEEMA members companies are associated with the Government department, under Ministry of Power, either directly or indirectly, as equipment manufacturer supplier / Contractor / Service provider / Developer which have gone extra miles during this pandemic under extremely challenging and life threatening conditions, to serve the Government on the understanding and trust that any liquidated damages or penalty, if deducted during pandemic conditions will be refunded.

We feel that the health of the vendors is of primary importance to the Principal. This has been a practice around the world for the quality and supply interest of the buyer in the long run.

IEEMA seeks your kind intervention on this matter and request your good offices to issue necessary instructions to power utilities of State and the Government of India not to impose any kind of penalties for the delay in execution of contract for the period from February 2020 to March 2022 or allow short closing of a contract, if any party desires so, without any financial implication to that party.

We look forward to kind consideration of our above request.

With Best Regards

Yours sincerely

Sunil Misra

Shri B.B. Swain
Secretary
Ministry of Micro, Small and Medium Enterprises
Government of India