IMPACT OF COVID-19 ON UNDERCONSTRUCTED RENEWABLE ENERGY PROJECTS IN INDIA

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Introduction

The National Solar Energy Federation of India ("NSEFI"), an umbrella organization of all solar energy stakeholders of India, has estimated that around 4 GW of solar generation capacity is set to be affected in India by delayed deliveries from China after the outbreak of COVID-19. The virus has officially been declared a global pandemic by the World Health Organization. In addition to human life, COVID-19 is causing significant economic disruptions all over the world.

Supply Interruption

China is the world's second-largest economy and a major trade partner for many countries including India. It has become the central manufacturing hub of many global business operations. Any interruption in China's productivity is expected to have repercussions all over through regional and global networks. The outbreak of COVID-19 has caused a delay in the delivery of solar products that are needed across the world.

The solar power projects in India have been badly impacted due to the spread of COVID-19 as China has stopped the supply of solar cells and modules. Nearly, 80% of solar modules in India are sourced from China (directly or indirectly). Due to the import dependency on China for sourcing of solar modules and cells, the Indian developers are facing a shortage of raw materials needed for setting up of new solar projects as there are delays in the transit and limited stocks from China.

Issues faced by Renewable Energy Sector

India has become one of the leading renewable energy producers globally, with ambitious capacity expansion plans to achieve 175 GW by 2022 and 500 GW by 2030, as part of its climate commitments. However, the solar industry is facing hindrances due to issues such as:

(i) very high transmission and distribution losses,
(ii) per capita land availability is very low in India,
(iii) delays in making payments by discoms,
(iv) securing transmission connectivity,
(v) financing in a timely manner, and
(vi) now COVID-19 is delaying the supply schedules.

Relevant PPA Provisions

The standard terms of the government PPAs ("Standard Government PPAs"), among others, provides for penalties including reduction of tariff for non-completion of the renewable energy project within the prescribed timeline. Further, the Standard Government PPAs also protects the developers against force majeure events. The force majeure provision in the Standard Government PPAs excuses the developer from performing its obligations if a force majeure event prevents such performance. However, the developer is required to bear its risks and cost associated with force majeure, i.e., any cost associated with force majeure event will be on the developer and the developer is only entitled to an extension of time.

Government Measures to Mitigate Impact of COVID-19
To provide relief to the renewable energy sector in India, the Ministry of New and Renewable Energy ("MNRE") has issued a notification allowing extension of time for completion of renewable energy projects effected by COVID-19 ("COVID-Notification"). The COVID-Notification recognises disruption of the supply chains due to the spread of virus in China and other countries as a force majeure event. The developers claiming force majeure is required to make a formal application to the relevant implementing agencies giving documentary evidence in support of their claim.

Open Issues
Termination due to prolonged Force Majeure Event: The Standard Government PPA usually provides that if a force majeure event continues beyond 3-6 months ("Force Majeure Termination Period"), then either party will be entitled to terminate the PPA. In light of this provision, the issues which require further consideration are:

(i) whether the projects affected by COVID-19 should be cancelled/PPAs terminated post the Force Majeure Termination Period, or

(ii) to let the projects be further delayed and completed post force majeure event, i.e., the implementing agency not to terminate the PPAs post the Force Majeure Termination Period and allow the developers to decide whether they want to continue with the project or terminate the PPA.

In deciding whether to terminate the PPAs, the following issues require consideration:

(i) cost of the bid process,
(ii) the time required for completing a bid process, and
(iii) the cost incurred by the developers post wining of the bid. For example, some of the developers of

the affected project may have already acquired some or all of the land and incurred other expenses towards the implementation of the project. In this kind of situation, it may be better to delay the projects affected by COVID-19, instead of termination of the PPA.

Debt: Servicing of debt may be an issue for the renewable energy companies in India in light of various factors including default/delay of payment by the discoms and impact of COVID-19, which is increasing the cost of the projects. Considering these issues, the Government should consider implementing policy to delay payment of interest and principal for projects affected by COVID-19.

Conclusion
Although the Government has taken measures to provide some relief to the renewable energy sector in India by the issuance of COVID-Notification, further measures need to be considered, including those highlighted above, because the impact of COVID-19 will be felt by the economy and the renewable energy sector for at least months to come if not years.

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