



PMC Cell – MM

Oil and Natural Gas Corporation Ltd
Corporate Materials Management
2nd Floor, Tower-A, Deendayal Urja Bhawan,
5, Nelson Mandela Marg, Vasant Kunj, New Delhi -110 070
Tel – (011)26752004 Fax – (011) 26129091

Circular No. 41 /2020

No: MAT/PMC/13(185)/2020

Dated: 03.09.2020

Sub: Applicability of Force Majeure due to situation arising on account of COVID-19.

Reference is invited to O.M. dated 13.05.2020 from Department of Expenditure, Government of India vide which Guidelines with respect to applicability of Force Majeure situation due to situation arising on account of COVID-19, have been specified. Further, Department of Public Enterprise, Government of India, vide O.M. dated 01.07.2020 has informed that the aforementioned O.M. dated 13.05.2020 is applicable to CPSEs. Copy of the said O.M.s is attached as Annexure-I herewith for reference.

Accordingly, EPC in its meeting (10/2020) held on 12.08.2020 has examined the guidelines issued vide O.M. dated 13.05.2020 and decided as under towards applicability of the Force Majeure on account of COVID-19 Global Pandemic only:

- i) Situation arising due to COVID-19 Global Pandemic will be considered under Force Majeure situation.
- ii) Considering COVID-19 as special situation, the requirement of notifying ONGC, by the contractor/supplier, in writing within 72 hours of beginning of cause amounting to Force Majeure, is dispensed with.
- iii) The guidelines detailed at para (iv) & (v) below shall be applicable for Domestic suppliers/contractors whereas for foreign suppliers/contractors guidelines (except para 4) issued by Corporate Legal (attached as Annexure-II) shall be followed irrespective of duration for which extension has been sought.
- iv) In case, the contractor has requested for extension of delivery/completion period of contract by invoking Force Majeure for a period of 3 months or less than 3 months, the extension may be granted without levy of Liquidated damages for the period, extension is being sought by contractor/supplier or 3 months, whichever is lower. Further, the requirement of documents from contractor for justifying the request for extension in delivery period/contractor period will not be insisted upon.
- v) In case, contractor has requested for extension of delivery/completion period of contract by more than 3 months, then the extension will be granted without levy of Liquidated damages for 3 months, without seeking any documents, as per para (iv) above. However, for period beyond 3 months, the issue will be dealt in line with the guidelines (except para 4) issued by Corporate Legal (attached as Annexure-II).

The contract shall be extended, depending on the specific circumstances of the case, for the maximum period of 6 Months only.

In this regard, for domestic supplier/contractor, documents/directives issued at the level of District Magistrate or higher or any other authority designated by the Government of relevant area shall be considered acceptable. Similarly for foreign supplier/contractor, documents

pertaining to such period shall be from the authority authorized to issue such certificate in the area of respective country. The responsibility for genuineness of such document shall be on contractor/supplier submitting the document. Further, such supplier/contractor (both domestic and foreign) shall submit the undertaking towards genuineness of such document while submitting their request.

- vi) Further, in case of intermittent lock-down imposed by various authorities, the duration of extension to be granted as per para (iii), (iv) & (v) shall be considered on cumulative basis.
- vii) The above guidelines on Force Majeure shall be dealt as Post Contract issue as per Para 24.3 of IMM Manual and approval of Competent Authority shall be obtained accordingly.
- viii) The above guidelines will not be applicable on marketing cases, for which guidelines issued by Corporate Legal will be followed.
- ix) The above guidelines on Force Majeure would be held valid only in a situation where the contractor/supplier was not in default of any of the contractual obligations as on 19th February, 2020. Further, Force Majeure does not absolve all non-performance of contractor, but only in respect such non-performance as is attributable to a lockdown situation or restrictions imposed under any ACT or executive order of the Government/s on account of COVID-19 global pandemic.

Above guidelines should be meticulously followed by all concerned.


(A P Tripathi)

ED-Chief MM Services

Distribution: (Through ONGC's intranet website 'ongcreports.net').

All concerned may download the circular from the site. Hard copies are not distributed separately.

Copy through e-mail:

1. EO to CMD, ONGC, New Delhi.
2. CEA to Director (T&FS) / Director (Offshore) / Director (HR) / Director (Exploration)/Director (Onshore)/ Director (Finance), ONGC, New Delhi.
3. CVO, ONGC, New Delhi.

No. DPE/7(4)/2017-Fin.(Part-I)
Government of India
Ministry of Heavy Industries & Public Enterprises
Department of Public Enterprises

Public Enterprises Bhawan
Block No.14, CGO Complex
New Delhi - 110003

Date: 1st July, 2020

OFFICE MEMORANDUM

Subject: Dept. of Expenditure OMs No.18/4/2020-PPD dated 13.5.2020 regarding performance Security in terms of Rule 171 of GFR 2017 and 'Force Majeure Clause (FMC)' -regarding

The undersigned is directed to enclose herewith Department of Expenditure (DoE) two OMs No.18/4/2020-PPD dated 13.5.2020 regarding Performance Security in terms of Rule 171 of GFR 2017 and 'Force Majeure Clause (FMC)' issued by DoE as part of the Government's 'Atmanirbhar Bharat' package for information and compliance by CPSEs. As clarified by DoE vide OM No. 18/15/2020-PPD dated 25.6.2020 (copy enclosed) the provisions of the said OMs dated 13.5.2020 are also applicable to the CPSEs.

2. All the administrative Ministries/ Departments of CPSEs are requested to direct their CPSEs for compliance of directions contained in the above stated DoE OMs.
3. This issues with the approval of competent authority.


(Kalyani Mishra)
Director
Tel.24362061

Encl.: As above
(OMs No. 18/4/2020-PPD dated 13.5.2020
18/4/2020-PPD dated 13.5.2020
18/15/2020-PPD dated 25.6.2020)

To
i) All the Secretaries to the Administrative Ministries/Departments of CPSEs
ii) Chief Executives of CPSEs

Copy for information to:
Secretary, D/o Expenditure, North Block, New Delhi

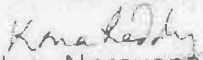
No.F.18/15/2020-PPD
Government of India
Ministry of Finance
Department of Expenditure
Procurement Policy Division

512, Lok Nayak Bhawan, New Delhi.
Dated the 25th June, 2020

OFFICE MEMORANDUM

Subject: Clarification on the applicability of OMs dated 13.05.2020.

Attention is invited to the two OMs No.F.18/4/2020-PPD dated 13.05.2020 regarding Performance Security in terms of Rule 171 of GFRs 2017 and Force Majeure Clause issued by this Department in the time of COVID-19 pandemic (copies attached). A Doubt has arisen as to whether the Central Public Sector Undertakings (CPSUs) are covered under the term "Government Agencies" referred in these OMs. In this regard it is hereby clarified that these two OMs are applicable not only to all Central Ministries/ Departments, their attached and subordinate offices, Autonomous Bodies covered by GFR, 2017 but also to Central Public Sector Undertakings (CPSUs) subject to issue of any separate orders by Department of Public Enterprises in this regard.


(Kotluru Narayana Reddy)
Deputy Secretary to the Govt. of India
Tel.No.2462 1305
Email: kn.reddy@gov.in

To

All Secretaries of Central Ministries/ Departments

Copy to : Secretary, Department of Public Enterprises with a request to reiterate the instructions in the OMs cited for compliance of CPSUs, as these were part of the Government's 'Atmanirbhar Bharat' package.

No. F. 18/4/2020-PPD
Government of India
Ministry of Finance
Department of Expenditure
Procurement Policy Division

North Block, New Delhi
New Delhi dated the 13th May, 2020

OFFICE MEMORANDUM

Subject: Force Majeure Clause (FMC)

Attention is invited to Department of Expenditure's O.M. No. 18/4/2020-PPD dated 19th February, 2020 on the invocation of Force Majeure Clause (FMC). Vide the O.M., it was clarified that disruption of supply chains due to spread of Coronavirus will be covered under FMC which could be invoked, wherever considered appropriate, following the due procedure as stated in para 9.7.7 of the Manual on Procurement of Goods.

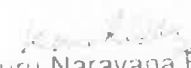
2. Subsequent to issuance of the above referred O.M., further disruptions have affected transportation, manufacturing and distribution of goods and services in the country. Limitations placed on the movement of men and material as per the guidelines issued by the Ministry of Home Affairs (MHA) under the Disaster Management Act, 2005 (DM Act 2005) and the respective State and UT governments from time to time have severely impaired the fulfilment of contractual obligations for supply of goods, works and consultancy services (including other services) and affected the volume of vehicular traffic.

3. Attention in this regard is invited to para 9.7.7 of the "Manual for Procurement of Goods 2017", Para 6.4.2 of the "Manual for Procurement of Works 2019" and para 8.14.1 of the "Manual for Procurement of Consultancy and other Services 2017" issued by the Department of Expenditure. The above referred three Manuals recognize extraordinary events or circumstances beyond human control leading to delays in or non-fulfilment of contractual obligations. In a situation of such events happening, and after following due procedure, parties to the contract are allowed flexibility to invoke FMC following prescribed due procedure.

4. It is recognised that in view of the restrictions placed on the movement of goods, services and manpower, on account of the lockdown situation prevailing overseas and in the country in terms of the guidelines issued by the MHA under the DM Act 2005 and the respective State and UT Governments, it may not be possible for the parties to the contract to fulfil contractual obligations. In respect of Public-private Partnership (PPP) concession contracts, a period of the contract may have become unremunerative. Therefore, after fulfilling due procedure and wherever applicable, parties to the contract may invoke FMC for all construction/works contracts, goods and services contracts and PPP contracts with Government Agencies and in such event date for completion of contractual obligations which had to be completed on or after 20th February 2020 shall stand extended for a period not less than

three months and not more than six months without imposition of any cost or penalty on the contractor/concessionaire. Concession period in PPP contracts ending on or after 20th February 2020 shall be extended by not less than three and not more than six months. The period of extension (between three and six months) may be decided based on the specific circumstances of the case and the period for which performance was affected by the *force majeure* events.

5. It is clarified that invocation of FMC would be held valid only in a situation where the parties to the contract were not in default of the contractual obligations as on 19th February 2020. It is further clarified that invocation of FMC does not absolve all non-performances of a party to the contract, but only in respect of such non-performance as is attributable to a lockdown situation or restrictions imposed under any Act or executive order of the Government/s on account of COVID-19 global pandemic. It may be noted that, subject to above stated, all contractual obligations shall revive on completion of the period.


Kotluru Narayana Reddy
Deputy Secretary to the Govt. of India
Tel No - 24621305
Email kn.reddy@gov.in

To,
Secretaries of all Central Government Ministries/Departments

5

Guidelines to be followed on invocation of FM by Contractor
Under the pretext of COVID-2019

Force Majeure (FM) is an unforeseeable event beyond the control and without any fault or negligence of a party preventing a Party / Contractor from performing its obligations under the Contract. In light of the present Novel Coronavirus pandemic (COVID-19) Many of the Contractors / Vendors have invoked FM by issuing Notice under the Contract / Agreement.

Some of the work centers have raised queries regarding applicability of FM condition to the present ongoing COVID-2019. As such to have uniform action it is suggested to take following steps depending upon the type of the Contracts / Transactions:

1. Upon receipt of any notice for FM invoked by the Contractor, user department should immediately bring it to the knowledge of the concerned MM section and Legal Section along with relevant contract copy. Since we have different type of FM clauses for different type of contracts, every such notice needs to be examined in light of FM clause and other relevant clauses of the particular Contract.
2. If the contract provides for any exemption from the invocation of FM clause, a reply should be sent communication to the Party rejecting its claim for FM. For example in Crude – Gas Sale Agreement / Term sheets it is provided that lack of buyers or utilization of the product would not be a ground for FM. The reply should further state that their services under the contract with ONGC being essential service, the same is not being impacted upon by the COVID-19 and the lockdowns imposed by the Government. Therefore, the claim for FM is denied. A draft of such letter is placed at **Annexure 'A' below.**
3. If the reason is not falling within exempted matters, then a letter be sent to the Contractor:-
 - a. seeking detailed reasons as to how the FM event is affecting its ability to perform its obligations
 - b. steps taken by the Contractor for mitigating the impact of the FM event.
 - c. Offer of assistance from ONGC's side if required by Contractor for obtaining passes / approvals from Government / State / District Administration.

A sample draft of such letter placed at **Annexure 'B'** below.

4. The Key Executive at the location shall form a Committee consisting of I/c MM, I/c Finance, I/c Legal and a technical person from the project. The response of the Contractor to the letter referred at Clause 3 above would be examined by this Committee and give clear recommendations (whether to accept or reject the claim of FM) to Key Executive within 2 days of receipt of reply from Contractor.
5. All the notices referred under clause 1 above shall be replied within two days.

In case of doubt on any specific issue, the same can also be referred to Corp. Legal Department through Corp. MM Department.

Note: Annexure "A" & "B" are deemed to be standard formats. I/C (Legal) of the locations may modify the same to suit the facts and circumstances of the contract before them.

Annexure 'A'
(on letter head)

To,

Subject: Invocation of Force Majeure vide Letter No. _____ dated _____ with respect to Contract No. _____ dated _____

Dear Sir,

Please refer your letter no. _____ dated _____, invoking Force Majeure clause no. _____ in the Contract No. _____ dated _____ due to [the outbreak of Novel Coronavirus Disease (COVID-19)].

2. In this regard, we would like to refer to clause / Article No _____ of (refer the relevant exemption clause) of the subject contract:

Quote

(Quote the relevant exemption clause)

Unquote

3. In light of the Force Majeure Clause quoted above, it is clear that the parties agreed that situations like COVID 19 would be outside the scope of Force Majeure Clause. Parties have consciously agreed that lack of buyers of the gas purchased by you would not be a situation covered under Force Majeure.
4. Further, Government of India by a Public Notice bearing Number -----dated -----has declared supply of Natural Gas across the country as a Essential Service and has exempted it from the restrictions under the lockdown directives. Accordingly ONGC has been maintaining its oil & gas operations and producing gas for supply to you. Therefore, your contention that the present situation is a Force Majeure situation for you is not acceptable and your purported invocation of Force Majeure Clause is not valid.
5. You continue to be under obligation to offtake the gas and are liable for the MGO charges as per GSA for the short offtake of the gas.

Yours sincerely,

Annexure 'B'
(on letter head)

To,

Subject: Invocation of Force Majeure vide Letter No. _____ dated _____ with respect to Contract No. _____ dated _____

Dear Sir,

Please refer your letter no. _____ dated _____, invoking Force Majeure clause no. _____ in the Contract No. _____ dated _____ due to [the outbreak of Novel Coronavirus Disease (COVID-19)].

2. In this regard, the following is brought out:
As per the Clause no. _____ of the Contract:

Quote

(Quote the relevant Force Majeure clause)

Unquote

- 3 However, you have not given any particular as to how and in what manner the present situation of COVID 19 / lockdown directives have made performance of your obligations impossible. Assuming, without admitting, that the present situation has really made performance on your part impossible or unlawful, you have not detailed what steps you have taken to mitigate and to find alternatives to perform the contract.
- 4 Further, Government of India by a Public Notice bearing Number -----dated -----has declared ONGC operations as an Essential Service and has exempted it from the restrictions under the lockdown directives. Accordingly ONGC has been maintaining its oil & gas operations. It seems that you did not avail the exemptions / concessions being extended by Govt authorities for maintenance of Essential Services and you are taking the COVID 19 just as an excuse to not perform the contract. Therefore, your contention that the present situation is a Force Majeure situation for you is not acceptable and your purported invocation of Force Majeure Clause is not valid.
- 5 Therefore, we do not accept your invocation of the Force Majeure Clause as valid unless you establish with sufficient facts and details and documentary evidence as required under the Force Majeure Clause of the Contract (i) that COVID 19 and lock down

directives of Govt have really made performance of the contract impossible and unlawful for you; (ii) that you have taken required measures to mitigate the situation and you explored alternatives to overcome the hurdles but despite such efforts / measures, performance continues to be impossible and unlawful.

6. Please note that unless you satisfy the aforesaid conditions, your obligation to perform continues and non-performance shall be dealt as per the contract and law.

Yours sincerely,