

COVID-19: A MULTILATERAL CATASTROPHE ON SOCIETY**-KISHAN RAJANAHALLI¹****ABSTRACT-**

Novel Corona Virus (COVID-19) outbreak has created distress and ruckus all across the world. The outburst is termed as a “global pandemic”. The pandemic has triggered unparalleled disturbance to economic activities, day to day operations and has influenced many companies contractual obligations and enforcement of the same. Further, it has also impacted the propensity of the companies to keep up with the stable functioning. Supply chains have been rigorously disrupted. The rights and obligations of parties to the contract are bound by doubt. The parties as well treat the outbreak of COVID-19 as platform for renegotiation of contractual arrangements and well may circumvent from performing their contractual obligations. This article from the outlook of Indian laws, analyses the scope of immunity proffered by a force majeure provision and whether such immunity even so be claimed if the force majeure stipulation is absent in the contract.

SUB THEME - THE CONCEPT OF FORCE MAJEURE IN THE PANDEMIC

Conceivably, in order to ease the impact of non-functioning and non-execution of the contracts, the companies may resort to “force majeure” stipulation enshrined in their respective contracts. Any extraordinary occurrences which are beyond human control (natural calamities), such events can be coined as “Force Majeure” event or an “act of god”. Government limitations imposed on contractual engagement would construe as an act of god.

If the force majeure clause is cited in the contract, such clause demands for non-performance be outside the limitations of the invoking party’s recourse and reasonable control, and such occurrence was not practicably foreseeable. *Whether the outbreak of COVID-19 would count as a force majeure event will be dependent on the terms of the contract* i.e. the manner force

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majeure provision has been framed in the contract or what uncertainties have been apprehended either explicitly or impliedly in such a force majeure provision eventuality which could meet the requirements as a force majeure occurrence. The onus rests on the party invoking such stipulation. The onus articulated in the contract can effortlessly be dispensed with when the clause expressly provides for occurrences/events like natural calamities, pandemics or any governmental limitation. Having said that, the situation may become complicated when such a stipulation is not explicitly enshrined in the contract and unambiguously worded as an “act of god”. Barring this, the party’s prerogative to exploit such clause would rest on following aspects. Bulk of the contracts would necessitate the party invoking such provision to appropriately intimate the counterparty within a specified time frame about the event which induced the force majeure clause. Furthermore, the party invoking would be required to form an estimation of the consequences and the prolongation of effects arising from the said event.

Varied effects of the force majeure occurrence are to be considered. For instance, the execution of the contract may be deferred in the course of a force majeure event and the performance may be postponed to a future date. The contract ceases if the force majeure event is persisted with for a considerable period of time.

It is essential that the parties relying on the force majeure stipulation must garner to various documents related to the event which might be needed if dispute arises. In the contemporary scenario, documents which may be required are – Central & state government’s notification and directions imposing curtailment on trade; news reports on COVID-19 pandemic, constricted travel, quarantine and obligatory shutdown of trains, airports and sea ports; logistics & cargo booking agreement; rejected or cancelled visa application.

If the contract doesn’t comprise of a force majeure stipulation, this condition may appear ominous, but the aforesaid has been taken care of by the “*doctrine of frustration*” under section 56 of the Indian Contract Act, 1872 and the standpoint taken by the Honourable Supreme Court. In a monumental decision in *Energy Watchdog Vs. Central Electricity Regulatory Commission* [2017 (4) SCALE 580], Justice Nariman deduced that the incident guiding to the frustration which is associated to either an express or implied clause, is regulated under Section 32 (Enforcement of the contract contingent on an event happening) of the act and if it occurs outside the scope of the contract, Section 56 of the act deals with it. In the ongoing

circumstances, the dependence on Section 54 of the act rely on – an authentic and persisting contract betwixt the parties; some portion of the contract yet to be accomplished and the contract after coming in force becomes impossible of enforcement (subsequent impossibility).

It is vital to note that the judiciary is granting relief on the narrative of subsequent impossibility when it is established that the whole basis or motive of the contract is frustrated owing to the obtrusion or unprecedented contingency or change in the environment, which was not foreseen by the parties whilst entering the contract or the completion of the contract becomes non-viable or futile considering the purpose and object the parties had in contemplation. The ongoing situation has altered the environment so drastically as to hamper the very purpose of the contract, making the obligations impractical to perform. The organisations and the parties to the contract be acquainted with the developments to cushion their arrangements from the universal socioeconomic slowdown.

The manoeuvre taken up by the Government of India earn a mention. The government is ascertaining appropriate measures to contain further disconcert in the international trade and economics by asserting the COVID-19 outburst as a force majeure event. An office memorandum dated February 19, 2020 issued by the Ministry of Finance avers that, force majeure stipulation can be invoked in case of government contracts if there exists a “disturbance in supply chain owing to the outbreak of virus either in China or any other country”². Furthermore, the memorandum also states that COVID-19 pandemic should be contemplated as a “*natural calamity*”. Further, Ministry of New & Renewable Energy (MNRE) bearing on this memorandum issued an office memorandum on March 20, 2020 directing all implementing agencies of MNRE to regard the delay caused due to disruptions in supply chains in China or any nation as a force majeure event³.

ARE WE EQUIPPED FOR THE PROSPECTIVE DISPUTE

² Office memorandum issued by the Department of Expenditure, Ministry of Finance dated February 19, 2020. <https://doe.gov.in/sites/default/files/Force%20Majeure%20Clause%20-FMC.pdf>

³ Office memorandum issued by the Ministry of New & Renewable Energy dated March 20, 2020. https://mnre.gov.in/img/documents/uploads/file_f-1584701308078.pdf

Despite the fact that in the present day scenario it would be absurd to draw the extent and quantum of harm caused, it is wise for any enterprise or organisation to be reasonably prepared to shield their specific businesses from the forthcoming disputes. As a general rule, the courts cannot exonerate a party from executing a part of the contract entirely on the fact that the performance has become impossible owing to an unprecedented turn of events, hence mere financial loss or economic difficulty may not suffice for a party to rely on the conditions laid under Section 56 of the act, and in consequence the parties may not be justified from performing their duties under a contract during such circumstances.

Nonetheless, whether a party to the contract is absolved from performing their obligations from the outlook of the pandemic is a query to be determined by perusing into the contract regulating a particular transaction.